

**WSR 11-11-004**  
**NOTICE OF PUBLIC MEETINGS**  
**BELLINGHAM TECHNICAL COLLEGE**

[Filed May 5, 2011, 10:18 a.m.]

The **regularly scheduled** meeting of the board of trustees of Bellingham Technical College will be held on Thursday, May 19, 2011, from 9:00 - 12:00 p.m., in the College Services Board Room on the Bellingham Technical College campus. Call 752-8334 for information.

**WSR 11-11-006**  
**NOTICE OF PUBLIC MEETINGS**  
**HUMAN RIGHTS COMMISSION**

[Filed May 5, 2011, 2:01 p.m.]

**PUBLIC MEETINGS FOR 2011**

Following is a schedule of meetings of the Washington state human rights commission for the remainder of 2011.

With the exception of conference calls, the usual format for meetings is a regular business meeting beginning at 9:00 a.m. Evening public forums may be held in various cities around the state and will be announced as they are scheduled. All meetings are held in accessible locations. The physical addresses of the meetings will be determined closer to the meeting dates. Please contact Tanya Calahan for the exact time and address or visit the commission's web site at [www.hum.wa.gov](http://www.hum.wa.gov) and click on The Commission tab.

Conference calls start at 10 a.m. originating out of Olympia. Individuals can participate in commission meetings held by conference call by coming to the commission's headquarters office at 711 South Capitol Way, Suite 402, Olympia, WA.

If you have questions or need an accommodation because of a disability, please contact Tanya Calahan at (360) 753-4876 or [tcalahan@hum.wa.gov](mailto:tcalahan@hum.wa.gov).

<b>DATES</b>	<b>LOCATION</b>
Friday, May 27	Olympia
Friday, June 24	Seattle
Friday, July 29	Olympia
Friday, August 26	Olympia (conference call)
Friday, September 30	Olympia
Friday, October 28	Olympia
Friday, November 18	Olympia
Friday, December 30	Olympia (conference call)

**WSR 11-11-008**  
**NOTICE OF PUBLIC MEETINGS**  
**CONVENTION CENTER**

[Filed May 6, 2011, 8:59 a.m.]

A regular meeting of the Washington state convention center public facilities district board of directors will be held on Tuesday, May 17, 2011, at 2:00 p.m. The meeting will

take place in Room 303 of the Convention Center, 800 Pike Street, Seattle.

If you have any questions regarding the board meeting, please call (206) 694-5000.

**WSR 11-11-012**  
**NOTICE OF PUBLIC MEETINGS**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

(Fish and Wildlife Commission)

[Filed May 6, 2011, 5:01 p.m.]

**2011 MEETING CHANGE NOTICE**

The Washington fish and wildlife commission today changed its June 17, 2011, meeting via conference call to an earlier date:

<b>Date</b>	<b>Location</b>
<b>June 16, 2011</b>	<b>Department of Fish and Wildlife</b> Natural Resources Building 5th Floor 1111 Washington Street S.E. Olympia, WA 98501

The public may listen to the call on speakerphone by going to the commission office at the above address. Agendas, scheduling updates, audio recordings and background materials are available for viewing on the internet at <http://wdfw.wa.gov/commission/meetings.html>.

Accommodations are available upon request for people with disabilities. Contact the commission office with questions by phone at (360) 902-2267 or by e-mail to [commission@dfw.wa.gov](mailto:commission@dfw.wa.gov).

**WSR 11-11-021**  
**NOTICE OF PUBLIC MEETINGS**  
**PUBLIC WORKS BOARD**

[Filed May 9, 2011, 2:10 p.m.]

The public works board has made some changes to the 2011 regular scheduled meetings. The changes are in bold.

Please contact the public works board at (360) 725-3151 for any further information.

- May 25-26**
- June 7
- July 12
- August 2
- September 13
- October 4
- November 1
- November 15
- December 6

**WSR 11-11-026**  
**DEPARTMENT OF COMMERCE**

[Filed May 10, 2011, 3:24 p.m.]

The Washington state department of commerce plans to hold a public hearing on the proposed Washington state abbreviated model state plan for the 2012 low-income home energy assistance program (LIHEAP).

The hearing will be held Wednesday, July 6, 2011, at the Department of Commerce, 1011 Plum Street S.E., 2nd Floor, Conference Room 207, Olympia, WA 98504-2525. The LIHEAP hearing will begin at 10:00 a.m. and close at noon unless taking testimony requires more time.

Two typewritten copies of all oral testimony are requested. There will be a question and answer period. Written testimony will be accepted until 5:00 p.m., July 6, 2011.

Written testimony for the LIHEAP hearing should be sent to the attention of Lisa Lipsey, Department of Commerce, 1011 Plum Street S.E., P.O. Box 42525, Olympia, WA 98504-2525.

The LIHEAP plan is available in an alternate format upon request. Meetings sponsored by commerce shall be accessible to persons with disabilities. Accommodations may be arranged with a minimum of ten working days notice, to Lisa Lipsey (LIHEAP) at TTY (360) 586-4623.

If you have any questions or need additional information, please contact Lisa Lipsey at (360) 725-2861 or by e-mail at [lisa.lipsey@commerce.wa.gov](mailto:lisa.lipsey@commerce.wa.gov).

