

Act 47 Building Energy Code Study Committee

Meeting #8 Meeting Notes

Department of Public Service, GIGA Conference Room, 112 State Street, Montpelier
and

Virtual via Teams

November 17, 2023

9:30 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
Stu Slote
Peter Tucker
Robert Sponable

2. Approval of Meetings #7 Minutes

- Matt Musgrave moved to approve the minutes.
- Voice vote result: Unanimous agreement to approve the minutes.

3. Process for reviewing the Report and voting on the recommendations – Chair (10 minutes)

- There's a final meeting on the 28th. We'll have a final draft and all we're looking for is point edits for mistakes or if there's a statement that you feel is really problematic.

- Not everything in here is going to turn into legislative action, but we'll include helpful suggestions for people who are working on this issue.
 - **Richard Faesy (RF)**: Primary goal today is to get through these recommendations and quantify the support, the opposition and then capture the dissenting points.
 - RF: We will have it out the end of the day on Tuesday to everybody to give you enough time to review that before the meeting on the 28th
 - RF: the main change from the 11/9 draft was to add columns for the responsible entity for each recommendation. And the other was to note the funding source for some of these.
 - RF: It may be that we take the results of the votes here and break it out between those recommendations that the legislature can deal with and those that are nice to have or that others can pick up and run with.
 - RF: Do we want to ask that question with each one of these recommendations?
 - **Kelly Launder (KL)**: for funding source, is it just legislatively decided or there might be suggestions like permit fees or whatever as funding source?
 - **Chair**: We have people with experience in that area then let's capture that as we go.
 - RF: There's also an unprecedented level of federal money out there.
 - **Chair**: and it may well be cost effective investment to find people to help bring the money in that will help run the program itself.
 - **Chris Campany (CC)**: That funding question could send us down rabbit holes, so we should just identify the possible options here, but not commit to them
 - **Chair**: Some of the state agencies have been turning away federal funds because they don't have the administrative capacity or the management offices.
 - RF: The DOE grant that we have gives us three years of funding to help us flesh out all those details. We envision offering this committee as an ongoing advisory committee for that effort as well.
 - **KL**: the Department is applying for any and all formula grants that have been announced, but we do not have the resources for any competitive grants.
4. Review and vote on each proposed recommendation in draft report– Chair (95 minutes)
- **Recommendation A1: Designate the DFS as *the statewide authority over all building construction – public, private, commercial, and residential.* (2024)**
 - **Matt Musgrave (MM)**: I'm a no with an asterisk on this. DFS says they can't do this and I'm fearful about setting someone up for failure. Are we taking away responsibility from OPR? I see a major problem with having jurisdiction from both agencies, DFS and OPR. The residential contractor registry was written that you would not be required to register with OPR if you were an electrical licensee or a plumber or you're under the authority of another jurisdiction. Unfair to have two masters.
 - **KL**: The Department is a dissenter. We do not feel that this is the time to increase housing costs. Our preference is to focus on compliance activities versus enforcement.
 - **CC**: I am OK as not being a dissenter as long as what we're saying is designate DFS as a statewide authority over all building construction.
 - **MM**: My suggestion is just to move licensure for builders over to DFS as well.
 - **Matt Sharpe (MS)**: Efficiency Vermont is choosing to abstain from this vote. We don't feel it's our position to comment on matters that are up to the state to decide how to organize themselves.
 - **Mike Desrochers (MD)**: PSD already administers the energy efficiency rules, and I think there's a lot more to it than just taking licensing from a program that's not even established

