Ohio | Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Joseph Baker, Director

MEMORANDUM

TO: Regina Hanshaw, Ohio Board of Building Standards

FROM: Michael Bender, Business Advocate

DATE: May 17, 2023

RE: **CSI Review – Ohio Building Code Update (OAC 4101:1-1-01, 4101:1-2-01, 4101:1-3-01, 4101:1-4-01, 4101:1-5-01, 4101:1-6-01, 4101:1-7-01, 4101:1-8-01, 4101:1-9-01, 4101:1-10-01, 4101:1-11-01, 4101:1-12-01, 4101:1-13-01, 4101:1-14-01, 4101:1-15-01, 4101:1-16-01, 4101:1-17-01, 4101:1-18-01, 4101:1-19-01, 4101:1-20-01, 4101:1-21-01, 4101:1-22-01, 4101:1-23-01, 4101:1-24-01, 4101:1-25-01, 4101:1-26-01, 4101:1-27-01, 4101:1-28-01, 4101:1-29-01, 4101:1-30-01, 4101:1-31-01, 4101:1-32-01, 4101:1-33-01, 4101:1-34-01, and 4101:1-35-01)**

On behalf of Lt. Governor Jon Husted, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Board as provided for in ORC 107.54.

Analysis

This rule package consists of thirty-five new rules and thirty-five rescinded rules proposed by the Ohio Board of Building Standards (Board) as part of the statutory five-year review process. This rule package was submitted to the CSI Office on April 21, 2023, and the public comment period was held open through May 10, 2023. Unless otherwise noted below, this recommendation reflects the version of the proposed rule filed with the CSI Office on April 21, 2023.

Ohio Administrative Code (OAC) 4101:1-1 to 4101:1-35 contain the rules that comprise the Ohio Building Code (OBC). The OBC sets forth the construction standards for nonresidential buildings in the state of Ohio. The thirty-five existing rules in this package are rescinded and replaced by thirty-five proposed new rules with the same numbers. The new rules incorporate by reference the 2021 edition of the International Building Code (IBC) as promulgated by the International Code Council

(ICC) while explicitly identifying Ohio-specific modifications. Additionally, the new rules incorporate by reference the 2021 editions of both the International Energy Conservation Code (IECC) and the International Existing Building Code (IEBC) with Ohio-specific modifications likewise explicitly identified.

During early stakeholder outreach, the Board received a petition in January 2020 from the Ohio Electric Coalition (OEC) to update the National Electrical Code (NEC) referenced in the OBC from the 2017 edition to the 2020 edition. Adoption of the 2020 edition of the NEC was put on hold as a result of the COVID-19 pandemic. In August 2021, the Board approved the OEC's petition to adopt the 2020 NEC while exempting certain heating, ventilation, and air conditioning equipment from ground fault circuit interrupter requirements. The Board solicited stakeholder comments with respect to this proposal in September 2021 and received a letter of support from the Ohio Manufacturer's Association. Due to the lingering effects of COVID-19, the Board again put adoption of the 2020 NEC on hold. In the meantime, the 2023 edition of the NEC was published, and the Board determined to adopt this version as part of an overall OBC review. This decision was supported by the OEC. The Board also contacted the Ohio society of the American Institute of Architects (AIA Ohio) and Ohio Design Professional & Code Analysts in March 2021 to request input on the expected cost impact of the 2017 ICC A117.1 requirements for new construction compared to the 2009 edition currently referenced. To look into this issue, AIA Ohio organized a task force which concluded that most changes were good clarifications while the cost impacts were marginal and reasonable. In addition, the Board sent an email to stakeholders in December 2021 requesting comments regarding newer editions of the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) 90.1 and IECC energy standards. Support for the adoption of the newer additions was expressed by the Midwest Energy Efficiency Alliance (MEEA), the Responsible Energy Codes Alliance, and two individuals in the engineering field. A third individual in the construction industry expressed concerns about the cost impact of newer standards on metal buildings, which prompted the Board to include language in the rules to provide regulatory relief for buildings used in certain industrial processes. Furthermore, the Board held a stakeholder meeting on March 22, 2023, to hear comments and answer questions on the proposed rules, allowing those who could not attend to submit comments or questions via email. The Board incorporated much of the feedback it received from the meeting into the rules, with many commenters voicing support for the adoption of new requirements for adult changing tables in certain occupancies under certain conditions.

