



# HOUSE COMMITTEE ON APPROPRIATIONS

## FISCAL NOTE

HOUSE BILL NO. 409

PRINTERS NO. 2155

PRIME SPONSOR: Evankovich

### COST / (SAVINGS)

FUND	FY 2017/18	FY 2018/19
Commonwealth Funds	See "Fiscal Impact"	See "Fiscal Impact"
Municipal Funds	\$0	\$0

**SUMMARY:** Amends the PA Construction Code Act to make comprehensive changes to the process used by the Uniform Construction Code Review and Advisory Council to evaluate and adopt building code updates. The amendment to Section 703 (Education and Training Programs) would take effect on July 1, 2017 or immediately, whichever is later. The amendment of Section 902(c) (Certification of "Uncertified Buildings") would take effect in 60 days with the remainder of the legislation taking effect immediately.

**ANALYSIS:** Amends the PA Construction Code Act (Act 45 of 1999) to make comprehensive changes to the process used by the Uniform Construction Code (UCC) Review and Advisory Council (Council) to evaluate and adopt building code updates.

**UCC Review and Advisory Council Composition:** The legislation increases the terms of Council members from 2 years to 3 years. The legislation states that members who miss three or more consecutive meetings, or who miss three or more technical advisory meetings, may be removed from the Council and committees. The legislation increases the size of the Council from 19 to 21 members by adding a member of the construction trades to represent employees in the construction industry, and an individual to represent the interests of commercial building owners. The legislation modifies the appointment process for 4 of the current positions from gubernatorial appointments to appointments by the General Assembly as follows:

- One member appointed by the Senate President Pro Tempore who is a general contractor from an association representing the residential construction industry.
- One member appointed by the Senate Minority Leader who must be a Second or Third Class City official experienced in the construction of buildings.
- One member appointed by the House Speaker who must be a general contractor from an association representing the nonresidential construction industry who has experience in the construction of nonresidential buildings.
- One member appointed by the House Minority Leader having recognized ability and experience in the construction trades to represent employees in the construction industry.

**UCC Review and Advisory Council Transition to New Composition:** This legislation contains specific language immediately “grandfathering in” 16 current members of the current Council onto the new Council. The current terms of 16 members are extended and the terms for the 5 new members are established in a manner that has 7 terms expiring in 2018, 7 terms expiring in 2019, and 7 terms expiring in 2020. The annual rotation of 7 members serving three year terms would thereafter continue indefinitely.

**UCC Review and Advisory Council Administrative Support:** The legislation states that L&I shall provide secretarial and legal support to the Council. It gives L&I the authority to compensate individuals who provide expert input to the Council. In addition, the legislation permits Council members to be reimbursed for reasonable travel, hotel, and other necessary expenses. The legislation also creates a Review and Advisory Council Administration Account in the State Treasury to fund Council operations.

**Changes in Time-Frame for Council Review of Latest ICC Codes:** The legislation increases the timeframe (from 12 months to 24 months) that the Council has to review triennial ICC code updates. The legislation requires that the Council begin its review 21 months after publication of the updated triennial codes. The legislation further requires that the Department of Labor and Industry (L&I) promulgate final-omitted regulations implementing updated UCC provisions 33 months after the beginning of the review process.

**Creation of Public Comment Period on Latest ICC Codes:** The legislation amends the act to require that a 120 day public comment period be commenced 30 days after the Council begins its review of the triennial code updates. Public comments would have to be on a form created by L&I, and would have to be on a single updated section. All public comments would be provided to all Council members and be posted on L&I’s internet site.

**Creation of Technical Advisory Committees:** The legislation requires the Council to establish technical advisory committees which would be limited to a maximum of 12 members and composed of up to 5 Council members. Each committee would have a Council member appointed to chair the committee. The Chairman of the Council would be limited to appointing four total Council members to each committee, unless not enough members of the public could serve. The legislation establishes standards for the appointment of Council members and members of the public to the committees. Meetings could be conducted in person, or tele-conference/video-conference.

**Guidelines for Operation of Council Review:** The legislation requires that after the expiration of the public comment period, the Chairman of the Council must assign each updated code section to a technical advisory committee. The committee must submit recommendations to the Council on whether to accept/modify/reject updated sections with rationale relied upon. Updated sections of triennial codes that never received public comment recommending modification/rejection, and which a committee member did not request separate consideration of, shall be reported as unopposed. These recommendations must be posted on L&I’s website and be posted for 10 business days prior to the first public hearing conducted by the Council. The Council must hold three public hearings (one in Harrisburg, one in the eastern part of the state and one in the western part of the state).

Once the public hearings are completed, the Council must hold one or more official meetings to decide whether to adopt, reject, or modify the updated sections. The Council must review updated sections applying the following criteria: 1) the impact that the provision may have upon the health, safety, and welfare of the public; 2) the economic/financial impact, including to the end consumer; and 3) the technical feasibility of the provision.

