



State of Idaho  
Division of Occupational and Professional Licenses  
Idaho Building Code Board

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**Minutes of 08/16/2022**

**Board Members:**

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

**DOPL Staff:**

Tim Frost, Deputy Administrator  
Michael Hyde, Executive Officer  
Yvonne Dunbar, Legal Counsel  
Sam Zahorka, Building Code Manager  
Linda Pratzner, Board Support Specialist  
Carlotta Zito, Board Support Specialist

Chairman Bick called the meeting to order at 9:01 a.m. (MT)

**Public Hearing – Negotiated Rulemaking**

Overview of Proposed Amendments to IDAPA 24.39.30 Rules of Building Safety (Building Code Rules)

**Executive Officer Michael Hyde** - Beginning in July of 2021, DOPL began meeting with building, mechanical, plumbing, and electrical trades that make up Idaho's construction industry to extract information relative to the IDAPA rule chapters enforced upon the individuals performing construction practices, and to gather their feedback on such enforcement. Nine townhall listening sessions occurred for each trade; building and energy, mechanical, plumbing, and electrical at the following locations: Meridian, Hailey, Idaho Falls, Lewiston, McCall, Pocatello, Post Falls, Sandpoint, and Twin Falls. All listening sessions were intended to extract as much industry feedback on the current rule chapters regulating each construction practice for structures built, altered, or modified in the State of Idaho, along with how the codes incorporating their respective amendments are enforced upon each practice. Informal meetings also occurred between DOPL and building officials to obtain information from the different local jurisdictions on the current adopted codes and enforcement practices, extracting their feedback and opinions of the codes adopted in Idaho. These meetings occurred in the following locations as to maximize as much local jurisdictional feedback as possible: Coeur d'Alene, Moscow, Meridian, Twin Falls and Blackfoot. To ensure the division captured as much feedback as possible, individual meetings occurred with the following organizations and groups: BCA, AGC, AIA, State Fire Marshalls Office, IDABO, AIC, and IAC. In addition to the informal meetings, our division has made every attempt to maximize the process to allow for public and stakeholder participation and to allow the opportunity to provide feedback. To fill such requirements and accommodate additional request, DOPL conducted the following formal meetings, starting with April's Building Code Board meeting. The first negotiated rulemaking hearing was on June 14<sup>th</sup>, 2022, and the first code

collaborative discussion, all day between building and energy, was on July 27<sup>th</sup>. The second code collaborative discussion, specifically focused and tailored for energy, was on August 9<sup>th</sup>, 2022. All discussions and feedback were analyzed, reviewed, and taken into consideration with fulfilling the ZBR analysis in determining the following: Whether the benefits each rule intends to achieve are really being realized, whether those benefits justify the cost of each rule, whether these are less restrictive alternatives, and whether there are less restrictive alternatives to accomplishing the benefits. In addition to the determinations made based upon the responses to the perspective analysis, we took into consideration what is the specific legal authority for the proposed rule, define the specific problem the proposed rule is attempting to solve and can the problem be addressed by non-regulatory measures. How have other jurisdictions approached the problem this proposed rule intends to address? What is the evidence that the proposed rule will solve a problem? What is the anticipated impact of the proposed rule on various stakeholders and how did we include these stakeholders in discussions? Finally, what cumulative regulatory volume does the proposed rule have? Upon gathering the specific feedback through formal and informal meetings and following the ZBR perspective analysis guidelines, DOPL has produced and recommends the red line draft included in your board packet today. The amendments in the packet you have before you have been drafted with the intent to fulfill the board's requirement to ensure uniform code adoption and enforcement procedures of building safety codes throughout the state and the elimination of unnecessary regulations that would unnecessarily increase construction costs, prevent the use of new materials and methods of installations. This is from the perspective of health safety and occupant welfare, which reigns supreme due to legitimate life safety issues that have been identified on a nationwide basis over time through the engineering design and construction practices of new buildings. The building codes that took part in this analysis, which are adopted by the Idaho Building Code Board are as follows: 2018 IBC, including appendices pertaining to accessibility, excluding the incorporated electrical, mechanical, fuel gas, plumbing, fire, and property maintenance codes; 2018 IRC parts 1 through 4 and part 9; 2018 IEBC; and 2018 IECC. So, with that mister chairman, members of the board, the only change to the proposed red lines you have in your packet, starting on page four, is on page ten from what we saw at our first negotiated rule making hearing. That change came at the request of industry to modify the definition of condition space.

**Board Member Brooks** - So it basically says that after July 1<sup>st</sup>, 2021, 80% of the homes can either be an optional ACH tested lower door or visually inspected. The other 20% are required to do the blower door test, and then that's going to be replaced with now 100% can be visually inspected, but they have the option to do the blower door test.

**Executive Officer Hyde** - That is correct. The minimum requirement will be a visual option through inspection.

**Board Member Brooks** - Does this permit the use of an ACH test in lieu of the visual inspection or is a visual inspection required in addition to the blower door test.

**Executive Officer Hyde** - The minimum requirements to fulfill the energy code requirement of this amendment is a visual option. If a jurisdiction, a contractor, or a homeowner wanted to go above and beyond and do a performance test that would be up to the local jurisdiction to determine.

**Board Member Brooks** - The current requirement is that they do either/or but with a new requirement if they wanted to do the blower door testing, they would have to do both.

**Executive Officer Hyde** - They would work with the local jurisdiction to determine what that looks like.

**Board Member Brooks** - But the code states both are required.

**Executive Officer Hyde** - Code states that is a minimum. If doing a performance test, that is above and beyond code and can be deferred back to the local jurisdiction and will allow them to make the determination.

**Board Member Brooks** - So the 20% that are required to do the blower door test, do you have any idea what the compliance is on that?

**Executive Officer Hyde** - From the conversations that we've had across the industry, there's a handful of areas that require it. There's one jurisdiction that we were informed of that actually fails the job for not meeting the blower door testing requirements. Everything else is informational guidance on what to do moving forward.

**Board Member Brooks** - Do you know what the percentage of the homes are above five ACH, regardless of what the jurisdiction decides to do with that information?

**Executive Officer Hyde** - I do not know that statistical number.

**Board Member Brooks** - What I'm getting to is if you have a higher compliance then you're only talking about of the 20% that has to be tested and 85% pass. We're talking about 3% of homes in Idaho that are effectively failing this criterion.

**Executive Officer Hyde** - Having this discussion statewide, I would disagree with those numbers that you just stated. We have specific jurisdictions that don't even have a building official that aren't even measured or even visually inspected, so I don't believe that number holds true.

**Chairman Bick** - At our last Building Code Board meeting, we had a couple of people stand up and it seemed like the blower door test is one of the ones that failed. It was more of a training method to teach the builders.

**Board Member Cotner** - You had mentioned that it would be up to the discretion of the jurisdiction, owner, or builder. Can you clarify that? And how is that going to be represented in statewide?

**Executive Officer Hyde** - When it comes to setting the minimum code requirements, the visual inspection is looked at as prescriptive. Anything above that performance is above and beyond. In our jurisdiction, if it were us enforcing it, we would see that performance test as optional based, not required, as an alternative route one can choose if they didn't want to pursue the option route.

**Board Member Cotner** - It just it seems like it's leading up to individual jurisdictions. They can pick and choose how they want to enforce code.

**Executive Officer Hyde** - It's not written as such. The codes are written and adopted based on the minimum level of life safety. If somebody were to go above and beyond it would be the same option as a HERS rating where right now, it's not mandated. Visual inspection is an option and if a builder or a homeowner wanted to choose this route, it would meet the intent of the law set by this book.

**Deputy Administrator Frost** - The board in going through your rule chapter decision. If you were to decide to require for a visual inspection requirement, you have to factor in House Bill 660 and the legislature putting in a local preemption on ordinances above and beyond what's adopted as the Idaho State Energy Conservation Code. If the decision were to be made that we went with visual inspection, that would put a framework for jurisdictions because of that local preemption they would not be able to adopt above and beyond. It could be optional, but they wouldn't be able to require it as a mandate with one exception, and that would be the grandfather clause for any jurisdiction that had a blower door testing requirement in place prior to July 1, 2018.

**Patrick Sullivan, City of Nampa** - If we are only allowing visual inspection and the jurisdictions can't approve anything above and beyond that, you would have to put in the rule that an acceptable option the builder could take, and the jurisdiction could accept, would be blower door testing,

HERS ratings, et cetera. But if you leave it to just doing visual inspection, we likely would say, no, you have to do visual inspection because we can't wait to the end and skip the visual inspection. We need something very prescriptive for the jurisdictions to adopt because we can't do this.

**Chairman Bick** - I tend to agree with that. What I'm worried about is if you get into a local jurisdiction, you may have a building official that butts heads with a certain builder or individual and says, hey, I did a visual and you need to do this, this, and this. Then you have a blower door test done and a blower door test passes as well. You're sort of putting yourself in a scenario where the building official could say no until you do those things.

**Executive Officer Hyde** - I'm trying to identify how we incorporate that into these rules and start dictating what building officials may or may not do.

