

- Expedite
- No hearing set
- Hearing is set

Date:

Time:

Judge/Calendar:

**SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THURSTON COUNTY**

BUILDING INDUSTRY ASSOCIATION OF
WASHINGTON, a Washington non-profit
corporation,

Plaintiff,

v.

WASHINGTON STATE BUILDING CODE
COUNCIL, and DAIMON DOYLE, in his official
capacity as CHAIR of WASHINGTON STATE
BUILDING CODE COUNCIL,

Defendants.

No.

**COMPLAINT FOR DECLARATORY
JUDGMENT**

I. INTRODUCTION

1. The Washington State initiative process expects, and requires, governmental agencies to follow an initiative that the citizens of Washington have passed during a general election.

2. During the 2024 General Election, Washington voters passed Initiative 2066 (“I-2066”), an act relating to promoting energy choice by protecting access to gas for Washington homes and businesses. A true and correct copy of I-2066 is attached here as Attachment A.

3. I-2066 ends natural gas bans or restrictions for new and existing natural gas customers, repeals laws requiring energy companies to remove natural gas as an energy option, and protects

COMPLAINT FOR DECLARATORY JUDGMENT
CASE NO.

Building Industry Association of
Washington
300 Deschutes Way SW, Suite 300
Olympia, WA 98501
P: 360.352.7800

1 Washingtonians’ ability to rely on clean natural gas for cooking, heating their homes, and warming
2 their water.

3 4. I-2066 specifically changes RCW 19.27A.020 by stating that “[t]he Washington state
4 energy code may not in any way prohibit, penalize, or discourage the use of gas for any form of
5 heating, or for uses related to any appliance or equipment, in any building.” *See* Attachment A, pg.
6 18.

7 5. The State Building Code Council, a subagency of the Department of Enterprise Services,
8 has stated that it does not have to act to change the current 2021 Washington State Energy Code
9 (“2021 WSEC”) to comply with I-2066’s amendments to the RCWs that control the State Building
10 Code Council’s conduct.

11 6. The 2021 WSEC penalizes and discourages natural gas equipment and appliances in
12 Washington State homes through a variety of provisions.

13 7. The State Building Code Council is failing the people of Washington who passed I-2066
14 by choosing not to take steps to initiate emergency, and subsequently permanent, rulemaking under
15 RCW 19.27.032 and the Administrative Procedure Act (“APA”) Chapter 34.05 RCW to ensure
16 that natural gas equipment and appliances are not penalized in the home building process.

17 8. By failing to engage in emergency rulemaking following I-2066’s passage, the State
18 Building Code Council is depriving homebuilders and homeowners of the protection of natural
19 gas afforded to them from I-2066 in the building, heating, and running of their homes.

20 9. Plaintiff Building Industry Association of Washington respectfully asks this Court to issue
21 declaratory judgment declaring that: (1) I-2066 as of December 5, 2024 amended the Washington
22 Energy-related building standards statute, Chapter 19.27A RCW, specifically RCWs 19.27A.020,
23 19.27A.025, and 19.27A.045; (2) that the State Building Code Council is required to comply with
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1 RCW 19.27A.020(3); and (3) that it would be appropriate for the State Building Code Council to
2 engage in emergency rulemaking pursuant to RCW 19.27.032(c)(i)(B) to ensure that the 2021
3 WSEC complies with changes to Washington State law.

4 **II. PARTIES**

5 10. Plaintiff Building Industry Association of Washington (“BIAW” or the “Association”) is a
6 non-profit trade association with its principal office address located at 300 Deschutes Way SW,
7 Ste. 300, Tumwater, WA 98501. BIAW promotes the interests of Washington homebuilders.
8

9 11. BIAW represents, through fourteen local associations, more than 8,000 member companies
10 that employ approximately 265,000 people in all aspects of home construction.

11 12. Defendant Washington State Building Code Council (“SBCC” or the “Council”) is a
12 subagency of the Department of Enterprise Services of the State of Washington with its office
13 located at 1500 Jefferson Street SE, Olympia, WA 98501. The SBCC is made up of 15
14 gubernatorial appointed voting members with collective responsibility to establish the building,
15 residential, mechanical, fire, plumbing, and energy codes for the State.
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17 13. Defendant Daimon Doyle is a resident of Washington and the Chair of the SBCC.
18 Collectively, SBCC and Mr. Doyle shall be referred to as SBCC, the Council, or Defendants.

19 **III. JURISDICTION AND VENUE**

20 14. The Court has personal jurisdiction over the Council because the Council is a part of
21 Washington State government and is domiciled in Washington.

22 15. The Court has subject matter jurisdiction under Chapter 2.08 RCW, and Chapter 7.24
23 RCW.
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25 16. Venue is proper in this Court under RCW 4.92.010.
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IV. STANDING

17. BIAW has standing to request that this Court declare that I-2066 as of December 5, 2024 amended the Washington Energy-related building standards statute, Chapter 19.27A RCW; that the SBCC is required to comply with RCW 19.27A.020; and that it would be appropriate for the SBCC to engage in emergency rulemaking pursuant to RCW 19.27.032(c)(i)(B) to ensure that the 2021 WSEC complies with changes to Washington State law. Attached is a true and correct copy of RCW 19.27.032 as Attachment B.

18. BIAW has standing to bring suit on behalf of its members because its members would otherwise have standing to sue in their own right; the interests BIAW seeks to protect are germane to its purpose of championing the rights of its members, homebuilders, and fighting for affordable homeownership; and neither the claim asserted nor the relief requested requires participation of individual members in the lawsuit.

19. BIAW builder members have each suffered an injury in fact due to the SBCC’s failure to acknowledge its statutory obligations under RCW 19.27.032(c)(i)(B).

20. This Court’s grant of declaratory relief will redress directly the harm caused to BIAW by SBCC’s decision to ignore the changes implemented by I-2066 and the resulting violations of RCW 19.27A.020.

V. STATEMENT OF FACTS

A. Background – Engrossed Substitute House Bill 1589

21. During the 2024 Legislative Session, the Washington State Legislature passed Engrossed Substitute House Bill 1589 (“ESHB 1589”), “AN ACT Relating to supporting Washington’s clean energy economy and transitioning to a clean, affordable, and reliable energy future [...]” or colloquially referred to by its opponents as a “Ban to Natural Gas.”

1 22. ESHB 1589 provides Puget Sound Energy (“PSE”) sweeping authority to electrify its
2 natural gas system.

3 23. Specifically, ESHB 1589 section 3(4)(h) requires PSE to develop a plan to “achieve all
4 cost-effective electrification of end uses currently served by natural gas” including “geographically
5 targeted electrification.”

6 24. Once PSE converts every one of its natural gas customers to electricity in a targeted area,
7 PSE will be able to decommission service to that area for natural gas with approval from the
8 Utilities and Transportation Commission (“UTC”).

9 25. ESHB 1589 incentivizes PSE to electrify its system at the expense of ratepayers by
10 allowing for accelerated depreciation of natural gas assets by 2050.

11 26. ESHB 1589 combines natural gas and electricity rates for consumers, requiring customers
12 who receive one or the other to pay for the delivery and infrastructure maintenance of both.

13 27. PSE under ESHB 1589 can obtain pre-approval for energy projects and incorporate those
14 costs before the UTC approves the project, and, if the project is ultimately disapproved, PSE can
15 incorporate all the associated costs of energy projects into utility rates.

16 28. Governor Inslee signed ESHB 1589 into law on March 28, 2024, at a large bill signing
17 ceremony.

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20 **B. I-2066 Drafting, Filing, and Passage**

21 29. In response to the passage of ESHB 1589, concerned citizens drafted I-2066.

22 30. I-2066 was drafted to strengthen requirements for public utilities and certain regulatory
23 agencies, for example, the SBCC, to protect customers' access to gas while allowing substantial
24 portions of ESHB 1589 to take effect.

1 31. I-2066 makes targeted changes to ESHB 1589 and other laws to ensure that energy choice
2 is protected for consumers who still want access to gas even after ESHB 1589’s planning
3 requirements for utilities are fully implemented.

4 32. I-2066 includes thirteen sections that work together to ensure that natural gas remains
5 available.

6 33. Section one addresses I-2066’s service of its paramount goal: to preserve access to gas for
7 Washington homes and businesses by strengthening utilities’ obligation to provide it to customers
8 and preventing regulatory actions that will limit access.

9 34. Sections two and three of I-2066 require state-regulated public and municipal gas utilities
10 to provide gas to eligible customers in their service areas when those customers request to be
11 served, otherwise known as the utilities’ “obligation to serve.”