During the CSI public comment period, the Board received thirteen comments from an architect and individuals affiliated with The Preview Group, Inc. (Preview), the Lakewood Division of Housing and Building (LDHB), the City of Columbus, AIA Ohio, the National Elevator Industry, Inc. (NEII), HEAPY, the Summit County Division of Building Standards (SCDBS), the MEEA, the Columbus Department of Public Utilities (DPU), and Simon Construction Services, Inc. (SCS). Preview believed that the additional requirements in the 2021 edition of the IEBC which take effect when the

work area exceeds fifty percent of the existing building/floor area would force an owner to perform previously unplanned work. The Board replied that the purpose of these supplemental requirements, which apply if an owner chooses to comply using the Work Area method, is to improve the safety of the existing building, in addition to addressing structural and accessibility issues. Two commenters from LDHB expressed concern over the proposed removal of nonconformance approval and pointed out an instance where "conditional approval" should have been changed to "phased approval." Conversely, SCDBS and the architect supported the elimination of nonconformance approval. The Board made the text correction but maintained the nonconformance approval deletion, acknowledging that some stakeholders were in favor of the deletion while others were opposed. The commenter from the City of Columbus urged the Board not to delete the controlled receptacle requirement, but the Board replied that this energy code change was being carried over from the current code.

Two commenters from AIA Ohio supported the rules requiring adult changing stations but believed that the 1:40 occupancy ratio of water closets to people used to determine when an adult changing station is required for night clubs, dance halls, taverns, and bars was overly restrictive. In response, the Board increased this occupancy ratio threshold to 1:75 for these establishments. The NEII proposed new language approved for the upcoming 2024 edition of the IBC that would clarify the intended functionality of the elevator emergency communication system, which the Board accepted. HEAPY suggested changes to the ventilation requirements regarding one-hour interior and exterior rooms to address what it saw as challenges with navigating the requirements of the OBC, ASHRAE 170, and National Fire Protection Association 99. However, the Board did not accept these changes, saying the proposal needed more coordination and recommending that HEAPY work with the ICC to propose changes at the national level. The MEEA and Columbus DPU urged the Board to adopt the 2021 IECC without change, citing the benefits of improved building efficiency, access to certain federal funding opportunities, and maximization of savings for residents and businesses. The Board, however, did not eliminate the Ohio-specific modifications to the 2021 IECC. SCS proposed language to allow buildings used for factory or storage uses to be classified as "semi-heated," as permitted by ASHRAE 90.1, so that they would not need to take on additional insulation costs due to new IECC requirements, asserting that these types of buildings would not see the intended energy savings. The Board pointed out that proposed language already addressed this issue in a more limited manner. Lastly, the Board made some technical corrections to the rules.

The business community impacted by the rules includes building owners, design professionals, contractors, and building department personnel. The adverse impacts created by the rules include the various requirements for buildings to be constructed, repaired, erected, or equipped according to certain standards in order to receive approval and the increased cost of construction due to changes that necessitate different construction methods, materials, and products. According to the Board, it is difficult to calculate the actual cost of the impacts due to the variance in allowable building designs.

However, the Board notes that adoption of the IEBC provides more compliance paths, while current Ohio compliance paths are retained, and that incorporating the unchanged model IBC by reference will significantly reduce the verbiage in the OAC and make Ohio-specific modifications more easily identifiable. The Board also points out that many of the proposed changes, particularly the new exceptions, will lead to a cost decrease in construction. The Board states that the adverse impacts to business are justified to fulfill statutory directions and ensure safety, accessibility, and sanitary conditions.

Recommendations

Based on the information above, the CSI Office has no recommendations on this rule package.

Conclusion

The CSI Office concludes that the Board should proceed in filing the proposed rule with the Joint Committee on Agency Rule Review.