**Chairman Bick** - My only concern is it gives them a power trip.

**Patrick Sullivan** - I think it'd be as simple as limiting that choice, saying that the visual inspection is the minimum requirement. However, at time of submitting a permit, if you choose another option, you make that option known at that time. Then that would be your requirement for that permit that's issued. That doesn't come into a gray area during construction and you want to make sure that it is not something that you have a hammer to enforce. Let's say you go out for an air seal and they have a hard time just getting the air seal, right. You don't want somebody saying now you got to do a blower door test because we don't trust that you are going to do a great job air sealing this house.

**Board Member Guho** - If these rules are adopted and there's existing permits in place what rule takes precedent? Is it the rule at the time of the permit that's being pulled or is it the rule that is currently in existence?

**Executive Officer Hyde** - It would be in our jurisdiction; we define that as when the permit is issued.

**Board Member Guho** - So everybody would have to comply with the rules at the time they pulled the permit.

**Ken Burgess, Idaho Building Contractors Association** - On the subject of the blower door test, they will tell you the issue is one that the home builders would like to see eliminated as proposed in this proposed rule. I think it's important to understand that with the compromise we reached a couple of years ago is testing one of every five homes. What we're finding is that it's being inconsistently applied across the state. We have some jurisdictions that are requiring every home to be tested. We have some jurisdictions that are complying with the one of every five, as the rule allows, and we have many rural areas that aren't doing any testing at all. Partly because they don't have a building department, or they can't find testers to come and do that. If you were to allow an option for the mandatory visual inspection and an option of the blower door test, our request would be that the option be at the discretion of the builder or the homeowner and not necessarily jurisdiction, because if you give that option to the jurisdiction, effectively, you probably won't change anything from what you've got today. Currently the enforcement mechanism on that is very weak at best. We would prefer to have the blower door test eliminated. However, if it were an option, there may be some builders who would like to have that as an option as a sales point for their home, right? But currently, it's inconsistently applied, inconsistently enforced, so we'd like to try to remedy the problem. Thank you.

**Charlie Allen, City of Ammon** - The board and chair should consider the actions they take and not take Idaho backwards with energy code enforcement. That when a homeowner gets a home, they get a home that meets an energy code.

**Patrick Sullivan** - As the president of the Building Safety Professionals of Southwest Idaho, I took this to our city council last night. They weren't comfortable weighing in on the issues, so we're going to have a workshop in September to bring them up to speed. I've been thirty plus years in the design construction industry as an architect, as an owner's architect, as a practicing architect, and then the last nine years as a building official. One thing that I am passionate about is retaining most of the sections of the IECC, and there's many reasons for that. Over the years, since they first developed the energy code, they systematically took out portions that had dealt with envelope mechanical, electrical, and plumbing systems and put it into that code and pulled it out of those other legacy codes. Because ICC builds codes that are interrelated, it's an interrelated code. There's going to be some unintended consequences for taking out the mechanical, electrical, plumbing sections of this code. The first and foremost unintended consequences is it will never come back. They will never be political will in the State of Idaho to bring sections of the energy code back to the boards and then take it to legislature, it just won't happen. Once you get rid of it, it's gone and I'm not being prophetic. I just know that I've been around long enough to know that's just the way it's going to go. The biggest thing I'd like to retain out of the codes are the mechanical sections of the energy code and the reason for that is because there are some testing requirements in the code. There are some nuances in the energy code that make sure that we have healthy and safe buildings. When this code was adopted in 2008 and the Idaho Building Code act charged adopting codes for the health, life safety and welfare of the occupants of the buildings, not just life safety. All I've heard so far on the few meetings I've been to, is that the bar we're comparing this code it is only life safety. There is a lot to be said about the welfare of houses. I know that as a code official, about 15% of our 250 inspections we do a day get correction. What I'm also seeing is, the different trades don't understand holistically how a building goes together and how the design is related. If you take away some of these mechanical aspects of code, that basic underpin how you integrate a design a building, so that the envelope is tight. You have adequate fresh air coming into it, you have adequate moisture mitigation. If you're going to pull it out, then you need to actually give it a little bit more time. I know that you have until 2026 to actually finish up. I mean, this is a decision that DOPL made to put this as one of the first rules to go forward but, through the executive order, you have until 2026 to get this done. I really feel that rather than carte blanche just take away all these sections that we need to go through with that fine tooth comb and leave the items that make sure we have safe and healthy buildings for Idaho residents. The biggest thing I'd have to say is the other states around us except Wyoming; Montana, Washington, Oregon, Utah all have an Energy Code. You take away 80% of the code and now somebody moving here to buy a house are expecting a house built to a certain design standard and they will not have that design standard. They're comparing where they've been to where they're going in Idaho. And you're going to have substandard housing and not because builders will intentionally do this but if it's not in the code as a minimum, it just doesn't happen. Remember, the building codes are the least bad way to build something. It doesn't mean that somebody can't build above that bar, but out of the 1500 homes we do a year, I would say that over half of them are just spec homes and people are trying to do it on a budget and anything you can cut that isn't in code, it gets cut. I would just impress upon you rather than going through a lot of details that I have submitted my testimony. But I think that we really need to look at this because if the vote is to get rid of all these sections, they are not coming back and the unintended consequence is, unless your designers on the architectural side are with it and understand how to creatively design buildings so it is efficient without spending a lot of extra money, you're going to get inefficient buildings. You're going to get buildings that can't effectively handle moisture from the occupants, or from the gas fire appliances in the houses. For the health

life safety and the welfare of the citizens in Idaho, I really recommend that we put the brakes on this and go back and do a deep dive and figure out what needs to be kept. Because I think it's irresponsible just to get rid of these sections of the code.

**Russ Pratt, SEED Idaho** - I agree with Patrick. I think it's irresponsible to take away these sections completely, particularly with respect to commercial buildings. When I first read the draft my first reaction was, I get it. I understand. 95% of the state is rural and a one size fits all approach doesn't necessarily work in this situation. There are municipalities in the state that would benefit from maintaining the current code structure. I was thinking that there are municipalities that would benefit from keeping the most current versions of it. The bigger municipalities like Twin Falls, Pocatello, Idaho Falls and the greater Boise area. I do think it's irresponsible. I appreciate what Patrick said. I think doing away with it is irresponsible and if you do it, there's no coming back.

**Deputy Administrator Frost** - It sounds like from what you stated you provide as a commissioning agent a significant benefit to even state buildings. One of the things the board has considered today is whether or not commissioning is permissive or it's mandatory. There's nothing in this draft chapter that's preventing a commissioning agent from marketing their services to a state or private building. One of the things we have to understand is, is it necessary to require it? From your perspective, is there any context you would like the board to understand?

**Russ Pratt** - I have been trying to convince DBW that full blown envelope commissioning should be mandatory for all state buildings and certain municipalities. For commercial buildings it's not required, so I think keeping the commercial sections, particularly C403 through C408 are critical to maintaining the quality of the built environment for all buildings for this state. There are other components in the system that need to be tested, like the ventilation system. In a large building, the ventilation air is being brought in through large handling equipment. If the controls on that equipment aren't working the way they're supposed to, buildings can get sick. If the ventilation areas aren't controlled properly, the carbon dioxide levels build up in it, and the people start to feel ill. I think that the energy conservation code helps to prevent that.

**Kraig Stevenson, International Code Council** - I'm most particularly concerned with the energy code because I've watched the evolution in seven Western states, beginning with not having much more than the Northwest energy code, which was installation that you put in the cavities. This code is about energy efficiency. The IMC, which we produce in the state of Idaho, is about how to put things in the building safely. The energy code is about how to make a building operate efficiently and so we've seen this evolution. We have to do this undertaking by the executive order, but we have to be consistent with what that executive order is directing us. I have attended meetings virtually and listened in and I too heard the comments about what are we doing to address life safety. Is the cost of the requirements in the ICC giving the benefit and the intended legislative intent? As articulated in Statute 3941, it not only deals with fire and life safety, but health and welfare. The legislative intent is very clear how title 3997 is drawn back into title 3941 and that the legislative intent is for jurisdictions to enforce building codes, minimum standards, and requirements. In terms of performance, energy efficiency and effect upon construction consistent with nationally recognized standards so, to deviate and do the level of deletions of what's proposed in the packet, particularly page ten, I think it goes beyond and removes what was intended by the statute to have the energy efficiency. I agree with what Mr. Sullivan from the city of Nampa presented. All the things that have gone away or that would potentially go away, would probably not be revisited and that would lower the quality of the building. In the executive order, it's very clear that you have plenty of time to comply with a thorough analytical, thoughtful, and contemplative review of the energy efficiency and the benefits that can be gained. But I think you

need to collect more information. I have written to Ryan Koker, Senior Vice President of ICC asking him to help to identify reports that address the energy efficiency and the cost benefits. I would love to be able to provide that to the board when I have that. I think we're a little bit premature if we move on and accept this as the base document to go to further negotiated rule making process, because you have for these IDAPA rules until 2026, so it's a little bit premature. The Idaho Building Code Board should not accept this packet at this particular time for the primary reason that I think that the board needs to provide a little bit more direction on the analytical tools and the metrics as to which this energy code should be evaluated. I would suggest to the board to strike a balance on the blower test issue. Mr. Sullivan was correct, that the housing stock and the quality can go down if you don't have certain things in code. Coming back to the HVAC equipment, if we don't size the airflow over the coil right, we get excessive condensation and mold growth can happen. So, just bigger is not better. One of the concerns also comes with the controls. If we don't have any requirements, and those are proposed to be deleted as I understood from the proposal, then we don't have the ability to do setback. I really can't support what I interpret to be the deletions on page ten and thirteen in the packet that I think go too far without a proper analysis of the economics of why those things are there. I think that there's plenty of time for the board to be contemplated in a review of the rules.

