

**IDAHO BUILDING CODE BOARD AND
BUILDING NEGOTIATED RULEMAKING MEETING**

June 14, 2022 – 9:00 a.m. (MT)

**Division of Building Safety
1090 East Watertower Street, Suite 150, Meridian**

DRAFT MINUTES OF THE JUNE 14, 2022 JOINT MEETING

NOTE: The following report is not intended to be a verbatim transcript of the discussions at the meeting, but to record the significant features of those discussions.

Chairman Andrew Bick called the meeting to order at 9:00 a.m. (MT)

Board Members:

Andrew Bick, Chairman
Sam Zahorka
Kent Soelberg
Kelly Daniels
John Cotner
Jeremy Maxand
Ron Johnson
Rob Brooks
Jon Laux
Nick Guho (absent)

DOPL Staff:

Tim Frost, Deputy Administrator
Michael Hyde, Executive Officer
Yvonne Dunbar, Legal Counsel
Renee Bryant, Board Support Supervisor
Linda Pratzner, Board Support Specialist

Public Hearing – Negotiated Rulemaking

Overview of Proposed Amendments to IDAPA 24.39.30 Rules of Building Safety (Building Code Rules) – Executive Officer Michael Hyde prepared an opening statement, leading off with the current state of the negotiated rulemaking process. In the May 4, 2022 Administrative Bulletin, the Division noticed the intent to promulgate rules published by the Office of the Administrative Rules Coordinator. Today’s public hearing is the first formal hearing, and all meetings leading up to today were informal. The informal meetings were intended to draw ideas from stakeholders to create draft amendments and identify how consistent building code rules are implemented throughout the State.

The makeup of the building rule chapter consists of amendments to the following codes:

- 2018 International Building Code (IBC)
- 2018 International Residential Code (IRC) Parts I-III & Part IX
- 2018 International Energy Conservation Code (IECC)
- 2018 International Existing Building Code (IEBC)

In addition to code amendments, the chapter outlines plan reviews, permitting and inspection requirements for any project under the Board and DOPL’s jurisdiction; also the rules outline requirements for integral design and fundamental commissioning of public-school facilities.

Overview of Informal Meetings with Industry & Stakeholders – In August 2021, DOPL conducted nine informal townhall listening sessions that consisted of general contractors, electricians, plumbers, and HVAC technicians across the State to extract input relating to the IDAPA rule chapters regulating their industries and how these rules were being interpreted and enforced.

In May 2022, Executive Officer Hyde conducted open meetings, specifically with building officials and inspectors, to obtain information from the code enforcement departments to determine how they were enforcing and interpreting the IDAPA rule chapter governing building codes. In summary, the responses and feedback received from the meetings differed from region to region and displayed a large amount of inconsistent enforcement, interpretations, opinions, and suggestions.

Executive Office Hyde has met with and discussed the initial redline draft of the IDAPA rule chapter with the following groups, receiving overall positive feedback on the direction taken:

- Idaho Building Contractors Association
- Idaho Associated General Contractors
- The American Institute of Architects – Idaho Chapter
- State Fire Marshall’s Office under the Idaho Department of Insurance

The Executive Officer conducted an overview of the redlines in IDAPA 24.39.30 “Rules of Building Safety (Building Code Rules)”.

- Section 004. *Adoption and Incorporation by Reference* – Taken all codes that have been adopted and put into the section header.
- Subsection 01. *International Building Codes* – Added the year the codes were adopted.
 - Section a. *2018 Edition with the following amendments:* – Deleted as it will be incorporated into the header.
 - Section 305.2.3 – Deleted language and replaced the word “five” with the word “twelve (12)”.
 - 308.2.4 – Deleted section in its entirety as it is in the 2018 IBC.
 - 308.5.4 – Deleted section in its entirety as it is in the 2018 IBC.
 - 310.4 – Deleted language that was redundant to the 2018 IBC and added “Dwelling units providing day care for twelve (12) or fewer children.”
 - Section 3113.1 – Deleted as it does not fall under the statute purview of this board.
- Subsection 02. *International Residential Code* – Reduced the number of words to keep the integrity to these amendments and replaced the words “24 inches (610 mm)” with “four (4) feet (1219) mm” for pools in (c) and in (d) added the word “exemption”, for flagpoles.
 - R314.2.2 *Alterations, repairs, and additions* – Amended to reduce the number of words on the requirements for smoke detectors.
 - R315.2.2 “Alterations, repairs and additions” – Amended to reduce the number of words on the requirements for carbon monoxide detectors.