12 35. Sections four and five of I-2066 prohibit the UTC from approving a utility’s rate plan or
13 system plan that pushes a regulated gas utility toward terminating gas service for customers or
14 forces customers to involuntarily switch to a different energy source by making natural gas cost
15 prohibitive.

16 36. Section five additionally eliminates the elements of a large combination utility’s integrated
17 system plan where those elements would give the UTC a regulatory foothold to push the utility
18 towards shrinking, winding up, or phasing out its gas system, making gas service unavailable for
19 the large combination utility’s customers, who would not have the ability to find an alternative
20 supplier of gas.

21 37. Sections six through eight focus on the energy codes for buildings, so that the SBCC cannot
22 accomplish a *de facto* gas ban by making it too difficult or costly to equip a new building for gas
23 heating and appliances.

1 38. Specifically, section six amends RCW 19.27A.020 by removing the following language
2 “that help achieve the broader goal of building zero fossil fuel greenhouse gas emission homes and
3 buildings” and adding that “[t]he Washington state energy code may not in any way prohibit,
4 penalize, or discourage the use of gas for any form of heating, or for uses related to any appliance
5 or equipment, in any building.”

6 39. Section seven amends RCW 19.27A.025 by adding “[w]hen amending a code under this
7 section, the state building code council shall not in any way prohibit, penalize, or discourage the
8 use of gas for any form of heating, or for uses related to any appliance or equipment, in any
9 building.”

10 40. Section eight amends RCW 19.27A.045 by adding “[w]hen amending a code under this
11 section, the state building code council shall not in any way prohibit, penalize, or discourage the
12 use of gas for any form of heating, or for uses related to any appliance or equipment, in any
13 building.”

14 41. Sections nine through eleven prevent local governments (cities, towns, counties, and local
15 air agencies) from regulating against the use of gas for heating and other equipment in buildings.

16 42. Section twelve repeals only the portions of ESHB 1589 that push large combination utilities
17 toward shutting down gas service, including provisions that require accelerated depreciation of gas
18 infrastructure, prohibit a large combination utility’s offering of rebates or other incentives for
19 energy-efficient gas appliances, and require a large combination utility to assess how other electric
20 utilities serving an area where gas will be discontinued may have to mitigate negative impacts to
21 their electric grid resulting from the termination of gas service in their area.

22 43. Section thirteen is a severability provision.
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1 44. On November 5, 2024, I-2066 was approved by the voters by a vote of 1,941,474 in favor
2 and 1,813,169 opposed. *See November 5, 2024 General Election Results Initiative Measure No.*
3 *2066*, Washington Secretary of State, [https://results.vote.wa.gov/results/20241105/initiative-
5 measure-no-2066.html](https://results.vote.wa.gov/results/20241105/initiative-
4 <u>measure-no-2066.html</u>) (last visited December 6, 2024).

6 **C. Background – The State Building Code Council**

7 45. The Washington State Legislature adopted the State Building Code Act (“SBCA” or the
8 “Act”) to provide a mechanism for uniform building codes throughout the state.

9 46. Codes adopted under the Act must, among other requirements, be “consistent with accepted
10 standards;” “permit the use of modern technical methods, devices and improvements;” “eliminate
11 restrictive, obsolete, conflicting, duplicating, and unnecessary regulations and requirements which
12 could unnecessarily increase construction costs or retard the use of new materials and methods of
13 installation or provide unwarranted preferential treatment to types or classes of materials or
14 products or methods of construction.” RCW 19.27.020.

15 47. The SBCA consists of multiple parts including the International Building Code, and the
16 International Residential Code.

17 48. The Washington State Energy Code is codified under Chapter 19.27A RCW, Energy-
18 related building standards.

19 49. The Legislature granted the Council authority to adopt, maintain, and amend the State
20 Building Code via the APA, RCW 34.05, so long as the Code remains “consistent with the State’s
21 interest as set forth in RCW 19.27.020.” RCW 19.27.074(1)(a).

22 50. The Legislature established the Washington State Energy Code to be “the maximum and
23 minimum energy code” for residential and nonresidential buildings in the State. RCW 19.27A.015.
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1 51. The Legislature granted the Council authority to adopt rules for the State Energy Code
2 “follow[ing] the legislature’s standards.” RCW 19.27A.020(2).

3 52. The Legislature also granted the Council authority to adopt emergency amendments to the
4 code at any time when either: “(A) the amendment is necessary for the preservation of the public
5 health, safety, or general welfare; or (B) the amendment is necessary for consistency with state or
6 federal laws and regulations.” RCW 19.27.032(c)(i).

7 53. The Energy Code must be designed, in relevant part, to “require new buildings to meet a
8 certain level of energy efficiency, but allow flexibility in design, construction, and heating
9 equipment efficiencies within that framework.” RCW 19.27.020(2)(b).

10 54. Energy Code provisions for residential structures may increase the energy efficiency of
11 newly constructed residential buildings, while at the same time satisfying the legislative standards
12 of allowing flexibility in design, construction, and heating equipment. RCW 19.27A.045.

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14 **D. BIAW’s Letter and How the Washington State Energy Code Violates I-2066**

15 55. On November 13, 2024, General Counsel for BIAW, Ashli Penner (Tagoai), sent a letter
16 to the SBCC and Daimon Doyle, the Council Chair. A true and correct copy of the November 13,
17 2024, letter sent by BIAW to the SBCC is attached as Attachment C.

18 56. In the letter, BIAW addressed how the SBCC will be in violation of I-2066 following
19 certification on December 5, 2024.

20 57. Specifically, BIAW directed the Council to the fact that the current 2021 WSEC via Section
21 R406 will be in violation of RCW 19.27A.020.

22 58. Section R406 of the 2021 WSEC provides for “Additional Energy Efficiency
23 Requirements.”
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1 59. This section requires that homes built in Washington be constructed to meet a minimum
2 amount of energy credits.

3 60. Section R406.3 requires that “[e]ach dwelling unit in a residential building shall comply
4 [...] to achieve the following minimum number of credits” with a small dwelling of less than 1500
5 square feet needing to meet a minimum of 5.0 credits, a medium dwelling meeting neither the
6 definition of a small or large dwelling needing to meet a minimum of 8.0 credits, and large
7 dwellings of over 5000 square feet meet a minimum of 9.0 credits.

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9 61. Table R406.3 provides a table with the necessary energy credits, which provide relevant
10 building options with corresponding credits.

11 62. Table R406.2 amends Table R406.3 by providing “Energy Equalization Credits” which
12 specifically penalize “combustion heating equipment meeting minimum federal efficiency
13 standards” by assigning this primary heating source with 0 credits when Table R406.3 otherwise
14 provides at least 1.0 credit for combustion-based heating equipment.

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16 63. Ultimately, this requires homes that choose combustible fuel sources, such as natural gas,
17 to obtain more energy credits to meet minimum requirements penalizing their choice, rather than
18 homes that choose an electric heat pump.

19 64. The 2021 WSEC provides for two main compliance pathways for residential
20 homebuilding, the performance pathway under R405 and the prescriptive pathway under R401-
21 R404 and R406.

22 65. R405, the performance pathway, requires builders to utilize energy simulation computer
23 program modeling software to create energy efficient options of materials and equipment.
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25 66. R401-R404 and R406, the prescriptive pathway, utilize worksheets for homebuilders to
26 choose from a non-flexible list of options of materials and equipment for energy efficiency.
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1 67. Most builders do not employ the performance pathway as the necessary computer software
2 can be costly, cumbersome to utilize, and require specialized training.

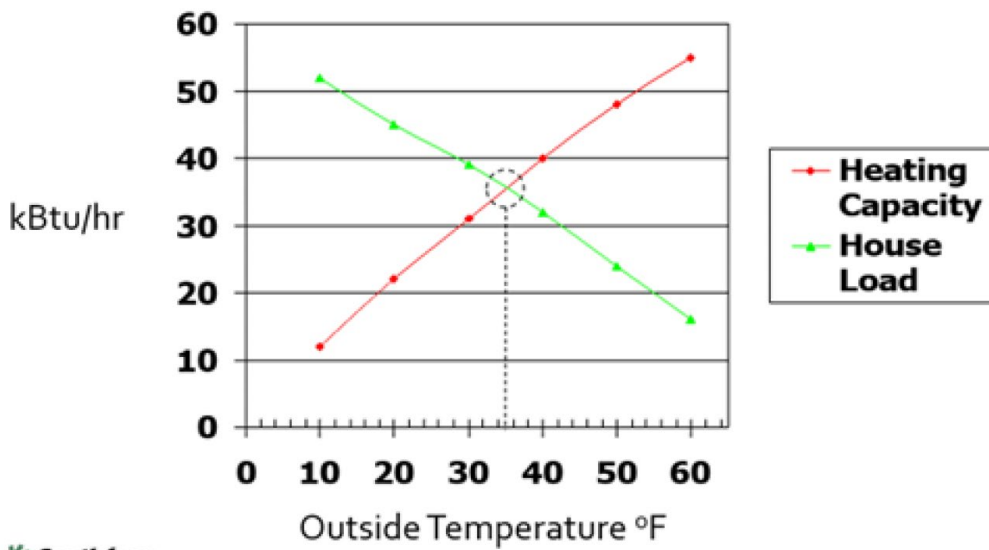
3 68. The prescriptive pathway - due to its much simpler means of compliance - encourages
4 builders and homeowners to choose from narrow credit options which actively disincentivize gas
5 equipment and appliances and encourage electric equipment and appliances, specifically electric
6 heat pumps.

