



STATE OF WASHINGTON
— OFFICE OF GOVERNOR JAY INSLEE —

April 17, 2024

Todd Myers
Washington Policy Center
PO Box 3643
Seattle, WA 98125-3643
Via email: tmyers@washingtonpolicy.org

Re: APA Appeal – WSR 23-21-106 and WSR 23-21-105

Dear Mr. Myers:

On March 5, 2024, the Governor's Office received the appeal you filed in response to the State Building Code Council's (SBCC) decision to deny your petition to repeal Washington State Register (WSR) 23-21-106 and 23-21-105, as found within the Washington State Energy Code.¹ Under RCW 34.05.330(3), I may consider appeals of an agency's denial of a petition to repeal an existing² rule.

Specifically, your petition requested that the SBCC repeal these rules because the requisite Small Business Economic Impact Statements (SBEIS) connected to the rules did not properly comply with the Regulatory Fairness Act (RFA), codified in RCW 19.85.030 and 19.85.040. Today, after careful consideration of your appeal, I affirm the SBCC's decision.

In its written denial of your petition, the SBCC listed numerous components of your argument that the SBEIS did not comply with the RFA. This suggests a thorough understanding of the reasoning behind your petition. The SBCC issued its denial after hearing your presentation at their January 19, 2024, meeting, as well as your responses to questions and comments posed by SBCC members. At this meeting the SBCC noted that four CR-102s related to the Washington State Energy Code (Commercial and Residential) have been filed since November 2022. All four

¹ Under RCW 34.05.330(3), an appellant is required to appeal an agency's denial of a petition to repeal or amend a rule within 30 days of the agency's decision. Your appeal was received by the Governor's Office on March 5, 2024, approximately 47 days after the SBCC's denial on January 19, 2024. However, your appeal letter states that you received the SBCC's letter on February 6, 2024, only 28 days before my office received your appeal. Erring on the side of providing full consideration to your appeal, I am treating your petition to appeal as timely solely for the purpose of fully responding to your petition.

² It appears your petition to the SBCC was filed after adoption of the proposed rule but before the rule went into effect, leaving it unclear as to whether your agency petition related to an existing rule or a proposed rule. My authority under RCW 34.05.330(3) is limited to considering appeals related to existing rules. Again, erring on the side of providing full consideration to your appeal, your petition to appeal will be treated as an appeal of the agency's denial of your petition to repeal an existing rule solely for the purpose of fully responding to your petition.

petitions for proposed rulemaking included similar SBEIS, and all four SBEIS stated that there was no economic impact on small businesses. The SBCC concluded that this fulfills the requirements of the RFA and voted 10 to 1 to deny your petition.

Your appeal to the Governor's Office offered alternative actions to resolve this case, including directing the SBCC to perform and publish a new SBEIS related to the 2021 Washington State Energy Code, to survey affected parties regarding the cost of compliance, and to hold a public hearing to hear the concerns of affected parties. You also suggested that the Office of Regulatory Innovation & Assistance (ORIA) provide training to Council members and staff on how to comply with the RFA.

The SBCC consists of fourteen Council members appointed by the Governor. The work of the SBCC requires that it operate independently from the Governor's Office, and therefore I do not have any authority to order the SBCC to take any of the requested actions.

I am not persuaded that the SBCC erred in denying your petition to repeal WSR 23-21-106 and WSR 23-21-105. For all of the above reasons, I affirm the SBCC's decision to maintain current rules and deny your petition to repeal WSR 23-21-106 and WSR 23-21-105.

Sincerely,



Jay Inslee
Governor