

Building Code Council-Staff Opinion

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: Building Code Council

RULE CITATION: All rules

RECOMMENDED ACTION:

Note staff's comment

X Object, based on:

Lack of statutory authority

Unclear or ambiguous

Unnecessary

X Failure to comply with the APA

Extend the period of review

COMMENT:

When the Council published these Rules in the NC Register, Volume 29, Issue 4, (excerpts from the Register are attached), the agency stated that the amendments and adoptions would not become effective until January 1, 2016. The agency is now proposing to have the rule changes become effective April 1, 2015. This means the rule changes will become effective eight months earlier than published.

Staff believes that this change to the effective date made to the rules following publication create a substantial change pursuant to G.S. 150B-21.2(g).

G.S. 150B-21.2(g) states, in relevant part:

(g) Adoption. - An agency shall not adopt a rule that differs substantially from the text of a proposed rule published in the North Carolina Register unless the agency publishes the text of the proposed different rule in the North Carolina Register and accepts comments on the proposed different rule for the time set in subsection (f) of this section.

An adopted rule differs substantially from a proposed rule if it does one or more of the following:

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Commission Counsel
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- (1) Affects the interests of persons who, based on the proposed text of the rule published in the North Carolina Register, could not reasonably have determined that the rule would affect their interests.
- (2) Addresses a subject matter or an issue that is not addressed in the proposed text of the rule.
- (3) Produces an effect that could not reasonably have been expected based on the proposed text of the rule.

Staff believes that by changing the effective date to make these changes eight months earlier than noticed, it appears the rule change will:

- 1) Affect the interests of persons who could not have determined they would be affected by the rule change, as any individual who planned to construct a dock before January 1, 2016 would not believe he or she would be affected by the rule changes when they were noticed.
- 2) Produce an effect that could not be reasonably expected, based upon the proposed text, as an individual would not expect to be affected until January 1, 2016.

Staff recommends objecting to the rules based upon failure to comply with the APA, finding that setting an effective date eight months earlier than published creates a substantial change as set forth in G.S. 150B-21.2(g).

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NOTICE OF RULE MAKING PROCEEDINGS AND PUBLIC HEARING

NORTH CAROLINA BUILDING CODE COUNCIL

Notice of Rule-making Proceedings is hereby given by NC Building Code Council in accordance with G.S. 150B-21.5(d).

Citation to Existing Rule Affected by this Rule-Making: North Carolina Administrative, Building, Electrical, Energy Conservation, Existing Building, Fire, Plumbing, and Residential Codes.

Authority for Rule-making: G.S. 143-136; 143-138.

Reason for Proposed Action: To incorporate changes in the NC State Building Codes as a result of rulemaking petitions filed with the NC Building Code Council and to incorporate changes proposed by the Council.

Public Hearing: Tuesday, September 9, 2014, 9:00AM, NCSU McKimmon Center, 1101 Gorman Street, Raleigh, NC 27606. Comments on both the proposed rule and any fiscal impact will be accepted.

Comment Procedures: Written comments may be sent to Barry Gupton, Secretary, NC Building Code Council, NC Department of Insurance, 322 Chapanoke Road, Suite 200, Raleigh, NC 27603. Comments on both the proposed rule and any fiscal impact will be accepted. Comment period expires on October 14, 2014.

Statement of Subject Matter:

11. Request by Steve Knight, PE, BCC Structural Committee Chair, to amend the 2012 NC Residential Code, Sections AM 106 and AM 111 as follows:

Section AM106: Delete partial reprint of Table R502.3.1(2) without substitution.

Section AM111: In Figure AM111 delete partial reprint of Table R502.5(1) without substitution.

Motion/Second/Approved – The request was granted. The proposed effective date of this rule is January 1, 2016.

Reason Given – This proposal is to eliminate inconsistencies with the revised Southern Pine design values.

Fiscal Statement – This rule is anticipated to provide equivalent compliance with no net decrease/increase in cost. This rule is not expected to either have a substantial economic impact or increase local and state funds. A fiscal note has not been prepared.