7 69. Electric heat pumps, the alternative to natural gas equipment and appliances encouraged
8 by the SBCC, are less effective and efficient in cold weather.

9 70. The U.S. Department of Energy provides an explanation of the “heat pump balance point”
10 which demonstrates how electric heat pumps are unable to heat at capacity when the outside
11 temperature is below 35 degrees Fahrenheit. *See Air-Source Heat Pumps*, United States
12 Department of Energy, <https://www.energy.gov/energysaver/air-source-heat-pumps> (last visited
13

HEAT PUMP BALANCE POINT

The temperature at which the heat pump can deliver exactly the same amount of Btu's that the house is losing



Southface

71. The Washington State Department of Commerce states that on average in Western Washington “summer days rarely rise above 79° (26° C) and winter days are seldom below 45° (8° C) during the day. Snow is rare, but winter temperatures can easily dip into the 20s and 30s (-6° to -1° C) at night.” See *Washington’s diverse climate and geography*, Choose Washington - Washington State Department of Commerce, <https://choosewashingtonstate.com/research-resources/about-washington/climate-geography> (last visited December 6, 2024).

72. However, in Eastern Washington the Washington State Department of Commerce states that “[t]he average summer highs are in the upper 80s to mid 90s (27° to 34° C) and in winter, average daytime temperatures can range from the upper 30s to just above 0° F (3° to -17° C).” *Id.*

73. Electric heat pumps are not equipped to withstand the cold weather in Western Washington at night in the winter, or at all in Eastern Washington in the winter.

1 74. In addition to the letter, BIAW identified the following sections of the Residential portions
2 of the 2021 WSEC which violate RCW 19.27A.020: R403.1.2 Heat pump supplementary heat;
3 R403.5 Service hot water systems; R403.5.7 Supplementary heat for heat pump water heating
4 systems; R406.2 - Carbon emission equalization; Table R406.2 – Energy equalization
5 credits; Table R406.3 – Energy credits; Tables R406.3.3.1 through R406.3.3.11; Tables
6 R406.3.5.1 through R406.3.5.8; Table R406.3.6.1; Table R406.3.7.1; R502.3.2 Heating and
7 cooling systems; R502.3.3 Service hot water systems; R503.1.2 Heating and cooling systems;
8 and R503.1.3 Service hot water systems.

10 75. In the November 13th letter, BIAW proposed two alternative paths for SBCC to comply
11 with I-2066.

12 76. The first compliance pathway is that the Council rolls back to the 2015 WSEC, which is
13 the last code iteration where R406 did not penalize or discourage natural gas heating.

14 77. The Council would adopt emergency amendments pursuant to the APA, RCW
15 34.05.350(1)(b), to remove the current 2021 code language and reinstate the code language from
16 the 2015 WSEC.

18 78. The second compliance pathway is that the Council adopts the 2024 International Energy
19 Conservation Code (“IECC”) via emergency rulemaking without adopting any appendices, and
20 adopts the following amendment to create a legal performance pathway:

21 **R405.2 Simulated building performance compliance.**

22 3. ~~For each dwelling unit with one or more fuel burning appliances for space heating,~~
23 ~~water heating, or both, the annual energy cost of the dwelling unit shall be less than~~
24 ~~or equal to 80 percent of the annual energy cost of the standard reference design. For~~
25 ~~all other dwelling units, the annual energy cost of the proposed design shall be less~~
26 ~~than or equal to 85 percent of the annual energy cost of the standard reference~~
27 ~~design....~~

28 **Exceptions:**

1. The energy use based on source energy expressed in Btu or Btu per square foot of
conditioned floor area shall be permitted to be substituted for the energy cost. ~~The~~
source energy multiplier for electricity shall be 2.51. ~~The source energy multiplier shall~~

1 ~~be 1.09 for natural gas, 1.15 for propane, 1.19 for fuel oil, and 1.30 for imported~~
2 ~~liquified natural gas.~~

3 **E. SBCC Responds to Passage of I-2066**

4 79. On November 15, 2024, the Council met for a regularly scheduled meeting from 10 a.m.
5 to 4 p.m.

6 80. On the agenda for the Council meeting was “BIAW Letter re: I-2066.”

7 81. During the meeting, there was a presentation by Kjell Anderson, the Energy Technical
8 Advisory Group (“TAG”) chair on I-2066 and the 2021 Energy Code. *See* Washington State
9 Building Code Council, *SBCC Council Meeting – November 15, 2024 – Part 2 of 2*, YOUTUBE
10 (Nov. 15, 2024), https://www.youtube.com/watch?v=tNUqgR2np_M.

11 82. During Mr. Anderson’s presentation he had a slide on the screen that stated “The energy
12 code may already comply with I-2066[.] Despite what you’ve heard, there is no gas ban. The 2021
13 codes are based on Efficiency. Gas is not incentivized, nor is electricity. Efficiency is
14 incentivized!” *Id.*

15 83. After Mr. Anderson’s presentation and robust discussion by committee members and
16 members of the public, Mr. Anderson made a motion to take no action on the BIAW letter and to
17 have a meeting at a later date to discuss I-2066. The motion carried. *Id.*

18 84. The SBCC then had a meeting on November 22, 2024, to discuss I-2066 and potential legal
19 implications. *See* Washington State Building Code Council, *SBCC Special Council Meeting –*
20 *November 22, 2024*, YOUTUBE (Nov. 22, 2024),
21 <https://www.youtube.com/watch?v=uKJ82Cey31M>.

22 85. The November 22nd meeting included an executive session open only to members of the
23 SBCC, SBCC staff, and their legal counsel from the Attorney General's Office followed by public
24 discussion. *Id.*

1 86. During the public discussion the SBCC informed the public that it was not engaging in
2 emergency rulemaking. *Id.*

3 87. The SBCC subsequently passed a motion stating:

- 4 - SBCC is endeavoring to comply with I 2066, the existing state statute, and federal
- 5 EPCA law.
- 6 - SBCC has existing responsibilities that were not changed by 2066 to continue to update
- 7 the 2024 Energy Code with limited staff, TAG and Council resources and time to meet
- 8 them.
- 9 - In that context, we intend to make a good faith effort, through our established process,
- 10 to achieve the complex and entangled goals with which we have been asked to comply,
- 11 while minimizing uncertainty in regulation and disruption for the construction industry.
- 12 - To that end, we direct the Energy Code TAG to continue to advance the 2024 Energy
- 13 codes and bring forward off cycle recommendations to update the 2021 Energy Codes
- 14 if needed (Res and commercial), so as to:
 - 15 o Comply with federal EPCA standards.
 - 16 o Meet the existing statutory requirements, including but not limited to,
 - 17 incrementally increase energy efficiency with each update towards a 70%
 - 18 improvement in energy efficiency.
 - 19 o Recommend rules that may be required to meet the 2066 provision that gas not
 - 20 be penalized, prohibited or discouraged relative to other energy sources.
 - 21 o Does not provide an artificial advantage in meeting energy efficiency standards
 - 22 to gas energy sources or appliances.
- 23 - And directs SBCC staff to proactively communicate this process, including keeping
- 24 existing 2021 energy code in effect until by this process or directed otherwise by a
- 25 court; as well as any incremental steps in pending adjudication to local governments
- 26 required to implement standards.

27 *Id.* A true and correct copy of the Motion as presented during the Council Meeting on November
28 22, 2024, is attached as Attachment D.

88. Since the passage of this motion there has been no further action taken by the SBCC
regarding I-2066, emergency rulemaking, BIAW's letter, or changes to the 2021 WSEC.

