

Act 47 Building Energy Code Study Committee

Meeting #9 Meeting Notes

Department of Public Service, GIGA Conference Room, 112 State Street, Montpelier
and
Virtual via Teams
November 28, 2023
10:00 am – 12:00 pm

1. Welcome and Roll Call – Chair, Senator Chris Bray

a. **Committee Members:**

Chris Bray
Ted Brady
Jim Bradley
Chris Burns
Bob Duncan
Chris Company
Scott Campbell
Michael Desrochers
Timothy Perrin
Kelly Launder
Matt Musgrave
Craig Peltier
Matt Sharpe
Jason Webster
Sandy Vitzthum

Participants:

Collin Frisbie
Liz Bourguet
Ben Civiletti
Richard Faesy
Keith Levenson
Barry Murphy
Walt Adams
Michelle Farnham
Kevin Rushing
Ethan Goodkind
Andrew Brewer

2. Approval of Meetings #8 Minutes

- Jason Webster moved to approve the minutes.
- Voice vote result: Unanimous agreement.

3. Review 11/22/23 draft Report – Chair (90 minutes)

- Chair: Thanks to authors and committee members for your contributions in putting together this report. The report includes accurate representation of dissenting opinions. This will be very helpful in crafting legislative action.
- **Action Item:** Send any final proposed edits to Richard and Liz by COB 11/29.
- Chair: **Is the committee comfortable with the chair representing the Committee as the final editor?** (No objection)
- Richard Faesy (RF): Using the 11/22/23 draft of the report with the comments received to date.
- RF: First, we'll put high level comments on the table, then walk through the report.
- Sandy Vitzthum (SV): Two big picture comments: Report downplays consumer risk. Want to make sure that stays in the body of the report. Need a unified authority over all building construction.
- SV: Also need to be clear that some aspects of compliance are below 50%
- KL: PSD doesn't agree that recommendations under C., D., E. and F. are contingent on having a statewide AHJ.
- KL: Also, don't agree that we should suggest that technical compliance is less than 54%. We don't have data to support that.
- Mike Musgrave (MM): AGCVT can't support report that says compliance is worse than we have data to support. AIA can write its own report if it wants to.
- Jim Bradley (JB): Can't say that empowering the DFS as the AHJ is impossible to do. It would be possible if they had the resources. The recommendation stands on its own. If we want to do it, let's find the resources to do it.
- JB: I do want to raise the alarm in the report that the house is burning down in the sense that there are large numbers of building failures happening in all types of buildings. Can't just sweep that under the rug. Not anecdotal. We need to acknowledge.
- Chair: Legislative process is where these things will be hashed out. We won't solve everything. Progress will be incremental, and progress builds on progress. Legislators understand we can't impose unfunded mandates.
- Jason Webster (JW): Builders and designers are raising concerns that advancing energy code without a building code and administrative structure puts builders at risk by saying you have to do this without the training and knowledge of how to do it right. Need to advance the administrative side before advancing the performance side.
- KL: PSD doesn't agree with that. PSD sent in suggested changes disagreeing with designating the DFS as the AHJ. That needs to be clarified.
- RF: Struck a balance in trying to include recommendations regardless of whether the AHJ is established. Multiple swim lanes as Mike D suggested.
- SV: You can remove AIA from the dissenting column for Recommendation A4. (Acknowledge RBES/CBES legal requirement)
- SV: If you move A6. up under A.1. that would be perfect. OPR does not want to take that on so if that is a responsibility of the AHJ, that makes more sense.
- JW: VBRA still dissents on A6. Suggest you change Responsible entity to "AHJ" for A2 and A3.
- Mike Desrochers (MD): Don't have to have rulemaking authority and AHJ be the same. PSD is doing a great job with the rulemaking part.
- Chris Campany (CC): Understand that the administration's position will differ from others on this committee and that's expected and ok.
- SV: suggest adding bullet that says continue to have the PSD promulgate the energy code.

