

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #2

Do Not Mark In This Box

FILED

2015 MAY -1 P 12:41

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: State Fire Commission TITLE NUMBER: 87

RULE TYPE: Legislative CITE AUTHORITY: 29-3-5b

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 4

TITLE OF RULE BEING AMENDED: State Building Code

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON June 1, 2015 AT 4:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

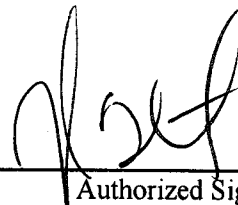
Ken E. Tyree

State Fire Marshal

1207 Quarrier Street, 2nd Floor

Charleston, WV 25301

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.



Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

STATEMENT OF FACTS AND CIRCUMSTANCES FOR PROMULGATION OF 87-4 STATE BUILDING CODE

This rule amends the existing rule with few substantive changes. The Commission is updating this rule to include the various recent changes to standards and codes included in the State Building Code. The rule also requires local governments to file an annual report to the Commission to ensure jurisdictions are utilizing certified employees and implementing up-to-date building codes. This requirement allows the Commission to regulate the area of safe building practices more efficiently throughout the State. The rule also has minor technical clean-up language.

The substantive changes for this Rule include:

1. Updating to the 2015 edition of the IBC and omitting references to the IFC. (See §87-4-4.1.a.);
2. Updating to the 2015 editions of the IMC, IFGC, IPMC, IRC and IEBC. (See §87-4-4 *et seq.*);
3. Requiring judicial approval of demolitions occurring under the IPMC to avoid unilateral taking of property without oversight (See §87-4-4.1.e.1);
4. Including the 2015 edition of the ISPSC (See §87-4-1.n.);
5. Codifies requirements of State licensed Architects or Professional Engineers to review design documents for certificates of occupancy (See §87-7-3.3.);
6. Requires local governments to file an annual report with the State Fire Commission documenting their current building code and enforcement officials (See §87-4-7.a-b.);
7. Expressly delegates interpretation and enforcement decision- making to the local jurisdictions (See §87-4-7.3.a.);
8. Clarifies for the purpose of local governments adopting multiple codes and standards, that a single appeals board shall consist of five (5) members and defines the qualifications for its members. (See §87-4-7.5.a.);

FISCAL NOTE FOR PROPOSED RULES

State Building Code 87CSR4

Rule Title: _____

Type of Rule: Legislative Interpretive Procedural

Agency: State Fire Commission

Address: 1207 Quarrier Street, 2nd Floor
Charleston, WV 25301

Phone Number: 304-558-2191 Email: Kenneth.E.Tyree@wv.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

Proposed rule should not have a fiscal impact on state government.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

State Building Code 87CSR4

Rule Title: _____

Rule Title: _____

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

No increase or decrease anticipated in agency revenues.

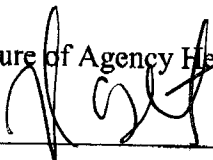
MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

Proposed rule would not have a fiscal impact due to the fact that the rule establishes and updates the current state building code. There are no fees associated with this rule in particular.

Date: May 1, 2015

Signature of Agency Head or Authorized Representative



**TITLE 87
LEGISLATIVE RULE
STATE FIRE COMMISSION**

**SERIES 4
STATE BUILDING CODE**

FILED

2015 MAY -1 P 12:42

OFFICE WEST VIRGINIA
SECRETARY OF STATE**§87-4-1. General.**

1.1. Scope. -- This rule establishes the standards considered necessary by the State Fire Commission for the safeguarding of life and property and to ensure compliance with the minimum standards of safe construction of all structures erected or renovated throughout this state.

1.2. Authority. -- W. Va. Code §29-3-5b.

1.3. Filing Date. -- ~~June 3, 2013.~~

1.4. Effective Date. -- ~~September 1, 2013.~~

1.5. Incorporation of Other Documents. -- This rule does not include a reprinting of all the requirements imposed by statute or by the incorporation of various nationally recognized standards and codes cited in Subsection 4.1 of this rule. For ascertaining these additional standards and requirements, it is necessary to make reference to the other documents.

§87-4-2. Definitions.

2.1. "ANSI" means American National Standards Institute, 25 West 43rd St., Fourth Floor, New York, NY 10036.

2.2. "ASTM" means American Society of Testing and Materials.

2.3. "Fire Commission" means the thirteen (13) appointed members of the West Virginia State Fire Commission.

2.4. "Fire Marshal" means the West Virginia State Fire Marshal and/or his or her designated representatives.

2.5. "ICC" or "International" means International Code Council, 500 New Jersey Avenue, NW, 6th Floor, Washington, DC 20001.

2.6. "Local jurisdiction" means municipal, ~~or county,~~ level or other local government.

2.7. "NFPA" means National Fire Protection Association, ~~1 Batterymarch Park, P. O. Box 9101, Quincy, MA 02269-9101.~~

2.8. "State Building Code" means the entire contents of this rule and the referenced national standards and codes.

