

Burgos, Alexander N

Subject: FW: [External] Procedural Objections and Challenge of Fiscal Analysis: NC Building Code Council Spray Foam Insulation Proposal Suite

From: Ben Edwards <ben@mathisconsulting.com>

Sent: Tuesday, July 6, 2021 9:45 AM

To: rrc.comments <rrc.comments@oah.nc.gov>; Martin, Carl <Carl.Martin@ncdoi.gov>

Subject: [External] Procedural Objections and Challenge of Fiscal Analysis: NC Building Code Council Spray Foam Insulation Proposal Suite

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Ms. Reeder,

Unfortunately, I again must appeal to Rules Review [RRC] regarding actions taken at the Building Code Council [BCC]. In appreciation of your always generous response to the public's concerns, I'll attempt (and likely fail) to be brief – though exhaustive detail and documentation can be provided, as well as recordings, if needed. The items in question concern a suite of minimum efficiency reductions for spray foam insulation products (items 4, 5, 13, 14, 15 @ <https://www.ncosfm.gov/media/2027/open>; or pgs. 2-5, 22-24, 25-28 @ <https://files.nc.gov/ncosfm/documents/Rules/RRC/07152021-Building-Code-Council.pdf>). Unfortunately, the BCC/public had been told at the March meeting that other associated items would be held to be submitted with these. That did not happen, allowing improper changes to be allowed through uncontested.

1. While tabling already-noticed items has no clear procedure when the BCC intends to modify, after items affecting parts of the coordinated suite (above), including NCECC/NCIRC Ch44 (reference standards) and R202 (definitions), had been approved for rulemaking, the remainder of the items met considerable confusion and resistance.

2018 NC Residential Code/Referenced Standards

Chapter 44

2018 NC Residential Code/Compliance

N1101.13

2018 NC Residential Code/Definitions

R202

Among the many concerns presented by the council to the proponents during the initial BCC discussion, the lack of clarity of intent and content of the new tables (Table N1106.2.1, N1106.2.2, R406.2.1, and R406.2.2) was called into question. Specifically the BCC (and public) was confused regarding footnotes and U-factor equivalents (not in RRC scope, but a primary reason for tabling). Additionally, there was concern about if/how these footnotes and modifications were included in the fiscal analysis. I confirmed with Mr. Martin that the proponent did not make changes to the D-item(s), which means **the fiscal analysis modeling does not match the requirements in the rule.**

2. The fiscal analysis included none of the proposal's footnotes. It, also, had considerable modeling faults. For example, in the current code baseline model the heating/cooling equipment is outdoors; the proposed model puts equipment in conditioned space. You can imagine how equipment in conditioned space improperly advantages the proposal. Despite multiple objections, the proponent refused to add proposal language to dictate HVAC location to match his model. Likewise, air leakage was improved in the proposed model, even though no requirement was proposed. This is fundamentally biased and incorrect use of modeling. Additionally, "AIR-IMPERMEABLE INSULATION. An insulation having an air permeance equal to or less than 0.02 L/s-m2 at 75 Pa pressure differential tested according to ASTM E2178 or E283 at the thickness applied," references 2 very different ASTM standards (E2178, correct; E283, incorrect). Because of the "or" in the definition, the fiscal analysis needs to demonstrate the implications of the alternate standard for cost. **This is a request for an**

independent review of the analysis by the Office of State Budget and Management to estimate the actual cost of the language change.

3. Violating § 166A-19.24(b)(1) and (9) the public were barred from remote participation during the September and December meetings. Correspondence with the BCC chairman and staff specifically documents the exclusion of public engagement, though some council members used a remote connection. At the March meeting a select group was given less than a week's notice that limited trial participation would be tested, but that the public would be prevented from active participation. Many were compelled to attend the June meeting in person to attempt to document procedure and testimony. Additionally § 166A-19.24(b)(4) is questionable, and (b)(3,5, and 7) were not met. While *all* actions taken by the BCC during these meetings could be open to challenge, **I request that the outstanding rule-making items indicated above be denied by RRC.**

Again, I regret that I must burden RRC and OSBM, but the ongoing refusal of the BCC to follow the most basic public process cannot be left unchallenged.

-Ben Edwards

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