89. On December 4, 2024, the Office of the Secretary of State certified statewide results of the
2024 General Election. *See Office of the Secretary of State Certifies 2024 General Election*
Results, Washington Secretary of State (December 4, 2024), [https://www.sos.wa.gov/about-](https://www.sos.wa.gov/about-office/news/2024/office-secretary-state-certifies-2024-general-election-results)
[office/news/2024/office-secretary-state-certifies-2024-general-election-results](https://www.sos.wa.gov/about-office/news/2024/office-secretary-state-certifies-2024-general-election-results).

90. As of December 5, 2024, I-2066 is law in Washington State.

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3 **VI. CAUSE OF ACTION**

4 **A. DECLARATORY JUDGMENT**

5 91. Plaintiff repeats and re-alleges each of the foregoing allegations as though fully set forth
6 herein.

7 92. For reasons including but not limited to those stated in this Complaint, an actual dispute
8 exists between BIAW and SBCC, which parties have genuine and opposing interests, which
9 interests are direct and substantial, and of which dispute a judicial determination would be final
10 and conclusive.

11 93. This matter raises important questions about the State’s duty to implement initiatives
12 passed by the people, the protection of natural gas, and a judicial opinion will benefit the public,
13 other branches of government, and counties across Washington.

14 94. Plaintiff will suffer immediate damage and harm if SBCC’s existing refusal to accept I-
15 2066 and the amendment to RCW 19.27A.020 as a change in Washington State law which requires
16 amendments to the 2021 WSEC.

17 95. Plaintiff will further suffer immediate damage and harm if SBCC fails to acknowledge that
18 amendment is necessary for consistency with state laws due to I-2066’s certification.

19 96. SBCC believes that I-2066 does not create an obligation to amend the 2021 WSEC.

20 97. Specifically, SBCC believes that the 2021 WSEC does not “prohibit, penalize, or
21 discourage the use of gas for any form of heating, or for uses related to any appliance or equipment,
22 in any building.”

23 98. Further, SBCC believes that RCW 19.27A.020’s energy efficiency goals supersede the
24 amendment to the same statute via I-2066 protecting natural gas.
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1 99. Plaintiff is, therefore, entitled to declaratory judgment from this Court declaring that: (1)
2 I-2066 as of December 5, 2024 amended the Washington State Energy-related building standards
3 statute, Chapter 19.27A RCW, specifically RCWs 19.27A.020, 19.27A.025, and 19.27A.045; (2)
4 that the SBCC is required to comply with RCW 19.27A.020(3); and (3) that it would be appropriate
5 for the SBCC to engage in emergency rulemaking pursuant to RCW 19.27.032(c)(i)(B) to ensure
6 that the 2021 WSEC complies with changes to Washington State law, as well as such other and
7 further relief as may follow from the entry of such declaratory judgment. *See* Attachment A, pg.
8 18.
9

10 **VII. PRAYER FOR RELIEF**

11 **WHEREFORE**, having set forth the claim for relief, Plaintiff BIAW respectfully prays for relief
12 as follows:

13 100. That the Court enter an order declaring that: (1) I-2066 as of December 5, 2024 amended
14 the Washington State Energy-related building standards statute, Chapter 19.27A RCW,
15 specifically RCWs 19.27A.020, 19.27A.025, and 19.27A.045; (2) that the SBCC is required to
16 comply with RCW 19.27A.020(3); and (3) that it would be appropriate for the SBCC to engage in
17 emergency rulemaking pursuant to RCW 19.27.032(c)(i)(B) to ensure that the 2021 WSEC
18 complies with changes to Washington State law, as well as such other and further relief as may
19 follow from the entry of such declaratory judgment.
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21 101. An award of reasonable attorney fees, expenses and costs, to the fullest extent allowed by
22 law and equity;

23 102. For leave to amend pleadings as justice may require; and

24 103. Any further relief as this Court may deem necessary and proper.
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26 Respectfully submitted this 6th day of December, 2024.
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1 **DECLARATION OF SERVICE**

2 I, Sydney Phillips, hereby declare under penalty of perjury under the laws of the State of
3 Washington that on December 6, 2024, I caused the foregoing to be filed with the clerk, and caused
4 a true and correct copy of the same to be sent via email to the Washington State Attorney Generals
5 Office.

6
7
8 Dated: December 6, 2024.

9
10 By: 
11 Sydney Phillips

ATTACHMENT A

Initiative Measure No. 2066

Filed April 5, 2024

AN ACT Relating to promoting energy choice by protecting access to gas for Washington homes and businesses; amending RCW 80.28.110, 35.92.050, 80.28.425, 80.--.---, 19.27A.020, 19.27A.025, and 19.27A.045; adding a new section to chapter 35.21 RCW; adding a new section to chapter 36.01 RCW; adding a new section to chapter 70A.15 RCW; creating a new section; repealing RCW 80.--.---, 80.--.---, and 80.--.---; and repealing 2024 c 351 ss 1 and 21 (uncodified).

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec. 1.** (1) The people find that having access to natural gas enhances the safety, welfare, and standard of living of all people in Washington. The people further find that preserving Washington's gas infrastructure and systems will promote energy choice, security, independence, and resilience throughout the state. Natural gas is a convenient and important necessity because it: Serves as a backup source of energy during emergencies; provides consumers with more options for heating, sanitation, cooking and food preparation, and other household activities, helping to control their costs; and sustains essential businesses, such as restaurants.

(2) Unfortunately, due to recent policy and corporate decisions, the people's ability to make choices about their energy sources is at risk. Therefore, the people determine that access to gas and gas appliances must be preserved for Washington homes and businesses, by strengthening utilities' obligation to provide natural gas to customers who want it, and by preventing regulatory actions that will limit access to gas.

Sec. 2. RCW 80.28.110 and 2024 c 348 s 6 are each amended to read as follows:

(1) Every gas company, electrical company, wastewater company, or water company, engaged in the sale and distribution of gas, electricity, or water, or the provision of wastewater company services, shall, upon reasonable notice, furnish to all persons and corporations who may apply therefor and be reasonably entitled thereto, suitable facilities for furnishing and furnish all available gas, electricity, wastewater company services, and water as demanded, except that: ~~((+1))~~ (a) A water company may not furnish water contrary to the provisions of water system plans approved under chapter 43.20 or 70A.100 RCW; ~~((+2))~~ (b) wastewater companies may not provide services contrary to the approved general sewer plan; and ~~((+3))~~ (c) exclusively upon petition of a gas company, and subject to the commission's approval, a gas company's obligation to serve gas to customers that have access to the gas company's thermal energy network may be met by providing thermal energy through a thermal energy network.

(2) Every gas company or large combination utility shall provide natural gas to all persons and corporations in their service area or territory that demand, apply for, and are reasonably entitled to receive, natural gas under this section, even if other energy services or energy sources may be available.

Sec. 3. RCW 35.92.050 and 2022 c 292 s 405 are each amended to read as follows:

(1) A city or town may also construct, condemn and purchase, purchase, acquire, add to, alter, maintain, and operate works, plants, facilities for the purpose of furnishing the city or town and its inhabitants, and any other persons, with gas, electricity, green electrolytic hydrogen as defined in RCW 54.04.190, renewable hydrogen as defined in RCW 54.04.190, and other means of power and facilities for lighting, including streetlights as an integral utility service incorporated within general rates, heating, fuel,

and power purposes, public and private, with full authority to regulate and control the use, distribution, and price thereof, together with the right to handle and sell or lease, any meters, lamps, motors, transformers, and equipment or accessories of any kind, necessary and convenient for the use, distribution, and sale thereof; authorize the construction of such plant or plants by others for the same purpose, and purchase gas, electricity, or power from either within or without the city or town for its own use and for the purpose of selling to its inhabitants and to other persons doing business within the city or town and regulate and control the use and price thereof.

(2) A city or town that furnishes natural gas shall provide natural gas to those inhabitants that demand, apply for, and are reasonably entitled to receive, natural gas under this section, even if other energy services or energy sources may be available.

Sec. 4. RCW 80.28.425 and 2024 c 351 s 18 are each amended to read as follows:

(1) Beginning January 1, 2022, every general rate case filing of a gas or electrical company must include a proposal for a multiyear rate plan as provided in this chapter. The commission may, by order after an adjudicative proceeding as provided by chapter 34.05 RCW, approve, approve with conditions, or reject, a multiyear rate plan proposal made by a gas or electrical company or an alternative proposal made by one or more parties, or any combination thereof. The commission's consideration of a proposal for a multiyear rate plan is subject to the same standards applicable to other rate filings made under this title, including the public interest and fair, just, reasonable, and sufficient rates. In determining the public interest, the commission may consider such factors including, but not limited to, environmental health and greenhouse gas emissions reductions, health and safety concerns, economic development, and equity, to the extent such factors affect the

rates, services, and practices of a gas or electrical company regulated by the commission.

