



STATE OF IDAHO  
OFFICE OF THE ATTORNEY GENERAL  
LAWRENCE G. WASDEN

January 28, 2020

The Honorable Todd M. Lakey  
Idaho State Senator  
Idaho State Legislature  
Via email: [tlakey@senate.idaho.gov](mailto:tlakey@senate.idaho.gov)

Re: International Energy Conservation Code

Dear Senator Lakey:

This letter is in response to your questions regarding the adoption of the International Energy Conservation Code (International ECC). This analysis should not be interpreted as a determination of the legality of any particular legislative action with regard to the International ECC but provides a general overview of this Office's understanding of your questions based on generally applicable law.

- 1. Idaho Code section 39-4109 and IDAPA 07.03.01.004.04 interdependently require compliance with the Idaho Energy Conservation Code.**

First, you ask whether removal of Idaho Code section 39-4109(1)(c), IDAPA 07.03.01.004.04, or both, is needed to eliminate the requirement of compliance with the International ECC. Removal of either Idaho Code section 39-4109 or IDAPA 07.03.01.004.04 would in effect eliminate the requirement of compliance with the *Idaho* Energy Conservation Code (Idaho ECC).

Idaho Code section 39-4109 states:

- (1) The following codes are hereby *adopted* for the state of Idaho division of building safety . . . : (c) The version of the *International* Energy Conservation Code adopted by the Idaho building code board, together with the amendments, deletions or additions adopted by the Idaho building code board through the negotiated rulemaking process provided in this chapter, shall be *in effect*. The *International* Energy Conservation Code, together

with any amendments, revisions or modifications made by the board, shall collectively constitute and be named the *Idaho* energy conservation code. The *Idaho* energy conservation code shall be *in effect* until such time as a subsequent version is adopted by the Idaho building code board, at which time the subsequent versions of the *Idaho* energy conservation code, as adopted and amended by the Idaho building code board through the negotiated rulemaking process provided in this section, shall be *in effect*.

(Emphasis added.) Idaho Code section 39-4109(1)(c) adopts and makes effective<sup>1</sup> the Idaho ECC as defined and defines the Idaho ECC as the version of the International ECC adopted and amended by the Idaho Building Code Board (Board) in rule. In general, Idaho Code section 39-4109(1)(c) requires compliance with the version of the International ECC the Board has adopted and amended in rule. Accordingly, if IDAPA 07.03.01.004.04 (the rule promulgated by the Board that adopts and amends the 2015 version of the International ECC) were removed, there would be nothing with which to comply.<sup>2</sup> Put another way, although Idaho Code section 39-4109(1)(c) would continue to require compliance with the Idaho ECC if IDAPA 07.03.01.004.04 were removed, without IDAPA 07.03.01.004.04 the Idaho ECC would not contain any material with which to comply. Thus, removal of IDAPA 07.03.01.004.04 would in effect eliminate the requirement of compliance with the Idaho ECC as defined by Idaho Code section 39-4109(1)(c). Please keep in mind that the removal of IDAPA 07.03.01.004.04 through legislative rejection of the rule must be accomplished in compliance with the constitutional and statutory provisions quoted in the second section of this letter.

Rules are traditionally afforded the same effect of law as statutes. Huyett v. Idaho State Univ., 140 Idaho 904, 908, 104 P.3d 946, 950 (2004). Further, a code incorporated by reference into an agency's rules has the "same force and effect as a rule." Idaho Code § 67-5229(4). IDAPA 07.03.01.004.04 adopts and incorporates by reference the 2015 edition of the International ECC with the amendments set out in the rule. Thus, IDAPA 07.03.01.004.04 requires compliance with the Idaho ECC as defined by Idaho Code section 39-4109(1)(c).

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<sup>1</sup> Idaho Code section 39-4109(1)(a)(iii) also appears to adopt and make effective the Idaho ECC as part of the International Building Code.

<sup>2</sup> While Idaho Code section 39-4109 adopts the Idaho ECC for the State of Idaho, Idaho Code section 39-4116(2) requires "[l]ocal governments that issue building permits and perform building code enforcement activities" to adopt the Idaho ECC "together with any amendments or revisions set forth in section 39-4109, Idaho Code."

However, an administrative body is limited to the authority granted to it by the Legislature and may not exercise its sub-legislative powers to enlarge the provisions of the legislative act being administered. Roberts v. Transp. Dep't, 121 Idaho 727, 732 827 P.2d 1178, 1183 (Ct. App. 1991), *aff'd*, 121 Idaho 723, 827 P.2d 1174 (1992). IDAPA 07.03.01.004.04 draws its legal authority from Idaho Code section 39-4107(1). See IDAPA 07.03.01.000. Idaho Code section 39-4107(1) authorizes the Board "to adopt and enforce the codes specified in section 39-4109, Idaho Code, or later editions of such codes, and to promulgate rules in accordance with chapter 52, title 67, Idaho Code, to implement the provisions of this chapter." Because Idaho Code section 39-4107(1) only allows the Board to adopt the codes specified in Idaho Code section 39-4109, IDAPA 07.03.01.004.04 would likely exceed the Board's authority and be invalid and unenforceable if reference to the Idaho ECC and International ECC were removed from Idaho Code section 39-4109. Thus, removal of reference to the Idaho ECC and International ECC from Idaho Code section 39-4109 would eliminate the requirement of compliance with the Idaho ECC.

**2. Idaho Code section 39-4109 does not conflict with article III, section 29 of the Idaho Constitution.**

Lastly, you ask if Idaho Code section 39-4109 conflicts with article III, section 29 of the Idaho Constitution. It does not.

Article III, section 29 of the Idaho Constitution states:

The legislature may *review* any administrative rule to ensure it is consistent with the legislative intent of the statute that the rule was written to interpret, prescribe, implement or enforce. After that review, the legislature may *approve* or *reject*, in whole or in part, any rule *as provided by law*.

(Emphasis added.) Idaho Code section 67-5291(1) provides:

A concurrent resolution may be adopted approving the rule, in whole or in part, or rejecting the rule where it is determined that the rule, or part of the rule, is not consistent with the legislative intent of the statute that the rule was written to interpret, prescribe, implement or enforce, or where it is determined that any rule, or part of a rule, previously promulgated and reviewed by the legislature shall be deemed not to be consistent with the legislative intent of the statute the rule was written to interpret, prescribe, implement or enforce.

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When taken together (as the constitutional provision requires), the constitutional and statutory provisions quoted above only allow the Legislature to review rules and approve them for consistency, or reject them for inconsistency, with legislative intent. The Legislature's constitutional authority to *review* and *approve* or *reject* rules does not conflict with or override the Board's legislative authority in Idaho Code sections 39-4107 and 39-4109 to *adopt* codes and *promulgate* rules.

I hope you find this analysis helpful. Please let me know if you have any additional questions or if I can provide further assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read "Spencer W. Holm". The signature is written in a cursive style with a large initial "S" and "H".

SPENCER W. HOLM  
Deputy Attorney General  
Contracts & Administrative Law Division

SWH/blm