**WSR 11-11-029**  
**DEPARTMENT OF AGRICULTURE**

[Filed May 10, 2011, 4:27 p.m.]

**PUBLIC NOTICE FOR SPARTINA TREATMENT  
 IN WESTERN WASHINGTON**

**LEGAL NOTICE:** The Washington state department of agriculture (WSDA) plant protection division is hereby notifying the affected public that the herbicides glyphosate (e.g. Aquamaster®, Aquaneat®, or Rodeo®) and imazapyr (e.g. Habitat® or Polaris AQ®), surfactants (e.g. Agri-Dex™, Class Act Next Generation™, Competitor™, Dyne-Amic™, Kinetic™, or LI-700™) and marker dyes may be used to control invasive *Spartina* grass species between June 1, 2011, and October 31, 2011. Properly licensed pesticide applicators who have obtained coverage under the WSDA national pollutant discharge elimination system (NPDES) waste discharge general permit may apply glyphosate or imazapyr to control the noxious weed *Spartina* in Grays Harbor, Hood Canal, Willapa Bay, Puget Sound, the north and west sides of the Olympic Peninsula, and the mouth of the Columbia River.

Use of herbicides is one of the options used to control *Spartina*. These infestations may also be treated, but not eradicated, by mowing, digging, crushing, or covering.

For more information, including locations of possible application sites or information on *Spartina*, contact the WSDA *Spartina* Control Program at (360) 902-1923. Or write WSDA *Spartina* Program, P.O. Box 42560, Olympia, WA 98504-2560. To contact the WSDA NPDES permit

coordinator, call Brad White at (360) 902-2071. The Washington state department of ecology 24-hour emergency number for reporting concerns about *Spartina* treatments is (360) 407-6283.

**WSR 11-11-032**  
**NOTICE OF PUBLIC MEETINGS**  
**LOWER COLUMBIA COLLEGE**

[Filed May 11, 2011, 9:41 a.m.]

The board of trustees of Lower Columbia College is cancelling their regularly scheduled meeting of May 18, 2011. The next meeting will be held on June 15, 2011.

Following is an updated meeting schedule for the remainder of this year.

**2011 MEETING SCHEDULE**

The trustees meet on the 3rd Wednesday of the month at 5:00 in the Heritage Room of the administration building unless noted differently below.

January 19, 2011	5:00 p.m.	Regular meeting
February 16, 2011	8:30 a.m.	Regular workshop
March 9, 2011	5:00 p.m.	Special executive session Administration building Training room
March 16, 2011	5:00 p.m.	Regular meeting
April 20, 2011	5:00 p.m.	Regular meeting
<del>May 18, 2011</del>	<del>5:30 p.m.</del>	<del>Regular meeting</del> <del>(cancelled)</del>
June 15, 2011	5:00 p.m.	Regular meeting
July 20, 2011	8:30 a.m.	Workshop Campus
August 2011	<b>NO MEETING</b>	
September 21, 2011	5:00 p.m.	Regular meeting
October 19, 2011	5:00 p.m.	Regular meeting
November 16, 2011	5:00 p.m.	Regular meeting
December 21, 2011	5:00 p.m.	Regular meeting

**WSR 11-11-037**  
**NOTICE OF PUBLIC MEETINGS**  
**SKAGIT VALLEY COLLEGE**

[Filed May 11, 2011, 4:48 p.m.]

The Skagit Valley College board of trustees, at their May 10, 2011, meeting, approved the following meeting dates for 2011-2012. Unless otherwise noted, all meetings will be held at the Mount Vernon Campus, Multipurpose Room, 2405 East College Way, Mount Vernon, WA 98273, and will begin at 4:30 p.m.

**July 2011-June 2012  
Board Meetings**

<b>Dates</b>	<b>Location</b>
July 12, 2011	Mount Vernon Campus
September 20, 2011	Mount Vernon Campus
October 11, 2011	Mount Vernon Campus
November 8, 2011	Mount Vernon Campus
December 13, 2011	Mount Vernon Campus
January 10, 2012	Mount Vernon Campus
February 14, 2012	Mount Vernon Campus
March 13, 2012	Mount Vernon Campus
April 10, 2012	Mount Vernon Campus
<b>May 8, 2012 - 4:30 p.m.</b>	<b>Whidbey Island Campus 1900 S.E. Pioneer Way Oak Harbor, WA 98277</b>
June 12, 2012	Mount Vernon Campus

**WSR 11-11-039**

**INTERPRETIVE AND POLICY STATEMENT  
DEPARTMENT OF  
LABOR AND INDUSTRIES**

[Filed May 12, 2011, 8:20 a.m.]

Pursuant to RCW 34.05.230, enclosed is a policy and interpretive statement issued by the department of labor and industries regarding the specialty compliance services division policies.

If you have any questions or need additional information, please call Tamara Jones at (360) 902-6805.

**Specialty Compliance Services Division:** Apprenticeship Program.

**New Policy 2011-01:** Responsible bidder status for public works: Decisions against training agent for violating ratio, supervision and/or approved work process requirements.

