

AIA Position on Appeals from the OGCV in the 2019 Code Development Cycle

Impact of online voting (CP28) Cost impact Voting guides

The American Institute of Architects (AIA) is proud of its active engagement with the International Code Council (ICC) during its initial creation and history of code development. AIA's public policies support the development and adoption of codes and standards using the following guidelines.

AIA's public policy on Building Codes and Standards states:

The AIA supports regulation by a single set of comprehensive, coordinated, and contemporary building codes and standards that establish sound threshold values of health, safety, and the protection of the public welfare throughout the United States and abroad. To that end, the AIA espouses the development and adoption of model building codes that:

- *Include participation by architects and the public in a consensus process;*
- *Are the product of informed education and research;*
- *Are without favoritism or bias to any special interest;*
- *Include provision for a prompt appeals procedure for all that might be aggrieved;*
- *Are cost-effective in relation to public benefit; and*
- *Promote building code provisions that set performance rather than prescriptive criteria.*

(emphasis added)

AIA's public policies support the development of codes and standards that improve the building environment using the following guidelines.

AIA's public policy on Energy and Carbon in the Built Environment states:

The AIA advocates for policies, programs, and incentives for energy efficiency and renewable energy for the planning, design, construction, and operations of buildings. These strategies reduce anthropogenic greenhouse gas emissions that cause climate change, lowering risks and costs for our clients and the public. Architects must prioritize energy efficiency and renewable energy to achieve carbon neutral new construction and major renovations by 2030 (2030 Commitment) and a carbon neutral built environment by 2050 (2050 Imperative).

(emphasis added)

LBA and NAHB Appeal Impact of online voting (CP28) Cost impact Voting guides

LBA states in its appeal of April 30, 2020 claims that an unprecedented vote and overturning of votes during the 2019 Cycle were due to manipulation of the rules in CP28:

The OGCV results have a direct correlation to EECC's Voting Guide. Curiously, an unprecedented number of proposals were overturned from disapproval to approval (requiring 2/3rds) during the online vote. An unprecedented phenomenon that only occurred on IECC proposals, and only on those contained in the EECC Voting Guide.

The Online Governmental Consensus Vote has been in use by ICC during two code development cycles; the 2015-2016 and 2018-2019 hearings. The first ICC hearings on code changes were held in 1995 as part of the predecessor code organizations. Hearings have been held during the three-year cycles ever since. Changes in the procedures and methods used to develop codes have been made in ways to enhance the documents development and enhance the ability of a greater number of members to actively participate in the decision making process.

Characterizing the results of the 2019 vote to be unprecedented due to the claimed influence of the EECC voting guides recommendations fails to recognize the evolution of procedures and ignores prior votes that have been perceived as equally unprecedented, but none-the-less valid according to the rules and policies of the Board of Directors of ICC.

Historically, there are many organizations that develop positions on particular code changes. Historically there are many organizations that include in their number qualified and authorized voting representatives of the ICC member jurisdictions. Historically there are organizations that specifically are developed by and for ICC members to build a stronger and more effective voice in the development of codes. EECC is simply one example of such an organization. Claiming that ICC is somehow responsible for what its membership chooses to do relative to joining organizations that support the work they perform and identify with as providing the same services is irrational.

LBA has not shown any valid reason for overturning the decision of the ICC membership on code changes due to any violation of CP#28. The AIA believes that the argument by LBA and NAHB are incorrect and should be rejected, allowing the action by the membership on online voting (CP28) Cost impact Voting guides to remain unchanged.