2.9. "State Fire Code" means the entire contents of ~~State Fire Commission~~, the State Fire Code, W.Va. Code R. § 87-1-1 et seq. (87CSR1), and the referenced standards and codes.

§87-4-3. Conflicts.

3.1. Whenever there is a conflict between the State Fire Code and the State Building Code, the State Fire Code takes precedence.

3.2. Whenever there is a conflict between the International Plumbing Code requirements of the State Building Code and the rules of the West Virginia State Department of Health and Human Resources, the rules of the Department of Health and Human Resources take precedence.

3.3. Whenever there is a conflict between the State Building Code and statutory laws of the State of West Virginia, the laws of the State of West Virginia take precedence.

§87-4-4. National Standards and Codes.

4.1. The standards and requirements as set out and as published by the International Code Council, and American National Standards Institute, and the National Fire Protection Association as listed in this subsection, have the same force and effect as if set out verbatim in this rule.

4.1.a. The ~~2012~~ 2015 edition, International Building Code, with the following exceptions:

4.1.a.1. Provided; that the section entitled "Fire Prevention" and identified as Section 101.4.5 is deleted and not considered to be a part of this rule and omit all references to the International Fire Code and substitute NFPA Life Safety Code 2015 edition.

4.1.a.2. Further provided that the entire subsection entitled "Qualifications" and identified as Section 113.3 is deleted and replaced with the following:

"Section 113.3. Board of Appeals

113.3 Qualifications. The board of appeals shall consist of five members, with up to three alternates, who are qualified by experience and training to pass on matters pertaining to building construction and are not employees of the jurisdiction. They may include, but are not limited to, a WV Registered Professional Architect or Engineer, or a WV Licensed General Building, Residential, Electrical, Piping, Plumbing, Mechanical or Fire Protection Contractor, with at least 10 years experience, five of which shall be in responsible charge of work."

4.1.b. The ~~2012~~ 2015 edition of the International Plumbing Code.

4.1.c. The ~~2012~~ 2015 edition of the International Mechanical Code.

4.1.d. The ~~2012~~ 2015 edition of the International Fuel Gas Code, with the following exception:

4.1.d.1. Section 404.10 Underground piping systems shall be installed a minimum depth of 12 inches (305 mm) below grade. If the minimum depth cannot be maintained, the piping system shall be installed in conduit or shielded in an approved manner.

4.1.e. The ~~2012~~ 2015 edition of the International Property Maintenance Code. This Code may be rejected at the option of the local jurisdiction.

4.1.e.1. Provided, that Section 110.3 Failure to Comply, shall be modified as follows:

“If the owner of a premises fails to comply with a demolition order within the time prescribed, the legal counsel of the jurisdiction shall institute appropriate action in the Circuit Court of the County in which the property is located against the owner of the premises where the structure is or was located seeking an Order causing the structure to be demolished and removed. Thereafter, the local jurisdiction, through an available public agency or by contract or arrangement with private persons, shall demolish and remove the structure and the costs thereof, as well as all fees and costs incurred in the legal action, shall be a lien upon such real estate.”

4.1.e.2. This code may be adopted by the local jurisdiction without requiring adoption of the other national codes and standards listed in this ~~section~~ rule.

4.1.f. The 2009 edition of the International Energy Conservation Code for residential buildings, ~~Provided that this does not become effective until November 30, 2013.~~

4.1.g. The ANSI/ASHRAE/IESNA Standard 90.1-2007 ~~Edition~~ for commercial buildings.

4.1.h. The ~~2009~~ 2015 edition of the International Residential Code for One and Two Family Dwellings, with the following exceptions:

4.1.h.1. Chapter 11 of the ~~2009~~ 2015 edition of the International Residential Code for One and Two Family Dwellings, Seventh Printing, entitled “Energy Efficiency”, is exempt from this rule.

4.1.h.2. Section ~~G2415.10~~ G2415.12 (404.10) Minimum Burial Depth. Underground piping systems shall be installed a minimum depth of 12 inches (305 mm) below grade. If the minimum depth cannot be maintained, the piping system shall be installed in conduit or shielded in an approved manner.

4.1.h.2. Section ~~R311.7.4~~ R311.7.5 Stair Treads and Risers

4.1.h.2.A. ~~311.7.4.1~~ 311.7.5.1 Riser Heights -- The maximum riser height shall be eight and one-quarter (8 ¼) inches.

4.1.h.2.B. ~~311.7.4.2~~ 311.7.5.2 Tread Depth -- The minimum tread depth shall be nine (9) inches.

4.1.h.3. Section R403.1.7.1: Building Clearances From Ascending Slopes is not applicable to this rule.

4.1.h.4. Section R403.1.7.2: Footings Setbacks From Descending Slope Surfaces is not applicable to this rule.

4.1.j The 2009 ICC/ANSI A117.1 American National Standards for Accessibility & Usable Buildings & Facilities.

