

February 14, 2020

Dominic Sims, CEO
International Code Council
500 New Jersey Avenue, NW
6th Floor
Washington, DC 20001

Dear Mr. Sims:

As discussed during our January 21 meeting in Las Vegas, NAHB has serious concerns related to the ICC 2019 Group B energy results. It appears that a combination of improperly validated voters, proposals not meeting the intent of the International Energy Conservation Code (IECC) and a newly-uncovered flaw in the voting process resulted in voting irregularities and proposals being approved that will greatly reduce the functionality of the 2021 IECC and significantly impact affordability. We are equally concerned about how these flaws might impact the integrity of the ICC code development process and the credibility of the codes, themselves.

NAHB has been supportive of the Online Governmental Consensus Vote (OGCV) since its inception. However, NAHB based this support on the assumption that validated voters would be knowledgeable of the building codes and have a practical understanding on the impact of code proposals on construction practices. Building Code officials are the most reasonable arbiters in developing a building code. For the most part, they do not have a “dog in the fight” and they know what is reasonable and what is enforceable. Once this dynamic changes, the codes become a political tool rather than a credible set of minimum building requirements.

NAHB’s concerns are presented in greater detail below, along with suggested remedies.

Validated Voter Discrepancies

NAHB believes the Group B OGCV had an influx of voters who were incorrectly validated for the 2019 code cycle.

For the past few code development cycles, ICC has maintained a list of the Governmental Member Voting Representatives (GMVRs) that have met the validation deadline and made that list available to ICC members. Historically, this list has appeared to be up-to-date and making the ICC Member Directory available has been viewed as an important step toward improving the transparency of an on-line process that is inherently opaque.

In 2019, only minor updates occurred to the ICC Member Directory after the March 29th Governmental Member application deadline and the GMVR application deadline of September 23rd. At some point between late October and December 19, 2019, however, there was a major update that added roughly 209 newly validated Governmental Members to the roster, totaling about 1,345 new Voting Representatives.

NAHB is concerned about the eligibility of many of the Governmental Members, especially those who were posted after the commencement of the Group B OGCV. We have attached a list (Attachment A) of Governmental Members and/or GMVRs that we believe should be reevaluated because we do not believe they meet the ICC Bylaws' definition.

The ICC Bylaws state, “[A] Governmental Member [Voting Representative] ...shall be an employee or a public official **actively engaged** either full or part time, in the **administration, formulation, implementation or enforcement** of laws, ordinances, rules or regulations relating to the public health, safety and welfare.”

Proposed Remedy: At a minimum, the qualifications of the GMVRs listed on Attachment A who voted in the Group B OGCV need to be reassessed to determine their eligibility. Once that is completed, the OGCV results should be retallied, excluding and the votes of any GMVRs who do not meet the current bylaws. In the future, ICC must implement policies and procedures to ensure GMVRs are more closely vetted during the application process to ensure they meet the proper qualifications, including being directly affiliated with their associated Governmental Member and actively engaged as defined by the bylaws. NAHB urges ICC to revise its bylaws to ensure participation is appropriately limited to those who are directly knowledgeable of the I-Codes. NAHB also requests that ICC maintain an up-to-date list of the Governmental Members and GMVRs on the ICCSAFE.org website.

CP #28 Code Development Flaw

NAHB does not believe that allowing a 2/3 OGCV vote to overturn proposals that were disapproved at the two previous hearing was ever the intent of the ICC process.

Since the inception of the OGCV, beginning with the 2014 Group C code cycle, there had never been a single instance in any code group where the code development committee and the assembly disapproved a code change proposal and that proposal was revived through a 2/3 vote in the OGCV. However, in the 2019 Group B cycle, twenty proposals that were disapproved at both hearings received a 2/3 vote in the OGCV and were ultimately approved. Not coincidentally, recommendations to approve all of these proposals were contained in a voting guide distributed by an energy advocacy coalition. This exploited flaw, if not corrected, will have a significant impact on future code development and the resultant codes. For the 2019 Group B IECC it will significantly impact affordability, as NAHB. NAHB estimates that the cost impact for these 20 proposals can be in excess of \$10,000 per house in some climate zones.