NAHB

NAHB in its appeal of May 8, 2020 states:

I. The Issues

The issues raised by this appeal are:

- 1) Whether RE147 and CE217 meet the Intent of the International Energy Conservation Code (IECC).*
- 2) Whether RE126 violates the Federal preemption statutes of NAECA.*
- 3) Whether 20 proposals do not meet the spirit and intent of ICC Council Policy #28 (CP#28).*
- 4) Whether ICC fairly, thoroughly and properly vetted Governmental Members or Voting Representatives to ensure compliance with ICC governmental consensus requirements.*

(emphasis added)

3) Spirit and Intent of ICC Council Policy #28 (CP#28)

ICC's Council Policy #28 establishes the policies and protocols ICC follows during the code development process. Prior to the Online Governmental Consensus Vote (OGCV) process, which was added in 2013, there were only two voting steps in the ICC code development process - the committee hearing and the final action hearing. Proposals that were disapproved at the committee hearing would begin with an initial motion supporting the committee action of disapproval at the second hearing. If the vote at the second hearing did not overturn the committee action, no public comments would be heard, and the proposal would be disapproved as a final action.

With the new online process, a proposal that is disapproved at both the committee and second hearing is allowed to move to the online vote. However, the current CP#28 does not allow proposed modifications to proposals that have been defeated twice to be discussed because the assumption is that the proposal is no longer viable. The current ICC process allows these partially vetted proposals to advance to the OGCV ballot and be approved with a 2/3 vote.

CP#28 includes no such assumption. Specifically, CP#28 states:

8.0 Online Governmental Consensus Vote

8.1 Public Comment Hearing Results: *The results from the Individual Consideration Agenda at the Public Comment Hearing (see Sections 7.5.6 and 7.5.9.10) shall be the basis for the Online Governmental Consensus Vote. The ballot shall include the voting options in accordance with the following table:*

Committee Action	Public Comment Hearing result and Voting Majority	Online Governmental Consensus Ballot and Voting Majority	
AS	AS: Simple Majority	AS: Simple Majority	D: Simple Majority
	AMPC: 2/3 Majority	AMPC: 2/3 Majority	D: Simple Majority
	D: Simple Majority	AS: Simple Majority	D: Simple Majority
AM	AS: 2/3 Majority	AS: 2/3 Majority	D: Simple Majority
	AM: Simple Majority	AM: Simple Majority	D: Simple Majority
	AMPC: 2/3 Majority	AMPC: 2/3 Majority	D: Simple Majority
	D: Simple Majority	AM: Simple Majority	D: Simple Majority
D	AS: 2/3 Majority	AS: 2/3 Majority	D: Simple Majority
	AMPC: 2/3 Majority	AMPC: 2/3 Majority	D: Simple Majority
	D: Simple Majority	AS: 2/3 Majority	D: Simple Majority

8.2 Online Governmental Consensus Ballot: *The ballot for each code change proposal considered at the Public Comment Hearing will include:*

1. *The Public Comment Hearing result and vote count.*
2. *The allowable Online Governmental Consensus Vote actions in accordance with Section 8.1.*
3. *Where the Public Comment Hearing result is As Submitted (AS) or Disapproval (D), the original code change proposal will be presented.*
4. *Where the Public Comment Hearing result is As Modified by the committee (AM) or As Modified by one or more Public Comments (AMPC), the original code change and approved modification(s) will be presented.*
5. *The committee action taken at the Committee Action Hearing.*
6. *ICC staff identification of correlation issues.*
7. *For those who voted at the Public Comment Hearing, the ballot will indicate how they voted, unless an electronic vote count is not taken in accordance with Section 7.5.9.10.*
8. *An optional comment box to provide comments.*
9. *Access to the Public Comment Agenda which includes: the original code change, the report of the committee action and the submitted public comments.*
10. *Access to the audio and video of the Committee Action and Public Comment Hearing proceedings.*
11. *Identification of the ballot period for which the online balloting will be open.*

CP#28 specifically states the options in the table in 8.1 are required to be included in the ballot for the Online Governmental Consensus Vote (OGCV). One of two options are allowed when the committee action is for denied and the decision at the public comment hearing is denied; as submitted requires a 2/3rds majority vote and denial requires a simple majority. There is no “assumption” built into the process outlined by CP#28. The actions for OGCV are the same allowed for each and every action allowed for any code change acted upon by the committee

and during the public comment hearing. Why anyone would infer an assumption as to the results is not founded in CP#28.

