



Legislative Building
Olympia, WA 98504-0482

Washington State Senate

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October 11, 2022

State Building Code Council
PO Box 41449
Olympia, WA 98504-1449

Re: Comments on WSR 22-17-148 and 22-17-149

Dear voting members of the State Building Code Council,

We are writing as Washington State Senators to express our concerns with two specific proposals included in the above-referenced building and energy code revisions. First, as we explain below, the proposal to require electric vehicle charging infrastructure in new homes by revising the International Residential Code is not authorized in state law. Second, the proposal to restrict the use of natural gas for space- and water-heating in new homes conflicts with legislative intent. The Legislature did not authorize the Council to phase out natural gas.

We would appreciate your attention to these comments as the Council considers whether to adopt its proposed changes as part of the codes.

(1) State law does not authorize the Council to require dwellings regulated under the International Residential Code to be outfitted for electric vehicle charging.

The Council's new rules propose to revise the International Residential Code (IRC) to require dwellings to have at least one dedicated circuit for electric vehicle charging.¹ This new requirement is purportedly grounded in RCW 19.27.540, but that statute does *not* apply to dwellings regulated under the IRC. Therefore, the Council's proposed rule is not authorized in state law and should be rejected.

RCW 19.27.540 authorizes the Council to adopt rules for electric vehicle infrastructure for new buildings that provide on-site parking and specifically refers to building occupancy classifications that only apply to buildings regulated under the International Building Code (IBC).² Critically, the IBC occupancy classifications referenced in RCW 19.27.540 do not apply to dwellings regulated

¹ Proposed WAC 51-51-0309, WSR 22-17-148.

² “[R]ules adopted under this section must require electric vehicle charging capability at all new buildings that provide on-site parking.” RCW 19.27.540(2)(a). “Except for rules related to residential R-3, the required rules required under this subsection [2] must be implemented by July 1, 2021. The rules required under this subsection [2] for occupancies classified as residential R-3 must be implemented by July 1, 2024.” RCW 19.27.540(2)(c).

under the IRC.³ Furthermore, the statute’s reference to “residential R-3” refers to an IBC occupancy classification, not an IRC dwelling.⁴

Minding the difference between IBC occupancy classifications and IRC dwellings is important because it demonstrates that the Legislature did not authorize the Council to adopt electric vehicle charging requirements for IRC dwellings in RCW 19.27.540. The statute only refers to IBC occupancy classifications and does not cover IRC dwellings. The statute thus provides no authority for the Council’s new rule to amend the IRC to require charging equipment in homes, because the Legislature only required electric vehicle charging capability for certain IBC buildings designated in the law according to occupancy classification.⁵

Without a clear source of statutory authority for the electric vehicle charging rule, a reviewing court would probably hold that the rule is invalid. That is a key lesson of the Supreme Court’s recent opinion in *West Virginia v. EPA*, a cautionary tale for agencies that try to stretch their actions beyond the limits of the law.⁶ In that case, the Court emphasized that significant regulations must be supported by clear statements of legislatively delegated authority—courts will not presume that agencies have been empowered by statutes that leave doubts about agency authority.⁷ The Council should be aware that a reviewing court will not rely on the Council’s interpretation of its own authority if there is a dispute about the meaning of RCW 19.27.540.

Finally for this proposal, we stress that we do not oppose efforts by builders and their customers to install electric vehicle charging infrastructure when it is the customer’s desire to have it. While installing charging infrastructure will affect the price of a new home, this should be a matter of personal choice, not government regulation.⁸ We only write to highlight that the Legislature has not required the installation of electric vehicle charging infrastructure in all new homes, which means that the Council cannot adopt the same provision as a code requirement. Therefore, the electric vehicle charging rule should be removed from the proposed code revision.

(2) Any policy on phasing out natural gas should be based on a specific grant of authority from the Legislature, not a broad and nonspecific goal pursued by the Council.