12. Request by Steve Knight, PE, BCC Structural Committee Chair, to amend the 2012 NC Residential Code, Appendix N, Tables N-1 and N-2 as follows:

Appendix N: Delete Tables N-1 and N-2 and substitute tables at the following link:

[http://www.ncdoi.com/OSFM/Engineering_and_Codes/Documents/BCC_Minutes/2014%2006%2014~June%2010,%202014%20\(Items%20B-11%20through%20B-21,%20for%20public%20comment\).pdf](http://www.ncdoi.com/OSFM/Engineering_and_Codes/Documents/BCC_Minutes/2014%2006%2014~June%2010,%202014%20(Items%20B-11%20through%20B-21,%20for%20public%20comment).pdf)

Motion/Second/Approved – The request was granted. The proposed effective date of this rule is January 1, 2016.

Reason Given – This proposal is to eliminate inconsistencies with the revised Southern Pine design values.

Fiscal Statement – This rule is anticipated to provide equivalent compliance with no net decrease/increase in cost. This rule is not expected to either have a substantial economic impact or increase local and state funds. A fiscal note has not been prepared.

13. Request by Steve Knight, PE, BCC Structural Committee Chair, to amend the 2012 NC Residential Code, Appendix N, Examples as follows:

Appendix N Example at the top of Page 918 – Change as follows:

By using Table N-1, the required beam is 4 @ 2x12 ~~SYP~~ ~~or~~ SPF

OR

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By using Table N-2, the required minimum flitch beam is 2 @ 2x8 with ~~1/2"~~ 5/8" x 7" steel plate bolted with 1/2" bolts space at 2' o.c.

Appendix N Example at the bottom of Page 918 – Change as follows:

By using Table N-1, the required beam is ~~3~~ 4 @ 2x12 Southern Pine or 4 @ 2x12 Spruce-pine-fir

OR

By using Table N-2, the required minimum flitch is 2 @ 2x8 with ~~3/8"~~ 1/2" x 7" steel plate bolted with 1/2" bolts spaced at 2' o.c.

Motion/Second/Approved – The request was granted. The proposed effective date of this rule is January 1, 2016.

Reason Given – This proposal is to eliminate inconsistencies with the revised Southern Pine design values.

Fiscal Statement – This rule is anticipated to provide equivalent compliance with no net decrease/increase in cost. This rule is not expected to either have a substantial economic impact or increase local and state funds. A fiscal note has not been prepared.

14. Request by Steve Knight, PE, BCC Structural Committee Chair, to amend the 2012 NC Building and Residential Codes pertaining to Docks, Piers, Bulkheads and Waterway Structures as follows:

The complete amendment text is published at the following link:

[http://www.ncdoi.com/OSFM/Engineering_and_Codes/Documents/BCC_Minutes/2014%2006%2014~June%2010,%202014%20\(Items%20B-11%20through%20B-21,%20for%20public%20comment\).pdf](http://www.ncdoi.com/OSFM/Engineering_and_Codes/Documents/BCC_Minutes/2014%2006%2014~June%2010,%202014%20(Items%20B-11%20through%20B-21,%20for%20public%20comment).pdf)

Motion/Second/Approved – The request was granted. The proposed effective date of this rule is January 1, 2016.

Reason Given – This proposal is revise the code requirements for waterfront structures to reflect current construction practice.

Fiscal Statement – This rule is anticipated to provide equivalent compliance with no net decrease/increase in cost. This rule is not expected to either have a substantial economic impact or increase local and state funds. A fiscal note has not been prepared.

Motion/Second/Approved – The request was granted.

21. Request by Ron Zemke, WindowZ, to amend the 2012 NC Residential Code, Sections R202 DEFINITIONS; R301.2.1 Wind limitations; Table R301.2 (2); R301.2.1.2 Protection of openings; R613.3 Performance; R703.4 Attachments as follows:

The complete amendment text is published at the following link:

[http://www.ncdoi.com/OSFM/Engineering_and_Codes/Documents/BCC_Minutes/2014%2006%2014~June%2010,%202014%20\(Items%20B-11%20through%20B-21,%20for%20public%20comment\).pdf](http://www.ncdoi.com/OSFM/Engineering_and_Codes/Documents/BCC_Minutes/2014%2006%2014~June%2010,%202014%20(Items%20B-11%20through%20B-21,%20for%20public%20comment).pdf)

Motion/Second/Approved – The request was granted. The proposed effective date of this rule is January 1, 2016.

Reason Given – This proposal allows the installation of windbreak panels for screen enclosures which allows for the removal of a section of the screen to accommodate high-wind events.

Fiscal Statement – This rule is anticipated to provide equivalent compliance with no net decrease/increase in cost. This rule is not expected to either have a substantial economic impact or increase local and state funds. A fiscal note has not been prepared.

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