- R322.2.1 – Deleted as it relates to flood hazard areas and design requirements, which is in the 2018 IRC.
- R322.2.2 – Deleted as it relates to flood hazard areas and design requirements, which is in the 2018 IRC.
- R602.10 – Reduced word count.
- 03. *International Existing Building Code. 2018 Edition* deleted. This is still referenced in the 2018 code and based under the section header.
- Subsection 03. *International Energy Conservation Code* – “c” was deleted as it pertains to the economizer requirement, which is out of the energy code.
 - Table C404.5.1 – Deleted the piping installation out of the energy code and added deletions for the energy code, which are applicable to mechanical, electrical, and plumbing installations.
 - R402.4.2 – Extracted the requirements of performance testing for air sealing replaced with the visual test option as a method to be consistent with another amendment within this rule chapter that requires mechanical ventilation for residential homes.
 - R402.6 – Reduced the redundancy of thermal envelope requirements, mechanical and electrical requirements.
 - R403.3.1 – Removed duct installation requirements.
 - R403.5.3 – Removed the hot water pipe installation requirements.
 - R404.1 – Removed the lighting equipment requirements.
- Subsection 05. *References to Other Codes* – Deleted in its entirety as codes are adopted and enforced in statute.
- Subsection 026. *Definitions* – 01. *Listed* was deleted as the I-Codes provide substantive definition.
- Subsection 027. *Permits* – 01. *Building Permits* was deleted as it is not relevant and lives within the building code.
- Subsection 028. *Plan Review* – Deleted were the definitions for “Jurisdiction”, “Plan Specifications” and “Addenda and Change Orders”.
- Subsection 029. *Fees* – 03. *Fees for Annual Permits*, the word “hour” was replaced with “inspection” for consistency with all other inspections within DOPL.
- Subsection 030. *Right of Entry* – Removed in its entirety as it is duplicative of code.
- Subsection 031. *Work Proceeding Without Permit or Approval* – Removed in its entirety as it is duplicative of code.
- Subsection 032. *Stop Work Orders* – Removed in its entirety as it is duplicative of code.
- Subsection 038. *Integrated Design and Fundamental Commissioning of Public School Facilities* – Removed *Definitions, Fundamental Commissioning, and Integrated Designs* in their entirety as they are duplicative of code.
 - 01. *Technical and Educational Information* – Extracted addresses, which will be replaced by DOPL’s website address.

Open Forum for Public Comment – Johanna Bell, Association of Idaho Cities, inquired into how inspections are compensated and the cost share is set up amongst the different parties when DOPL is providing these services, i.e., percentage on the developer’s shoulders versus percentage on the

State of Idaho's shoulders versus percentages on the local jurisdictions shoulders. Executive Officer Hyde replied the rule is only applicable to state projects and annual permits for state facilities so that rate was consistent with the Division's baseline premise. DOPL forecasts the overall cost as being reduced for such permits.

Patrick Sullivan, city of Nampa, sent a letter to Executive Officer Hyde and Chairman Bick, detailing comments to the proposed building code rule changes. In IBC sections 305, 308 and 310, the deleted language needs to be kept otherwise it will lead to confusion. Section 602.10 should be left in its entirety to properly reference the intended bracing requirements. The proposed revision misses the intent of the original rule text and does not belong in Section 602.12. The proposed deleted sections of the IECC should be retained to ensure residential and commercial buildings are designed with integrated building, plumbing, mechanical and electrical systems to maintain the integrity of life and health safety of building structures. Mr. Sullivan would like to see the Idaho Building Code Board extend the timeline for ZBR until the 2024 Legislative Session to allow sufficient time for input from stakeholders.