Now turning to the proposed energy code amendments, we emphasize that the Legislature did not direct the Council to restrict or phase out the use of natural gas for space- or water-heating in new

³ The IRC applies to detached one- and two-family dwellings and townhouses not more than three stories. International Residential Code, Chapter 1 Scope and Administration (2021), *available at* codes.iccsafe.org/content/IRC2021P2/chapter-1-scope-and-administration.

⁴ International Building Code, Chapter 3 Occupancy Classification and Use (2021), *available at* codes.iccsafe.org/content/IBC2021P2/chapter-3-occupancy-classification-and-use.

⁵ RCW 19.27.540 specifies that its requirements only apply to employee parking spaces for occupancies classified as assembly, education, or mercantile. RCW 19.27.540(2)(b). Occupancies classified as utility or miscellaneous are exempt. *Id.*

⁶ *West Virginia v. EPA*, 597 U.S. ____ (2022).

⁷ *Id.*

⁸ Preliminary Cost Benefit Analysis for the 2021 International Residential Code 1.3, Log # 21-GP2-091R.

homes. If legislators wanted to direct the Council to adopt this change, we knew how to do it.⁹ But we have not authorized the specific natural gas policy the Council seeks to impose.¹⁰

In determining whether the Council has the authority for its new proposal:

“[T]he paramount consideration is whether [the rule is] promulgated pursuant to legislative delegation. . . . ‘To have the force of law, an administrative regulation must be properly promulgated pursuant to a legislative delegation.’”¹¹

A reviewing court would search in vain for a statute that clearly directs the Council to curtail natural gas for residential heating. Without a statutory mandate, the Council cannot act.

Moreover, we support having natural gas heating as an option for Washington residents. Natural gas keeps people warm and safe. It is an affordable and reliable energy source for homeowners. It provides redundancy during energy emergencies. And many people simply like having it available as a choice for their families. The state should not place limits on that choice.

Home use of natural gas is a minor source of emissions in Washington; the benefits of preserving our essential natural gas infrastructure for security and energy independence outweigh any potential drawbacks. Indeed, the Legislature has recently debated whether we should phase out natural gas in buildings, but we have not taken that action, and neither should the Council.

Thank you for considering our comments. Please feel free to contact the undersigned members of the Senate if you have questions or concerns.

Sincerely,



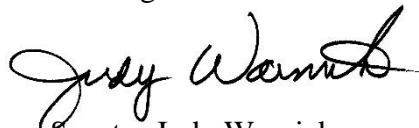
Senator Lynda Wilson
17th Legislative District



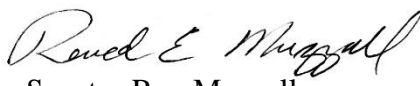
Senator John Braun
20th Legislative District



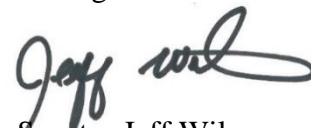
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⁹ The Legislature did not enact HB 1084 (2021) or SB 5093 (2021).

¹⁰ Proposed WAC 51-11R-40340, -40392. WSR 22-17-149.

¹¹ *Mills v. W. Wash. Univ.*, 170 Wash. 2d 903, 911 (2011) (quoting *State v. Brown*, 142 Wash. 2d 57, 62 (2000)).



Senator Curtis King
14th Legislative District



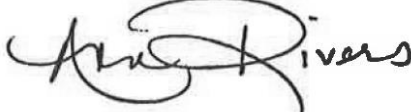
Senator Perry Dozier
16th Legislative District



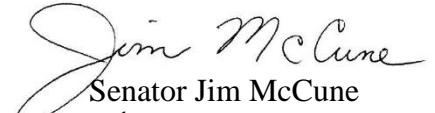
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31st Legislative District



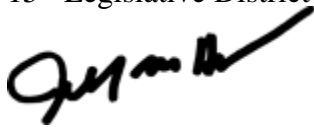
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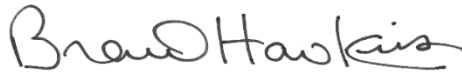
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Senator Brad Hawkins
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CC: Anthony Doan, Chair
Daimon Doyle, Vice Chair
Stoyan Bumbalov, Managing Director