(2) The commission may approve, disapprove, or approve with modifications any proposal to recover from ratepayers up to five percent of the total revenue requirement approved by the commission for each year of a multiyear rate plan for tariffs that reduce the energy burden of low-income residential customers including, but not limited to: (a) Bill assistance programs; or (b) one or more special rates. For any multiyear rate plan approved under this section resulting in a rate increase, the commission must approve an increase in the amount of low-income bill assistance to take effect in each year of the rate plan where there is a rate increase. At a minimum, the amount of such low-income assistance increase must be equal to double the percentage increase, if any, in the residential base rates approved for each year of the rate plan. The commission may approve a larger increase to low-income bill assistance based on an appropriate record.

(3) (a) If it approves a multiyear rate plan, the commission shall separately approve rates for each of the initial rate year, the second rate year and, if applicable, the third rate year, and the fourth rate year.

(b) The commission shall ascertain and determine the fair value for rate-making purposes of the property of any gas or electrical company that is or will be used and useful under RCW 80.04.250 for service in this state by or during each rate year of the multiyear rate plan. For the initial rate year, the commission shall, at a minimum, ascertain and determine the fair value for rate-making purposes of the property of any gas or electrical company that is used and useful for service in this state as of the rate effective date. The commission may order refunds to customers if property expected to be used and useful by the rate effective date when the commission approves a multiyear rate plan is in fact not used and useful by such a date.

(c) The commission shall ascertain and determine the revenues and operating expenses for rate-making purposes of any gas or electrical company for each rate year of the multiyear rate plan.

(d) In ascertaining and determining the fair value of property of a gas or electrical company pursuant to (b) of this subsection and projecting the revenues and operating expenses of a gas or electrical company pursuant to (c) of this subsection, the commission may use any standard, formula, method, or theory of valuation reasonably calculated to arrive at fair, just, reasonable, and sufficient rates.

(e) If the commission approves a multiyear rate plan with a duration of three or four years, then the electrical company must update its power costs as of the rate effective date of the third rate year. The proceeding to update the electrical company's power costs is subject to the same standards that apply to other rate filings made under this title.

(4) Subject to subsection (5) of this section, the commission may by order establish terms, conditions, and procedures for a multiyear rate plan and ensure that rates remain fair, just, reasonable, and sufficient during the course of the plan.

(5) Notwithstanding subsection (4) of this section, a gas or electrical company is bound by the terms of the multiyear rate plan approved by the commission for each of the initial rate year and the second rate year. A gas or electrical company may file a new multiyear rate plan in accordance with this section for the third rate year and fourth rate year, if any, of a multiyear rate plan.

(6) If the annual commission basis report for a gas or electrical company demonstrates that the reported rate of return on rate base of the company for the 12-month period ending as of the end of the period for which the annual commission basis report is filed is more than .5 percent higher than the rate of return authorized by the commission in the multiyear rate plan for such a company, the company shall defer all revenues that are in excess of .5 percent higher than the rate of return authorized by the

commission for refunds to customers or another determination by the commission in a subsequent adjudicative proceeding. If a multistate electrical company with fewer than 250,000 customers in Washington files a multiyear rate plan that provides for no increases in base rates in consecutive years beyond the initial rate year, the commission shall waive the requirements of this subsection provided that such a waiver results in just and reasonable rates.

(7) The commission must, in approving a multiyear rate plan, determine a set of performance measures that will be used to assess a gas or electrical company operating under a multiyear rate plan. These performance measures may be based on proposals made by the gas or electrical company in its initial application, by any other party to the proceeding in its response to the company's filing, or in the testimony and evidence admitted in the proceeding. In developing performance measures, incentives, and penalty mechanisms, the commission may consider factors including, but not limited to, lowest reasonable cost planning, affordability, increases in energy burden, cost of service, customer satisfaction and engagement, service reliability, clean energy or renewable procurement, conservation acquisition, demand side management expansion, rate stability, timely execution of competitive procurement practices, attainment of state energy and emissions reduction policies, rapid integration of renewable energy resources, and fair compensation of utility employees.

(8) Nothing in this section precludes any gas or electrical company from making filings required or permitted by the commission.

(9) The commission shall align, to the extent practical, the timing of approval of a multiyear rate plan of an electrical company submitted pursuant to this section with the clean energy implementation plan of the electrical company filed pursuant to RCW 19.405.060.

(10) The provisions of this section may not be construed to limit the existing rate-making authority of the commission.

(11) The commission may require a large combination utility as defined in RCW 80.--.--- (section 2, chapter 351, Laws of 2024) to incorporate the requirements of this section into an integrated system plan established under RCW 80.--.--- (section 3, chapter 351, Laws of 2024).

(12) The commission shall not approve, or approve with conditions, a multiyear rate plan that requires or incentivizes a gas company or large combination utility to terminate natural gas service to customers.

(13) The commission shall not approve, or approve with conditions, a multiyear rate plan that authorizes a gas company or large combination utility to require a customer to involuntarily switch fuel use either by restricting access to natural gas service or by implementing planning requirements that would make access to natural gas service cost-prohibitive.

Sec. 5. RCW 80.--.--- and 2024 c 351 s 3 are each amended to read as follows:

(1) The legislature finds that large combination utilities are subject to a range of reporting and planning requirements as part of the clean energy transition. The legislature further finds that current natural gas integrated resource plans under development might not yield optimal results for timely and cost-effective decarbonization. To reduce regulatory barriers, achieve equitable and transparent outcomes, and integrate planning requirements, the commission may consolidate a large combination utility's planning requirements for both gas and electric operations, including consolidation into a single integrated system plan that is approved by the commission.

(2) (a) By July 1, 2025, the commission shall complete a rule-making proceeding to implement consolidated planning requirements for gas and electric services for large combination utilities that may include plans required under: (i) RCW 19.280.030; (ii) RCW 19.285.040; (iii) RCW 19.405.060; (iv) RCW 80.28.380; (v) RCW

80.28.365; (vi) RCW 80.28.425; and (vii) RCW 80.28.130. The commission may extend the rule-making proceeding for 90 days for good cause shown. The large combination utilities' filing deadline required in subsection (4) of this section will be extended commensurate to the rule-making extension period set by the commission. Subsequent planning requirements for future integrated system plans must be fulfilled on a timeline set by the commission. Large combination utilities that file integrated system plans are no longer required to file separate plans that are required in an integrated system plan. The statutorily required contents of any plan consolidated into an integrated system plan must be met by the integrated system plan.

(b) In its order adopting rules or issuing a policy statement approving the consolidation of planning requirements, the commission shall include a compliance checklist and any additional guidance that is necessary to assist the large combination utility in meeting the minimum requirements of all relevant statutes and rules.

(3) Upon request by a large combination utility, the commission may issue an order extending the filing and reporting requirements of a large combination utility under RCW 19.405.060 and 19.280.030, and requiring the large combination utility to file an integrated system plan pursuant to subsection (4) of this section if the commission finds that the large combination utility has made public a work plan that demonstrates reasonable progress toward meeting the standards under RCW 19.405.040(1) and 19.405.050(1) and achieving equity goals. The commission's approval of an extension of filing and reporting requirements does not relieve the large combination utility from the obligation to demonstrate progress towards meeting the standards under RCW 19.405.040(1) and 19.405.050(1) and the interim targets approved in its most recent clean energy implementation plan. Commission approval of an extension under this section fulfills the large combination ((utilities)) utility's statutory filing deadlines under RCW 19.405.060(1).

(4) By January 1, 2027, and on a timeline set by the commission thereafter, large combination utilities shall file an integrated system plan demonstrating how the large combination utilities' plans are consistent with the requirements of this chapter and any rules and guidance adopted by the commission, and which:

(a) Achieve the obligations of all plans consolidated into the integrated system plan;

(b) Provide a range of forecasts, for at least the next 20 years, of projected customer demand that takes into account econometric data and addresses changes in the number, type, and efficiency of customer usage;

(c) Include scenarios that achieve emissions reductions for both gas and electric operations equal to at least their proportional share of emissions reductions required under RCW 70A.45.020;

(d) Include scenarios with emissions reduction targets for both gas and electric operations for each emissions reduction period that account for the interactions between gas and electric systems;

(e) Achieve two percent of electric load annually with conservation and energy efficiency resources, unless the commission finds that a higher target is cost-effective. However, the commission may accept a lower level of achievement if it determines that the requirement in this subsection (4)(e) is neither technically nor commercially feasible during the applicable emissions reduction period;

(f) Assess commercially available conservation and efficiency resources, including demand response and load management, to achieve the conservation and energy efficiency requirements in (e) of this subsection, and as informed by the assessment for conservation potential under RCW 19.285.040 for the planning horizon consistent with (b) of this subsection. Such an assessment may include, as appropriate, opportunities for development of combined heat and power as an energy and capacity resource, demand response and load management programs, and currently employed and new policies and programs needed to obtain the conservation and efficiency resources.

