



State of New Hampshire

GENERAL COURT

CONCORD

MEMORANDUM

DATE: November 1, 2018

TO: Honorable Christopher Sununu, Governor
Honorable Gene G. Chandler, Speaker of the House
Honorable Chuck W. Morse, President of the Senate
Honorable Paul C. Smith, House Clerk
Honorable Tammy L. Wright, Senate Clerk
Michael York, State Librarian

FROM: Representative Steven P. Beaudoin, Chairman

SUBJECT: Final Report on HB 1254; Chapter 294:1, Laws of 2018

Pursuant to HB 1254, Chapter 294:1, Laws of 2018, enclosed please find the Final Report of the Committee to Study Procedures for Adoption of National Codes by the State of New Hampshire.

If you have any questions or comments regarding this report, please do not hesitate to contact me.

Enclosure

cc. committee members

FINAL REPORT

Committee to Study Procedures for Adoption of National Codes by the State of New Hampshire

HB 1254, Chapter 294, Laws of 2018

November 1, 2018

MEMBERS:

Rep. Steven P. Beaudoin, Chairman
Rep. Raymond G. Gagnon, Clerk
Rep. Carol M. McGuire
Sen. Sharon M. Carson
Sen. Robert J. Giuda

CHARGE OF THE STUDY:

The committee was charged to study the procedures for adoption of national codes as part of the state building code and state fire code, including the Life Safety Code, the Uniform Fire Code, the International Building Code, the International Existing Building Code, the International Plumbing Code, the International Mechanical Code, the International Energy Conservation Code, the International Residential Code, and the National Electric Code.

PROCESS AND PROCEDURES:

The committee met 6 times between August 28 and October 19. The State Fire Marshal's Office and members of the Building Code Review Board provided detailed information on the current processes used to adopt and amend the State Fire Code and the State Building Code. Testimony was also given by representatives of the NH Building Officials Association, and members of the general public with experience in the building trades.

FINDINGS:

Prior to 2002, NH had no unified codes. Some municipalities had no codes or even code enforcement personnel. HB 285 was introduced in 2002 to address this problem and create a statewide model building code. Clearly, the intent was to eliminate the multitude of codes that existed across NH, remove the ambiguity in code compliance from town to town, and ensure that buildings are constructed to a safe minimum standard. HB 285 (2002) allowed for municipalities to amend the code to suit the particular needs of their community. Since then, many other bills have been filed to further amend our building and fire safety codes.

It is apparent that the ability to amend the code has been misinterpreted by our municipalities and in fact, many communities have adopted entire new codes. To address this problem, HB 137 was filed in 2011. After extensive work in subcommittee and a number of amendments, the bill was signed into law and took effect in June, 2012. The preamble to the law states that one of its purposes is to "... reserve the authority for code adoption and changes to code editions to the general court,...". Clearly, the intent of the bill was to prohibit the adoption of entire codes by municipalities. Apparently, this intent was not translated into statute clearly enough and we have now reverted back to the pre-2002 situation with a multitude of codes being in place across the state. This situation makes it difficult for contractors, tradespeople, and developers in that there is uncertainty in knowing what the demands of a particular municipality might be. It also unnecessarily increases costs for development for our constituents.

The governing bodies of our municipalities, like our legislature, is made up of laypeople that oftentimes lack a full understanding of the trades and life safety issues. When considering amendments to the codes, they rely upon the recommendations of their code compliance personnel to ratify local amendments to the building and life safety codes. Sometimes, these amendments are unwarranted and are simply adopted on the whim of the code compliance official. On the other hand, the state of NH has boards such as the Building Code Review Board and the Board of Fire Control that are comprised of experts. These boards possess the experience and knowledge necessary when considering any changes to our codes and, in compliance with NH law, including the costs of such changes. While there is agreement that these boards should be taking the lead in approving code amendments, the operations of these boards should be improved. Notice of public hearings should be more accessible and the Building Code Review Board should post code amendments in a timely manner. The boards should also have more members, particularly public members, along with some alternates in order to make it easier to achieve a quorum.

When a person or organization is cited for a code compliance violation, in order to determine the remedy for the violation, it is essential that that person knows which particular section of code has been violated. They should also have the right to access, read, copy, and duplicate the particular section of code has been violated. RSA 47:22 states in part "...there shall be filed 3 copies of such codes, rules and regulations in the main office of the municipal department or agency administering the same and 3 copies in the office of the city clerk. All copies of any code, rules and regulations filed as provided herein, shall be for use and examination by the public." It has come to the committee's attention that this section of statute is not being followed by most municipalities. Our constituents are being forced to use on line "read only" access to codes or alternatively hire code compliance experts to achieve compliance.

In past applications to the legislature for ratification of new codes, there has been a distinct shortage of information provided to permit a full understanding of the implications, need, and cost of adopting the new codes. This has led to uncertainty and reluctance on the part of the legislature to adopt new codes. As a result, new technologies and techniques are not approved for use in NH. In some cases, this has increased the cost of buildings. Conversely, some of the newest codes, such as the International Energy Conservation Code, in the opinion of some legislators, go too far and should be elective as opposed to mandatory. Vetting new codes is a long and exhaustive process. In order to fully consider the implications of any new codes, it has been suggested that the state stay one full code cycle behind the national codes.