Chapter 197, Laws of 2009 (ESSB 5873) requires the program to establish penalties for contractors found to be working apprentices out of ratio, with inappropriate supervision, or outside their work process scope of the approved apprenticeship program. Contractors who are found out of compliance in any of these areas by the Washington state apprenticeship and training council (WSATC) may have their responsible bidder status revoked for the first violation and be barred from bidding on any public works contract for five years upon the second violation. The legislation also requires that the WSATC establish rules for implementing the law. This policy is an interim step toward full rule implementation.

**Contact** Sally Elliott, P.O. Box 44400, Olympia, WA 98504, (360) 902-6411, [yous235@lni.wa.gov](mailto:yous235@lni.wa.gov).

Tamara Jones  
Assistant Director of  
Legislative and Government Affairs

**WSR 11-11-040**

**NOTICE OF PUBLIC MEETINGS  
LAW ENFORCEMENT OFFICERS' AND  
FIREFIGHTERS' PLAN 2 RETIREMENT BOARD**

[Filed May 12, 2011, 10:22 a.m.]

The law enforcement officers' and firefighters' plan 2 retirement board cancelled their May 18, 2011, board meeting.

The next regularly scheduled meeting is **Wednesday, June 15**, at 9:30 a.m. located in the Washington state investment board room.

Please feel free to contact Jessica Burkhart at (360) 586-2322 or by e-mail at [jessica.burkhart@leoff.wa.gov](mailto:jessica.burkhart@leoff.wa.gov) should you have any questions.

**WSR 11-11-041**

**PROCLAMATION  
OFFICE OF THE GOVERNOR**

[May 7, 2011]

**PROCLAMATION BY THE GOVERNOR  
11-09**

**AMENDING PROCLAMATION 11-08**

**WHEREAS**, on April 25, 2011, I issued Proclamation 11-08, proclaiming a State of Emergency for Chelan, Cowlitz, Ferry, King, Kittitas, Mason, and Snohomish Counties as a result of severe spring storms that produced extensive rainfall throughout Washington from March 15 through April 10, 2011; and

As the Washington State Department of Transportation continued to assess damage caused by these storms and implementation repairs, it became evident that additional damage to state and county road systems resulting from saturated soils and flooding also extended into Grays Harbor and Pierce Counties. Damage to these roadways has caused and may continue to warrant temporary closure or limited access impacting public safety and infrastructure; and

It is necessary for the Washington State Department of Transportation to use emergency contracting procedures and commence work to repair, remove and replace the affected roadways in Grays Harbor and Pierce Counties; and

The Washington State Department of Transportation and local jurisdictions are continuing to coordinate resources to repair the state and county road systems, assess the damage caused by this incident, and implement repairs and detours to alleviate the immediate and long term impacts upon the infrastructure and public safety; and

The impact of this incident to the life and health of our citizens, as well as the property and transportation infrastructure of Washington State, is a public disaster that affects life, health, property or the public peace.

**NOW, THEREFORE**, I Christine O. Gregoire, Governor of the state of Washington, as a result of the aforementioned situation and under Chapters 38.52 and 43.06 RCW, do hereby proclaim that Proclamation 11-08 remains in effect, and that

a State of Emergency also exists in Grays Harbor and Pierce Counties, in addition to the counties identified in Proclamation 11-08. I again direct the plans and procedures in the *Washington State Comprehensive Emergency Management Plan* be implemented. State agencies and departments are directed to utilize state resources and to do everything reasonably possible to assist affected political subdivisions in an effort to respond to and recover from the incident.

Signed and sealed with the official seal of the state of Washington this 7th day of May, A.D. Two-thousand and Eleven at Olympia, Washington

By:

\_\_\_\_\_  
Christine O. Gregoire  
Governor

BY THE GOVERNOR:  
Steve Excell  
[Assistant] Secretary of State

**WSR 11-11-042**  
**OFFICE OF THE GOVERNOR**

[Filed May 12, 2011, 10:30 a.m.]

**NOTICE OF APPEAL**  
RCW 34.05.330(3)

Pursuant to RCW 34.05.330(3), you are hereby notified for publication in the Washington State Register that:

On March 22, 2011, the Governor's Office received an appeal from Mr. Randy Boss relating to the Department of Transportation's denial of a petition to repeal or amend WAC 468-270. The Governor denied the Petition on May 5, 2011.

DATE: May 9, 2011

Narda Pierce  
General Counsel to the Governor

May 5, 2011

Randy Boss  
PO Box 237  
Gig Harbor, WA 98335

RE: Administrative Rule Appeal - WAC 468-270

Dear Mr. Boss:

I am writing in response to your letter appealing the Transportation Commission's denial of your petitions under RCW 34.05.330(1). These petitions requested repeal or amendment of recent rule making actions that modified Chapter 468-270 of the Washington Administrative Code (WAC) relating to setting tolls for toll facilities in our state. You have petitioned that denial to the Governor under RCW 34.05.330(3). After careful consideration of your petitions and the Transportation Commission's reasons for denial of your petitions, I am denying your appeal.