- and moving it over to Fire Safety. We manage the inspection process, the mentoring process, continuing ed and we approve all the continuing ed classes.
- MD: There's enough national third-party certifications that exist already. You could just piggyback off those national certifications. We have zero bandwidth to take on additional duties including rulemaking and adding more to our licensing operation.
 - Rep. Scott Campbell (SC): Another recommendation that is not in here is a study group to talk about residential building code.
 - Chair: Are people interested in having a recommendation for a study committee on a residential building code.
 - MD: I'm running a housing study in parallel with this energy efficiency study and the recommendation that's going to come out of that is to put together a study group to look at the impact of the IRC on the cost of housing.
 - Chair: **anyone recommend a study group about a residential building code?**
 - MM: as long as it's clear that we're recommending a study group and not recommending someone write a bill that we're going to introduce
 - SV: we would be supportive of a study group. There is a FEMA grant available which allots \$2,000,000 specifically to establish a building code.
 - MD: I'm good with the IRC study, but this doesn't mean that I'm supporting the extension of our authority to single family owner-occupied homes.
 - Jason Webster (JW): I agree that if there's a study group, it needs to be looking at the application of IRC to single family home in a much broader sense. It needs to include structural codes and details beyond just fire safety.
 - Chair: So is it fair to say people are supportive of a study group and we want to acknowledge that it's broader than the IRC question? **No dissent on that.**
- **Recommendation A2: Clarify the chain of authority from the General Assembly, through DFS, to municipalities.**
 - SV: This comes out of concerns raised by the Chittenden County Regional Planning Commission. There's no authority chain between a municipality up to the legislature.
 - KL: The report says this committee recommends increasing the MOU provision in DFS statute (25 VSA 173) to include oversight of municipality administration to owner-occupied single-family homes.
 - MM: if you changed A2 from "through DFS" to "through AHJ," I could support that because if we're recommending A2 and no one voted for A1, we're going to lose A2 at the same time.
 - SV: *As an example*, South Burlington has an MOU with DFS so they can enforce all the *building* codes, but they cannot enforce the building *energy* code because DFS doesn't enforce the building energy code.
 - Chair: any dissent on that proposal?
 - Ben Civiletti (BC): I could take a look at that from a legal perspective if that would be helpful.
- Chair: **Recommendation A3: Amend the energy code update cycle by changing "shall" in the enabling statute to "may."**
 - Chair: any dissent on that recommendation? None heard. That change is going to be part of a bill we are drafting.

- **JW:** If the enabling legislation is changed before the adoption date of the new version of the code, is the AHJ via DFS or DPS and LCAR able to stop the enactment of that next code or is that something that the legislature has to do?
- **Chair:** Statute trumps rule, so the reason that we pushed the effective date off to July 1 of 2024 was so there would be a full legislative session in between to enact legislation. We have an opportunity to address any code change by doing it through statute which will then control over rule. However, we are not at this point considering that that would change our adoption of the existing update.
- **Recommendation A4: Establish an advisory committee to help with future code revisions and examine building failure cases to improve building science and future codes.**
- **KL:** I would propose to strike the language “to help with mutual code revisions” and leave the rest of the language as is and strike PSD as the responsible entity and include EFG given that they have funding in their DOE grant. The PSD does not have the resources to lead these efforts, and it’s already in statute that during code updates, the department must establish an advisory committee as part of code updates.
- **SV:** This suggestion has developed wildly since the November 9th draft. It was suggested originally to be an advisory committee to the new authority over all building construction to help with the transition. The idea was to create an advisory committee to Fire Safety.
- **RF:** I had thought that this committee could transition into the Advisory Committee for the DOE grant.
- **SV:** the builders and the architects want to go in the direction of having one authority over all building construction, which should include energy codes.
- **Chair:** there are **two edits suggested for this one**. One is striking “help with future energy code revisions,” as PSD already has that authority. The other is changing “PSD” to “AHJ” as the responsible entity.
- **KL:** if it's being funded through the EFG DOE grant can we have EFG as the responsible entity?
- **SV:** In general, we are uncomfortable with any non-state entity being at ultimate authority.
- **Recommendation B1: Establish a statewide, central, publicly accessible database for all Vermont buildings that includes energy code data. (Combine with B.4.)**
- **RF:** I think this envisions building on the system that DFS is currently spending \$1,000,000 on their permit system and adding a single-family home component to that.
- **MM:** If for some reason the legislature doesn't agree to A1, what happens to B1 under this recommendation?
- **MD:** These are all predicated on everything going to DFS and if any of these parts do not work out, then where does this leave this whole entire study? I say come up with two three different approaches to gaining better compliance with energy efficiency and not goes back to training, education and awareness.
- **SV:** whoever takes it over, it's going to be a cost.
- **SC:** For B1, instead of “establish,” it would say “expand DFS's current database redesign to include the capability of tracking energy code certificates”
- **MD:** This energy efficiency is not in any way part of the procurement of the DFS system. There’s no module for it, there’s no design parameters or nothing, and we haven't even selected the vendor. We are challenged with the existing cost of this system already.

