

How The International Code Council Weaponizing Certification



Virginia's adoption of the ICC/MBI off-site construction standards has been promoted as a model of progress, national consistency, affordability, innovation, and regulatory leadership. The Commonwealth is repeatedly described as "leading the way," praised for creating a "modular-friendly environment," and presented as proof that the International Code Council and Modular Building Institute have developed the national solution for off-site construction.

That public narrative deserves a closer look—not only at the standards themselves, but also at the organizations and people involved in developing, adopting, administering, promoting, and ultimately rewarding the system.

The Standards

Virginia incorporated two co-branded standards into its Industrialized Building Safety Regulations:

- **ICC/MBI 1200-2021, Standard for Off-Site Construction: Planning, Design, Fabrication and Assembly**
- **ICC/MBI 1205-2021, Standard for Off-Site Construction: Inspection and Regulatory Compliance**

ICC/MBI 1200 addresses the planning, design, fabrication, transportation, and assembly of off-site construction.

ICC/MBI 1205 reaches directly into the regulatory and certification process. It addresses permitting, plan approval, in-plant and on-site inspections, third-party inspection agencies, state modular programs, and regulatory compliance at the final building site.

The scope of ICC/MBI 1205 makes accreditation far more than a technical footnote. Accreditation can determine which third-party agencies are permitted to review plans, inspect factories, evaluate compliance, and participate in the regulated off-site construction market.

The October 2020 committee roster described ICC/MBI 1205 as covering third-party inspections, industrialized building departments, state modular programs, and authorities having jurisdiction.

Organizations Involved

International Code Council

The International Code Council, or ICC, developed and co-branded ICC/MBI 1200 and 1205. ICC is also connected to the testing, inspection, certification, and conformity-assessment side of the industry through ICC NTA.

Modular Building Institute

The Modular Building Institute, or MBI, partnered with ICC to co-brand the standards. Its executive leadership participated directly in the standards-development process, and MBI later promoted Virginia's adoption as a national model.

ICC NTA

ICC NTA operates within the testing, inspection, certification, and conformity-assessment side of the ICC system. Its involvement is important because ICC/MBI 1205 contains requirements affecting the third-party agencies that perform those functions.

Virginia Department of Housing and Community Development

The Virginia Department of Housing and Community Development, or DHCD, administers Virginia's Industrialized Building Safety Regulations. Virginia officials participated in developing the ICC/MBI standards, incorporated them into state regulations, issued implementation memoranda to Compliance Assurance Agencies, and later promoted the standards publicly.

ASTM Intern

People and Overlapping Roles

Jeff Brown

State Building Codes Office Director, Virginia DHCD

- Served on the ICC committee developing ICC/MBI 1200 and 1205.
- Represented the Virginia agency that would later administer the standards.
- Later issued Virginia's memoranda directing Compliance Assurance Agencies on accreditation requirements.

Tom Hardiman

Executive Director, Modular Building Institute

- Served on the committee developing ICC/MBI 1200 and 1205.
- Served as co-chair, based on my direct knowledge of the standards-development process.
- Represented the organization whose name appears on the co-branded standards.

David Tompos Sr.

ICC NTA

- Served on the committee developing ICC/MBI 1200 and 1205.
- Served as chair
- Represented the conformity-assessment and certification side of the system.

Cindy Davis

Deputy Director of Building and Fire Regulations, Virginia DHCD

- Simultaneously served as **president of the International Code Council**.
- Held a senior position within the **Virginia agency adopting and administering the ICC/MBI standards**.
- Was copied on Virginia's December 5, 2023 implementation memorandum.

Brian Hilderbrand

Construction Regulation Administrator, Virginia DHCD

- Featured in promotional coverage praising Virginia's adoption of the ICC/MBI standards.
- Described Virginia as a leader in addressing regulatory barriers to off-site construction.
- Promoted the standards as a pathway toward national consistency and continued industry growth.

These were not isolated roles.

Jeff Brown Virginia's State Building Codes Office Director participated in developing the standards the state later adopted.

MBI's executive director participated in committee leadership.

ICC NTA was represented in committee leadership.

Cindy Davis, A senior Virginia DHCD official simultaneously served as ICC president Virginia officials then administered and publicly promoted the resulting system.

That overlap is essential context for understanding what happened next.

ASTM E541 Was Left Out

On December 5, 2023, Jeff Brown issued a memorandum to Virginia-approved Compliance Assurance Agencies announcing significant changes under the 2021 Industrialized Building Safety Regulations.

The memorandum stated that Virginia had incorporated ICC/MBI 1200 and ICC/MBI 1205.

It then addressed accreditation requirements under Section 401.1, Item 6, of ICC/MBI 1205. Agencies were told they would be required to provide an accreditation certificate issued by an ISO/IEC 17011-compliant accreditation body demonstrating compliance with ISO/IEC 17065 or ISO/IEC 17020.

“All Virginia Approved Compliance Assurance Agencies will be required to provide the State Building Codes Office with a copy of their accreditation certificate by January 18, 2025.”

ASTM E541 was not mentioned.

A third-party agency receiving that memorandum could reasonably conclude that the ISO-based accreditation route contained in ICC/MBI 1205 had become the required pathway for continued participation in Virginia’s program.

But that was not the complete legal picture.

ASTM E541 remained listed in Virginia’s regulations.

After receiving the memorandum, I contacted Jeff Brown and asked whether Virginia would continue accepting third-party agencies meeting ASTM E541.