- MM: MF homes are already subject to building code through DFS. Members are frustrated that they can't get stuff done at DFS so moving the RBES administration over to DFS is not realistic without big expansion of funding and staff.
- RF: All recommendations under A are appropriate to implement immediately (i.e. 2024). For B, there seems to be consensus that there is a need for a database. Nobody has strong objection that these should be modified.
- RF: C, D and E are non-legislative and longer-term recommendations.
- SV: For C4, the words "for weatherizers" got dropped.
- RF: We heard that, but there is a list of other training efforts that include weatherization underway. Training in building science shouldn't be limited to new construction.
- SV: Just want weatherization of existing buildings to be identified as different from building science. Also, we think the AHJ should be a government entity and that non-government entities should not be responsible for the training efforts in C.
- RF: our thinking is that the training that's already happening should continue regardless of whether an AHJ is appointed.
- KL: the Department agrees with that. I would remove the PSD from the dissenting column because that was based on those initiatives being assigned to PSD.
- SV: Currently there's no recourse if a building fails.
- MD: Recent study said we'd need 40 assistant Fire Marshalls to do all the follow-up inspections that should be done. If we are going to verify energy code compliance, that would be a very heavy lift. That's why we rely on 3rd party certifications.
- Chair: why is it that other states are able to enforce codes while Vermont can't?
- MD: Many states have municipal inspectors, planning and zoning boards. Vermont is fortunate to have a statewide entity because contractors / architects are playing from the same set of rules.
- RF: Section D – Increase awareness of building energy codes.
- KL: For D.4., what is the action we are recommending when we say "support efforts to create a radio show..."
- SV: Maybe say "create a radio show." Maybe EVT can underwrite it.
- SV: If you change the responsibility for E and F to AHJ, you can remove AIA's dissent.
- RF: we will make clear in the report that the AHJ will be the responsible party if and when it is ready.
- RF: Moving to the Findings section, we will add discussion of the difference between technical and administrative compliance.
- SV: Suggest adding that 'some aspects of compliance may be lower.'
- RF: We can say compliance with energy code is declining. Too in the weeds to get into details like program vs. non program homes. That should move to the appendix.
- KL: There needs to be more context around mechanical ventilation and compliance with Manual J and those details, so that should be moved to the appendix.
- RF: will clarify the finding about the chain of authority based on Ben Civilletti's comments.
- SV: we suggest using "training" rather than "awareness" throughout.
- MM: We hear all the time about builders that literally don't know about RBES. They don't know to go get the training. So it's both.
- SV: Strongly suggest removing language that qualifies the tally of consumer complaints. (p.15) These complaints are all about Builder competence. These are not reasons to get rid of energy code. We totally support the energy code.
- KL: Don't want the inference is that these issues are due to the energy code.

- SV: text at bottom of p. 16 is inaccurate. Other states have continuing education requirements, but Vermont has none. Hard to get people to come to trainings especially outside of Chittenden county.
 - Chair: effective date of RBES and CBES is 7/1/24, not a “target date”
 - SV: On the conclusion, we want to emphasize that possibility of not meeting GWSA obligations is real.
 - Chair: Don’t want to make broad brush statements. I will review to make language less inflammatory.
4. Stakeholder/Public comments - Chair (15 minutes)
- Walt Adams: Impressed that the report has gotten this far. Concerned that Vermont doesn’t understand how all this is interrelated. Curious to see how the legislature handles this.
 - Guy Payne (GP): When we talk about training, need to know there are guidelines and standards for that curriculum. Need consistency in the training content. Encourage statewide consensus on what builders need with respect to building science and code compliance. Don’t think the agencies listed in the report have the expertise to provide that.
 - Chair: to GP: what kind of requests do you get for training?
 - GP: We have tried to advertise throughout the state with little uptake. No incentive to participate in continuous education. Carrot isn’t working.
 - MM: AGC is the biggest OSHA training center in Vermont. We’ve created a culture that encourages training and education. We can do that with the Energy Codes.
5. Wrap up and next steps - Chair (5 minutes)
- Get edits to RF and Liz Bourget by COB tomorrow (11/29)
 - Scott Campbell: I put together a bill request that includes most of the recommendations in this report. Don’t know how it will proceed but it is in the mix.
 - Chair: Chair of Senate NRE Committee and he is going to put a bill forward as well.
 - KL: Leg. Counsel process for submitting this report has been emailed to EFG. That process is basically emailing the report to Leg. Counsel and PSD will post it on our website.