For proposals that are disapproved at the Committee Action Hearing and do not get enough votes to overturn them at the Public Comment Hearing, ICC Council Policy #28-05 – Code Development (CP #28) dictates that the proposal is disapproved, and no further discussion takes place. Further, this policy does not allow proposed modifications to proposals that have been defeated twice to even be discussed because the assumption is that the proposal is no longer viable. However, the current ICC process still allows these proposals to advance to OGCV ballot and be approved with a 2/3 vote.

The Code Change Proposals in Group B that were disapproved at the Committee Action Hearings, disapproved at the Public Comment Hearing, yet received a 2/3 or greater OGCV resulting in an “As Submitted” outcome include: RE21, RE29, RE32, RE33, RE36, RE37, RE126, RE145, RE147, RE151, RE182, RE184, RE192, RE204, RE209, CE12, CE49, CE56, CE217 Part II, and CE262.

When developing cdpACCESS and the OGCV, the ICC Board saw the potential for voting irregularities within the OGCV. They had the foresight to include Section 10.2, which provides the ICC Board the latitude to address these types of problems. It reads,

“10.2 Voting Irregularities: Where voting irregularities or other concerns with the Online Governmental Consensus Voting process, which are material to the outcome or the disposition of a code change proposal(s) are identified by the validation committee, such irregularities or concerns shall be immediately brought to the attention of the ICC Board. The ICC Board shall take whatever action necessary to ensure a fair and impartial Final Action vote on all code change proposals, including but not limited to:

1. Set aside the results of the Online Governmental Consensus Vote and have the vote taken again.
2. Set aside the results of the Online Governmental Consensus Vote and declare the Final Action on all code change proposals to be in accordance with the results of the Public Comment Hearing.
3. Other actions as determined by the ICC Board.”

Proposed Remedy: NAHB recommends that the ICC Board set aside the OGCV results for all 20 proposals that were defeated at both the Committee Action and Public Comment Hearings. ICC is further urged to Revise CP #28 Section 7.6 to clarify that the Public Comment Hearing results are considered the Final Action for proposals that were disapproved at both the Committee Action Hearings and the Public Comment Hearings.

Proposals Inconsistent with Code Intent

Two of the proposals, in addition to being approved by overturning the Public Comment and Committee Action Hearings, were also, in our opinion, clearly outside the intent of the IECC (section R101.3 and C101.3). Proposal RE147 and CE217 Part I and Part II are completely beyond the scope of the IECC. These proposals require the addition of electric vehicle charging outlets and the installation of electric outlets where gas appliances are installed that can be used for future electric appliance replacement. Neither proposal increases energy efficiency.

R101.3 Intent. This code shall regulate the design and construction of buildings for the effective use and conservation of energy over the useful life of each building. This code is intended to provide flexibility to permit the use of innovative approaches and techniques to achieve this objective.

Proposed Remedy: The ICC Board should reject RE147 and CE217 Part I and Part II as not meeting the intent of the IECC and suggest that the proponents resubmit these proposals during the next cycle as part of NFPA 70 or the IgCC.

As a strategic partner and leading participant in crafting the I-Codes, NAHB has a long-term interest in retaining the rigor, credibility and legitimacy of the process followed to create the I-codes, as well as the codes themselves. Unfortunately, the 2019 Group B OGCV has called the integrity of the ICC code

development process into question. If the efforts taken to influence and direct the outcome of the Group B OGCV are left unchecked, the future code development cycles will become a free-for-all. This will undermine the process and ultimately the final product. NAHB urges ICC to promptly resolve the concerns raised in this letter so that the I-Codes can continue to be the preeminent resource they are today.

I and my colleagues stand ready to work with you to remedy this situation.

I look forward to hearing from you soon.

Sincerely,



Gerald M. Howard
Chief Executive Officer
National Association of Home Builders

CC: Greg Wheeler, President ICC
Kris Bridges, ICC Liaison to NAHB