The Transportation Commission is designated in various statutes as the entity responsible for setting tolls. These statutes are valid law and were not repealed by Initiative 1053. Initiative 1053 provides that "[a] fee may only be imposed or increased in any fiscal year if approved with majority legislative approval in both the house of representatives and the senate ..." RCW 43.135.055(1). As outlined in the enclosed informal Attorney General Opinion<sup>1</sup>, Initiative 1053 does not constrain the manner in which the legislature approves imposition or increases in fees. The Transportation Commission made its adoption of the rule amendments contingent on action by the Legislature pursuant to RCW 43.135.055(1).

The Transportation Commission clearly had authority to take these actions. With regard to the Tacoma Narrows Bridge, RCW 47.46.100(1) states: "The commission shall fix the rates of toll and other charges for all toll bridges built under this chapter that are financed primarily by bonds issued by the state. Subject to RCW 47.46.090, the commission may impose and modify toll charges from time to time as conditions warrant." With regard to State Route 520, RCW 47.56.810(1) states: "Tolling authority" means the governing body that is legally empowered to review and adjust toll rates. Unless otherwise delegated, the transportation commission is the tolling authority for all state highways." RCW 47.56.850(1) states: "Unless these powers are otherwise delegated by the legislature, the transportation commission is the tolling authority for the state." The Transportation Commission also clearly stated its intent that the toll rates adopted would not take effect without subsequent legislative action, recognizing the passage of Initiative 1053.

You also protest that the language of the title of the Proposed Rulemaking notice, "Toll and Fee Setting for Toll Facilities in Washington State," is broader than the specific toll facilities addressed in the proposed rules. The CR-102 announces to the public that a change to a rule is being proposed, and there are no provisions in the Administrative Procedures Act that require the title of the form to be narrowly tailored and specifically describe the proposed rules. In any event, the CR-102 form gave adequate notice to members of the public and any person who wished to be apprised of more detail could simply read the remainder of the form.

As another basis for your appeal, you allege that the Transportation Commission has not implemented a provision in Engrossed Substitute Senate Bill 6499, Laws of 2010, Chapter 249, that directed the Transportation Commission to adopt rules to assess administrative fees as appropriate for toll collection processes. However, the Transportation Commission adopted WAC 468-270-300, filed on January 20, 2011, with effectiveness contingent upon legislative action. This rule details fees as appropriate for toll collection processes and cites the 2010 law (codified at RCW 47.56.795) as statutory authority for the rule.

For these reasons and for the additional reasons set forth in the Transportation Commission's response, I am denying your appeal. I appreciate your concerns regarding proper rule making authority, notice and processes, but have concluded the Transportation Commission met all legal requirements with regard to these rule adoptions.

<sup>1</sup> Letter opinion from Deputy Solicitor General James K. Pharris to Senator Don Benton dated February 17, 2011.

Sincerely,  
Christine O. Gregoire  
Governor

**Reviser's note:** The typographical errors in the above material occurred in the copy filed by the Office of the Governor and appear in the Register pursuant to the requirements of RCW 34.08.040.

**Reviser's note:** The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

### WSR 11-11-057

#### INTERPRETIVE STATEMENT DEPARTMENT OF REVENUE

[Filed May 13, 2011, 1:56 p.m.]

#### INTERPRETIVE STATEMENTS ISSUED

The department issued the following excise tax advisory (ETA):

ETA 3161.2011 *Apportionment of Income by Stockbrokers and Security Houses*. This ETA explains how stockbrokers and security houses should apportion their income for B&O tax purposes. It discusses when and under what circumstances single factor receipts formula, cost apportionment, and the "60/40 convention" methods of apportionment apply.

A copy of this document is available via the internet at Recent Rule and Interpretive Statements, Adoptions, and Repeals.

Alan R. Lynn  
Rules Coordinator

### WSR 11-11-062

#### NOTICE OF PUBLIC MEETINGS GUARANTEED EDUCATION TUITION PROGRAM

[Filed May 16, 2011, 9:24 a.m.]

In accordance with RCW 28B.95.020 and WAC 14-276-030, the advanced college tuition program, known as guaranteed education tuition program has made a revision to the committee meeting schedule:

**Cancellation: Monday, May 23, 2011, 3:00 p.m. - 5:00 p.m., Office of the Insurance Commissioner, Olympia, Washington 98504.**

Please contact Betsy Hagen if you need additional information.

### WSR 11-11-063

#### OFFICE OF THE GOVERNOR

[Filed May 16, 2011, 9:25 a.m.]

#### NOTICE OF APPEAL RCW 34.05.330(3)

Pursuant to RCW 34.05.330(3), you are hereby notified for publication in the Washington State Register that:

On March 30, 2011, the Governor's Office received an appeal from Mr. John Neff relating to the Washington State Building Code Council's denial of a petition to repeal WAC 51-11, 2009 Edition. The Governor denied the appeal on May 13, 2011.

DATE: May 13, 2011

Narda Pierce  
General Counsel to the Governor

May 13, 2011

John P. Neff, CBO  
2315 Buckingham Drive SE  
Olympia, WA 98501

RE: Administrative Rule Appeal—WAC 51—2009 Edition

Dear Mr. Neff:

I am writing in response to your letter appealing the denial of your petition to the Washington State Building Code Council under RCW 34.05.330(1). This petition requested repeal of the 2009 Washington State Energy Code. You have appealed the Council's denial to the Governor under RCW 34.05.330(3). After careful consideration of your petition and the response of the Washington State Building Code Council, I am denying your appeal.