NFPA further states:

This makes little sense given prior precedent and all parties' (sic) interest in ensuring all viable proposals are fully evaluated. It is apparent that allowing a twice-defeated proposal to move to the OGCV without being fully vetted was a vestige of the earlier process and an oversight when CP#28 was modified to add the OGCV. In the four previous code cycles since the OGCV has been in place, not a single twice-defeated proposal has garnered a 2/3 online vote to pass, so the intent and spirit of CP#28 were never challenged.

Precedent is established by a consistent pattern or action on a repetitive and unchanged process. CP#28 at the agreement by the membership of ICC was revised to CHANGE THE VOTING PROCESS allowing all governmental members an opportunity to actively weigh in on the final decision on all code changes. This revised process has only been used twice, and no unique action at one or the other would qualify as establishing a precedent, nor should any precedent be assumed to be necessary or appropriate in accordance with the ICC CP#28.

The fact that the committee action was for “disapproval” and the voters at the public comment hearing was for “disapproval” is not “defeating” the proposal. In accordance with CP#28 the only vote that can determine that action on any single code change is “defeated” would happen as a result of the OGCV.

NAHB is suggesting that the Code Development committees and the members at the public hearing have not fully vetted the code change proposals. It is our observation that such an accusation is untrue. Every code change is given a thorough and complete hearing during the committee hearing and during the public comment hearing. That information is specifically made available during the public broadcast of those hearings and are specifically required to be available to the ICC accredited voting members during the OGCV process.

Contrary to being an oversight, CP#28's structure creating the OGCV has removed a major failure of the prior process that is corrected by OGCV. That failure being the lack of actual participation at the public hearing for many code changes. As noted in the comments to the appeal on CE217:

For example, CE217-19 received a total of 22 votes at the public comment hearing. A total of 1,191 votes were counted after the OGCV. The breakdown was a final vote of 840 in support and 335 opposed.

CP#28 reflects the ICC membership's desire to be actively involved in the final decisions on code changes. In lieu of 22 votes making the decision, 1,191 individuals indicated their preference. Obviously this is a much more representative number of members that were present at the

public hearing. To have “presumed” that the decision by 22 voting members was final would have been a disservice to the 1,191 membership that did make the final decision.

NAHB continues:

That all changed in the 2019 Group B OGCV, as 20 twice-defeated proposals achieved the 2/3 vote necessary to overturn both the committee and public comment hearing results (RE 21, RE 29, RE 32, RE 33, RE 36, RE 37, RE 126, RE 145, RE 147, RE 151, RE 182, RE 184, RE 192, RE 204, RE 209, CE 12, CE 49, CE 56, CE 217 Part II, and CE 262). Of these 20 proposals, only RE 209 and CE 262 had an opportunity to be fully vetted. The other 18 proposals passed without full consideration given to their need, effectiveness, or potential resolution to known flaws.

None of these code changes had been “twice-defeated!” They were twice given a decision to “disapprove” committee recommended disapprove, the members attending the public comment hearing recommended disapprove. But the final vote per CP#28 can be one of two decisions; disapprove or as submitted. On each of these, by virtue of the OGCV they were approved as submitted.

This oversight was exploited in the 2019 Group B online vote and, if not corrected, will have a significant impact on future code development and the resultant codes.

This appeal does not dispute that the letter of CP#28 was followed in the Group B process, but it is clear that the spirit and intent of the process was exploited leading to the voting irregularities occurred.

While NAHB may feel this way, they do not contend that CP#28 was not properly followed. NAHB representatives were directly involved at every stage of the process involving the code changes they claim are creating future problems. An NAHB representative sat on the validation committee that examined the various aspects of the code development process and was one of the members of the committee that unanimously voted to confirm the results. To diverge from those guidelines and limitations **WILL** have a significant impact on future code development!

NAHB has not shown any valid reason for overturning the decision of the ICC membership on code changes due to any violation of CP#28. The AIA believes that the argument by NAHB are incorrect and should be rejected, allowing the action by the membership on online voting (CP28) Cost Impact Voting guides to remain unchanged.

Presented for your consideration.



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Representing the American Institute of Architects