**Board Member Brooks** - You gave a statement in your letter and I'm going to read a paragraph. It says the IDAPA proposal prepared by DOPL staff without specific direction or guidance from the Idaho Building Code Board on what metrics of analysis and process of reviews to be used to identify possible code content, potential rewrite, or possible deletion to the IDAPA rules. The DOPL staff conducted informal meetings around Idaho to reveal those rules identified specific code sections in the energy conservation code that do not seem that do not seem to relate to life safety. Therefore, should be considered as not justified, should be removed. Can you give me a comment on when you wrote that? Are you implying that the review process was flawed or what? I want to make sure I understand your comment.

**Kraig Stevenson** - I don't think the review process was aligned with the direction the board was provided with. In other words, how to measure to identify those particular things. What I understand was there were casual meetings where comments were taken from the installation industry as to where they have problems with inconsistent enforcement or things, they don't necessarily think work well, or that they think should be in another code, like the mechanical code, under the authority of another board. The statutes that govern the Idaho Building Code Board don't allow the board to just say we're not going to choose to do something or we're going to choose to delete something without the board, having provided that specific statement in a direction in the way we think. You should measure the energy efficiency or analysis of something that maybe should be taken out of the code. I think it was a document that was created by DOPL staff after the collected comments from the public. I don't think that's what the statutes that govern the Idaho Building Code Board, because it's the board that decides what to adopt and it should be the board that helps create the roadmap. I don't know that you were presented with a proposal of how to create the roadmap that staff would then use to help construct the proposed rules that are before you today.

**Board Member Brooks** - I think what you're saying is we were asked to react to what was presented to us rather than formulate a plan as to how it's going to be put together. Is that your comment?

**Brian Bennett, local HERS rater** - The thing that we've seen since the implementation using the 2018 code here is a significant increase in the performance of the homes and more specifically the

mechanical systems. The concern is, if we get rid of the required testing, even if they're only doing one house out of five and they're not doing the balancing requirement on the mechanical systems, it's where the burden lands. Theoretically, the burden is on the HVAC installer, the building contractor to meet our code specification, that the person buying the home knows what they're getting. The process is to verify those things are currently to find that. If we get rid of those protocols, then it's a much more random field of quality control. You have a mechanical contractor that really has no clue about what the design is supposed to be. They'll stand back across the street and look at the size of the house and say, that's obviously a 70,000 BTU furnace instead of doing the actual required calculations as the current code stands and don't go through proper commissioning processes, such as air balancing system. The current processes that we have in place are honestly the bare minimum to assure that the homeowner is getting what is promised. That's what the IECC codes provide for is the minimum in health safety, mold, environmental air quality. Getting rid of those guidelines is going to cause a lot of issues, long term. Currently, the burden is on the contractors. If we eliminate these codes that give us the guidelines to make judgements, to hold the people that are taking the money for the work that is being done, to hold them responsible by a common set of guidelines, that now shifts to the homeowner. And without that common set of guidelines to verify work, the homeowner has a much more difficult burden of proof, because we do not have that standardization to be used in court or working with our code officials. So, again, who are we going to put the burden on?

**Patrick Sullivan** - Brian in your experience, what's the fail rate on tests and balances and how many do you have to go back to a second time?

**Brian Bennett** - Currently, test and balances fail initially almost 100% of the time. If we're working with an HVAC contractor and that is their first test and balance, their failure rate is 100%.

**Patrick Sullivan** - And I wanted to just add on that. We get about 20% fail rate on manual J and D's at plan review and we probably have a high failure rate like that on test and balance as well. A lot of it is because dampers are stuck or they initially do a test and balance in the pickup, instead of doing a test and balance and then we go in and we see where they haven't even changed the dampers or we've even had situations where we get to a final, and we've had furnaces installed upside down.

**Deputy Administrator Frost** - A follow-up to Mr. Bennett's; how do you approach those failures as a jurisdiction?

**Brian Bennett** - What we do is, we get a hold of the contractors, and we go through and identify the failures. We'll step them through the process of how to do the air balancing and commissioning that's required to bring that house in the line, but if we didn't do preliminary testing, we are having homeowners with huge failure rates. This has been an educational process. By having the code and those specifications in place, we now have a tool that lets us use them to bring about education correction and higher basic levels of performance in mechanical systems and indoor insulation, air sealing. In our region, we went from air leakage rates of twelve air changes per hour down to three air changes per hour, under the current code. That makes a huge difference again on the burden of the homeowner, on the amount of money paid to heat and air condition their home. One of the words I've heard thrown around here is rural home. Rural homes, to give you an idea, are 4,000 square foot houses. If we're heating with natural gas, we're looking at about a total at \$600 a year, but those rural folks, if they're using propane, we're looking at \$3100, and that's 2.90 per gallon. Those guys are going to suffer disproportionately because their costs are already higher. Any level of decrease in efficiency is going to significantly impact the rural homeowners significantly more. Then the people that have access to natural gas, if they're forced to go with electric, they're looking



at about \$3000 a year on that same home. By reducing our codes or not having those standards that the homeowner can use as recourse for subpar performance, we're really kind of abusing them in a way.

**Deputy Administrator Frost** - Mr. Bennett, just to clarify and I'll ask multiple questions. You can just address them. Does your jurisdiction fail for blower door testing, and do you only use education? And if doing so if you don't fail and you provide the C of O, how is that then relevant back towards having a mandatory requirement on state level.

**Brian Bennett** - Currently, we don't fail an inspection if they fail the blower door test, and we provide a C of O before changes are made as a result of that test. We follow up again with the additional training and what we normally see is the failure on our blower door test requirement is they're usually close to passing. Then what we do, using the educational component, is detail through them and usually the next house will pass. We achieve our long-term goal. There have been times when they have made, especially in the low-income housing, where we're looking at, say, a project that has 95 single bedroom units, if those have failed, we have had to go back and do air ceiling and other things to bring those into compliance.

**Board Member Guho** - Normally, test and balance is a third-party inspection, and there was a comment made there that 100% of the inspections fail when they start. The whole purpose of test and balance is to go into a facility and to test it, balance it and sign off on it. It's not a deal where the contractor is putting in his required ductwork and his system. The idea is the third-party inspector would come in and verify that all those dampers are set correctly, so that the system is running properly. If that's a requirement of the contract, which normally is written into a contract, having tests and balance done is a stipulation of the owner or the designer to have that done, to ensure that the building runs correctly. I think there's a confusion here that the board is saying, is a state going to mandate that all buildings are test and balanced or is it up to the owner and the designer to have that in their design as an additional requirement to meet those specifications? I think there's a little bit of confusion here. Is it up to the state to mandate to test and balance every building, or is it the objective to have the owner of the building do that?

**Brian Bennett** - Our current regulations require in the Ammon area that the mechanical contractor balances the system prior to turning the system over to the homeowner, that is part of the permit final inspection process. The contractor is required to provide a balance report. Most of the time that's done in the pickup, they never go in and do that. That's why we have nearly 100% failure rate initially. It is required of the mechanical contractor here in this jurisdiction and I believe that is in code rather than requiring a homeowner or a contractor to find a third party.

**Kraig Stevenson** - This is one of those things that you're being asked as a board to work through, that you can't really decide right now. Do you want to cause a commissioning agent to do absolutely every one of these or is there another means that it is less restrictive? How much air is flowing out of that register now that could be something that code officials and contractors learn. It's not necessarily a commissioning agent, but the contractor. If the board felt it was appropriate, a flow report of what was tested could be created. The contractor can have his work viewed periodically on site by the inspector.

**Jason Blais, City of Boise** - When the board gets a packet this thick, something's not right, that's not collaboration. When we do true collaboration, this meeting is a slam dunk. We keep hearing this life safety thing over and over and it's not in the ZBR rules and the criteria. We need to go back to what the building code says we're all responsible for. The public safety, health, general, welfare, affordability, structural strength means of egress facility, stability, sanitation, light, ventilation, energy conservation, and safety to life and property from fire and other hazards. The

built environment provides firefighters and emergency responders during emergency operations. That's what we all do when we do these codes. It's not just life safety. That criteria is a made up rule. I don't understand it. So, energy efficiency, we keep arguing about blower door tests and residential, well we are throwing out the whole energy code. Fix the blower door, fix the visual inspection, give both options. Let's move on. This is overreach on this proposal. It's unbelievable. It's going backwards. Idaho agreed to do the 2009 energy code back in 2012 and we wouldn't go lower than that. This proposal goes lower than the 2009 energy code. This isn't true collaboration. Don't go deleting the entire energy code and leave this gaping hole.