Deputy Administrator Frost inquired how the city of Nampa approaches blower door testing. Mr. Sullivan stated the city has been using blower door testing since the rules were adopted. Every fifth house receives a blower door test with most results good. Visual inspections are also performed on air seals prior to an installation and are having good results as well. The Deputy Administrator asked, and Mr. Sullivan stated, the city will continue testing one out of five houses as it is working well. Executive Officer Hyde asked if the city fails an inspection, if a performance test is not met, and does it educate permit holders. The city passes the inspection with comments.

Matt Vandermeer, Momentum, LLC, explained when a blower door test fails, his company must go back to the builder. His company sees more failed tests than the city, approximately one out of ten houses. The builders call asking what is a blower door envelope test. There is a lack of education and having consistent testing requirements. Deputy Administrator Frost asked, and Mr. Vandermeer answered, the cost of a blower door test is between \$150 to \$200 to the consumer.

Bruce Graham, Quality Heating, A/C, & Electric, stated the city of Grangeville does not have a building program or building inspector; therefore, inspections fall back on the state HVAC program and there is no consistency by having to take this approach as HVAC inspectors are not building inspectors.

Jason Blais, city of Boise, has concerns that by striking words, it will make the code more restrictive. By deleting the statement at the end of IBC Section 308.2.4, and with the building code saying sprinklers, this makes the section confusing. On the smoke detector and carbon monoxide sections, amendments basically say if there is exterior work on the home in all the different trade areas there is no need to install smoke detectors and carbon monoxide detectors inside the home as it is considered exterior work and if deleted now it says if there is electrical work on the outside; the city may require detectors. Mr. Blais recommended to make changes to the statute first and then come back and fix it in rule as it relates to the mechanical, electrical, and plumbing requirements of the energy code. Deleting the rules before fixing it in statute is the wrong approach. Executive Officer Hyde asked Mr. Blais specifically which departments enforces mechanical, electrical, and plumbing energy code requirements. Mr. Blais responded with, when the city receives a set of plans, and route for review internally, the city has the building reviewers

perform the building envelope and the lighting review and route the mechanical and plumbing to both those sections for reviews for energy compliance.

Ms. Bell submitted a letter to Executive Officer Hyde and Board Chair Bick for discussion regarding concerns for the proposed timelines, scope and building safety code revisions. Deputy Administrator Frost commented that the process started in 2021 for gaining listening sessions, which involved some cities, and asked if she had heard any feedback. Ms. Bell replied there was no feedback specifically for the Division. Deputy Administrator Frost asked if it was Ms. Bell's intent to keep a rule that has no statutory authority until there is a legislative fix. Ms. Bell stated she is not an attorney and wanted to raise it as an issue. Deputy Administrator Frost stated in the 2022 legislative session, House Bill 660 passed; separating the Energy Conservation Code and the adoption of code into a completely new chapter. Ms. Bell was asked from her perspective how it impacts the statutory intent in Idaho with removing the energy code from the building code provisions. Ms. Bell pointed back to statutes 39-4101 and 39-4116, stating the provisions within those were part in parcel with the development and adoption of Chapter 97 and believes there was a consistency of review in terms of the promulgation of that code act by the legislature.

Richard Bigelow, city of Pocatello, agreed with Messrs. Blais and Sullivan's comments on the blower door issue. The blower test is new; however, the city has not done a test yet as they were a little delayed and will implement the blower door requirement in January 2023. Another issue is not receiving Manual J's in a timely manner. In Pocatello they are due at the time of plan review, not when the mechanical contractor pulls the permit. The city is trying to find a plans examiner to conduct reviews. Mr. Graham asked what the recommendation would be if there are no building inspectors, plan reviews, etc. and HVAC comes along and says you have to meet requirements. Mr. Bigelow stated it still goes back to the manual J requirement. Mr. Graham responded that unfortunately in Idaho County there isn't a building department to conduct a review; therefore, this is a unique situation and falls back on the homeowners. Deputy Administrator Frost asked, and Mr. Bigelow responded, the city would work with builders to handle further issues on blower door testing. Mr. Graham stated in Idaho County, specifically Grangeville, there are no inspectors and half the contractors do not realize there is a building or energy code. Again, Mr. Graham stated that this is a unique situation and falls back on the homeowners; giving them legal authority to sue subcontractors. Executive Officer Hyde asked for clarification on which state requirements make the city of Pocatello more restrictive. Mr. Bigelow stated the IDAPA rules for the blower door test, like I said we received an email and went to all of IDABO and jurisdictions. Executive Officer Hyde asked from whom.