“While we did incorporate 1200 & 1205, which include different accreditation requirements, the ASTM E541 accreditation is still listed in our state regulations, and where there are differing requirements between the regulations and incorporated standards, the regulations supersede, so the ASTM E541 accreditation is still acceptable in Virginia.”

That response confirmed three important facts:

- ASTM E541 had not been removed.
- ASTM E541 remained acceptable.
- Where the incorporated ICC/MBI standards differed from Virginia’s regulations, the regulations superseded the standards.

Yet none of that appeared in the December 2023 memorandum.

The July 2024 Clarification

Virginia later issued a second memorandum dated July 1, 2024 that I asked them to send.

Its stated purpose was to “clarify accreditation requirements for Compliance Assurance Agencies.”

The memorandum acknowledged that Virginia’s existing regulation, 13VAC5-91-200, continued to require documentation showing that a Compliance Assurance Agency’s services had been accepted by an accrediting organization.

It then repeated the ICC/MBI 1205 language concerning ISO/IEC 17065 and ISO/IEC 17020.

Only after restating the earlier instruction did the memorandum add what had been missing:

“We would like to clarify that an accreditation certificate issued by an ISO/IEC 17011 compliant accreditation body in accordance with American Society for Testing and Material (ASTM) Standard Number E541-10 ... will also be considered.”

The revised instruction told agencies to provide accreditation verifying compliance with:

- **ISO/IEC 17065**
- **ISO/IEC 17020**

- **ASTM E541-10**

The July memorandum therefore did more than polish the wording of the first memo.

It restored a legally recognized accreditation pathway that had been omitted from the original written direction to regulated third parties.

The Public Blackout

The contrast between the treatment of ICC/MBI 1200 and 1205 and the treatment of ASTM E541 could hardly be greater.

Virginia's adoption of the ICC/MBI standards has been promoted through phrases such as:

- "Leading the way"
- "National leader"
- "A strategic move toward national consistency"
- "A modular-friendly environment"
- "Building for the future"

The standards are credited with addressing housing affordability, production capacity, regulatory fragmentation, quality, efficiency, and market growth.

Virginia officials are interviewed about their benefits. The standards are promoted for purchase. Virginia's early adoption is presented as proof of leadership.

ASTM E541 received no attention.

There was no public explanation that Virginia already recognized an ASTM accreditation pathway. There was no public comparison between ASTM E541 and the accreditation provisions in ICC/MBI 1205. There was no acknowledgment that the first implementation memorandum omitted ASTM E541.

There was also no celebration when Virginia later clarified that ASTM E541 remained valid.

One certification system was promoted as the national solution. The other remained invisible until someone asked.

How Certification Becomes a Market Tool

Certification is supposed to establish competence and protect the public.

But certification also controls access.

It can determine who may inspect, approve, certify, evaluate, affix seals, and operate within a regulated market. When a newly adopted system is presented as mandatory while an existing legally recognized pathway is omitted from official instructions and public coverage, certification begins to function as more than quality assurance.

It becomes a mechanism for directing the market.

The issue is not simply that Virginia adopted ICC/MBI 1200 and 1205. The issue is that the ICC/MBI pathway was elevated through standards development, regulation, implementation, publicity, and institutional praise while ASTM E541 disappeared from view.

A competing pathway does not always have to be formally prohibited to be pushed aside. Sometimes it only has to be omitted.

Questions That Deserve Answers

- Why was ASTM E541 omitted from Virginia's December 2023 memorandum?
- Why were Compliance Assurance Agencies initially directed only toward the accreditation provisions associated with ICC/MBI 1205?
- Why did Virginia need a second memorandum to clarify that ASTM E541 remained acceptable?
- Why has the promotional coverage of Virginia's adoption ignored ASTM E541?
- Why are the overlapping roles among Virginia DHCD, ICC, MBI, and ICC NTA not disclosed as part of the public leadership narrative?
- Why has Virginia's status as the first adopter received so much attention while an accreditation standard already protected by Virginia's regulations received none?



And Finally, the Award: DrumRoll

After Virginia helped develop the standards, became the first state to adopt them, administered their accreditation provisions, and promoted them as a model for national consistency, the Modular Building Institute presented Virginia with its inaugural award for the:

“Best State Administrative Program for Off-site Construction.”

MBI specifically praised Virginia for being the first state to incorporate the Code Council's off-site construction standards into its regulations.

The circle was complete.

MBI helped create and co-brand the standards. Its executive director participated in committee leadership. Virginia's State Building Codes Office Director served on the standards committee. ICC

NTA participated in committee leadership. A senior Virginia official simultaneously served as ICC president.

Virginia adopted the standards. Virginia promoted the standards. Virginia's first accreditation memorandum omitted ASTM E541. Virginia restored ASTM E541 to the written options only after the omission was challenged. Then MBI gave Virginia an award.

Perhaps the award program simply overlooked one additional category:

***Best State Program for Celebrating the New Certification System While Forgetting to
Mention the Standard Already in Its Own Regulations.***

Note: I do appreciate how Jeff Brown always got back to me promptly.

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Author's Statement and Disclaimer

I was a **proponent who spearheaded the tiny-house effort within ASTM**, working collaboratively to establish the **E06.26 Tiny Houses Subcommittee** under the Committee on Performance of Buildings. I currently serve as **Membership Secretary** for the subcommittee.

Disclaimer: *I do not represent ASTM International, and the views, findings, and conclusions expressed in this document are my own, based on my own experience, experience, public information and independent research. This submission is made in my individual capacity as President of Tiny House Alliance USA, in support of transparency, lawful compliance, and open participation in standards development.*