**Teri Ottens** - I also submitted testimony as a private citizen. It covers the confusion over life safety that Jason just talked about. I did call HUD and the Idaho Housing Finance Association, and they confirmed if the State of Idaho goes below the 2009 energy codes, they cannot finance new VA. They cannot provide loans on new construction that do not meet those minimum standards. We heard testimony earlier from a DOPL staff that said no that that's not there. It doesn't require the State to adopt it, but it requires somebody to adopt it. And it requires all homes be built to that standard that are expecting VA and FHA financing. That's not everybody, I admit, but the lending industry is going to come unglued if they find out that this is what you're passing, because it takes away 20% of their business, and it affects low-income veterans, and folks that really need that help.

**Matt Vandermeer, Momentum** - We test about 2000 homes a year with the blower door tests. We've been doing this for 15 years. We've seen from 15 years ago, from twelve air changes, we are down to an average to four to five air changes per hour. Is it an improvement? Is it because of the blower door? No, it's because of the education that's behind it. We work with the builder. We work with air seal all the way through the blower door. Those are things that we can help with, it's the education on how to build the house better. It's not the blower door. It's not the air sealants. Working together about how to do it better and that's what I've seen over the last 15 years of just showing how to educate how to build a better home for the homeowner. It's not for the builder, it's not for the people doing the work, it's for the. That's who cares at the end, who has a better home so that's my comment.

**Board Member Brooks** - I saw in your letter that stated 85 to 90% of homes are done correctly and 10 to 15% are done poorly. When I looked up the original 2018 residential studies that were used to help establish the ACH levels for the code, the tests that were done in Idaho showed about 84% were below and 16% were above. It seems your testimony that's about right. Do you have data?

**Matt Vandermeer** - Yes, I have data, I don't have the data on failed jobs. But there are times I've gone back to homes multiple times. Recently, I saw a vinyl floor just pop up when we do a blower test, because it's pulling from the crawl space. It's things like that I like to educate the builder on, and once it's fixed and the home passes, then it gets turned in. Now what happens after I pass it, I don't know, because I don't know if the inspector requires it in that area.

**Board Member Brooks** - The reason I'm asking is, is that we looked at data to bring this ACH into the code, right? So, if we wanted to revisit the data to see how Idaho is doing my question is, is there data that we can look at?

**Matt Vandermeer** - I would have data from every home I did.

**Executive Officer Hyde** - Mr. Vandermeer, what local jurisdictions do you test homes in?

**Matt Vandermeer** - Everything in the Treasure Valley, Payette, and McCall.

**Marie Kellner, ICL** - I am with the Idaho Conservation League, ICL along with the Sierra Club of Idaho Conservation Voters of Idaho, the Idaho Organization of Resource Council, and the Inner

Mountain Fair Housing Council. I wanted to build on the comment that was brought up by Teri Ottens. It's something that hasn't been brought up as much in the call so far, and it is our serious concern that this could affect the ability of low income, rural veterans and other Idahoans who access certain funding to be able to become homeowners. We're very concerned for what that means for this very significant population of Idahoans if the code would be repealed in its entirety, as it's our understanding right now that is being proposed. We ask that you take that into consideration the unintended consequences, not directly related to some of the line items of the code but much broader and are certainly connected to the mandate, that you must consider the general welfare of all Idahoans when you make decisions regarding these things. We thank you so much for the opportunity to engage and be involved.

**Ryan McGoldrick, Conservation Voters of Idaho** - I wanted to draw the board's attention to the fact that the Inflation Reduction Act does include a provision that up to 330 million dollars for FY22 for grants to help states adopt residential and commercial building energy codes that meet or exceed the 2021, international energy conservation code, the ASHRE standard 90.1, 2019, or some combination of those codes that was included in there. I think there could be some unintended consequences of, if we're rolling back our codes, we could be losing out on some significant federal funding opportunities for Idaho. I encourage the board to look at those before making any decisions on this. I want to thank you for the opportunity to comment and stand.

## **Board Business**

Overview of Code Collaborative and Comments Regarding Amendments to IDAPA 24.39.30 - I'd like to begin walking through the rules and incorporating the public comments that we received at our code collaboratives, the written comments that were submitted and included in your board packet and discussion from the formal and informal meetings that we've had. Starting on page four, subsection 01 relating to the IBC. Rather than taking the entire code excerpt and throwing it back into the rule, we just amend the changes that are relevant, particularly to what we're changing. In that, we've received a lot of during the code collaborative meetings about how concise it is. How well is it easily understood? Do we need a section header, or should we introduce a section header? We can add those section headers in, but we would have to do it throughout the entirety of the rule chapter. We've never done that before. I leave it open to the board for discussion, specifically to identify if that's relevant. Why make that change now? It doesn't make sense to me to introduce all those section headers when we haven't done anything, historically in that regard.

The next section 308.2.4, 308.3.2, and 308.5.4; there were concerns this language is permissive and allows the opportunity for commercial structures that are following the IBC as a R3 occupancy not to have fire sprinklers. That was a concern with the state Fire Marshalls office, that it contradicts the International Fire Code, so we want to keep uniformity between the IFC and the IBC, as much as possible. When it comes to residential setting, being that we've amended it from five occupants to twelve in a section previously under 305.2.3, there are more occupancies that would fall under a residential setting. There are statutes in place that do not require fire sprinklers for these type of occupancies under a residential setting. Those were some of the questions or comments that we heard.

The next section, 310.4, we are rephrasing this paragraph and just introducing everything that struck out lives in the 2018 IBC. We're just adding the language that is amended by this board for that code section.

Next section we received feedback goes into the IRC section where it amends the requirements of CO detectors and smokes alarms. There are concerns from the local jurisdictions that say that this

language is permissive and allows for an option for minor structural exterior work where CO detectors and smoke alarms would not be required. That is permissive language that we can move forward and incorporate. However, there is electrical work. Should we require electrical smoke detectors and smoke alarms? It was discussed throughout these meetings to defer that to the Electrical Board.

In general, there is support from the Building Contractors Association to remove blower door testing. During the code collaboratives there was a lot of discussion about air leakage and performance testing. I would like to direct the board back to page seven of the packet, subsection H, towards the top of the page, section 303.4. The Building Code Board amended the blower door requirement out of the building code and deleted it entirely. That happened before the work of the 2018 code collaborative, and they said we're not going to require performance tests or measured air infiltration rate, but we are going to say every home is going to be required to have mechanical ventilation per the mechanical code. That alone creates some sort of contradiction between the energy code requirements, and the actions taken by this board. We're trying to have discussions and negotiate with industry about mechanical ventilation. Mechanical ventilation, whether it's residential or commercial, is deferred to the mechanical codes, whether that's chapter four or chapter five of the IRC, all required mechanical ventilation at specified rates. It also allows for a commercial setting. It allows the HVAC inspector to require air balancing or tab reports for life safety systems whether that's ventilation to make sure that the measured air flow rate is being achieved and the exhaust systems if necessary. In a residential setting, ACCA (Air Conditioning Contractors of America), they do produce a Manual B. There's nothing in the mechanical code that adopts, or refers to that Manual B, which requires and sets the standard for air balancing in a residential setting. When it comes to the residential amendments out of the IRC, I can assure you that ACCA Manual J, Manual S and Manual D is enforced under part five of the IRC and is adopted by the mechanical section of the residential code.

When we discuss the energy collaboration, there were concerns that removing 403.5, which is on page nine of your PDF. Subsection E, that's struck through and subsection D when it comes to pipe length insulation that these two requirements are permissive. I would agree with that. They are permissive but based on our proposal on page ten of removing mechanical system requirements and plumbing requirements, we remove these two sections as well.

The other concerns with section C406 and C407, relating to building performance and alternative pathways for achieving commercial building performance that those would not be allowed. The approach as written is to take the rules in the energy codes and set them at a prescriptive level that anything above and beyond meets or exceeds the minimum energy efficiency and performance standards set by this board because we're not deleting the entire energy code. The only thing we touched on the building envelope side has been the air balancing or blower door test report. We still require visual air seal for leakage, so we're trying to achieve or meet, or exceed that. We did hear support for our new definition of condition space. This was a proposal that came through on public comment for us to consider. What can a homeowner in Idaho do within their garage and/or shop? Again, a lot of concerns about blower door testing, and wanting to have some type of measurement tool or standard to base if we do accept. As an option, what standard do they have to adhere to? We've also heard support to remove blower door testing because there is a handful of cities that require and enforce it. We did hear from a representative from Yellowstone Log Homes in relation to the amendments to section R402.6, which is on page twelve of the PDF document, subsection T. The amendments as written, provide more permissive language for these structures.

The envelope requirements are there, solar heat gain for windows has been removed, but air leakage is required.

There is a concern for duct installation in attic spaces, which is proposed to be deleted on page thirteen of the PDF, section R403.3.1. This was the work of the board last summer when there was a flex supply shortage due to global supply chain in the demands for flex.