In petitioning for repeal of this rule, you have outlined your contentions that: 1) the rule is not authorized; 2) the rule is not needed and does not serve the purposes for which it was adopted; 3) the rule conflicts with or duplicates other federal, state, or local laws; 4) alternatives to the rule exist that will serve the same purpose at less cost, and that the costs imposed by the rule are unreasonable; 5) the rule is not clearly and simply stated; and 6) the rule was not adopted according to all applicable provisions of law. This letter will address each of these contentions in turn.

1. Contention that the rule is not authorized: Your appeal states that current law requires the Council to review the existing energy code every three years and limits its amendment of the code to no more frequently than every three years. You also state that my request to the Council to fully consider a 30% increase in energy efficiency, based on the recommendations of my Climate Action Team, does not provide authority for agency rulemaking. You further state that a letter from the sponsors of Engrossed Second Substitute Senate Bill (ESSSB) 5854 (2009) does not exclusively establish legislative intent. I agree with all of these statements, yet disagree with your conclusion.

On review of the law, I find that ESSSB 5854 did not repeal the existing and explicit statutory authority of the Council to adopt amendments to the energy code that is found in RCW 19.27A.025 and RCW 19.27A.045. These statutes provide that the Council may, by rule adopted pursuant to chapter 34.05 RCW, amend the energy code requirements for new nonresidential buildings and residential buildings to increase energy efficiency. Although the legislature mandates that the Council adopt state energy codes from 2013 through 2031 that incrementally move towards achieving the seventy percent reduction in annual net energy consumption, it did not withdraw the Council's authority to amend the energy code prior to 2013. These laws provide full authority for the Council's rulemaking.

Your appeal further asserts that the Council's actions did not meet the statutory requirement to "evaluate and consider adoption of the International Energy Conservation Code in Washington state in place of the existing state energy code." However, the record reflects that the Council considered the International Energy Conservation Code (IECC) in its process of developing the 2009 code and devoted a special meeting and public hearing to that topic. These efforts built upon prior review and detailed comparisons between the state energy code and the international code, both in 2003 and 2006. The Council was informed about the provisions of the IECC by both the technical advisory group and expert testimony provided to the Council. The Council remains active in the ongoing development of the international code and has committed to a detailed review of the 2012 IECC. In my view, the Council's actions met this requirement of the statute.

2. Contention that the rule is not needed and does not serve the purposes for which it was adopted: Your appeal states the rule is not needed because, in your view, the state would be better off by adopting the IECC. You suggest the IECC would be simpler and cheaper to implement and would allow access to federal support for implementation. Also, you cite to the energy use of existing buildings as a greater problem than new construction.

Adopting the IECC would not achieve energy efficiency comparable to the 2009 Washington State Energy Code, and therefore I cannot say that the state would be better off by adopting that code. Additionally, while the United States Department of Energy provides model codes, other technical assistance is needed. The state has already invested resources in the effective implementation of the 2009 state energy code by providing training and guides for builders and local government inspectors through the Washington State University energy program. While there are always tradeoffs in benefits and costs, the Council has considered those tradeoffs here.

You also state that the rule does not serve the purposes for which it was adopted, suggesting the Council ignores the significant energy use of existing buildings and places the burden of the energy code on new construction. A legislature or state council need not address all problems at the same time, but may address itself to phases of the problem. We cannot ignore that today's new construction becomes tomorrow's existing buildings. It is appropriate to require cost effective

and technically feasible energy efficiency measures at the time of initial construction, rather than adding to the stock of less efficient buildings that will need to be retrofitted in the future. Additionally, although the primary focus of the state energy code is new construction, the code does apply to alterations of existing buildings and to replacement of building mechanical systems. There are other government and utility programs designed to address the existing stock of buildings, and all involved in energy efficiency understand that existing building energy use is one phrase of the problem. In context, I find that the Council's adopted energy code meets the purposes of energy efficiency for which it was adopted.

3. Contention that the rule conflicts with or duplicates other federal, state, or local laws: Your appeal asserts that Chapter 9 of the state energy code is in conflict with the federal Energy Policy and Conservation Act (42 U.S.C. §6927). As you noted, this issue is the subject of ongoing litigation in federal court. In his February 2011 decision, Judge Robert Bryan of the United States District Court for the Western District of Washington concluded that Chapter 9 meets the tests for exemption from the preemption provisions of the federal Act, granted summary judgment to the Council and dismissed the claims of the plaintiffs. I understand the plaintiffs have appealed the judge's decision, with briefs due this summer. However, based on the current status of the case and the sound analysis of the federal district court, there appears to be no conflict between the state energy code and federal law.

4. Contention that alternatives to the rule exist that will serve the same purpose at less cost and that the costs imposed by the rule are unreasonable: Your appeal states that the law does not require "progress" in terms of improving energy efficiency and that the IECC would be less costly to the state. You also contend that the Council did not properly determine the implementation costs of their rule and did not compare these costs to the costs of implementing the IECC. You cite implementation costs as high as an additional \$15,000 for a new house.