Teri Ottens, Association Management Solutions, has worked for several associations over the years and commented the industry has spent 20 years trying to put together a process where all the groups who are directly affected by the codes can come together, go through the codes, and ensure there are no unintended consequences or expenses that would either be put on the jurisdictions or builders. It took stakeholders/industry conducting (collaborative) meetings two years to come up with the 2018 codes everyone could agree upon. The pending rules addressed at today's meeting have been up five months and none of the stakeholders have had any say in drafting them. Ms. Ottens has worked with remodelers and stated their comments are they are too busy to look at the proposal and cannot do this in a two-month period; however, would need time to determine the consequences, if any, to each change. It took time for the 2018 codes to be reviewed by industry and everybody was happy with the outcome and comprises made and now we are trying to rush

through the proposed draft amendments. Ms. Ottens has also spoken to contractors that do not know this is happening; abandoning the code collaborative and trying to rush the rules through to the 2022 legislature. This is not good for the industry, DOPL and building inspectors. Deputy Administrator Frost asked if the four negotiated rulemaking meetings were not enough to review the proposed draft of amendments corresponding to the 2018 codes. Ms. Ottens replied in the past the Board and stakeholders knew that every three years there would be talk about codes but now the industry is being pushed into a code cycle. Normally what would happen a year before the code cycle would come up, the collaborative would get together to begin talking, even before the negotiated rulemaking, and would come up with draft language, with the help of DBS, with everyone in agreement. Ms. Ottens questioned why the rush to adopt the proposed rule changes when the Board/industry is already on a code cycle, which a group put together and feel comfortable with what has already been adopted. When it comes to the interpretation, the Building Code Board does not have the authority and believes a second opinion is needed and is not how the statute is interpreted by anybody in the room and hasn't heard there is a second opinion coming. The rules have met the statutes for the last 25 years then all of sudden they don't meet the statute and recommended more thought needs to be put into the draft. Ms. Ottens is not opposing the changes but feels the process is being pushed through because the state of Idaho wants to reduce words and not for the benefit of the builders. The codes are too important to push them through in six months with a couple of public meetings. Deputy Administrator Frost explained every agency in Idaho will undergo the Executive Order 2020-01 ZBR. At the beginning of 2021 the initial discussion took place on what boards would DOPL pull together for the 2022 review schedule. DOPL chose mechanical, electrical, plumbing and building because of the intersection of trades. A part of the ZBR prospective analysis is to answer what is the statutory authority to promulgate each rule and that is also the basis of the Administrative Procedures Act. As it relates to the Building Code Rules, Deputy Administrator Frost agreed with Ms. Ottens that to do a code cycle review of every single one of the adopted codes that would be too much to take on in one year. So one of the reasons we started ZBR this year; we set a framework of we are not going to discuss moving the code cycle and will continue to stay with the 2018 codes as there has been a lot of successful work and have used the 2018 code as a framework since DOPL is required to do a replace and repeal of the chapter. We will take what was done in the past three years as it relates to 2018 codes and ask if it is working and relevant or if any adjustments need to be made. Ms. Ottens said DOPL made the decision to start with building code, did not talk to industry and did not involve industry to draft the rules. If this process is rushed, there will be unintended consequences because there was not enough time to review these rules to the building code. The point Ms. Ottens is making is this has all been an internal process and DOPL is not the only one affected by these rule changes and have not given industry enough time to figure out what this means to them. Executive Officer Hyde wanted to clarify if Ms. Ottens would like for DOPL to schedule a code collaborative meeting for industry in addition to what is required in statute for negotiated rulemaking on any rule amendments to code and whether she had any input as to who participated in the collaborative from industry to maximize feedback. Ms. Ottens replied yes there has always been a code collaboration for code amendments and there are ten groups who are invited, which is written in statute.