There was a concern on the residential perspective route for energy code requirements of HERS rating performance. Again, our outlook on this was setting the minimum baseline performance and efficiency standards of the energy code. Anything above and beyond would be permitted because they exceed the minimum requirements of code based on the board's intent. When it comes to the summary of comments in your packet, there was a comment made earlier in today's meeting and public comment that that packet is large. I agree with that. It's quite a few pages. When you go through a lot of these written comments, there's a cadence term or a set of terms being used. What are we doing with the energy code? And those terms are the energy code assists in moisture management that creates better indoor air quality, that protects fire safety, provides extreme weather protection, and that insures building resiliency. Why isn't there more non-life safety measures removed out of the building envelope section that came from mechanical and electrical engineers. Removed duct and envelope air leakage requirements that create higher energy bills. That's a problem. Energy code stabilizes utility grids and flatten peak load demands. That the benefits they provide by doing so, to the grid system as well as reduces energy bills and creates monthly savings for homeowners. I don't disagree with some of those comments, and I don't think the board would either. I just we need to tie everything back to the perspective analysis questions that we have correlating to the intent of the board and the intent of the codes. That life safety, occupant welfare, setting the minimum performance, and the energy efficiency requirements are within our skills and again, those are a minimum just like the codes. So, with that, when we're talking about moisture management, a lot of that deals with how the home is constructed, the building envelope. We haven't touched anything in the energy proposal, when it comes to the ventilation of a home or a commercial structure, that helps prevent moisture or allows for moisture management practices. Depending on the climate you live in, these codes are adopted throughout the state, and they are required to be enforced throughout the state. In the indoor air quality component that lives within the mechanical section of the code, and it is captured whether it's in part five of the IRC or chapter four and chapter five of the IMC. In a commercial setting, they are addressed, those all play a factor. We're looking at trying to encompass the energy code and we need to do that throughout the entirety of codes, not just the energy book. We have to look at plumbing, electrical, mechanical and the structure, because when we're talking building science, they all play a factor.

We heard some comments here today about flu gases, gas fired appliances, propane, or natural gas. The energy code doesn't cover that. The mechanical code does, the fuel gas code does, on how it's vented and how it's supposed to get out of the building. One thing we need to consider is, what are we doing with making envelopes so tight that the house doesn't breathe. Are we creating a health safety hazard? There are comments in relation to that. I'd also like to point out in the summary of comments that in 2018, the State of Idaho Energy Code is not where we're at. In 2018, we're on the mechanical, electrical, and plumbing section of the energy code, but when it comes to the building, it's been walked all the way back to the 2009 for the prescriptive table. If we can do that in one facet of construction, why aren't we doing that in the other facets? Looking at the 2018 code collaborative discussions and the meeting minutes that were held, a big reason why you only see amendments to the mechanical, electrical, and plumbing is because those discussions were never

held. We saw a lot of value in our discussions through listening sessions with industries that are being regulated to adhere to these codes, but they're looking at the builder and saying, hey, why aren't they looking in their own backyard? They can amend to the 2009 energy code, but we must adhere to the 2018. Where is the pragmatic calculated code enforcement approach in our industries? I feel like a large part of that is who wasn't at the table during the 2018 code collaborative discussions, which lead us to answering the perspective analysis based on informal and formal meetings that since occurred in July of 2021. Going through this set of questions and correlating it to the board's intent, set by statute and trying to keep costs as relatively low as possible from a life safety aspect was our approach. We were trying to eliminate any type of consumer regulation that eliminates consumer choice. Whether it's a thermostat or an economizer on a commercial building and how they're bringing in mechanical ventilation or the size of their AC and heat systems. Everybody has different needs and different conditions. Where my indoor design capture needs to be a little lower because I have this health condition. Right now, the energy code doesn't allow that. It sets it hard at 75 degrees for cooling or 70 for heating. We tried to take a look at this and do a deep dive review into these codes and we had discussions with industry directly that are affected by these codes. What we're proposing to delete are the sections of the energy code directly related to mechanical, electrical, and plumbing and revise the requirements, setting the minimum bar for how we verify air leakage consistently across the state.

**Board Member Brooks** - You mentioned the duct, the provisional emergency provisions we put in because of the shortage. Is that still the case? We still have the shortage and is there still a need for that?

**Executive Officer Hyde** - I have had intermittent feedback on that matter. I know it's providing benefit, but I don't know the pulse of what the supply houses have in stock.

**Board Member Brooks** - So, we need to revisit that.

**Chairman Bick** - I talked to Matt Thorton and he said that that supply is still not there. They're getting some, but it's not what is needed and the people in the field that were able to get the flex ducting before they ran out supply, their stock is dwindling. I think at this point, we still need that emergency order.

**Executive Officer Hyde** - Looking at the work that staff has done working with industry through informal and formal meetings, we feel like this proposal can fulfill the ZBR based regulation, executive order, and the prospective analysis questions that we have been asked to complete. We feel like this is a pragmatic approach to Idaho. And the enforcement of codes setting the minimum level of requirements to construct a home very similar to the code, applicable to Idaho throughout the entire state, not just in the large density population areas. You know, how do we enforce this throughout the state? We're confident that we can answer those questions on the mechanical, electrical, and plumbing amendments, along with setting a consistent bare minimum baseline factor for air leakage requirements.

**Board Member Maxand** - Can you respond to the public comments around the objective goal? The mission of the building code in terms of the contrasting life and safety and then the other description of the building code that referenced general welfare housing, the more expanded scope of charge of the board itself.

**Deputy Administrator Frost** - The legislative intent of your Idaho building code act is in 39.41.01. I'm just going to read the pertinent sections, both the ones that have been cited today and the ones that were uniquely left out. The first piece of it talks about uniformity of building codes and uniformity and procedures for enforcing building safety codes throughout the state. There is statewide concern and interest in uniformity would enhance elimination of obsolete, restricting,

conflicting, duplicating, and unnecessary regulations and requirements, which could unnecessarily increase construction cost or retard the use of new materials and methods of installation, or provide unwarranted, preferential treatment to types, or classes of materials, or products, or methods of construction. The leading part of your legislative intent is building code uniformity throughout the state including your local jurisdictions on the enforcement. The second piece that it talks about is any unnecessary construction types or costs that are preferential in view. Next it talks about promoting the health, safety and welfare of the occupants and users of the building subject to this chapter. What you've heard a lot about is life safety. Health safety and welfare of occupants is synonymous to life safety. There's not a difference from our perspective. We've asked a lot of questions around life safety, that's the piece where it goes back to the legislative intent. It then goes into requiring minimum performance standards and the requirements for construction materials, consistent with the accepted standards of engineering, fire safety, life safety, and accessibility for those with disabilities. Then it goes into establishing for jurisdictions, enforcing building codes pursuant to this chapter, minimum standards, and requirements in terms of performance energy efficiency, effect on construction cost and consistency with nationally accepted standards. Next, the intent is to permit the use of modern technical methods, devices and improvements and clarifying establish the various jurisdiction subject to this chapter. The legislative intent of this board covers a variety of different things. If you're asking from a staff perspective, an ethos to our entire division and our strategic plan is consumer protection. It's the reason that building codes were developed years ago. We do weigh safety, health, and occupant welfare higher than anything else. But the board, by the legislative intent, should be considering all these things you can consider in this adoption performance. You can consider energy efficiency. You should be considered unnecessary construction cost. All those things factor into the decision point. You have a statutory authority to adopt in entirety, the 2018 IECC or whatever provision of the IBC, IRC, or the IEBC. From a statutory authority perspective, you can go to that ceiling, and you could be specific or nuanced. That's very similar to how your current chapter is applied. When we're asking legislative intent, all those things can and should be considered in relation to this rule discussion today.

**Board Member Maxand** - What is the staff's ethos around the definition and statutory authority, when it comes to welfare?

**Deputy Administrator Frost** - I would broadly define anything that we're doing across any of our boards needs to be justified, that it's related to consumer protection that if we're adopting a requirement. We believe it's necessary for the health and safety and in this sense occupant welfare of the individual. I think depending on what topic we're talking about, that can probably have a myriad of different ways it can go. I think if you have a specific scenario based on your background that you'd like to ask Mr. Hyde, you should. Hey, wouldn't this come back and be relevant towards occupant welfare and we're not considering it? We absolutely would be open to that discussion. On the opposite side, if you think a requirement should be in place, not because of consumer protection, health safety occupant welfare, but you think it should be required because of energy efficiency or performance, that is completely in your purview. We just need to justify the why behind it. One thing is for sure, we must consider the life safety of Idahoans. But the rest of the legislative intent becomes a balancing point between construction costs and unnecessary construction types versus performance requirements and energy efficiency standards. And whether it's easy to thread through the needle of each one of those. It's not, but that's the role of the board. If you look at the comments, you have a significant number of comments that are at philosophical disagreements on what I would call the continuum of the energy code. There is not much disagreement on the IBC, the IRC and the IECC. As a board, your responsibility is to weigh

through those pertaining comments of the energy code and determine what you think is appropriate for Idaho as those minimum standards, and you had the full flexibility to add back in anything you believe is relevant.

**Board Member Maxand** - We hear about these questions of what can potentially fall into the category of welfare. I am happy to bring examples, but I would also like to know the sidebars here in terms of definition.

**Executive Officer Hyde** - This is a valid question. I have been corresponding with the commenters that have submitted written comment asking for more specific feedback because of what we may not be capturing. We're trying to cover our unintended consequences and have this collaboration with these individuals. When it comes back to the calculated data that can be provided, whether that's the Department of Energy resident or groups of such, is the benefits that it provides to the grid system, and the benefits on the monthly savings of utility bills. But there's a caveat that you, as a homeowner, you must utilize your home in a certain way, which is based on the energy design requirements. It's trying to pin it back to what Tim said between welfare and cost and then regulating consumers or Idahoans. Do we tell Idahoans what they can and cannot do to gain that efficiency? We've tried to extract more information from all individuals that we met with, throughout all these meetings, to get more specific on these sections, and we've yet to be provided with those details, what section directly affects that.