It is clear to me that adoption of the IECC would not serve the same purpose as the 2009 Washington State Energy Code. The IECC would not increase the energy efficiency of typical newly constructed buildings as is required for amendments to the code under RCW 19.27A.025 and RCW 19.27A.045. I understand that expert testimony established that the 2009 IECC is approximately 15% less efficient than the 2009 state energy code and comparable in efficiency to the 2006 state energy code. There would be legal impediments to adopting the IECC when it would not meet the requirements of the cited statutes.

Given these limitations, it was rational for the Council to decline to use public resources to conduct a detailed cost comparison between the two codes. While the law directs the Council to evaluate and consider the IECC, a detailed cost comparison cannot be said to be required when other aspects of the evaluation contraindicate its adoption at this time. The Council has reasonably focused its attention on the potential adoption of the 2012 IECC.

Regarding the costs of implementation of the adopted code, every proposed amendment to the state energy code went through the Council's cost analysis review, which considers the costs of construction to builders and the costs of compliance actions by local government. Detailed analysis of the 2009 state energy code indicates construction costs for an average size gas heated home, representing 75% of all new homes in Washington, would cost \$1.00 per square foot in most of Washington and \$2.04 per square foot in the colder parts of the state. The analysis indicates the energy code adds costs of \$2000 to \$3000 for a typical home. More importantly, the analysis shows that energy savings will exceed the financed costs of the construction after several years of ownership and will bring long-term benefits to the homeowner. The Council evaluated higher levels of improvement in energy efficiency with the costs and adjusted the increase in efficiency from an early goal of 30% energy savings to an energy code that achieves 15% energy savings, in large part because of considerations of costs. To further mitigate the impacts of implementation costs on a housing market that was destabilized by the economic recession, I asked the Council to delay the effective date of the new energy code. This delay was intended to give the housing industry additional time to stabilize and to ensure that suppliers, builders and local governments were properly trained and equipped to implement the new code requirements.

I conclude that the suggested alternative to the rule will not serve the same purpose at less cost, and that the costs required to implement the 2009 state energy code are reasonable.

5. Contention that the rule is not clearly and simply stated: Your appeal says the Council has already amended the state energy code to address issues that were not clear in the original rule. You also say there is confusion over the new code, as noted in the state building officials' blog.

The Council's changes to their original rule were made at the request of builders. After the initial rule was adopted, my office convened a group of builders and state agency staff to discuss concerns about the costs of the new energy code. These discussions led to agreement to request a rule change and several rule interpretations, designed to further mitigate the costs of the rule. These requests were acted on by the Council. A review of the building official's blog indicates ongoing debate about the merits of a state energy code, the costs of the new code, and whether the current economic conditions warrant another delay of the new requirements. If there is confusion, it is not about the contents of the code.

Of course, by its nature, the state energy code deals with technical subject matter. The state energy code provides both prescriptive options to simplify implementation and alternative approaches based on energy performance. The State Building Code Council, Washington State University's energy program, and others have provided extensive training, instruction guides, and other resource materials to facilitate implementation of the new code and they continue to offer technical assistance when asked. Despite the complex topic, the construction industry in our state is well versed in our state energy code and fully capable of implementing the requirements.

RCW 34.05.220(5) provides: "To the extent practicable, any rule proposed or adopted by an agency should be clearly and simply stated, so that it can be understood by those required to comply." I find the adopted code to be well organized, with requirements that are as clear as practicable given the technical subject matter, and capable of being understood by those required to comply.

6. Contention that the rule was not adopted according to all applicable provisions of law: Your appeal asserts that the adoption of the state energy code did not comply with Chapter 19.27A RCW or with RCW 34.05.320 and RCW 19.85.-030, as they relate to the requirement to prepare a small business economic impact statement. You further assert that the actions by the technical advisory group did not follow the Council's bylaws in terms of procedures for motions and voting.

As I described above, I find no conflict between Chapter 19.27A RCW and the Council's adoption of the 2009 state energy code.

At the request of the legislative Joint Agency Rules Review Committee, the State Building Code Council prepared a small business economic impact statement (SBEIS). All proposed rule amendments were reviewed by the Council's technical advisory group (TAG), and any amendments with more than a minor cost were further reviewed by the Council's economic and regulatory assessment committee. The committee identified five sections of the proposed rule that could disproportionately impact small businesses. Each of these areas was evaluated in the Council's SBEIS to identify any disproportionate costs, and steps were identified and taken to reduce those costs.

The Council's SBEIS states that the number of jobs created or lost as a result of the proposed rule "is unknown," and that jobs could be created in some specialty trades. The lack of a specific estimate of job numbers was a specific concern of the legislative committee. To address this concern, I asked the economic experts in the forecast division of the Office of Financial Management to conduct a review. The economic experts agreed with the Council - it is not possible to estimate the number of jobs created or lost from the new energy code. In the short term, the incremental costs from the new code would be a relatively small piece of the overall cost of a home and would likely be included in the home financing. Over time, the energy savings would offset the construction and financing costs.