The Council shall consider adoption into the UCC of the unopposed sections first, and as a block. However, before a vote is conducted on the unopposed "block", the Council must provide the opportunity for any member to make a motion to remove a section from the unopposed block. A motion to remove a section would have to be supported by a written explanation of the underlying rationale for the motion, and would only be successful if two-thirds of the Council membership supported it. If a section was removed from the unopposed block, it would be considered to be "controversial" and subject to the provisions relating to adoption of "controversial" items. After the Council's consideration of the unopposed block, the legislation requires the consideration of "controversial" sections. A two-thirds vote by the Council membership is necessary to adopt or modify such sections.

**Specific Guidelines for Review of 2015 Triennial ICC Codes:** The legislation requires that the Council initiate a new review of the updated provisions of the 2015 triennial codes within 30 days of passage of the legislation. The Council's existing report recommendations would remain in effect until September 30, 2018, and the new report recommendations would take effect October 1, 2018. The Council would have to conduct the review in accordance with the act, with the proviso that: 1) the public comment period would only have to be 30 days; 2) only one public hearing would have to be held; 3) the Council would not have to establish formal technical advisory committees, and could establish subcommittees based on past practices; and 4) the Council could rely on technical analysis' from its previous review of 2015 codes. The Council would have to submit a report of its recommendations by May 1, 2018.

**Report by Council of Updated Provisions to Be Adopted into UCC:** The legislation requires that the Council submit to L&I, within 24 months of commencement of the triennial code review process, a report detailing the updated code provisions that are specified for adoption/modification. L&I would have to promulgate final-omitted regulations adopting the report's recommendations within 9 months of receiving the report, which would then take effect 33 months after commencement of the review process.

**City of First Class/Ability to Adopt 2018 ICC Codes for Commercial Buildings:** The legislation includes language that will permit a City of the First Class to adopt provisions of the 2018 ICC codes that apply to commercial buildings. The adoption will have to be through adoption of ordinance and governed by provisions of Section 503 of the act (relating to adoption of stricter ordinances by municipalities). The provisions adopted will expire on the date the department's regulations take effect implementing the Council's adoption report for the 2021 ICC codes.

**UCC Board of Appeals Composition:** This legislation provides clarification on how a municipal UCC board of appeals is to be constituted. The legislation states that the boards of appeal shall be established in accordance with regulations issued by the department.

**Applicability of Updated Codes to Previous Finalized Contract:** The legislation provides clarifying language to the applicability of updated UCC standards to construction contracts signed before effective date of new code standards. Construction contracts that are signed before the effective date of new UCC standards may utilize UCC standards then in effect when the contract was signed if the permit is applied for within six months, or a period specified by municipal ordinance, of the effective date of new UCC standards.

**Education and Training Programs:** The legislation increases the existing surcharge of \$4.00 on each building permit to \$4.50 and also creates a new restricted account in the State Treasury which is named the "Review and Advisory Council Administration Account". The legislation creates a new funding distribution formula as follows: 1) 43.5% to the existing Municipal Code Official Training Account; 2) 43.5 % to the existing Construction Contractor Training Account; and 3) 13% to the newly created UCC Review and Advisory Council Administration Account.

Monies deposited in the UCC Review and Advisory Council Administration Account are to be transmitted quarterly to the department for expenses of the Council for performance of duties, and for technical and administrative assistance as determined necessary by the Council. Monies may also be used for fees associated with contracting with the ICC to establish and publish code manuals which contain the standards of the Uniform Construction Code

Language is included in the legislation to allow DCED to utilize up to 3% of the funds allocated to each of the two training accounts for administrative costs.

**Accountability Measures for Monies Allocated To Accounts:** The legislation establishes annual reporting requirements for DCED and the department to account for the use of monies allocated from the permit surcharge. The annual reports would be as follows:

- By November 1st of each year, the department will have to submit a report to the Majority/Minority Chairmen of the House/Senate Labor & Industry Committees detailing how monies were utilized by the UCC Review and Advisory Council Administration Account during the previous fiscal year. The legislation lists detailed data that is to be included.
- By November 1st of each year, DCED will have to submit a report to the Majority/Minority Chairmen of the House/Senate Labor & Industry Committees detailing how monies were utilized by the Municipal Code Official Training Account and Construction Contractor Training Account during the previous fiscal year.

**Technical Standards Involving Certification of "Uncertified Buildings":** The legislation gives code officials the option of using the L&I's technical standards to issue a certificate of occupancy to an uncertified building; the legislation eliminates the current requirement that such standards can only be used if the municipality adopts an ordinance electing to use L&I's standards.

**FISCAL IMPACT:** Over the past two completed fiscal years, revenues from the \$4 surcharge averaged \$1.02 million annually. Adding a 50¢ increase to the permit fee would generate an additional \$127,000 annually. The legislation directs 13% of the building permit fees collected annually to the Review and Advisory Council Administration Account which would total about \$149,000 annually. It also allows the Department of Community and Economic Development to utilize up to 3% of the funds allocated to the Municipal Code Official Training Account and the Construction Contractor Training Account which would result in about \$30,000 being available annually. It is estimated that the costs related to the code review process and administrative costs should not exceed the funding available.

This legislation would have no adverse fiscal impact on municipal funds.

**PREPARED BY:** Tim Rodrigo  
House Appropriations Committee (R)

**DATE:** October 4, 2017

*Estimates are calculated using the best information available. Actual costs and revenue impact incurred may vary from estimates.*