**Board Member Johnson** - If we pass these, what's the direct measurable effect on the building stock? How much money is it going to save? How much energy efficiency are we losing?

**Executive Officer Hyde** - It's a great question. Right now, we don't have the ability to measure all these new constructed homes. We don't have it now versus we don't have it then. All these reports that we've seen is with a certain database that happened, and we're evaluated for the first-year homeowners to occupancy. After that, the return, when does it happen? We don't even know with keeping them here. What we're trying to identify is, throughout these perspective analysis questions is, are they beneficial; are we over-regulating based on the minimum efficiency and performance that we've adopted? What are other outside factors that come into play that we need to consider? I don't know of anybody that's set up a monitoring system on their home to evaluate through summer, winter, spring and fall design conditions here in Idaho.

**Board Member Johnson** - When you say it's too soon to know, is it too soon for doing this?

**Deputy Administrator Frost** - How are surrounding states as well as South Dakota and Alaska, regulating this? If they don't regulate this, are there concerns because of the result of this? What puts Idaho in a unique instance is House Bill 660. There isn't a variation of home rule when it comes to local jurisdictions. And the decision of the legislature to put that preemption in place, puts this board in making the determining factor of what are those minimum standards. In effect, as the board are the home rule for Idaho.

**Board Member Johnson** - Was there any comments received during the collaborative on what the future impacts would be? I know I talked to you about that one situation where I had a single mom. It's a good perspective to have and she's living in a 1980's multi-family unit. Two young children were falling down the stairs because there was no handrail. So, there's a provision with the City of Boise that they'll go out and inspect the renter complaints. The inspector will come out, which you did the same day. Found that there was no handrail, looked at the code and said that hardware was required and when she told the landlord was going to require her to pay for the handrail, but once they had this information from the city, landlord installed the handrail with no cost to her. My point is, if that wasn't in the building code, the requirement for the handrail, it



would not be enforced. So, what are the implications of removing these provisions out of the code? And they're not there for future enforcement.

**Executive Officer Hyde** - That's part of the evaluation process of what we did, looking at the current energy code and how it's been adopted and/or amended. We've looked at all these sections that we're proposing to delete, and we can't walk it back to cost effectiveness and ensure occupant welfare and life safety. I mean, a handle is a lot different than regulating what type of thermostat I have on the wall or what my fan efficacy is in my bathroom. Those are the type of things that we had to consider, because there's factors in the energy code that are not directly tied to occupant safety.

**Board Member Brooks** - But what about like mold? You get condensation, you have mold in units, that is a life safety issue.

**Executive Officer Hyde** - The energy code does not directly correlate to mold, it's a facet of codes. Moving air is the ventilation piece that lives in the mechanical code, which the board acted on and said every house will be having mechanical ventilation, but that's not an amendment to the IECC, it's in the IRC. We have building envelope requirements that haven't been amended. They still live in the energy code. To respond to your question, we have that captured. We are comfortable with this proposal in this direct example.

**Board Member Maxand** - can you speak to the concerns brought up about the consequences for eligibility for assistance in terms of veterans and families who are impacted in this state with the cost of housing and other issues, and whether or not the draft rules would impact those or if we know if we need to find that out.

**Deputy Administrator Frost** - When it comes to VA and FHA, loans we've had multiple agencies do some research on our behalf to look into whether or not the state must have at minimum, the 2009 standards as a basis for qualifying for either of those loans. So far, what we've received back is there is not a mandatory requirement. Even in the comments that were related to HUD, the link, the information provided does not detail that as a mandatory requirement for 2009. However, we are in active discussions with the realtors. The realtors have not identified this as an issue and an impact in VA or FHA loans, but we've asked them to take a look and talk with their lenders. We also know that the bankers and credit unions are also looking at it on their end as well. From a self-awareness standpoint, we're very aware of it. We have no desire to negatively impact the VA or FHA loan process, so we'll continue to monitor that. If we're provided information that there is a mandatory requirement, for example, to be at a certain code cycle threshold, we will provide that information to the board to make sure that we have that in place.

**Board Member Laux** - Mr. Stevenson brought up a point about this type of process should have been brought about through the board itself and directing DOPL to act. Is that accurate?

**Deputy Administrator Frost** - We go to what is in the executive order from the governor. Say it talks about agencies going through this process, there's the board and then there's the statutory required agency that oversees the board. It talks about the analysis being guided by the legislative intent, articulated in the statute, or giving the agency authority to propagate the rule. And then it says, specifically agencies should start the new rule, starting from a zero base and not seek to simply reauthorize their existing rule chapter without a critical or comprehensive review. We've certainly received comments that staff brought forward, suggested edits based on our critical and comprehensive review. That is a true statement, absolutely. That's what we've done for all thirteen of our boards that have gone through ZBR this year. Interestingly, this is the only industry that has provided issues with the agency, bringing that forth. What I can say is our approach has been consistent. We've provided our review to the board and not every one of the boards have agreed

with every element. That's the important part here, the decision is not a staff decision. The requirement of the executive order is for the workload of ZBR to be done by the agency and to present to the board for you to make the decision on the content of whether you agree or disagree. I would just add, to give the board context as you're working through this, there's probably three things that are important on today's meeting. Align on what you agree on adding in or removing. Find an alignment on what you want to get more public comment on. Because if you know what you want to get more public comment on, we can make sure that is included in that draft and then elicit specific public comment and provide the right type of meetings to get feedback and invite the right individuals. And then, what you think should be taken off the table, if there are things that you as a board functionally do not think that we are going to come to a conclusion on through the ZBR process in the next six months. You should come to an agreement today of taking those off the table for a future conversation. So, what you agree or disagree on, what you want to get more feedback on, and what you completely want to be taken off the table. I think that will allow more efficient alignment on how you take your next steps.

**Board Member Laux** - We would be remiss if we didn't recognize the timeframe that this process is allowed to happen, and which is apparently by end of the session signing in 2026. So, let's be deliberate, and I know there seems to be consternation on staff's part to get this done quickly and aggressively. But I want to make sure we make the right decision, or at least I do in this process and it's super complicated, at least for some of us. I appreciate answering those questions, but I also appreciate and respect the process that we have, and the timeframe that we must do this.

**Board Member Brooks** - Did you have a chance to look at any ACH data from what was collected and to surmise how is it going? In other words, they looked at ACH data when they brought it into the code, right? They had to say, what can builders build do, right? So, now we're going to take it out. When we do that based on data too. How are we doing in Idaho and have it just not a predisposition to keep it or take it out, but let's just look at data. We do that with seismic, let's do it with this information.

**Executive Officer Hyde** - Looking at the data that was provided yes, I did receive that information. And if you look at the data, I believe it was a little over 100 houses, all centered in the Treasure Valley area. It's only construction practices happening in this region, not throughout the state. It would be hard to collect such data when only a handful of jurisdictions are even requiring a performance test.

**Board Member Brooks** - Do you feel we could gather that information if requested, that it would become available?

**Executive Officer Hyde** - Tying that back to how many homes are HERS rated and where those homes are located, it would be centralized to just one location of the state. It wouldn't tell the full story of what's occurring everywhere else where these codes are adopted and enforced and then who would pay as such. That's a valid point. However, let's take a step back to higher level, consistent enforcement. We adopted something that's not consistently enforced throughout the state. We heard it today, there's a handful of jurisdictions that are actually requiring a performance test report.

**Board Member Brooks** - If you take your rationale and we apply that to the rest of the code, there are jurisdictions that aren't enforcing the building codes, so let's just get rid of the building code. You are taking select provisions of the code and applying that rationale, but not applying it consistently.

**Executive Officer Hyde** - Weight upon life safety and occupant welfare, yes. And air leakage is still being achieved through inspection protocols that have existed in the energy code since 2003,

we're just walking it back, because we see that the performance path has created an inconsistent code enforcement for builders and homeowners.

**Board Member Brooks** - It's just a comment. When you kept using the life safety mantra, it added a ton of confusion to the process because I'm listening to you and you're justifying these provisions based on consistency, which is a different conversation than what was presented with life safety.

**Executive Officer Hyde** - It's both. Tim said it best under the board's intent. There are many factors that all have to be taken into consideration to set the minimum requirements for Idaho and not drive up the cost of construction.

**Chairman Bick** - I do feel like it would be worthwhile for us as a board to talk a little bit about the air changes, because I think that's a critical part of what's going on right now is whether we do the blower door test or not. I know from my analysis of talking to different architects, it's mixed. There are people that feel the blower door test is very important and there's other people that feel it is not. What I found interesting in the last couple of meetings we had is the fact that there really wasn't enforcement happening. Instead, what was happening is if a blower door test fails, what they did is they use that as an educational piece going forward. Maybe it's more of a scenario, having contractors go through the process of doing the education rather than trying to put in there as an enforcement tool, and it wasn't being used as enforcement tool. With that, it does raise the question whether we're putting undue costs on some of these builders to go through this process. It's like once they know how to build it, then they're still having to pay for the test to be done. It does bring up the question whether that is above and beyond, but I would like everyone's input on that. I think that's going to be an important part of what we decide today.

