



August 26, 2020

Michael J. Pfeiffer
SVP, Technical Services
International Code Council
Central Regional Office
4051 Flossmoor Road
Country Club Hills, IL 60478

RE: Appeals of the 2019 Group B Code Development Process

Dear Mr. Pfeiffer,

The National Association of State Energy Officials (NASEO) respectfully submits the following comments and request to participate in the appeals hearings taking place on September 10, 2020, (*Impact of Online Voting, Cost Impact, and Voting Guides*), and September 14, 2020, (*Voter Eligibility, Validation Process*). NASEO is the only national non-profit association representing the nation's 56 governor-designated state and territory energy officials and their more than 3,000 staff. The State Energy Offices and NASEO have been involved in the code development process for decades.

The appeal and request of appellants to rescind, reverse, or reject the outcome of the Online Governmental Consensus Vote (OGCV) should be rejected based on the clear text of Council Policy 28 at 12.1.1 "*Variations of the results of the Public Comment Hearing compared to the Final Action result in accordance with Section 10.4.*"¹ Appellants assert that because the OGCV result overturned the result of the Public Comment Hearing (PCH), that it should be rejected. This is an appeal of variations of the results of the PCH compared to the Final Action result. It is therefore not an appealable matter. Furthermore, the appeal is requesting that the input of the average of 1,080 Governmental Member Voting Representatives (GMVRs) who voted on the 20 contested proposals through the OGCV be rescinded in favor of the average 57 GMVRs who voted at the Public Comment Hearing.² Limiting valid state and local government input on the development of building codes which those same governments may choose to adopt is akin to an opaque and limited-access process abandoned decades ago. This action, if taken, does not represent a consensus-based code.

¹ International Code Council. Council Policy #28-05 Code Development. Revised January 2019. Pg. 26. <https://cdn-web.iccsafe.org/wp-content/uploads/CP28-05.pdf>.

² International Code Council. Final Action Results On The 2019 Proposed Changes To The International Codes – Group B. April 8, 2020. https://www.iccsafe.org/wp-content/uploads/2019-Group-B-Final-Action_incl-OGCV.pdf.

ICC should reject the appeals that request the Appeal Committee retroactively disqualify Governmental Member Voting Representatives. Council Policy 28 states in 12.1 “*Any person may appeal an action or inaction in accordance with Council Policy 1 Appeals. Any appeal made regarding voter eligibility, voter fraud, voter misrepresentation or breach of ethical conduct must be supported by credible evidence and must be material to the outcome of the final disposition of a code change proposal(s).*”³ No such evidence is provided by appellants. Furthermore, appellants assert that the eligibility should be changed, retroactively, which is not an appealable matter.

How NASEO members are impacted

The ability of State Energy Offices (and other state and local jurisdictions) to participate in the code development process through the OGCV allows them to participate fully in the code development process without spending large sums of taxpayer resources on travel for staff to attend hearings such as those on October 23-30, 2019. The OGCV has dramatically increased the ability of states and other jurisdictions with relevant expertise and public-interest motivation to participate in the process – a result that should be celebrated by ICC. Any action to rescind the results of the OGCV will by design reduce the role of state and local Governmental Members in code development and exclude their considerable expertise. More importantly, it would limit the representation of the public’s interest in code development matters and negate the investment of time to ensure that the 2021 IECC meets the high-standard for transparency and inclusion required of state and local governments. Such an action would also raise questions about the function of the ICC as a means to achieve consensus based codes. Negating this engagement by implementing the remedies requested by appellants would harm NASEOs’ members (and all jurisdictions) by wasting taxpayer resources on travel for staff to cast votes. For example, sending 12 staff members to exercise their right to vote would cost taxpayers more than \$15,000 in lodging and meals alone based on U.S. General Service Administration *per diem* costs for Las Vegas in October 2019. This amount does not include transportation to and from Las Vegas or labor.⁴ The appellants request to make GMVR participation and voting more expensive for taxpayers has the appearance of being motivated by a desire to influence outcomes rather than inform them through a robust public-interest driven consensus processes.

NASEO and the State Energy Offices recognize the value of the ICC open and transparent process for code development and the opportunities for participation created by the OGCV. In 2019, the State Energy Offices that participated in the development process registered as Governmental Members in a timely manner, paid their membership dues to ICC, participated in the Committee Action Hearing (with some State Energy Office staff members sitting on the commercial committee), participated in the public comment hearing, and voted in the OGCV, all in accordance with ICC’s bylaws and code development procedures. The State Energy Offices and their designated Governmental Member Voting Representatives cast their votes in the OGCV to support code change provisions that serve the public interest in their states. In deciding which code change proposals to support or oppose our members engage with many different stakeholders, including local home builders, utilities, and industry in order to achieve a balanced approach to their decisions on code changes. In this cycle, ICC’s members used the OGCV to participate, resulting in more than a doubling of participation from the 2018 cycle. This development should be applauded, and we recognize the achievements of the ICC in managing this process fairly, transparently,

³ International Code Council. Council Policy #28-05 Code Development. Revised January 2019. Pg. 26. <https://cdn-web.iccsafe.org/wp-content/uploads/CP28-05.pdf>.

⁴ Using U.S. General Services Administration (GSA) per diems and allowable meals and expenses (not including travel) the cost to attend the Public Comment Hearing from October 23-30 could be as high as \$1,304 per employee, without airfare, cabs, or labor. Calculated using GSA rates for Las Vegas, October 2019. Sending 12 GMVRs to the PCH, as all the states may do, would cost \$15,648. https://www.gsa.gov/travel/plan-book/per-diem-rates/per-diem-rates-lookup/?action=perdiems_report&state=NV&fiscal_year=2020&zip=&city=.

and effectively. Unfortunately, ICC is being forced to hold an appeals hearing despite its own internal review showing that ICC's process worked and was not subject to any failures or breakdowns in procedure.

We strongly oppose the appeal to rescind the results of the OGVC and dispute the suggestion that the eligibility of online voters should be restricted beyond existing ICC policy. Building officials play an extremely important role in ensuring our buildings are safe, and NASEO strongly supports their engagement and function. However, they are not the only stakeholders with an interest in the role that buildings play in communities and states. Buildings are an important part of the energy-using infrastructure and energy costs are a significant and permanent cost for building owners, renters, and the public. Further, ensuring building resilience, including energy-related systems and designs which impact energy requirements, can save lives and vast sums of taxpayer resources required to support restoration and rebuilding. Therefore, specialized knowledge that State Energy Officials and other stakeholders bring to the table is essential. Eliminating the expertise of stakeholders will result in fewer states adopting the I-codes as published by ICC, as questions are raised about the nature of the process the appellants envision. Such a path would result in a fractured building code system or an alternative system, both of which would have a negative impact on home buyers, building owners, builders, and the public.

We strongly encourage the ICC Appeals Board to reject the appeals outright.

Respectfully submitted,



David Terry, Executive Director,
National Association of State Energy Officials

CC:

Greg Wheeler, International Code Council

Dominic Sims, International Code Council

Andrew McAllister, Commissioner, California Energy Commission; Chair, NASEO
Board of Directors

State and Territory Energy Office Directors