The value of recoverable waste heat resulting from combined heat and power must be reflected in analyses of cost-effectiveness under this subsection;

(g) Achieve annual demand response and demand flexibility equal to or greater than 10 percent of winter and summer peak electric demand, unless the commission finds that a higher target is cost-effective. However, the commission may accept a lower level of achievement if it determines that the requirement in this subsection (4) (g) is neither technically nor commercially feasible during the applicable emissions reduction period;

~~(h) ((Achieve all cost-effective electrification of end uses currently served by natural gas identified through an assessment of alternatives to known and planned gas infrastructure projects, including nonpipeline alternatives, rebates and incentives, and geographically targeted electrification;~~

~~(i))~~ Include low-income electrification programs that must:

(i) Include rebates and incentives to low-income customers and customers experiencing high energy burden for the deployment of high-efficiency electric-only heat pumps in homes and buildings currently heating with wood, oil, propane, electric resistance, or gas;

(ii) Provide demonstrated material benefits to low-income participants including, but not limited to, decreased energy burden, the addition of air conditioning, and backup heat sources using natural gas or energy storage systems, if necessary to protect health and safety in areas with frequent outages, or improved indoor air quality;

(iii) Enroll customers in energy assistance programs or provide bill assistance;

~~(iv) ((Provide dedicated funding for electrification readiness;~~

~~(v))~~ Include low-income customer protections to mitigate energy burden, if electrification measures will increase a low-income participant's energy burden; and

~~((vi))~~ (v) Coordinate with community-based organizations in the ~~((gas or electrical company's))~~ large combination utility's service territory including, but not limited to, grantees of the department of commerce, community action agencies, and community-based nonprofit organizations, to remove barriers and effectively serve low-income customers;

~~((j))~~ (i) Accept as proof of eligibility for energy assistance enrollment in any means-tested public benefit, or low-income energy assistance program, for which eligibility does not exceed the low-income definition set by the commission pursuant to RCW 19.405.020;

~~((k) Assess the potential for geographically targeted electrification including, but not limited to, in overburdened communities, on gas plant that is fully depreciated or gas plant that is included in a proposal for geographically targeted electrification that requires accelerating depreciation pursuant to RCW 80.--- (1) (section 7(1), chapter 351, Laws of 2024) for the gas plant subject to such electrification proposal;~~

~~(l))~~ (j) Assess commercially available supply side resources, including a comparison of the benefits and risks of purchasing electricity or gas or building new resources;

~~((m) Assess nonpipeline alternatives, including geographically targeted electrification and demand response, as an alternative to replacing aging gas infrastructure or expanded gas capacity. Assessments must involve, at a minimum:~~

~~(i) Identifying all known and planned gas infrastructure projects, including those without a fully defined scope or cost estimate, for at least the 10 years following the filing;~~

~~(ii) Estimating programmatic expenses of maintaining that portion of the gas system for at least the 10 years following the filing; and~~

~~(iii) Ranking all gas pipeline segments for their suitability for nonpipeline alternatives;~~

~~(n))~~ (k) Assess distributed energy resources that meets the requirements of RCW 19.280.100;

~~((e))~~ (l) Provide an assessment and 20-year forecast of the availability of and requirements for regional supply side resource and delivery system capacity to provide and deliver electricity and gas to the large combination utility's customers and to meet, as applicable, the requirements of chapter 19.405 RCW and the state's greenhouse gas emissions reduction limits in RCW 70A.45.020. The delivery system assessment must identify the large combination utility's expected needs to acquire new long-term firm rights, develop new, or expand or upgrade existing, delivery system facilities consistent with the requirements of this section and reliability standards and take into account opportunities to make more effective use of existing delivery facility capacity through improved delivery system operating practices, conservation and efficiency resources, distributed energy resources, demand response, grid modernization, nonwires solutions, and other programs if applicable;

~~((f))~~ (m) Assess methods, commercially available technologies, or facilities for integrating renewable resources and nonemitting electric generation including, but not limited to, battery storage and pumped storage, and addressing overgeneration events, if applicable to the large combination utility's resource portfolio;

~~((g))~~ (n) Provide a comparative evaluation of supply side resources, delivery system resources, and conservation and efficiency resources using lowest reasonable cost as a criterion;

~~((h))~~ (o) Include a determination of resource adequacy metrics for the integrated system plan consistent with the forecasts;

~~((i))~~ (p) Forecast distributed energy resources that may be installed by the large combination utility's customers and an assessment of their effect on the large combination utility's load and operations;

~~((j))~~ (q) Identify an appropriate resource adequacy requirement and measurement metric consistent with prudent utility practice in implementing RCW 19.405.030 through 19.405.050;

~~((u))~~ (r) Integrate demand forecasts, resource evaluations, and resource adequacy requirements into a long-range assessment describing the mix of supply side resources and conservation and efficiency resources that will meet current and projected needs, including mitigating overgeneration events and implementing RCW 19.405.030 through 19.405.050, at the lowest reasonable cost and risk to the large combination utility and its customers, while maintaining and protecting the safety, reliable operation, and balancing of the energy system of the large combination utility;

~~((v))~~ (s) Include an assessment, informed by the cumulative impact analysis conducted under RCW 19.405.140, of: Energy and nonenergy benefits and the avoidance and reductions of burdens to vulnerable populations and highly impacted communities; long-term and short-term public health and environmental benefits, costs, and risks; and energy security and risk;

~~((w))~~ (t) Include a 10-year clean energy action plan for implementing RCW 19.405.030 through 19.405.050 at the lowest reasonable cost, and at an acceptable resource adequacy standard;

~~((x))~~ (u) Include an analysis of how the integrated system plan accounts for:

(i) Model load forecast scenarios that consider the anticipated levels of zero emissions vehicle use in a large combination utility's service area, including anticipated levels of zero emissions vehicle use in the large combination utility's service area provided in RCW 47.01.520, if feasible;

(ii) Analysis, research, findings, recommendations, actions, and any other relevant information found in the electrification of transportation plans submitted under RCW 80.28.365; and

(iii) Assumed use case forecasts and the associated energy impacts, which may use the forecasts generated by the mapping and forecasting tool created in RCW 47.01.520;

~~((y))~~ (v) Establish that the large combination utility has:

(i) Consigned to auction for the benefit of ratepayers the minimum required number of allowances allocated to the large

combination utility for the applicable compliance period pursuant to RCW 70A.65.130, consistent with the climate commitment act, chapter 70A.65 RCW, and rules adopted pursuant to the climate commitment act; and

(ii) Prioritized, to the maximum extent permissible under the climate commitment act, chapter 70A.65 RCW, revenues derived from the auction of allowances allocated to the utility for the applicable compliance period pursuant to RCW 70A.65.130, first to programs that eliminate the cost burden for low-income ratepayers, such as bill assistance, or nonvolumetric credits on ratepayer utility bills, (~~(or electrification programs,)~~) and second to (~~(electrification)~~) programs benefiting residential and small commercial customers;

~~((z))~~ (w) Propose an action plan outlining the specific actions to be taken by the large combination utility in implementing the integrated system plan following submission; and

~~((aa))~~ (x) Report on the large combination utility's progress towards implementing the recommendations contained in its previously filed integrated system plan.

~~(5) ((In evaluating the lowest reasonable cost of decarbonization measures included in an integrated system plan, large combination utilities must apply a risk reduction premium that must account for the applicable allowance ceiling price approved by the department of ecology pursuant to the climate commitment act, chapter 70A.65 RCW. For the purpose of this chapter, the risk reduction premium is necessary to ensure that a large combination utility is making appropriate long-term investments to mitigate against the allowance and fuel price risks to customers of the large combination utility.~~

~~(6))~~ The clean energy action plan must:

(a) Identify and be informed by the large combination utility's 10-year cost-effective conservation potential assessment as determined under RCW 19.285.040, if applicable;

(b) Establish a resource adequacy requirement;

(c) Identify the potential cost-effective demand response and load management programs that may be acquired;

(d) Identify renewable resources, nonemitting electric generation, and distributed energy resources that may be acquired and evaluate how each identified resource may be expected to contribute to meeting the large combination utility's resource adequacy requirement;

(e) Identify any need to develop new, or expand or upgrade existing, bulk transmission and distribution facilities and document existing and planned efforts by the large combination utility to make more effective use of existing transmission capacity and secure additional transmission capacity consistent with the requirements of subsection (4) ~~((4))~~ (1) of this section; and

(f) Identify the nature and possible extent to which the large combination utility may need to rely on alternative compliance options under RCW 19.405.040(1)(b), if appropriate.

