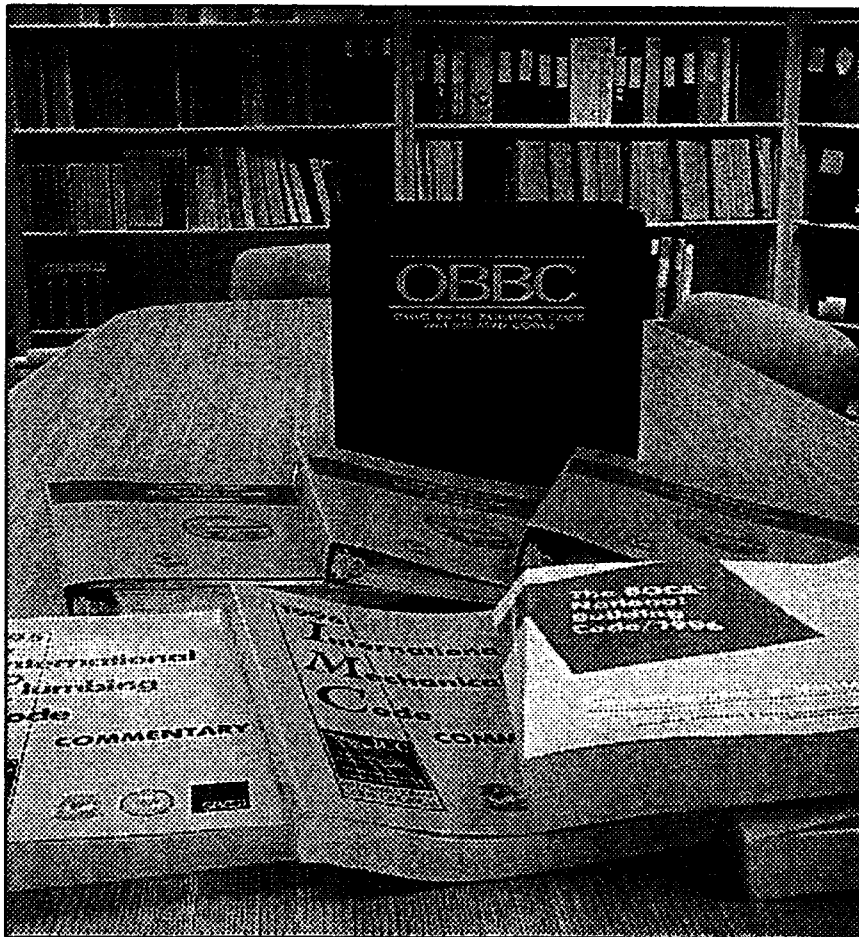




Ohio Board of Building Standards

Public Involvement in Our Rule-Making Process



I. The Ohio Board of Building Standards' Mission

The Board of Building Standards is responsible for promulgating the Ohio Basic Building Code (which includes the structural, mechanical, electrical, fire protection, and plumbing requirements for building construction), the Ohio Boiler & Unfired Pressure Vessel Rules, the Ohio Pressure Piping Systems Rules, and the Ohio Elevator Code. The Board also certifies municipal, county, and township building departments and their personnel to enforce the state building code and oversees their operations.

Section 3781.11 of the Revised Code requires the Board's rules to meet the following considerations:

- (1) To provide uniform minimum standards and requirements for the erection, construction, repair, alteration, and maintenance of buildings, including construction of industrialized units. Such standards shall relate to the conservation of energy, and the safety and sanitation of buildings for their intended use and occupancy.
- (2) To formulate such standards and requirements, so far as is practicable, in terms of performance objectives, so as to make adequate performance for the use intended the test of acceptability.
- (3) To permit to the fullest extent feasible, the use of materials and technical methods, devices, and improvements, including the use of industrialized units, which tend to reduce the cost of construction and erection without affecting minimum requirements for the health, safety, and security of the occupants or users of buildings or industrialized units and without preferential treatment of types or classes of materials or products or methods of construction.
- (4) To encourage, so far as may be practicable, the standardization of construction practices, methods, equipment, material and techniques, including methods employed to produce industrialized units.
- (5) To supersede and govern any standard or rule of the division of industrial compliance in the department of commerce, /division of the fire marshal, the department of health, and of counties and townships, in all cases where such standards or rules are in conflict with the rules of the board, except that rules adopted by the fire marshal pursuant to Chapter 3743. of the Revised Code prevail in the event of a conflict.