4.1.k. The ~~2012~~ 2015 International Existing Building Code, with the following exception:

4.1.k.1. Omit reference to International Fire Code and substitute NFPA Life Safety Code ~~2009~~ 2015 Edition.

4.1.m. The ~~2011~~ 2014 edition of the National Electric Code, NFPA 70.

4.1.n. The 2015 edition of the International Swimming Pool and Spa Code.

4.2. Whenever a certificate of occupancy is required by the State Building Code and/or the incorporated codes and standards herein, the project documents shall be designed by an Architect licensed by the WV Board of Architects or a Professional Engineer licensed by the WV State Board of Registration for Professional Engineers.

§87-4-5 Fire Protection of Floors in Residential Buildings

5.1 New One and Two Family Dwellings over one level in height, New One and Two Family Dwellings containing a basement, and New One and Two Family Dwellings containing a crawl space containing a fuel burning appliance below the first floor, shall provide one of the following methods for fire protection of floors: (1) A 1/2 inch (12.7 mm) gypsum wallboard membrane, 5/8 inch (16 mm) wood structural panel membrane, or equivalent on the underside of the floor framing member; (2) Wood floor assemblies using dimension lumber or structural composite lumber equal or greater than 2 inch by 10 inch (50.8 mm by 254 mm) nominal dimension, or other approved floor assemblies demonstrating equivalent fire performance; or (3) An Automatic Fire Sprinkler System as set forth in section R313.2 of the ~~2009~~ 2015 edition of the International Residential Code for One and Two Family Dwellings: *Provided*, That floor assemblies located directly over a space protected by an automatic sprinkler system as set forth in section R313.2 of the ~~2009~~ 2015 edition of the International Residential Code for One and Two Family Dwellings are exempt from this requirement.

§87-4-6. Exceptions.

6.1. The following structures are not subject to inspection by local jurisdictions:

6.1.a. Group U utility structures and storage sheds comprising an area not more than 200 sq. ft. which have no plumbing or electrical connections and are used only for residential storage purposes. (Examples include sheds that are for the residential storage of lawnmowers, tools, bicycles or furniture.) Not included are those utility structures and storage sheds which have plumbing or electrical connections are a non-residential use or for the storage of explosives or other hazardous or explosive materials.

§87-4-7. Adoption by Local Jurisdiction.

7.1. Each local jurisdiction adopting the State Building Code shall notify the State Fire Commission in writing. The local jurisdiction shall send a copy of the ordinance or order to the State Fire Marshal, West Virginia State Fire Commission, 1207 Quarrier Street, 2nd floor, Charleston, West Virginia 25301, within thirty (30) days of adoption.

7.1.a. Any municipality, county or local governmental entity adopting and enforcing the State Building Code, shall submit an annual report to the State Fire Commission indicating the number of employees in their respective code enforcement department, their job title, whether the employee is or is not certified by the State Fire Commission in their respective discipline, as well as verification that the entity has adopted the current version of the State Building Code. The municipality, county or local governmental entity shall also report what ICC codes are being enforced respectively.

7.1.b. This annual report shall be filed with the State Fire Commission no later than the thirtieth day of June of each year. The report may be completed by the Code Official, Deputy Code Official, or any other agent of the municipality, county or local governmental entity with signature authority.

7.2. Each local jurisdiction which adopts the State Building Code is responsible for the enforcement of the building code as provided in West Virginia Code § 7-1-3n and § 8-12-13.

7.3. Throughout the national codes, adopted in subsection 4.1 of this rule, there are discretionary provisions or amendments which require further action by the adopting local jurisdiction in order to adapt these codes to various local conditions. The appendices are not a part of the code and must also be adopted by the local jurisdiction to be enforceable. It is therefore the intent of this rule to further authorize each local jurisdiction to further complete, by order or ordinance, those respective areas which are indicated to be completed by the adopting "jurisdiction" and any of the appendices the local jurisdiction wishes to adopt.

7.3.a. All questions of interpretation and enforcement of the State Building Code are delegated to the local jurisdiction unless expressly provided by State Code, by this Rule, or by the incorporated codes and standards referenced in this rule.

7.4. Within the penalty sections of each of the national codes, adopted in Section 4.1 of this rule, there is a penalty for imprisonment. The provision of imprisonment for any violation of this rule is optional with each adopting local jurisdiction.

7.5. Each of the national codes adopted in subsection 4.1 of this rule provides for a separate appeals board. However, the intent and requirements for an appeal board may be met with the creation by the local jurisdiction of a single appeals board for the entire "State Building Code."

7.5.a. The board of appeals shall consist of five members, with up to three alternates, who are qualified by experience and training to pass on matters pertaining to building construction and are not employees of the jurisdiction. They may include, but are not limited to, a WV Registered Professional Architect or Engineer, or a WV Licensed General Building, Residential, Electrical, Piping, Plumbing, Mechanical or Fire Protection Contractor, with at least 10 years experience, five of which shall be in responsible charge of work.

§87-4-8. Existing Building Codes.

8.1. All building codes previously adopted by local jurisdictions are null and void.