Regarding voting during technical advisory group meetings, I understand that the meetings included both informal and formal methods. The TAG chair would informally poll everyone present to get a sense of the views of all attendees. However, formal voting was done solely by formal TAG members. The Council has produced a record that shows the formal votes on individual energy code amendments addressed by the TAG. The Council bylaws do not appear to address the question of who can second a formal motion during TAG meetings. In addition, the requirement to have a non-voting member present to audit the meeting procedures

was recently added to the bylaws, after the TAG had already voted on the 2009 amendments.

For these reasons and for the additional reasons set forth in the Council's response to your petition, I am denying your appeal. I appreciate your concerns regarding proper rule-making authority, cost analyses, and rulemaking processes, but have concluded the Council met all legal requirements with regard to the adoption of the 2009 Washington State Energy Code.

Sincerely,  
Christine O. Gregoire  
Governor

**Reviser's note:** The typographical errors in the above material occurred in the copy filed by the Office of the Governor and appear in the Register pursuant to the requirements of RCW 34.08.040.

**WSR 11-11-064**  
**NOTICE OF PUBLIC MEETINGS**  
**COUNTY ROAD**  
**ADMINISTRATION BOARD**  
[Filed May 16, 2011, 10:20 a.m.]

MEETING NOTICE: July 28, 2011  
County Road Administration Board  
2404 Chandler Court S.W.  
Suite 240  
Olympia, WA 98504  
1:00 p.m. to 5:00 p.m.

MEETING NOTICE: July 29, 2011  
County Road Administration Board  
2404 Chandler Court S.W.  
Suite 240  
Olympia, WA 98504  
8:30 a.m. - noon

Individuals requiring reasonable accommodation may request written materials in alternative formats, sign language interpreters, physical accessibility accommodations, or other reasonable accommodation, by contacting Karen Pendleton at (360) 753-5989, hearing and speech impaired persons can call 1-800-833-6384.

If you have questions, please contact Karen Pendleton at (360) 753-5989.

**WSR 11-11-065**  
**NOTICE OF PUBLIC MEETINGS**  
**DEPARTMENT OF LICENSING**  
(Real Estate Commission)  
[Filed May 16, 2011, 10:47 a.m.]

The June 9, 2011, meeting will be held 9:00 a.m. to 12:00 p.m. or until completion of business at the Department of Labor and Industries, 7273 Linderson Way S.W., Tumwater, WA 98501.

**WSR 11-11-072**  
**NOTICE OF PUBLIC MEETINGS**  
**LIFE SCIENCES**  
**DISCOVERY FUND AUTHORITY**  
[Filed May 17, 2011, 9:15 a.m.]

Please note the updated or new information underscored below for the life sciences discovery fund authority (agency #3560) 2011 board meetings. Note as well that we will post our public meeting agenda and any call-in information as appropriate on our web site <http://www.lsdfa.org/about/staff/meetings.html> prior to each meeting.

**2011 Public Board Meeting Dates**  
*(times are approximate and subject to change)*

Friday, June 3	9:00 a.m. - 10:45 a.m. and at approximately 2:30 p.m. as needed	Washington Research Foundation Office 2815 Eastlake Avenue East Suite 300 Seattle, WA Public call-in number: 1-888-272-2618, no passcode needed
Tuesday, July 19	8:30 a.m. - 5:00 p.m.	Washington Research Foundation Office 2815 Eastlake Avenue East Suite 300 Seattle, WA
Tuesday, September 27	8:30 a.m. - 5:00 p.m.	Washington Research Foundation Office 2815 Eastlake Avenue East Suite 300 Seattle, WA
Tuesday, November 1	8:30 a.m. - 5:00 p.m.	Washington Research Foundation Office 2815 Eastlake Avenue East Suite 300 Seattle, WA

**WSR 11-11-078**  
**DEPARTMENT OF ECOLOGY**  
[Filed May 17, 2011, 2:28 p.m.]

**PUBLIC NOTICE**  
**Announcing the Draft Sand and Gravel General Permit Modification and Antidegradation Plan for Review and Comment**

**Modified Permit Issuance:** The Washington state department of ecology (ecology) will release a draft sand and gravel NPDES and state waste discharge general permit (permit) modification on June 1, 2011. Ecology will accept written and oral comments on the modified parts of the draft permit and on the draft antidegradation plan until **5 p.m., July 8, 2011.**

**Draft Permit Modification:** The sand and gravel general permit controls the discharge of pollutants from sand and gravel mining operations and related facilities into waters of the state. This general permit was reissued on August 4, 2010 (effective date October 1, 2010). The permit was appealed by the Puget SoundKeeper Alliance (PSA). The Washington Aggregates and Concrete Association (WACA) intervened in support of the permit. Ecology and WACA have reached a



tentative settlement with PSA which is defined in the draft permit. A one page summary of proposed changes is attached to the draft permit. One item of appeal was the anti-degradation plan to comply with WAC 173-201A-300. Ecology is concurrently releasing a draft of the anti-degradation plan for the sand and gravel general permit.

**Copies of the Draft Permit and Draft Antidegradation Plan:** You may download a copy of the draft permit and draft anti-degradation plan at <http://www.ecy.wa.gov/programs/wq/sand/index.html>.