- JW: I may disagree with B1 now
- SV: When builders start a project, they would enter it as an application, and then you would close it out and it would become part of the database.
- RF: I think there was consensus to have a system that would allow you to determine at the beginning whether your proposed design is going to meet code and you verify it at the end and it gets loaded in a central repository. Takes the burden off of the towns.
- JW: that I agree with. I'd stop using the word "database" and replace it with "tool"
- **Recommendation B2: Establish a certificate application process for both CBES and RBES that is part of the database.**
- SV: the legislature specified what language has to be in those owner-home builder contracts over \$10,000, and they're very specific stipulations. So what this is saying is let's add that stipulation from which OPR creates a template that the builders are welcome to use.
- **Recommendation C1: Coordinate and support energy code trainings**
- SV: This again changed the wording pretty significantly. Our point was to create a state agency to coordinate the details of the trainings. "Name a statewide coordinating entity to oversee and support energy code trainings or certifications." Whoever has authority over all buildings would also be the coordinating authority for the certification. The idea is to have a general certification that would be specific to Vermont.
- MM: I'm going to oppose that. If OPR who hired two expensive attorneys can't do that then we're not going to be able to do that.
- MM: what I thought we tried to accomplish last year with the Builder Registry was raising awareness, not imposing more requirements. That would be licensure. As we've rolled out the RBES over the years, there hasn't been marketing or discussion.
- Chair: every single contractor I've talked to has been unaware of the Builder Registry.
- MM: State agencies don't have the capacity.
- SV: the idea would be to develop a generic voluntary Vermont-specific certification (not national) and it makes sense that that entity is tied in with the building codes.
- **Recommendation D4: Include a contractor commitment check box to comply with RBES/CBES on Contractor Registry and DFS trades registration.**
- SV: Builders are completely against D4. It's a noose around their necks without everything else being in place. It's not required for any other profession.
- JW: likely to be weaponized against the builder, to come after a builder to fix somebody's house that they built eight years ago where they missed a code requirement. They checked the box that said you are responsible for this because you said you knew about this.
- MM: Regardless, the builder is responsible for it. It's the law.
- Chair: The attraction for builders is when you build to code but others don't, that puts you at a competitive disadvantage in the marketplace. The intent was always to make sure that other builders knew that they had that obligation.
- Bob Duncan (BD): The check box says I'm going to comply with the code, but my client doesn't want to do it. What does the builder do in that case?
- Craig Peltier – RE: Charge 3b. incorporating the cost of carbon into cost-effectiveness calculations, I think the last bullet's extremely important that we look at the cost of carbon. I couldn't agree more that the existing housing stock is critical, however, the cost of carbon is

- a real factor and I think we really haven't addressed it if we make all our decisions based on \$3.50 oil.
- Colin Frisbie: I think this discussion has been a wonderful illustration of why we need one entity in charge, because last year, the requirement for R 10 exterior continuous sheathing got moved down to R5 continuous sheathing to address the cost of the upgrade to the RBES. The building science behind R5 continuous exterior insulation is not a good idea.
5. Paying for energy code administration– Richard Faesy (15 minutes) [skipped]
 6. Stakeholder/Public comments - Chair (15 minutes)
 - None received
 7. Need for and agenda for Meeting #9 on Tuesday 11/28, Remote Only Meeting - Chair (5 minutes)
 - Meeting will be virtual only. Not in person.
 - 10 AM to noon Tuesday 11/28