Based on a written submittal provided by the NH Building Officials Association and other testimony, there is some confusion concerning the application of the term “change of use”. In at least some instances it is apparent that the term change of use is being applied when there is a change of tenancy. It is clear in the codes that this does necessarily apply, that the term change of use refers to a change of occupancy classification.

Many municipalities lack qualified code enforcement personnel. In some cases, the persons charged with code enforcement don’t even possess a basic knowledge of the trade and workmanship they are inspecting. The entire intent of building inspections is to ensure compliance with codes to prevent poor or even dangerous workmanship. Qualified personnel are essential in meeting this goal. Some municipalities charge a fee for an appeal of a code compliance violation.

Many towns and cities have e mail notification of upcoming board meetings. Public and trade person input is essential in the code amending and adopting process. Unlike changes to the building codes, fire and life safety code changes don’t require public hearings at the municipal level.

RECOMMENDATIONS:

The committee developed legislative remedies to address problems identified in their findings. These remedies were grouped into four general topic areas and should serve as the basis for legislation filed in the 2019 legislative session.

The four bills should address:

- A. Adoption of Local Amendments to the State Building Code and State Fire CodeCode adoption
- B. Establishing a standard procedure and timeline for the adoption of new editions of codes
- C. Adoption of the 2015 suite of building codes as amended by the BCRB
- D. Code enforcement officials, citations and fees

A. Adoption of Local Amendments to the State Building Code and State Fire CodeCode adoption

- Require municipalities to adhere to the State Building Code and the Fire Code with any amendments adopted at the state level.
- Prohibit municipalities from adopting complete code updates.
- Prohibit the adoption or enforcement of local amendments to any state adopted codes without the prior approval of the Building Code Review Board or the Board of Fire Control.

- Require all approved local amendments to be prominently posted on the website of either the Building Code Review Board or the Board of Fire Control.
- Permit an amendment approved by the Building Code Review Board or the Board of Fire Control to be approved for one municipality or for the entire state. If approved for one municipality, other municipalities may adopt it by proper vote and notification of the appropriate board.
- Amend RSA 47:22, which currently requires that municipalities make 6 copies of *all* codes available to the public, to require that they keep 1 copy of each of the 10 major codes (the Fire Safety Code, the Life Safety Code, the International Building Code, the International Residential Code, the International Existing Building Code, the International Energy Conservation Code, the International Mechanical Code, the International Plumbing Code, the International Pool and Spa Code, and the International Electrical Code). Codes must be available free of charge and easily accessible.
- Require the Department of Safety to establish a simple sign up site whereby an interested person can provide his/her email address and indicate the public hearing he is interested in attending. This applies to the BCRB, the board of fire control, and legislative hearings on code updates and amendments.

B. Establishing a standard procedure and timeline for the adoption of new editions of codes by the Legislature

- Define the principle of adopting codes one cycle behind, i.e., 2015 now, 2018 effective 2021
- Specify what is expected from code review boards to bring a code update to the legislature: cost estimates, summary of all significant changes, and need for change.
- Clarify that the code amendment process would require legislative approval before becoming effective in the form of a standard bill every year to incorporate amendments.
- Require all state-adopted amendments to be published on BCRB and/or BFC websites (state-approved local amendments are required to be posted in Bill A)
- Provide additional funding for IT support to accomplish those goals.
- Establish a variance process to allow the BCRB to waive requirements of the code in special circumstances.
- Allow the BFC to adopt emergency amendments following JLCAR rules which will ultimately need legislative approval after the fact.

C. Adoption of the 2015 suite of building codes as amended by the BCRB.

- Amend RSA 155-A:1, IV (definition of state building code) to update the 2009 codes to the 2015 edition
 - the International Building Code 2009,
 - the International Existing Building Code 2009,
 - the International Plumbing Code 2009,
 - the International Mechanical Code 2009,
 - the International Energy Conservation Code 2009, and
 - the International Residential Code 2009, as published by the International Code Council
- Ensure that any amendments that have been adopted by the Building Code Review Board are incorporated

D. Code enforcement officials, citations and fees

- Require code enforcement officials to be IRC certified, at a minimum.
- Clarify that the State Fire Marshal's Office or that certified third party inspectors are available for inspections when a municipality has no code enforcement officials.
- Prohibit building permit fees over \$25 if there will not be an inspection of the work performed.
- Require all citations resulting from a building inspection to identify the specific code and code section(s) that has been violated.
- Prohibit charging a fee for the appeal of a decision made by a code compliance officer.
- Add statutory definitions clarifying the terms 'change of use', 'change of occupancy', and 'change of occupancy classification'.

Respectfully submitted on behalf of the committee,

Rep. Steven P. Beaudoin, Chairman