**Board Member Brooks** - The problem that you have is that you're not giving the public a choice and this all happens behind the scenes, and the homeowner doesn't know if they are getting a home that could have a lot of air leakage or very little air leakage. We're deciding that it's okay for us to have leaky homes in Idaho. There's no disclosure to the homeowner. It would be one thing if you had a disclosure on the energy report, but that information is not going to make it to the consumer. This is all buried, and I don't see how this helps the consumer.

**Chairman Bick** - It does beg the question, whether the consumer has the opportunity when they're purchasing the house to request a blower door test. It might be something as simple as the same thing as inspection fee if you're buying an existing house. They pay the fee for it to be tested for a blower door test and they know what it is before they purchase the house. There is that argument there.

**Board Member Brooks** - I just don't see the young homeowner who's barely able to afford the house pay for a blower door test.

**Chairman Bick** - They pay for an inspection right now when they purchase the house, if they want it inspected, and it's up to the realtor to educate them. Even if we do a blower door test, and it fails, apparently, it's the young couples that are going to buy that house, and it failed.

**Board Member Brooks** - The intent of the energy code was that you had these provisions for the ACH in there, that builders would eventually get there, and that's why we did the 20%, so that they would eventually get there. There was coaching involved and now we're using the exact opposite rationale to try and get out of it because it's inconsistent. I think that's the crux of what's being debated here is do we want to become better. Do we want to get better, or do we want to build better or do we just want to let it go?

**Chairman Bick** - I think that's pretty much the crux of the building cohort for thirteen years.

**Board Member Guho** - Being a contractor and seeing what goes on in the field, there was a comment made by someone earlier that the reason for the code is to have a standard. There was a

certain standard that is set for the industry that everybody wants to meet and there's some mark of excellence you need to meet. So, if there isn't a standard set to what supposed to be there and the contractors all are young, and they're learning different trades, they have to know what the right assembly is or the preferred assembly is. If you alleviate all those rules to just say, there's this baseline and not have any medium standard, not everybody's going to meet the mediums. Some are going to go above, but then there's houses out there that are going to be below also. Instead of setting the bar at the low end it is better to set it at a medium rate where everybody is expected to meet that medium rate. Back to what I've heard today, a homeowner that is a young couple and that doesn't have the knowledge that we know in building industry, they're trusting us. They're trusting that we've set a standard that they are buying a certain quality of construction that meets a set standard. I think the comment earlier that was made to lower the standard down to a baseline rate is not prudent.

**Board Member Cotner** - Code has changed throughout the years and building has gotten so much better throughout the years. I think to put the blower door test as the one stop shop and this is how you compare all houses, is false. Using the blower door test at the beginning, it's a great way to compare, it's a great way to test your house to see how well you're doing. The one on my mind is the house we built in Eagle. We put in the most highly efficient equipment, we did a completely conditioned space in the attic for all the ductwork and then we put in a heat recovery ventilator, which is going way above and beyond. But the homeowner wanted to have that in their house, so we spent the extra money to put in heat recovered ventilator, which creates great mechanical ventilation for the whole house. We go to do the blower door test and the test fails because the heat recovery ventilator allows this fresh air in. We had to disconnect the heat recovery ventilator, completely seal that up, and then redo the blower door tests to get it to pass. So, in that instance, the blower door test told us nothing. We've learned throughout the years on how to build better houses, code is automatically making us build better houses. From my experience and networking with builders, the houses have gotten a lot better, and I think some of it's because we've had some of these changes to the code. Some of it is has been because some of the builders have learned by doing some of these blower tests. But it's also the inspectors that don't have to have a blower door test anymore to know how to inspect these houses. There are really no impacts. As far as the applicability in the field, the builders that I've talked with don't feel like any of these changes impact us one way or another.

**Chairman Bick** - Regarding the log home industry. I just want to make sure that we're covered because I do see lines struck through in the log home industry. I heard you say that the changes that are happening are more helpful to their industry. They were one where we literally had to go through the executive session to make sure. Because when we made changes to the 2009, it literally stopped their industry dead in the tracks, and I want to make sure we aren't doing that again.

**Executive Officer Hyde** - These changes that you see before you today, it has taken away those requirements of mechanical the lighting and the simulated performance alternative for these log homes, deferring everything back to the baseline prescriptive. To build a home, we do need that amendment because we need to address these types of homes that are built. They must adhere to the general section of R401 and then the envelope requirements of R402. Outside of that, it's up to their industry to market and solicit pass the point based on the conversations that we've had today. I have reached out to Yellowstone Log Homes in Rigby. I've not heard the feedback in over a few days.

**Chairman Bick** - We are not getting rid of the energy code. We still have our R values and our building envelope. I see that a majority of what is struck through is because it's redundant

information and its information that is found in either the mechanical or electrical code, am I correct in that assumption?

**Executive Officer Hyde** - In certain aspects, not in its entirety.

**Chairman Bick** - We're really talking about things that we're taking away is the blower door test and the lighting fixtures.

**Executive Officer Hyde** – The way the energy code is written, you have your prescriptive route, or you have a performance. What we're looking to do is set it on a prescriptive at the minimum, so we adopt and enforce the minimum prescriptive and it's up to consumers to decide if they want to do above and beyond, which would meet or exceed our rule amendments and then mechanical systems. We've looked at mechanical systems and compared it to the mechanical codes and identified what in the mechanical systems are getting into the lines of regulating how and what consumers can and can't do within their structures, residential or commercial, and then trying to weigh in on life safety. That is the other piece that is proposed to be deleted.

**Chairman Bick** - Does anyone on this board have any issues with the strikeouts where it's redundant and it's found in different codes?

**Board Member Guho** - On the commercial side, on page seven, C through O, is that all in other places?

**Executive Officer Hyde** - Where life safety parameters exist, we have identified they are in the mechanical code. The plumbing code board has deleted out of their plumbing code, the piping installation requirements C404 because they didn't see it as life safety. C405 with lighting requirements through the prescriptive analysis, we're having a hard time identifying that it's not a regulatory barrier on where occupants or designers are allowed to put lighting fixtures in daylight lighting zones. That is not a barrier. We're having a hard time going around that so, whether you want to equate that to life safety, occupant welfare, we would it through our assessment and our proposal, we think that there aren't any life safety measures there. But, yes, all of those are deleted. Some of which do live in other codes, like the life safety parameters do. When it comes to additional efficiency package options again, that's above and beyond.

**Board Member Johnson** - That's my concern, that suddenly we're going from a comprehensive energy code that is capturing all this, to just breaking it down into so many pieces where we're only looking at life safety. What's the point of the energy code if all we're looking at is just the specific life safety options. I just have a hard time just going through and just deleting everything.

**Board Member Brooks** - The lighting packages, from a payback perspective. I know that where there's requirements for energy code, commercial buildings were switching out more efficient lighting systems because of payback. So now saying, we regulate lighting systems for life safety quote unquote, but we don't regulate efficiency of those systems, that's what this code regulates. There doesn't seem to be a rationale there.

**Executive Officer Hyde** - Cost of construction or cost of utility bills. I correlate that back to the statutory intent. Are we increasing the cost of construction or are we looking out for occupancy's utility bills? What is the intent of the board?

**Board Member Brooks** - The intent of the energy code is obviously energy efficiency.

**Executive Officer Hyde** - There's been some good arguments that have been presented through public comment where it comes to building resiliency. Where they can directly tie the lack of insulation in a structure in the envelope to life safety parameters if the power goes out for extreme periods of time. I think there's a great argument to be made on why we don't touch the building envelope.

**Board Member Brooks** - There's a lot of subjectivity in this. I'm trying to find the rationale and it's difficult. I'm not saying you didn't do your due diligence, but that's not my point. I'm struggling to take each provision and say why is this out, why is this in?

**Executive Office Hyde** - It is challenging from our perspective of code enforcement throughout our operations to regulate when a commercial contractor asks us why the owner of the building can't put lighting fixtures in this area.

**Chairman Bick** - Looking at these C codes of 403 through 503, can you touch on what your feedback from commercial engineer and builders were on the deletion of those items?

**Executive Officer Hyde** - There were comments that supported removing it, because they didn't believe it was life safety or provided any benefit that can be utilized through marketing measures and to promote their business and their design and their installations. The larger component was that they opposed it. The high-level safety factors that we've heard were about moisture management, indoor air quality, building resiliency, and extreme weather conditions. One point that was made was with extreme weather conditions. They feel like we need those specified efficiency requirements of heating and cooling equipment, for example. And in all reality that is true, but the performance, and the efficiency of equipment are only design conditions for which it's sized. Weather conditions, I'm assuming they're referring to temperature differences, extreme temperatures, do not produce more or diminish the capability of the BTU output of the equipment. That's based on sizing. Efficiency of a piece of equipment is how well it performs under the design conditions, which have been set, which are at sea level under a different set of conditions than the State of Idaho. Overall, the feedback we have received from engineers and ISPE, they are not in support of the proposal because of those high-level items that we keep hearing about, indoor air quality, moisture management, building resiliency in extreme weather.

