

To: Vermont Legislative Committee on Administrative Rules
From: The Board of Directors of AIA Vermont
Subject: Proposed 2023 RBES Amendment
Date: May 17, 2023

AIAVT Calls for the Adoption of the 2023 RBES Updates to be Postponed.

The Vermont Chapter of the American Institute of Architects (AIAVT) urges LCAR to postpone adoption of the 2023 RBES updates for the following reasons:

1. There exists an ongoing and systemic lack of clear authority for code administration and enforcement. This lack of oversight is causing financial harm in the marketplace, uneven penetration of the program statewide, and a severe drop in compliance.
2. The 2023 proposed technical wall assemblies are not technically reliable without proper administration, increasing the probability of damage - and serious cost - to consumers. This puts the health, safety, and welfare of buildings and consumers at risk.

Firstly, AIAVT strongly advocates for a system of RBES enforcement and oversight. AIAVT and its members have regularly and steadfastly testified to the VT Public Service Department (PSD) and to LCAR that the energy standards are essentially a building code. AIAVT's designee on PSD's RBES Advisory Committee for 2023 amendments was specifically prohibited from discussing enforcement.

Both the current (2020) and the proposed (2023) RBES include this disclaimer: *For the purposes of this code, the Vermont Public Service Department is not the authority having jurisdiction.*¹ While municipalities may adopt RBES and may designate officials to administer RBES, neither the municipalities nor the officials have any authority to enforce or to ensure health, safety, and welfare related to energy codes. The Division of Fire Safety (DFS) has authority over rented and multi-family buildings for all building issues except energy codes. The authority to administer energy codes for any kind of construction (residential or commercial) has not been granted by the State of Vermont to any entity.²

The proposed updates to RBES without enabling administration and enforcement increase the probability of personal and economic harm, and are not consistent with State energy or housing policies.³

¹ 2020 RBES 101.6 and Definitions.

² 20 VSA SS 2728 ff covers the Division of Fire Safety. 24 VSA SS 3101 ff covers Building Inspectors and Regulation of Building; it only covers building systems regulated by Division of Fire and Safety.

³ 30 VSA SS51 states any amendments to the RBES shall be: a) consistent with duly adopted State energy policy, as specified in section 202a of this title, and consistent with duly adopted State housing policy; b) evaluated relative to their technical applicability and reliability; and c) cost-effective and affordable from the consumer's perspective.

Secondly, AIAVT maintains that the technical wall assemblies in the proposed 2023 Energy Standards are not universally applicable and could easily be implemented in a manner that could cause considerable harm. Please see suggested revisions below.

RBES regulates details of wall assembly and performance. Energy efficient buildings are complicated systems that rely on sound building science and best practices that meet code requirements to ensure occupancy safety. When corners are cut due to lack of education, administration, and enforcement, the consumer is put at risk. Wall assemblies proposed in the revisions are not universally applicable and are likely to create problems with mold in certain climates. Because of the aforementioned lack of administration - including a lack of a variance process, appeals process, project review, and enforcement of energy code-related construction - failures in coordination with other building systems present a potential danger to public health, safety, and welfare. As RBES requirements become increasingly restrictive with each code cycle, the probability of damage such as by mold and rot, will continue to increase. This egregiously undermines the collective efforts to meet imperative statewide 2030 energy goals.

Lastly, while standards are becoming more stringent, compliance is actually decreasing; "The overall compliance rate of 54% represents a drop from a 2015 study which found a code compliance rate of 66% with the 2011 RBES. The drop in compliance is likely due to 1) weak code enforcement, 2) unchanging building practices as RBES gets stricter, 3) lower program penetration." ⁴

While AIAVT strongly supports the undertaking of RBES and smarter building practices to meet 2030 energy goals, the lack of a clear authority to administer and enforce the code, and the problematic wall assemblies currently being proposed, are causes of grave concern. We would be remiss to not voice these concerns and call for delay of the 2023 RBES updates until these issues are addressed.

Suggested revisions:

Table 402.1.2.1

Above Grade Walls-

R21+5ci Shall be revised to R21(Max)+R11ci(min)

R13+R10ci Shall be revised to R13(max)+R10ci(min)

Basement/Crawl-

R13+R10ci Shall be revised to R13(max)+R10ci(min)

Table 402.1.2.3:

Walls-

R20+R9ci shall be revised to R20(max)+R10(min)

Footnote "e" shall be updated to include the following sentences: Continuous insulation shall always be installed on the cold side of an assembly and outside the Vapor Retarder. The R value of continuous insulation shall be a minimum of R11, and must be at least 50% of the R value of the wall cavity insulation. There shall be no air spaces between insulation layers.

⁴https://publicservice.vermont.gov/sites/dps/files/documents/VT_2020_SF_RNC_Baseline_Final_Report_Jan242023.pdf