II. The Board of Building Standards' Vision

The Board of Building Standards' vision is to be a national leader in promoting a safer built environment for Ohio's citizens through knowledge, training, service, and technology.

III. How the Board is organized to accomplish its regulatory mission:

R.C. Section 3781.07 provides that the Board of Building Standards shall have ten members that are appointed by the Governor and confirmed by the Senate for four-year terms. The members are selected for their technical expertise and consist of the following: an attorney at law, two registered architects, two

professional engineers (one mechanical and one structural engineer), one a general contractor, one representing the industrialized unit industry, one a member of the fire service, one a construction materials expert, and one a public member with fifteen years experience in the construction industry. This Board is responsible for making all policy decisions involving the adoption of the Board's rules. The Board elects a chairman and a vice-chairman who serve two-year terms. R.C. Section 3781.09 provides that the votes of a majority of the members of the Board are required for the adoption of any rule, amendment, or annulment. The Board must also follow the requirements of Chapter 119. in the adoption of rules.

The Board has three committees: the Codes Committee, the Personnel Committee, and the Education Committee. The Codes Committee reviews all work done by the technical staff and makes all decisions relating to final wording of proposed rules. The Codes Committee normally meets three or four times a year to review petitions and to analyze and discuss draft rules prepared by the technical staff. The Personnel Committee meets prior to each board meeting to review applications from local governments for certification of their building department to enforce the state building code and also to review applications for personnel who work for these local departments. The Personnel Committee reviews all rules establishing the standards for certification of building departments and personnel. The Education Committee also meets prior to each board meeting to consider applications for approval of continuing education courses for building department personnel. The Education Committee also reviews all proposed rules relating to continuing education requirements before these rules are presented to the full Board. The three committees make recommendations to the full Board which must authorize the filing of rules with the appropriate state agencies by a majority vote (six of the ten members).

There is also an Electrical Safety Inspector Advisory Committee created by R.C. Section 3783.08. This committee has five members: two electrical inspectors from local governments, one state electrical inspector, an electrical contractor, and an electrical engineer. Two of the committee's duties relate to the rule-making process. First, the committee reviews the National Electrical Code, which the Board adopts, to see that it is compatible with the Board's other rules. Secondly, it reviews all rules related to the certification of electrical safety inspectors. This committee is another way in which the Board receives input by the effected industry, electrical contractors, and from the inspectors who enforce the National Electrical Code.

The Board's technical staff consists of an attorney, two architects, a professional fire protection/mechanical engineer, a fire specialist who also is a building department investigator, and an expert in building codes and industrialized units. These staff members review the national model code the Board decided to adopt every three years to determine whether there are conflicts between the Ohio Revised Code and the model code provisions. Staff resolves these conflicts in favor of the Ohio Revised Code and then presents the proposed changes to the Codes Committee for its determination that the proposed textual changes resolve the conflict with the statutory law. Technical staff also works with individuals who wish to petition for code changes to draft rules that will meet the requirements of the Legislative Service Commission and the statutory intent of the General Assembly. All petitions are reviewed by the Codes Committee which makes a recommendation to the full Board. If the Board rejects the petition, the petitioner is notified that he has a right to request an open hearing before the full Board to anyone to testify on the merits of the petition.

The Board is statutorily required to adopt the Ohio Building Code pursuant to R.C. section 3781.10 (A); to certify county, township, and municipal corporation building departments by R.C. section 3781.10 (E); to adopt the Ohio Boiler & Unfired Pressure Vessel rules by R.C. Section 4101.02 (A); to adopt the Ohio Pressure Piping Systems rules by R.C. Section 4101.44 (A); and to promulgate the Ohio Elevator Code by R.C. Section 4105.011.