~~((7))~~ (6) A large combination utility shall consider the social cost of greenhouse gas emissions, as determined by the commission pursuant to RCW 80.28.405, when developing integrated system plans and clean energy action plans. A large combination utility must incorporate the social cost of greenhouse gas emissions as a cost adder when:

(a) Evaluating and selecting conservation policies, programs, and targets;

(b) Developing integrated system plans and clean energy action plans; and

(c) Evaluating and selecting intermediate term and long-term resource options.

~~((8))~~ (7) Plans developed under this section must be updated on a regular basis, on intervals approved by the commission.

~~((9))~~ (8) (a) To maximize transparency, the commission may require a large combination utility to make the utility's data input files available in a native format. Each large combination utility shall publish its final plan either as part of an annual report or

as a separate document available to the public. The report may be in an electronic form.

(b) Nothing in this subsection limits the protection of records containing commercial information under RCW 80.04.095.

~~((10))~~ (9) The commission shall establish by rule a cost test for emissions reduction measures achieved by large combination utilities to comply with state clean energy and climate policies. The cost test must be used by large combination utilities under this chapter for the purpose of determining the lowest reasonable cost of decarbonization and low-income electrification measures in integrated system plans, at the portfolio level, and for any other purpose determined by the commission by rule.

~~((11))~~ (10) The commission must approve, reject, or approve with conditions an integrated system plan within 12 months of the filing of such an integrated system plan. The commission may for good cause shown extend the time by 90 days for a decision on an integrated system plan filed on or before January 1, 2027, as such date is extended pursuant to subsection (2)(a) of this section.

~~((12))~~ (11) In determining whether to approve the integrated system plan, reject the integrated system plan, or approve the integrated system plan with conditions, the commission must evaluate whether the plan is in the public interest, and includes the following:

(a) The equitable distribution and prioritization of energy benefits and reduction of burdens to vulnerable populations, highly impacted communities, and overburdened communities;

(b) Long-term and short-term public health, economic, and environmental benefits and the reduction of costs and risks;

(c) Health and safety concerns;

(d) Economic development;

(e) Equity;

(f) Energy security and resiliency;

(g) Whether the integrated system plan:

(i) Would achieve a proportional share of reductions in greenhouse gas emissions for each emissions reduction period on the gas and electric systems;

(ii) Would achieve the energy efficiency and demand response targets in subsection (4) (e) and (g) of this section;

~~(iii) ((Would achieve cost-effective electrification of end uses as required by subsection (4) (h) of this section;~~

~~(iv))~~ Results in a reasonable cost to customers, and projects the rate impacts of specific actions, programs, and investments on customers;

~~((v))~~ (iv) Would maintain system reliability and reduces long-term costs and risks to customers;

~~((vi))~~ (v) Would lead to new construction career opportunities ~~((and prioritizes a transition of natural gas and electricity utility))~~ for workers to perform work on construction and maintenance of new and existing renewable energy infrastructure; and

~~((vii))~~ (vi) Describes specific actions that the large combination utility plans to take to achieve the requirements of the integrated system plan.

(12) The commission shall not approve, or approve with conditions, an integrated system plan that requires or incentivizes a large combination utility to terminate natural gas service to customers.

(13) The commission shall not approve, or approve with conditions, an integrated system plan that authorizes a large combination utility to require a customer to involuntarily switch fuel use either by restricting access to natural gas service or by implementing planning requirements that would make access to natural gas service cost-prohibitive.

Sec. 6. RCW 19.27A.020 and 2018 c 207 s 7 are each amended to read as follows:

(1) The state building code council in the department of enterprise services shall adopt rules to be known as the Washington state energy code as part of the state building code.

(2) The council shall follow the legislature's standards set forth in this section to adopt rules to be known as the Washington state energy code. The Washington state energy code shall be designed to:

(a) Construct increasingly energy efficient homes and buildings (~~((that help achieve the broader goal of building zero fossil fuel greenhouse gas emission homes and buildings))~~) by the year 2031;

(b) Require new buildings to meet a certain level of energy efficiency, but allow flexibility in building design, construction, and heating equipment efficiencies within that framework; and

(c) Allow space heating equipment efficiency to offset or substitute for building envelope thermal performance.

(3) The Washington state energy code may not in any way prohibit, penalize, or discourage the use of gas for any form of heating, or for uses related to any appliance or equipment, in any building.

(4) The Washington state energy code shall take into account regional climatic conditions. One climate zone includes: Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, Skamania, Spokane, Stevens, Walla Walla, Whitman, and Yakima counties. The other climate zone includes all other counties not listed in this subsection (~~((4))~~) (4). The assignment of a county to a climate zone may not be changed by adoption of a model code or rule. Nothing in this section prohibits the council from adopting the same rules or standards for each climate zone.

~~((4))~~ (5) The Washington state energy code for residential buildings shall be the 2006 edition of the Washington state energy code, or as amended by rule by the council.

~~((5))~~ (6) The minimum state energy code for new nonresidential buildings shall be the Washington state energy code, 2006 edition, or as amended by the council by rule.

~~((6))~~ (7) (a) Except as provided in (b) of this subsection, the Washington state energy code for residential structures shall preempt the residential energy code of each city, town, and county in the state of Washington.

(b) The state energy code for residential structures does not preempt a city, town, or county's energy code for residential structures which exceeds the requirements of the state energy code and which was adopted by the city, town, or county prior to March 1, 1990. Such cities, towns, or counties may not subsequently amend their energy code for residential structures to exceed the requirements adopted prior to March 1, 1990.

~~((7))~~ (8) The state building code council shall consult with the department of enterprise services as provided in RCW 34.05.310 prior to publication of proposed rules. The director of the department of enterprise services shall recommend to the state building code council any changes necessary to conform the proposed rules to the requirements of this section.

~~((8))~~ (9) The state building code council shall evaluate and consider adoption of the international energy conservation code in Washington state in place of the existing state energy code.

~~((9))~~ (10) The definitions in RCW 19.27A.140 apply throughout this section.

Sec. 7. RCW 19.27A.025 and 2024 c 170 s 4 are each amended to read as follows:

(1) The minimum state energy code for new and renovated nonresidential buildings, as specified in this chapter, shall be the Washington state energy code, 1986 edition, as amended. The state building code council may, by rule adopted pursuant to chapter 34.05 RCW, RCW 19.27.031, and RCW 19.27.---, 19.27.---, and 19.27.---

(sections 6, 7, and 8, chapter 170, Laws of 2024), amend that code's requirements for new nonresidential buildings provided that:

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

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

(2) In considering amendments to the state energy code for nonresidential buildings, the state building code council shall establish and consult with a technical advisory group in accordance with RCW 19.27.--- (section 7, chapter 170, Laws of 2024) including representatives of appropriate state agencies, local governments, general contractors, building owners and managers, design professionals, utilities, and other interested and affected parties.

(3) Decisions to amend the Washington state energy code for new nonresidential buildings shall be made prior to December 15th of any year and shall not take effect before the end of the regular legislative session in the next year. Any disputed provisions within an amendment presented to the legislature shall be approved by the legislature before going into effect. A disputed provision is one which was adopted by the state building code council with less than a two-thirds vote of the voting members. Substantial amendments to the code shall be adopted no more frequently than every three years except as allowed in RCW 19.27.031 and RCW 19.27.--- (section 6, chapter 170, Laws of 2024).

(4) When amending a code under this section, the state building code council shall not in any way prohibit, penalize, or discourage the use of gas for any form of heating, or for uses related to any appliance or equipment, in any building.

Sec. 8. RCW 19.27A.045 and 2024 c 170 s 5 are each amended to read as follows:

(1) The state building code council shall maintain the state energy code for residential structures in a status which is consistent with the state's interest as set forth in section 1, chapter 2, Laws of 1990. In maintaining the Washington state energy code for residential structures, beginning in 1996 the council shall review the Washington state energy code every three years. After January 1, 1996, by rule adopted pursuant to chapter 34.05 RCW, RCW 19.27.031, and RCW 19.27.---, 19.27.---, and 19.27.--- (sections 6, 7, and 8, chapter 170, Laws of 2024), the council may amend any provisions of the Washington state energy code to increase the energy efficiency of newly constructed residential buildings. Decisions to amend the Washington state energy code for residential structures shall be made prior to December 1st of any year and shall not take effect before the end of the regular legislative session in the next year.