Ken Burgess, representing Idaho Building Contractors Association (IBCA), said the IBCA is comprised of and represents the new single-family construction builders of Idaho. The IBCA understands and supports the Governor's office on what they are trying to accomplish but prefers to see reduction of impactful regulations as opposed to reduction of words as to the degree of the

reduction of words might create more confusion. IBCA would like to see consistency in interpretation. Mr. Burgess has sent the draft to the IBCA members; however, has not received enough feedback to form a consensus. Members who have replied are generally okay with the proposed draft of amendments. The IBCA is holding their quarterly meeting the first week of July and will review the draft of the amendments; inviting Executive Officer Hyde to go through the process and feels confident that after the meeting Mr. Burgess will have a firm position with any suggested changes.

Charlie Allen, city of Ammon, commented to continue to allow stakeholders to be invited in this ZBR process as has been done in the past. Mr. Allen stated that building inspectors throughout Idaho need to know the Board and DOPL have their backs when enforcing energy codes.

Approval of the October 19, 2021 and February 22, 2022 Meeting Minutes

MOTION: Board Member Brooks made a motion to approve the October 19, 2021 and the February 22, 2022 Meeting Minutes as written. Board Member Johnson seconded. Motion carried.

Board Business

Zero-Based Legislation (ZBR) – Chairman Bick stated this is the opportunity for the board members to comment

Board's Recommendation on Proposed Amendments to IDAPA 24.39.30 – Board Member Brooks commented he would like to see adequate notice of documents and public comments to board members. In addition, it would be helpful to organize the draft amendments into three separate categories; 1) Word changes and reduction, 2) Strike provisions of the code that are not in the jurisdiction of the Board, and 3) Proposed changes in the code based on feedback from industry. The biggest improvement would be to go from a prescriptive-based code to performance-based code where there is pushback. Board Member Brooks also stated he heard the Division is trying to create uniformity; therefore, reducing regulations to accommodate the smaller jurisdictions and the larger jurisdictions no longer have those options available; thus, allowing smaller jurisdictions to have control over the larger jurisdictions. Board Member Brooks suggested the state help the smaller jurisdictions with inspections rather than striking provisions in the code.

Board Member Zahorka is seeing a fast track to amending a code that has already been vetted based on a lack of understanding from customers. More time is needed and more involvement from industry; thus, recommending postponing the draft amendments. Board Member Cotner agrees with Board Member Brooks comments and agrees in slowing down the ZBR process. Board Member Daniels agrees with needing more time with this process. Board Member Johnson agrees with other board members to slow down the process and involve a building code collaborative with industry. Board Member Laux agrees having a collaborative makes more sense. Board Member Soelberg added it is important to keep the performance-based side of things available. Chairman Bick said it is important for each board member to reach out to the Board's constituents; letting them know it is time to look at the rules from now through December in order to fulfill the Governor's executive order. Board Member Maxand believes in the code collaboration and industry needs more time to review.

Chairman Bick had concerns with some of the striking out on rules 308.2.4 and needs to review the smoke detector and CO2 amendments. Also, he was concerned that wall bracing section may be losing some information. At the next meeting, Chairman Bick would like to hear concerns of different entities before the Board votes and having a code collaboration is important.

Deputy Administrator Frost asked if it would help by providing a reasoning for the amendment in the comments section on the redlined document. Board Member Brooks concurred. Deputy Administrator Frost explained there are four scheduled negotiated rulemaking meetings, including today. Executive Officer Hyde can share at these meetings how he derived at the redlines. Moving forward, when discussing energy codes that regulate mechanical, electrical, and plumbing systems, the Division needs input from the mechanical, electrical, and plumbing boards that oversee and regulate the codes adopted for such installations and a co-chair discussion may be necessary with industry present so all affective industries know which codes are enforced upon their installations as this was not captured in the 2018 collaboration of the energy code. Deputy Administrator Frost is supportive of scheduling an additional meeting in the ZBR process to be considered a code collaboration.