IV. Prerule-making Notice and Comment

The Board of Building Standards learned many years ago that input during the initial stages of the rule-making process from outside sources may prevent the development of subsequent legal, technical, or political problems for the Board. The Board has actively sought the input of organizations that will be impacted by its rules. The Board has representatives who attend the monthly meeting of the Ohio Building Officials Association and maintains lines of communication with the seven regional building official associations in Ohio as to proposed rule changes being considered by the Board. Since the building officials who belong to these organizations are one of the major clientele groups which the Board impacts (because they are ultimately responsible for the enforcement of the state building code), the Board considers their input to be vital in the development of the code.

The Board also maintains contact with many of the contractor organizations that are impacted by the Board's rules such as: Associated General Contractors, National Electrical Contractors Association, National Mechanical Contractors Association, Plumbing, Heating, Cooling Contractors, Cleveland Plumbing Industry, and the Ohio Home Builders. The Board also seeks input from the American Institute of Architects, the Ohio Society of Professional Engineers, and the Society of Fire Protection Engineers. The Board also consults with associations representing industrialized unit manufacturers such as: Midwest Industrialized Unit Manufacturers Association and Mid-Atlantic Building Systems Council.

The Board has also utilized Ad Hoc Advisory Committees to get input from interest groups that are being impacted by rule changes made by the Board. These committees have always had a membership that was a fair cross section of the interest groups affected by the Board's proposed rules. For example in 1995, the Board created an Ad Hoc Plumbing Advisory Committee to study the model plumbing code and the existing Ohio Plumbing Code. This Committee recommended several hundred changes to the International Plumbing Code to meet unique Ohio conditions. This committee had numerous meetings and did a comparative analysis of three codes before suggesting changes to the one finally adopted. Approximately fourteen organizations were represented on this committee.

The Board has found that involving individuals and organizations that will be impacted by the rules it adopts has the following advantages:

- (1) It saves the Board resources and avoids difficulties by identifying problems that might later require drastic revisions to the proposed rules or make the Board regret having proposed a particular rule.
- (2) Public input at this stage gives the Board the necessary flexibility to determine if it needs more information, input, or other material to develop proposed rules.

- (3) Seeking public input early facilitates and encourages public participation before there is a commitment to particular language for a proposed rule.

V. Petitions for Changes to the Rules

Section 3781.12 of the Revised Code requires the Board to consider petitions submitted by the public to adopt, amend, or annul rules or to permit the use of any particular fixture, device, material, system, method of manufacturer, product of a manufacturing process, or method or manner of construction or installation which complies with the performance standards of the code. R.C. Section 3781.12 requires the Board to evaluate the proposed change and to hold a hearing on any petition. After this initial hearing, if the Board concludes the rule should be adopted, it must follow the R.C. Section 119.03 requirements for rule making by filing the rule with the appropriate agencies and holding a public hearing. To implement the petitioning process, the Board has adopted several administrative rules that specify the form and minimum information a petition must contain. (See AC rules 4101:2-1-41 through 4101:2-1-43.)

VI. The Rule-making Process

(1.) Rule Preparation

After the Board of Building Standards adopts a motion scheduling a proposed rule for public hearing at a stated conference meeting, the rule is put in final form for filing, and the Board's staff prepares a public hearing draft which includes all rules that will be heard at the public hearing. This public hearing draft is mailed to all certified building departments who are enforcing the state building code, to all persons on the Board's general subscription list, and to the clerks of the eighty-eight county commissioners as required by R.C. Section 3781.101. These mailings are done at least two weeks prior to the planned date for filing with the R.C. Section 119.03 agencies. The Board publishes a legal notice listing all of the proposed rules with a brief synopsis of each proposed rule change in the Akron Beacon Journal, Cincinnati Enquirer, Cleveland Plain Dealer, Columbus Dispatch, and Toledo Blade. These notices are run one time at least thirty-one days prior to the date of the scheduled public hearing.

