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Andrew Bick
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Executive Officer
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Delivered via Email to Michael.hyde@dopl.idaho.gov

RE: August 16, 2022 Idaho Building Code Board Meeting

Mr. Hyde please provide this document as my testimony to the Idaho Building Code Board.

Potential Board Action Regarding: Idaho Building Code Board, Zero-Base Regulation, Executive Order # 2020-1, Rulemaking IDAPA 24.39.30 Building Code Rules for Idaho Energy Conservation Code

What is the Purpose of the August 16, 2022, Idaho Building Board Meeting? A Rulemaking response to Executive Order # 2020-01.

- **The Idaho Building Code Board (IBCB)** has been asked by the staff of the Idaho Division of Occupational & Professional Licensing (IDOPL) to consider and **vote acceptance** of IDOPL staff's prepared proposal to **repeal & replace current administrative rules of ADAPA 24.39.30 – 004 – 04 with a new rewrite of the IDAPA rules** in response to **Executive Order # 2020-01**.
- The Idaho Energy Conservation Code is adopted & amended under authority delegated by statute to the Idaho Building Code Board per Title 39 Chapter 97 and Title 39 Chapter 4109(1)(c) Idaho Code.
 - This allocation of authority to the Idaho Building Code Board to direct and decide how to adopt codes and craft IDAPA rules is fitting with Idaho Constitution Article IV Section 20, which states: *"All...agencies, and instrumentalities of the executive department of the state and their respective functions, powers and duties...shall be allocated by law..."*
- A national model code known as the 2018 International Energy Conservation Code is named in statute and forms the basis for the Idaho Energy Conservation Code's regulations.
- The IBCB must take actions consistent with their allocated authorities and responsibilities in keeping with statute and Executive Order # 2020-1.



What is the concern with this possible action?

- The Idaho Building Code Board needs to set the metrics for review and analysis of the current ADAPA rules, so the goals & intent of the Executive Order are met and the legislative intent of the statutes 39-41 and 39-97 are preserved.
- The IDAPA proposal was prepared by IDOPL staff without specific direction or guidance from the Idaho Building Code Board on what metrics of analysis and process of review is to be used to identify possible code content for potential rewrite or possible deletion to create new IDAPA rules.
 - IDOPL staff conducted informal meetings around Idaho to reveal the proposed rules and identified specific code sections in the energy conservation code that, *do not seem to relate to "life-safety"*, and should therefore be considered as not justified, should be removed, and the proposed IDAPA rules shows them to be removed.
- The IDOPL IDAPA proposal proposes excessive deletions of energy code sections from the base national model code not in alignment with the prescribed analysis as identified in Executive Order 2020-1 item #4(a).
 - The EO 2020-1 #4(a) states: *"The analysis should be guided by the legislative intent articulated in the statute...giving the agency the authority to promulgate the rule."*
 - **The legislative intent of 39-97 and the energy code is conjoined with and articulated through 39-4101.**
 - The legislative intent of adopting an energy code is not solely for the purpose of "life-safety."
 - 39-4101(2)(a) "Promote the health, safety and welfare of occupants or users of buildings..."
 - 39-4101(2)(c) "Establish, for jurisdictions enforcing building codes...minimum standards and requirements in terms of performance, energy efficiency, effect upon construction costs and consistent with nationally accepted standards..."

The bottom line is:

- The currently proposed rules do not meet the criteria set in Executive Order # 2020-1 and should not be adopted by the Idaho Building Code Board (IBCB).
- The IBCB should specify the metrics and process for review and analysis in-keeping with the statutory legislative intent and Executive Order # 2020-1 for the re-crafting of IDAPA rules.
- The Executive Order # 2020-1 requires compliance of IDAPA rules by sine die 2026 so there is plenty of time for the IBCB to specify a compliant process of analysis to craft and complete the new rules for IDAPA 24.39.30 – 004 -04 (*"Idaho Energy Conservation Code."*)

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