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**SENATE BILL 5772**

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**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** Senators L. Wilson, Braun, MacEwen, Rivers, Dozier, Boehnke, Schoesler, Torres, McCune, Fortunato, Wagoner, Gildon, Padden, Short, King, Warnick, Muzzall, Holy, and Hawkins

1 AN ACT Relating to requiring the state building code council to  
2 amend the state energy code to comply with the energy policy and  
3 conservation act; amending RCW 19.27A.025, 19.27A.045, and  
4 19.27A.160; creating a new section; and declaring an emergency.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** On April 17, 2023, the United States court  
7 of appeals for the ninth circuit published its opinion in *California*  
8 *Restaurant Association v. City of Berkeley*, holding that the energy  
9 policy and conservation act expressly preempts state regulations  
10 concerning the energy use of many natural gas appliances, including  
11 building codes that regulate the use of natural gas in buildings. The  
12 legislature finds that Washington's new state energy code, adopted by  
13 the state building code council and scheduled to take effect in 2023,  
14 must be reevaluated in light of the *California Restaurant Association*  
15 opinion, and amended to comply with the interpretation of the energy  
16 policy and conservation act set forth in that opinion. Moreover, the  
17 legislature finds that it has delayed the effective date of new  
18 energy codes for the specific purpose of ensuring that the  
19 legislature has an opportunity to review the new codes and require  
20 the state building code council to adjust them as necessary.

1       **Sec. 2.** RCW 19.27A.025 and 2019 c 285 s 17 are each amended to  
2 read as follows:

3       (1) The minimum state energy code for new nonresidential  
4 buildings shall be the Washington state energy code, 1986 edition, as  
5 amended. The state building code council may, by rule adopted  
6 pursuant to chapter 34.05 RCW, amend that code's requirements for new  
7 nonresidential buildings provided that:

8       (a) Such amendments increase the energy efficiency of typical  
9 newly constructed nonresidential buildings; and

10       (b) Any new measures, standards, or requirements adopted must be  
11 technically feasible, commercially available, and developed to yield  
12 the lowest overall cost to the building owner and occupant while  
13 meeting the energy reduction goals established under RCW 19.27A.160.

14       (2) In considering amendments to the state energy code for  
15 nonresidential buildings, the state building code council shall  
16 establish and consult with a technical advisory committee including  
17 representatives of appropriate state agencies, local governments,  
18 general contractors, building owners and managers, design  
19 professionals, utilities, and other interested and affected parties.

20       (3) Decisions to amend the Washington state energy code for new  
21 nonresidential buildings shall be made prior to December 15th of any  
22 year and shall not take effect before the end of the regular  
23 legislative session in the next year. Any disputed provisions within  
24 an amendment presented to the legislature shall be approved by the  
25 legislature before going into effect. A disputed provision is one  
26 which was adopted by the state building code council with less than a  
27 two-thirds majority vote. Substantial amendments to the code shall be  
28 adopted no more frequently than every three years.

29       (4) Notwithstanding subsection (3) of this section, the state  
30 energy code for new nonresidential buildings scheduled to take effect  
31 in 2023 may not take effect until the state building code council  
32 amends the code to conform with the energy policy and conservation  
33 act as interpreted in the April 17, 2023, published opinion in  
34 California Restaurant Association v. City of Berkeley, case no.  
35 21-16278 (9th Cir. 2023).

36       **Sec. 3.** RCW 19.27A.045 and 1990 c 2 s 5 are each amended to read  
37 as follows:

38       (1) The state building code council shall maintain the state  
39 energy code for residential structures in a status which is

1 consistent with the state's interest as set forth in section 1,  
2 chapter 2, Laws of 1990. In maintaining the Washington state energy  
3 code for residential structures, beginning in 1996 the council shall  
4 review the Washington state energy code every three years. After  
5 January 1, 1996, by rule adopted pursuant to chapter 34.05 RCW, the  
6 council may amend any provisions of the Washington state energy code  
7 to increase the energy efficiency of newly constructed residential  
8 buildings. Decisions to amend the Washington state energy code for  
9 residential structures shall be made prior to December 1<sup>st</sup> of any  
10 year and shall not take effect before the end of the regular  
11 legislative session in the next year.

12 (2) Notwithstanding subsection (1) of this section, the state  
13 energy code for residential structures scheduled to take effect in  
14 2023 shall not take effect until the state building code council  
15 amends the code to conform with the energy policy and conservation  
16 act as interpreted in the April 17, 2023, published opinion in  
17 California Restaurant Association v. City of Berkeley, case no.  
18 21-16278 (9th Cir. 2023).

19 **Sec. 4.** RCW 19.27A.160 and 2009 c 423 s 5 are each amended to  
20 read as follows:

21 (1) Except as provided in subsection (2) of this section,  
22 residential and nonresidential construction permitted under the 2031  
23 state energy code must achieve a (~~seventy~~) 70 percent reduction in  
24 annual net energy consumption, using the adopted 2006 Washington  
25 state energy code as a baseline.

26 (2) The council shall adopt state energy codes from 2013 through  
27 2031 that incrementally move towards achieving the (~~seventy~~) 70  
28 percent reduction in annual net energy consumption as specified in  
29 subsection (1) of this section. The council shall report its progress  
30 by December 31, 2012, and every three years thereafter. If the  
31 council determines that economic, technological, or process factors  
32 would significantly impede adoption of or compliance with this  
33 subsection, the council may defer the implementation of the proposed  
34 energy code update and shall report its findings to the legislature  
35 by December 31<sup>st</sup> of the year prior to the year in which those codes  
36 would otherwise be enacted. The council shall delay the effective  
37 dates of the state energy code scheduled to take effect in 2023  
38 pursuant to the schedule set forth in RCW 19.27A.025(4) and  
39 19.27A.045(2).

1        NEW SECTION.    **Sec. 5.**    This act is necessary for the immediate  
2    preservation of the public peace, health, or safety, or support of  
3    the state government and its existing public institutions, and takes  
4    effect immediately.

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