Yvonne Dunbar, DOPL Legal Counsel, suggested if the Board wants to be involved in a code collaborative meeting, then the meetings needs to be noticed, formal, and minutes transcribed. If not, meetings should be informal; however, there cannot be a quorum of the board members present. Chairman Bick suggested holding a collaborative meeting and inviting the public. Then hold a co-chairs discussion of the building, electrical, HVAC and plumbing boards to discuss energy code. Executive Officer Hyde stated DOPL is exploring a legislative idea to consolidate all residential and commercial construction code adoption into one board which would allow for representation of each industry. Board Member Brooks commented this would simplify the process, but how does this help the smaller counties. Executive Officer Hyde explained energy code adoption isn't the culprit that would provide smaller jurisdictions assistance; that if the county doesn't have or has difficulty establishing a building program, they may request assistance from DOPL. Deputy Administrator Frost stated there is nothing in place that tells the State it must take on a service if a county does not have a building program in place. However, there have been legislative conversations started regarding how DOPL may assist further. Chairman Bick added those counties need to request assistance but may not want any help.

Discussion of Public Comments – In reading Executive Order 2020-01 *Zero-Based Regulation*, section 4, subsection c, “The new rule chapter that the agency finalizes must reduce the overall regulatory burden, or remain neutral, as compared to the previous rule chapter.”, Leo Jansen asked if the Board would be open to the idea of remaining neutral as the code is currently written.

Maureen O’Shea, State Flood Plain Coordinator, thanked the Board for leaving the National Flood Insurance Program regulations in IREC alone and is in favor of the amendments to section R322.2.1 and R322.2.2.

Review of Statute 39-4116(3) and 2018 International Building Code for Clarification -- Fire Walls, 2018 IBC Section 706.1 and Horizontal Assembly Requirements, 2018 IBC Sections 711.2.4.3, 420.3 & 420.4 – Executive Officer Hyde stated it applies to multi-family construction there was an existing interpretation from the Division’s former Building Program Manager submitted to the city of Pocatello clarifying the use of firewalls on horizontal assemblies to alleviate the fire

sprinkler requirements for such structures. Executive Officer Hyde explained that it has been requested by the Building Official for the city of Pocatello to receive a board interpretation on the code requirements for clarification purposes. Mr. Bigelow, Building Official for the city of Pocatello, received this interpretation by email in November 2019. He explained the units are four-plexes or stacked duplexes with a horizontal separation by a two-hour firewall and believes can be built this way without fire sprinklers. Board Member Zahorka disagrees with this interpretation and does not think you can build a vertical firewall in an apartment building as a horizontal assembly in order to create two two-family dwellings. Board Member Johnson agrees with Board Member Zahorka's statement and mentioned that this method described does not comply with the provisions of the International Fire Code and IBC. Executive Officer Hyde will send a notice to the city of Pocatello and place on the Division's website for clarification, rescinding the November 2019 email. Chairman Bick agreed with this decision.

Division Updates

DOPL's New Location – On June 20, 2022, staff at the Meridian office will move to the Division's new location, 11451 West Chinden Blvd., Building 4, Boise.

DOPL Staff Update – The following positions are open and posted on DOPL's website: 1) Building Inspector/Plans Examiner, 2) Building Permit Technician and 3) Building Program Manager.

Financial Update – In the board packet was a financial document, provided by DOPL's Finance Team.

Public Comment

Patrick Sullivan, city of Nampa, recommended one or two formal meetings be held with major stakeholders. Bruce Graham, Quality Heating, A/C & Electric, stated if scheduling a collaborative meeting, have one in north Idaho.

Adjournment

With no further comments or questions, Chairman Bick adjourned the meeting at 12:23 p.m. (MT)

ANDREW BICK, CHAIRMAN
IDAHO BUILDING CODE BOARD

MICHAEL HYDE, EXECUTIVE OFFICER
DIVISION OF OCCUPATIONAL AND
PROFESSIONAL LICENSES

DATE

DATE

These DRAFT minutes are subject to possible correction and final approval by the Board. 07/08/2022rb