**Chairman Bick** - With that being said, that's in direct correlation of the deletion of section C403 through C503.6.

**Board Member Guho** - There's a lot to be absorbed here. To me, the industry needs a little more time to swallow what's being said here and have a little more time to digest it. To decide on if we're going to go forward and say this is the way it's going to be and now, we're going to discuss it. I think that there needs to be more than just a couple of weeks for it to be out to the public and the industry.

**Chairman Bick** - I think where those sections where we are hearing from people who oppose it, maybe what we do is amend these to say we aren't accepting these deletions at this point.

**Executive Officer Hyde** - One point I'd like to add is throughout these written comments that are received, we are trying to engage and get specific details. As soon as we receive those details, we will provide it.

**Deputy Administrator Frost** - One thing that we've really tried to work on is we have gone through this process and we have released this draft in April and it's been out for public comment. We've been willing to meet with anybody who wants to, and we've had our scheduled hearings. We've continuously focused on the requirements of mechanical, electrical, and plumbing, in these sections as a basis to get feedback of what would be the unintended consequences. If we remove this, is there going to be issues? What specific sections should we not remove and why? And I think one question that has really spurred us internally is if we're unable to, in a simple way, be able to detail why it's necessary to keep. What type of evaluation was done when we adopted it in 2018? That's been something that we've kind of struggled with. I'm in no way saying that there doesn't need to be more comment on these sections. I think we need more comment. I think we need more discussion But we've continued to ask for specific comment on what would be the

impacts, and there have been a few nuanced discussions but outside of that its continued to be at a high level. This is a unique area that I don't think that there is complete agreement on. I would just recommend the board back towards what are the requirements that you agree with that you're deleting. What are the requirements that you want more feedback on? And what are the requirements that you want to take off the table?

**Board Member Brooks** - I think it's hard for the public to comment back to the staff, because I think the staff has a viewpoint of, 'we've got these, you got yours'. But you've got six or seven questions that you need to answer and then you just introduce significant analysis. Now, we need to revisit the original adoption of the 2018 code, so that's the mandate of this analysis. Not only to look at the provisions that are in the packet, but to assess if the original provisions we adopted previously are adequate. That's substantial because someone replies to you and says, well, I believe X, Y, and Z and you go back to your list, and you start asking those questions. Well, they don't have that structure to do that. You had a list of things you expected in the response. Like, here's the seven questions we need to answer, please reply with your comments, and give us your answer to these seven questions during your response. I think you would get better comments back from the community because I feel like we're just shooting down their comments because they're not answering your questions. Tell them the questions that you want them to answer for you and I think you'll get a better response back from the community. I'm concerned that we're discounting their response because they're not answering all your questions. I think it's more appropriate to tell them what the response is you need, to evaluate the response.

**Deputy Administrator Frost** - There's two pieces to this. There are some individuals in our negotiating meetings, informal meetings that there is no negotiation for them. They believe where the board currently is at is way below the standard that we should be considering. Respectfully of those individuals, they're not coming to the table to negotiate, and some of them showed up to our code collaborative with that faction, and they submitted comments with that type of framework. Those individuals won't provide us that input because they're not even willing to have the conversation. There have been some good individuals in both a local jurisdiction level and the construction industry that are willing to sit down and walk through each of these requirements, and they have been willing to dive into some of those questions. So, I agree with you, if we ask those questions and we ask them to the right people. Usually, we can get some tailored feedback and then at that point, we can present it to the board in a way of, hey, here's the feedback we got. We agree with it or disagree with it, and that's what we tried to do today. Could there be some more input and some more questions asked on this? I don't disagree. And I think that's what the negotiated process does. In other words, if you publish in the proposed bulletin, you have got a formal negotiated meeting September 15<sup>th</sup>. You have a formal negotiated meeting November 15<sup>th</sup>. We have a 60-day time period in between, to meet and ask and answer all those questions. I think we have that opportunity, but I also recognize that some individuals philosophically will not engage in the board in a meaningful way, and that's unfortunate.

**Board Member Brooks** - I'm just concerned that if we got this much response back from the community and effectively no language change was made. We've already had a couple of things today on some issues with the blower door test if we should allow blower door tests in lieu of a visual inspection. Those kind of language changes need to be in response to this. I'm just concerned that if we take this to the next step without any language changes, that's sending a message to the people that it really doesn't matter what the public input, is we're going to keep on going, because we don't have a framework for them to respond in a meaningful way that they could even get a language change.

**Deputy Administrator Frost** - I respectfully disagree that we haven't provided the framework. In fact, I can say of all the agencies that went through ZBR, this process for all of the agencies in the state, this process specifically for this board has been more time intensive on research and more time intensive on the willingness to meet with anybody. I can confidently tell you from a staff perspective we went above and beyond. Now, what does that mean? Have we covered every possible item? Maybe not and we're working towards that. If we need to have more meetings on specific items, we're happy to do that. We've been clear from the beginning. I think the piece before you here today, we've brought to you both sides of this entire negotiation and the comments. Certainly, we have a recommendation, and the board does not have to agree with that recommendation. It's on you today to give us guidance. If you want us to negotiate back in the future draft, the ball is in the board's court.

**Chairman Bick** - When we went through the 2008 code collaboration process, it was endless on the energy code. It was near endless on the residential. When it came to the commercial code, nobody chimed in. They said if you adopt the 18, everyone was good with it across the board. Literally, there was no opposition. I do have to say, looking at deleting these sections C403 through C503.6 in my opinion, those are areas where I think it makes good sense to get more information and reach out to the industries that are affected by it.

**Board Member Brooks** - I'd like to see some data from some of the ACH. I think the data speaks for itself. I get the perspective that we're not measuring every structure in Idaho. I think that information's missing. And this going lower than the 2009 energy code. I'm struggling with a rationale for that.

**Board Member Laux** - You asked us to think at a more philosophical level, what do we mean by life safety and welfare. My mind goes to just looking at the state of energy production and cost and I look at places like Texas. I look at what happens when medically dependent Idahoans who have medical equipment in their homes and the power goes out because we're not thinking about efficiency in energy consumption and those kinds of issues, they do become a life welfare and safety issue at a much higher level. I think we need a little more time to also just think about those levels, that kind of definition.

**Board Member Brooks** - I don't think it's ready to go to a proposed rule chapter. I am open to other board members perspectives on how do we gather more information or take the next step.

**Deputy Administrator Frost** - What are we in agreement on versus what we need more feedback on, that we can get through the negotiated process.

**Board Member Brooks** - I want this to be a board thing, not just me. You had raised some concerns about the commercial provisions, and you want me to be specific. Deletion of C403 through C503.6.1, that needs to be revisited. The requirements for the blower door test, going to a visual inspection, there were questions raised. We require visual inspection, and someone wants to do a blower door test as an alternative that would be permitted. I'd like to gather some more information on compliance, what has been that compliance for those that are doing the blower door tests where it would have been the results.

**Board Member Guho** - I agree with Brooks.

### **Vote to Adopt Proposed Rule Chapter IDAPA 24.39.30 - Approval to Adopt Rule Chapter IDAPA 24.39.30**

**MOTION:** Motion was made to approve to adopt the proposed rule chapters with the amendment of pulling out the energy code provisions and continuing with collaborative. Motion was



seconded. Roll call: Andrew Bick-nay, Nick Guho-nay, Jeremy Maxand-nay, Kelly Daniels-aye, Jon Laux-aye, Rob Brooks-nay, John Cotner-aye and Ron Johnson-aye. Motion did not pass.

**Chairman Bick** - And as discussion is concerned, the reason I vote no, and we put this in a tie is because I think we would be doing a disservice right now if we pull that completely off the table and did not continue the discussion about the energy codes this year. I think there's still plenty of room to adjust anything that is before us moving forward over the next several months. I think we would be doing a disservice if we took any of that off the table right now.

**Board Member Brooks** - I disagree with that. You are giving us more time and you're putting it on the agenda, so it's on the agenda. Do we have to accomplish this this year?

**Chairman Bick** - I think we would be doing a disservice if we pull the rug on this thing completely and not talk about it more because if we pull energy off the table, then we aren't talking about it anymore for the rest of the year. And we're sending a statement to the legislature that we aren't touching energy.

**Board Member Brooks** - They've already had discussions on repealing the code completely. I think if they see that we are engaged at this level in trying to better the code, I think it would give them less opportunity to try to repeal the whole thing. But if we get to this point, and now we tell them where it's going to take a play off the table, they may just come right back to us in January, say, well, you know what? We're just going to repeal it. I think this is showing we're getting public involvement. We're getting feedback positive or negative, and for us to just put a stop. It does a disservice to those people, too.

**Board Member Guho** - We are not deciding today. We are deciding to hear more input and then in November there will be a decision on that input.

**MOTION:** Motion was made to approve to adopt the proposed rule chapters. Motion was seconded. Roll call: Andrew Bick-aye, Nick Guho-aye, Jeremy Maxand-aye, Kelly Daniels-aye, Jon Laux-aye, Rob Brooks-nay, John Cotner-aye and Ron Johnson-aye. Motion passed.

### **Adjournment**

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