

WASHINGTON ENERGY CODES

On-Going Litigation

Following the release of the 2021 Washington State Energy Code (WSEC), various legal and political efforts were initiated to challenge the limitations set upon fossil fuels within the code. This includes Initiative-2066, three Washington Superior Court Cases, and a federal Executive Order. You can find summaries of each of these legal efforts, their implications, and current status to the right.

HOW TO PROCEED IN THE FACE OF REGULATORY UNCERTAINTY

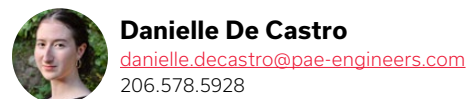
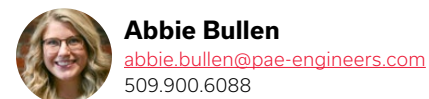
Planning capital projects amidst regulatory uncertainty is challenging as there may be prolonged litigation at the federal and state levels targeting Washington's ambitious energy and climate policies. Additionally, there may be investment risks presented by changing energy-related incentives and permitting in an unpredictable regulatory environment.

The Washington State Building Code Council (WSBCC) [issued a statement](#) indicating, until further notice, projects are to comply with the published 2021 WSEC as it stands. Similarly, Seattle Department of Construction & Inspections (SDCI) has informed PAE that the 2021 Seattle Energy Code (SEC) will be maintained until legal direction is finalized for the state code (upon which the Seattle code is based). WSBCC is endeavoring to consider public comments and proposed changes but adoption of any changes is yet to be determined.

The 2021 WSEC pushes projects towards high-performance electrified design, which has many benefits; high-performance all-electric buildings can reduce operational costs and lend to resilient designs when planned to reduce loads and maximize on-site renewables. All-electric design also comes with new challenges, including complexity in coordination and potentially increased first cost. Navigating new policies and tracking a changing energy code presents yet another hurdle to project teams. **PAE recommends that teams conservatively plan for the continued implementation of the energy codes as written. As the legal landscape settles, if restrictions on fossil fuel use relax, projects pursuing all-electric design will be better positioned to value-engineer to fuel-based systems than vice versa.**

GET IN CONTACT

Are you interested in learning more about the nitty-gritty of the 2021 WSEC and other code changes in the Northwest? Check out our handy cheat sheet and reach out for more information on the code updates and implications, or to schedule a presentation and discussion with our team



Litigation Status

WASHINGTON



I-2066

Natural Gas Policies Measure

STATUS: **IN DISPUTE**

[Initiative-2066](#) was presented to Washingtonians on the November 2024 ballot and was passed by a narrow margin. The initiative bans laws and regulations that “prohibit, penalize, or discourage” the use of gas and was written to specifically target the legality of the 2021 WSEC. This has spurred a flurry of legal action as the state, building agencies, and the courts seek to understand the legality of the initiative and its implications to the energy codes, and building performance standards. **See BIAW v. WSBCC and Climate Solutions v. State below for legal disputes.**



BIAW v. WSBCC

STATUS: **DISMISSED**

The Building Industry Association of Washington (BIAW) which authored I-2066 filed suit against the Washington State Building Code Council to force immediate adjustment of code implementation to comply with Initiative-2066 using emergency rulemaking. **As of February 14th, the case was dismissed thereby allowing WSBCC more time to process next steps.**



Climate Solutions v. State

STATUS: **ON-GOING**

The plaintiffs in this court case argue that I-2066 has broad-reaching implications covering multiple subjects thereby violating the constitutional requirement that voter initiatives address a single subject. **As of March 21st, Initiative-2066 was found to be unconstitutional. It is expected that this case will be on appeal to the Washington Supreme Court.**



Rivera v. Anderson

STATUS: **ON-GOING**

The Rivera v. Anderson court case was brought against the Washington State Building Code Council and challenges the legality of the 2021 Washington State Energy Code and its push towards electrification. The plaintiff's argument mirrors the argument made in the Berkeley case last year which pointed to EPCA preemption. **As of February 25th, the case was dismissed on the basis that WSBCC was not the proper defendant. The plaintiffs are appealing to the Ninth Circuit Court, which last sided against restrictions to fossil fuels in the Berkeley case.**

NATIONAL



EXECUTIVE ORDER 14260

Protecting American Energy From State Overreach

STATUS: **ON-GOING**

President Trump issued an [Executive Order](#) on April 8th targeting the ability of states and local jurisdictions to enact climate-change related policies, particularly with respect to limits or fines on emissions, and hurdles in expanding domestic energy sources (including fossil fuels). Policies deemed problematic by this Executive Order are to be identified and their enforcement halted. In Washington State, the Climate Commitment Act is expected to be identified as such a policy as it has direct implications to the energy industry. Resulting challenges may in turn affect Washington's energy codes and emerging building performance policies. **Legal dispute is anticipated to address state sovereignty with respect to climate initiatives and legality of the Executive Order. State and local laws are to be identified for challenge in early June 2025.**