Or you may request a copy of the draft permit and draft anti-degradation plan from Julie Robertson at (360) 407-6575 or by e-mail at [julie.robertson@ecy.wa.gov](mailto:julie.robertson@ecy.wa.gov).

**Ecology Contact:** Gary Bailey, Washington State Department of Ecology, P.O. Box 47600, Olympia, WA 98504, phone (360) 407-6433, fax (360) 407-6426, e-mail [gary.bailey@ecy.wa.gov](mailto:gary.bailey@ecy.wa.gov).

**Submitting Written and Oral Comments:** Ecology will accept written and oral comments on the draft permit and anti-degradation plan until **5 p.m., July 8, 2011**. Ecology prefers comments to be submitted by e-mail. E-mailed comments must contain the commenter's name and postal address. Comments should reference the specific permit and specific text when possible.

**Submit written comments to Gary Bailey, Sand and Gravel General Permit Comments, Washington State Department of Ecology, P.O. Box 47600, Olympia, WA 98504.**

**Submit comments by e-mail to [gary.bailey@ecy.wa.gov](mailto:gary.bailey@ecy.wa.gov).**

Written comments must be postmarked no later than **5 p.m., July 8, 2011**. You must send e-mail comments before **5 p.m., July 8, 2011**. You may provide oral testimony at the public hearing.

**Hearing and Workshop:** The public hearing and workshop on the permit is scheduled to be held in Lacey, Washington. At the workshop ecology will explain the draft permit and answer questions. A hearing will immediately follow the workshop. The hearing will provide the opportunity for formal oral testimony and comments on the proposed permit.

**Workshop and Hearing: July 6, 2011, at 1 p.m.,** at the Washington State Department of Ecology, 300 Desmond Drive S.E., Lacey, WA 98503.

**Issuing the Permit:** After ecology receives and considers all public comments, it will issue the final permit. If public comments cause a substantial change in the permit conditions from the original draft permit, ecology may issue a revised draft for comment. Ecology expects to issue the permit in the summer of 2011.

#### WSR 11-11-079

##### NOTICE OF PUBLIC MEETINGS WASHINGTON STATE UNIVERSITY

[Filed May 17, 2011, 2:36 p.m.]

Pursuant to RCW 42.30.075, this letter provides notice of the 2012 meeting schedule of the Washington State University (WSU) board of regents. The dates and locations of the 2012 meetings are:

Thursday and Friday	January 26-27	Tri-Cities
Thursday and Friday	March 22-23	Pullman
Thursday and Friday	May 3-4	Pullman
Thursday and Friday	August 23-24	Pullman
Thursday and Friday	October 4-5	Vancouver
Thursday and Friday	November 15-16	Spokane

Thursday's meetings will begin with lunch or a series of committee meetings, followed by dinner. Friday's meetings will begin with breakfast, followed by the board of regents meeting. All meetings may be attended by some or all of the regents.

Thursday's meetings will begin at 10:00 a.m. and Friday's meetings will begin at 7:30 a.m., or at such later time as may be announced on the regents' web page at [www.regents.wsu.edu](http://www.regents.wsu.edu). Such announcements will occur the week prior to the dates listed above, along with room locations for all meetings.

Inquires [Inquiries] about this schedule or board of regents meetings, in general, may be directed to the WSU board of regents office at (509) 335-4200.

#### WSR 11-11-080

##### NOTICE OF PUBLIC MEETINGS EDMONDS COMMUNITY COLLEGE

[Filed May 17, 2011, 2:40 p.m.]

Following is a revision to the 2011 regular meeting schedule of the Edmonds Community College board of trustees.

**A special meeting has been scheduled to include the Everett Community College board of trustees. The meeting will be held on the Edmonds Community College campus, Wednesday, June 1, 5:00 p.m., Snohomish Hall 304A, 20000 68th Avenue West, Lynnwood, WA.**

If you have any questions, please feel free to contact Patty Michajla at (425) 640-1516.

#### WSR 11-11-086

##### NOTICE OF PUBLIC MEETINGS SHORELINE COMMUNITY COLLEGE

[Filed May 18, 2011, 8:51 a.m.]

In compliance with the Open Public Meetings Act, the Shoreline Community College board of trustees will hold a special meeting, beginning at 3:00 p.m. on Wednesday, May 25, 2011, for the purpose of meeting with third year appointment review committee faculty co-chairs.

This special meeting will take place in the central conference room (#1020M) in the administration building (#1000) at Shoreline Community College, 16101 Greenwood Avenue North, Shoreline, WA 98133.

Please call (206) 546-4552 or e-mail Lori Y. Yonemitsu at [lyonemitsu@shoreline.edu](mailto:lyonemitsu@shoreline.edu) if you need further information.

**WSR 11-11-087**

**OFFICE OF THE GOVERNOR**

[Filed May 18, 2011, 8:51 a.m.]

**NOTICE OF APPEAL**

RCW 34.05.330(3)

Pursuant to RCW 34.05.330(3), you are hereby notified for publication in the Washington State Register that:

On May 13, 2011, the Governor's Office received an appeal from William Osmunson relating to the Board of Health's denial of a petition to repeal or amend WAC 246-290-460.

DATE: May 13, 2011

Narda Pierce  
General Counsel to the Governor