(2) When amending a code under this section, the state building code council shall not in any way prohibit, penalize, or discourage the use of gas for any form of heating, or for uses related to any appliance or equipment, in any building.

NEW SECTION. **Sec. 9.** A new section is added to chapter 35.21 RCW to read as follows:

A city or town shall not in any way prohibit, penalize, or discourage the use of gas for any form of heating, or for uses related to any appliance or equipment, in any building.

NEW SECTION. **Sec. 10.** A new section is added to chapter 36.01 RCW to read as follows:

A county shall not in any way prohibit, penalize, or discourage the use of gas for any form of heating, or for uses related to any appliance or equipment, in any building.

NEW SECTION. **Sec. 11.** A new section is added to chapter 70A.15 RCW to read as follows:

An authority shall not in any way prohibit, penalize, or discourage the use of gas for any form of heating, or for uses related to any appliance or equipment, in any building.

NEW SECTION. **Sec. 12.** The following acts or parts of acts are each repealed:

- (1) 2024 c 351 s 1 (uncodified);
- (2) RCW 80.--.--- and 2024 c 351 s 7;
- (3) RCW 80.--.--- and 2024 c 351 s 8;
- (4) RCW 80.--.--- and 2024 c 351 s 10; and
- (5) 2024 c 351 s 21 (uncodified).

NEW SECTION. **Sec. 13.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

--- END ---

ATTACHMENT B

RCW 19.27.032

Amendment—Timeline—Requirements—Public access.

(1) Adoption or amendment of the state building code or statewide amendments to the state building code as defined in RCW 19.27.031 must meet the following criteria:

(a) Substantive updates to the state building code shall occur only once during the three-year state building code adoption cycle as described in RCW 19.27.031(3). No substantive provision may be adopted, amended, or repealed except during the three-year code adoption cycle, or as provided in (c) or (d) of this subsection.

(b) An interim code adoption cycle as outlined in RCW 19.27.031(4) shall not be performed earlier than 12 months nor later than 18 months from the effective date of the codes adopted pursuant to (a) of this subsection.

(c)(i) The council may adopt emergency amendments to the code at any time under the following conditions:

(A) The amendment is necessary for the preservation of the public health, safety, or general welfare; or

(B) The amendment is necessary for consistency with state or federal laws and regulations.

(ii) The council may not act on a petition for emergency statewide amendments at the meeting when the petition is introduced.

(iii) The council may accept a petition for emergency statewide amendments only when the petition provides a concise statement of the reasons for a finding that an emergency basis exists, and the council approves a finding that such an emergency basis exists by a two-thirds vote of voting members. The approval of emergency amendments requires a majority vote of the voting members.

(d) The council may adopt or amend the state building code or code sections at any time pursuant to legislative direction as reflected in legislation signed into law.

(2) Any person or entity may submit to the council a petition in writing for statewide amendments within the time periods established by the council. The petition for statewide amendment must comply with format and content requirements approved by the council.

(3) Incomplete petitions for statewide amendments or petitions that exceed the specific delegation of authority provided by the legislature shall not be considered by the council for action.

(4) The council shall approve the referral of a statewide amendment to a standing committee or technical advisory group.

(5) The council shall develop a process for council meetings that allows members of the public to understand amendments being proposed for adoption. The process shall include requirements for modifications to proposed rule text to be in writing, specify the reason for the amendment, and be available to the council and the members of the public at least seven days prior to a vote on final amendment adoption. The council shall adopt rules that encourage councilmembers and technical advisory group members to make proposed amendments and text changes available to other members and the public at least 48 hours prior to the meeting at which they will be discussed.

(6) The council must adopt policies and procedures for the adoption or amendment of the state building code that comply with the rule-making requirements in chapter 34.05 RCW and chapter 170, Laws of 2024.

[2024 c 170 s 6.]

ATTACHMENT C



Building Industry Association of Washington
300 Deschutes Way SW, Ste. 300
Tumwater, WA 98501
(360) 352-7800 | BIAW.com

Wednesday, November 13, 2024

Via electronic mail to: sbcc@des.wa.gov

Washington State Building Code Council
Attention: Daimon Doyle, Council Chair
1500 Jefferson St SE
Olympia, WA 98501

Re: Compliance with Initiative 2066

Dear Daimon Doyle:

I am the Vice President, General Counsel of the Building Industry Association of Washington (“BIAW”), representing nearly 8,000 businesses in the Washington home building industry. I hope you are aware that on November 5, 2024, Washington voters approved Initiative 2066, which protects natural gas as an energy source.

The Washington State Constitution provides that an initiative enacted by the people of Washington take effect thirty days following the election, which means **Initiative 2066 will be effective December 5, 2024.**

*Any measure initiated by the people or referred to the people as herein provided shall take effect and become the law if it is approved by a majority of the votes cast thereon: Provided, that the vote cast upon such question or measure shall equal one-third of the total votes cast at such election and not otherwise. Such measure **shall be in operation on and after the thirtieth day after the election** at which it is approved. See WA Const. Art. II § 1d.*

Therefore, on December 5, 2024, the current 2021 Washington State Energy Code (“WSEC”), which penalizes and discourages natural gas primarily via Section R406, will be **illegal** to enforce. Accordingly, the Council must immediately start the emergency rulemaking process to create a compliant alternative to the 2021 WSEC. Since time is of the essence, BIAW insists the Council use one of its two solutions provided below to quickly make the WSEC legal.

Solution One: The Council rolls back to the 2015 WSEC, which was the last code iteration where R406 did not penalize or discourage natural gas heating. The Council adopts emergency amendments that remove the current 2021 code language and reinstate the code language from the 2015 WSEC.

Solution Two: The Council adopts the 2024 International Energy Conservation Code (“IECC”) via emergency rulemaking without adopting any appendices, and adopts the following amendment to create a legal performance pathway:

R405.2 Simulated building performance compliance.

3. For each ~~dwelling unit with one or more fuel-burning appliances for space heating, water heating, or both, the annual energy cost of the dwelling unit shall be less than or equal to 80 percent of the annual energy cost of the standard reference design.~~ For all ~~other dwelling units,~~ the annual energy cost of the proposed design shall be less than or equal to 85 percent of the annual energy cost of the standard reference design....

Exceptions:

1. The energy use based on source energy expressed in Btu or Btu per square foot of conditioned floor area shall be permitted to be substituted for the energy cost. ~~The source energy multiplier for electricity shall be 2.51. The source energy multiplier shall be 1.09 for natural gas, 1.15 for propane, 1.19 for fuel oil, and 1.30 for imported liquified natural gas.~~

While emergency rules are in effect to address **the illegal 2021 WSEC**, the Council can then engage the permanent rulemaking process to ensure the WSEC remains legal when the emergency rules expire. To be clear, **the Council has no authority to fail to act or delay acting on Initiative 2066.**

Penalizing and discouraging the use of natural gas water and space heating in homes has made housing less affordable in Washington. On December 5, 2024, BIAW members expect an energy code that will allow them to build with natural gas without it being penalized or discouraged. If the Council fails to act, BIAW will immediately pursue WSEC compliance with Initiative 2066 to the fullest extent of the law.

Sincerely,



Ashli Penner
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The Building Industry Association of Washington (BIAW)
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ATTACHMENT D

Motion

- SBCC is endeavoring to comply with I 2066, the existing state statute, and federal EPCA law.
- SBCC has existing responsibilities that were not changed by 2066 to continue to update the 2024 Energy Code with limited staff, TAG and Council resources and time to meet them.
- In that context, we intend to make a good faith effort, through our established process, to achieve the complex and entangled goals with which we have been asked to comply, while minimizing uncertainty in regulation and disruption for the construction industry.
- To that end, we direct the Energy Code TAG to continue to advance the 2024 Energy codes and bring forward off cycle recommendations to update the 2021 Energy Codes if needed(Res and commercial), so as to:
 - o Comply with federal EPCA standards.
 - o Meet the existing statutory requirements, including but not limited to, incrementally increase energy efficiency with each update towards a 70% improvement in energy efficiency.
 - o Recommend rules that may be required to meet the 2066 provision that gas not be penalized, prohibited or discouraged relative to other energy sources.
 - o Does not provide any artificial advantage in meeting energy efficiency standards to gas energy sources or appliances.
- And directs SBCC staff to proactively communicate this process, including keeping existing 2021 energy code in effect until by this process or directed otherwise by a court; as well as any incremental steps in pending adjudication to local governments required to implement the standards.