Copies of the hearing draft and notice are made available to any person who requests a copy.

(2.) Rule Filing

Two copies of each rule proposed by the Board are filed with the Legislative Service Commission, the Secretary of State, and the Joint Committee on Agency Rule Review (JCARR) at least thirty-one days prior to the scheduled date of the public hearing. The Board is also required to file all proposed rules with the Department of Aging so they can review the rules to see if there will be any impact on senior citizens, and with the Small Business Office in the Department of Development for review to see if there will be any impact on small business, small organizations, or an individual of a small business or small organization. With each rule the Board is also required to file a "Rule Summary and Fiscal Analysis" information relating to economy impact of compliance.

3. Public Hearing

The hearing must be scheduled between day thirty-one and forty after the initial filing.

On the date of the public hearing, which is usually held on a Friday and begins at 10:00 A.M., the Board takes testimony on proposed rules. The hearing agenda is organized into parts which reflect the different codes (building, boiler, pressure piping systems, and elevator) the Board has statutory authority to adopt. The hearing agenda also has separate parts for the authorization of industrialized unit manufacturers and for the certification of local building departments.

A stenographic record is made of the public hearing testimony.

Witness slips are available at the door to the hearing room. Individuals wishing to testify are asked to complete the witness slip and indicate which rule(s) they wish to testify about. Testimony may be either orally or in writing at the discretion of the witness. If the witness wishes to present changes to a proposed rule, these changes should be presented in writing and a sufficient number of copies should be provided for the ten Board members, the court reporter, and a file copy. However, if the witness only has one copy, the Board's staff will see that the proper number of copies are distributed. After witnesses are heard on each part, the chairman always inquires as to whether anyone was not called and they are permitted to testify. The chairman then adjourns the hearing.

During the business meeting following the hearing, any Board member may propose changes to reflect the testimony. If substantive changes are made, the executive secretary refiles the rules with the Legislative Service Commission, the Secretary of State, and Joint Committee on Agency Rule Review. The Board must wait an additional thirty-one days before taking action to adopt the rule. If substantive changes are made as a result of the public hearing that are inconsistent with the synopsis of the proposed rule, the rule must be moved and considered at a new public hearing date scheduled.

VII. JCARR Hearing

The executive secretary and other members of the Board technical staff attend JCARR hearings to respond to any questions raised by the Committee and the public. If JCARR indicates it has concerns with the rule(s), the Board makes a concerted effort to resolve these problems.

VIII. Adoption of Rules

The Board must wait at least until sixty-six days after the initial filing before it adopts an order promulgating the proposed rules. The Board's orders must reflect the statutory authority to adopt such rules. The order lists all rules which are being adopted and sets an effective date which is at least ten days after the date on which the final filing will be made with the agencies specified in R.C. Section 119.04. Normally, the Board establishes an effective date at least four months after its adoption on all regulatory codes so that the rules can be published by West Group,

Anderson, and BOCA and be distributed to their subscribers. Also, the Board wants code users to have enough time to plan for the transition to the new codes before they are enforced by the jurisdictions.

IX. Final Filing of Rules

After the Board adopts its orders, the executive secretary files the adopted rules, assuring that the content of each adopted rule is as originally proposed, with the Legislative Service Commission, the Secretary of State, and the Joint Committee on Agency Rule Review. The rules are filed at least ten days prior to the effective date as designated by the Board.

X. Conclusion

The Board encourages the active participation of all parties impacted by the codes that the Board is required to adopt by statute. The Board actively seeks input during the rule development process by consulting with organizations and individuals. Additionally, the Board encourages participation in its rule-making process by creating special committees composed of interested parties, by making drafts of its rules available to building official organizations and contractor groups, and by welcoming public comments at its public hearings. Ultimately, the Board wants to make certain that its rules are lawful, technically sound, and politically responsible.