

Northeast Energy Efficiency Partnerships

RESOLVE 46 COMMENTARY

Donald J. Vigneau, AIA/NEEP

NEEP endorses the basic recommendations of the Resolve 46 Committee, in that a mandatory comprehensive system of model building codes always represents a greater level of public health and safety, and a reduction in overall costs to the owner consistent with those safety standards. The recommendation of the Department of Public Safety as the *authority having jurisdiction* (AHJ) completes the agency's role in providing public safety for Maine's citizens.

Phase I. A State Technical Building Codes Board.

The Board. Since the existing state jurisdictions over building construction and their components are essentially separate entities with separate powers and authority, NEEP endorses the Board as an essential first step in de-fragmenting jurisdictional authority. Giving the Board authority to resolve conflicts with other codes/regulations and the four building and energy codes is necessary, but will be fraught with interagency conflict unless the membership of the Board is expanded at the outset to include the other state agencies and boards that now regulate that authority (Plumbing, Electrical, Energy, Elevators, Human Resources, etc.).

NEEP recommends that the composition of the Board be increased to include appointees from Human Resources, Health and Environment Departments/Offices; the Plumbing, Electrical and Access Boards; and a member of the general public versed in real estate or construction law. We would also recommend that a local Fire Marshal rather than a Fire Chief be the representative for the fire service, and that the State Fire Marshal not be a member but provide staff. This is coincident with our Best Practices (attached), that would give co-equal authority to the Board, the AHJ State Fire Marshal and an AHJ State Building Inspector. The proposed Board structure leaves the AHJ in a weaker position in the formation and adoption of the codes he must enforce.

Jurisdiction and Process. The Board should become the final authority on all fire and building codes as proposed, with an appeals process set first at the local level, next to the SFM or SBI de novo, and final appeal to the Board. This process provides for prompt resolution of most appeals at a local level, with staff reviewing those decisions and the Board having only to deal with those that cannot be resolved there. Local communities currently have to have some administrative appeal venue when they adopt their own codes.

Plan Review. The State Fire Marshal's office apparently does not have in-house expertise to handle most building code plan reviews or appeals. A State Building Inspector Office under the Commissioner of Public Safety Buildings Division should be established to provide the experience and expertise necessary to deal with plan reviews, technical appeals, interpretations and waivers of the regulations, as the Fire Marshal currently has.

Expecting the current staff to deal with over 2,000 pages of highly technical building code requirements in the initial three codes is not planning for a successful program. The public, the builders and designers, and the owners all benefit through the reviews that minimize errors and mistakes in a highly complex construction process.

To the extent possible, plan reviews should be left in the hands of municipal or county departments. Only the local jurisdictions are positioned to accomplish this. A plan review by a state agency with no ability to inspect for compliance will result in widespread non-compliance

Municipalities. Should submit any local amendments to the Board, which will need the power to approve or deny based upon demonstrated need unique to the town or county or region. Plan review by certified code enforcement staff should be mandatory at the local level (some consideration for exemption might be made on a waiver basis where no staff can be obtained). Municipal jurisdiction should not be superseded by the state except through the Board. It is not necessary to build a large bureaucracy at the state level to accomplish most of these tasks.

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Funding. Building Permit license fees should be established to defray all direct and indirect costs of plan reviews and inspections, including local/state fire marshal plan reviews. This would eliminate any unfunded mandates to the municipalities/counties. Where continuing education is mandated by law for code officials, such costs would also be included, as would costs for certification training of local fire marshals and building officials.

Phase II: Restructuring the Permitting System

One-Stop Shopping. NEEP endorses the concept of creating coordinated, efficient code oversight. This critical portion of the recommendation can accomplish an essential task; reducing or even eliminating the fragmentation of authority that currently exists between "...at least five different state agencies and a number of boards and divisions within them." It will also provide a higher level of coordination and elimination of conflicts between the various regulations.

The single board concept needs even greater vision: to place authority for administration and enforcement of all building/fire safety regulations under a single agency (public safety); divided only between building safety (construction/renovation) and maintenance of safe conditions (fire, life safety, HazMat). A composite Board brings all stakeholders to a single venue and process, and is the only proven way to accomplish this. Leadership demonstrated at the top of this process will result in the "one-stop" delivery of services locally, where the rubber meets the road.

Contractor Licensing. Certification/licensing of code enforcement personnel can readily be adapted to licensing for contractors and remodelers. NEEP endorses establishing a comprehensive licensing plan for trades and contractors, with authority to suspend or revoke licenses for cause (in addition to any civil/criminal penalties).

Contractor Responsibility. NEEP suggests that a contractor's responsibility is always as an agent (even to their own development companies); that the owner-in-fee of the property on which a building or structure is located is the only party who can own the building permit license, since they are the only party who cannot evade responsibility for the faults or failings of their agents. Should this not already be established in Maine law, it needs to be. The law should also define ownership of the Certificate of Use and Occupancy. An owner may designate the contractor or design professional as agent for a permit, but holds ultimate responsibility for the work.

Elevator, Access and Flood Regulations. The Board should be responsible for elevator, access and flood-proof construction, but probably not be responsible for flood-hazard regulations (zoning responsibility). NEEP endorses modifications of current Maine standards where necessary to coincide with national model regulations, as specialized requirements create additional construction cost burdens.

ADDITIONAL COMMENTS

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Jurisdiction. Placing jurisdiction within the Department of Public Safety is essential, but there needs to be an Office of State Building Inspector as well as an Office of State Fire Marshal, with staff that is well-qualified in building construction, not just fire and life safety expertise; to handle complex construction issues (structural, light and ventilation, energy, access) if the new Board is charged with resolving regulatory conflicts.

A state-wide building code is an essential element of public safety, no less than the police powers of the state. The protection of the public in buildings and structures is a state responsibility; but, as with the police and fire services, is recognized as a service that can be ceded in part to the municipalities, as they are uniquely positioned to enforce state public safety laws and regulations.

Funding. Given that a public responsibility exists for a service that, unlike the constant vigilance of police and fire services, is charged with protecting the public safety from design and construction flaws, such service can legitimately be based upon user fees and not on the general tax base. This becomes a license regulatory function, wherein an owner in fee is responsible for the construction in accordance with applicable regulations, and the public service charges pertaining thereto.

User fees are properly established by many states to adequately cover the direct and indirect costs of maintaining municipal building department services. Several states have legislated the ability for municipalities to join together in sharing the costs of a department or to engage qualified private services to perform the function. Plan review, inspections, other administrative functions and even the certification and training of staff can be fully supported through enabling legislation.

Permits. A building permit as a license allows owners to construct or alter a building or structure, in accordance with adopted rules and regulations, just as a Certificate of Occupancy is a license to occupy and use a building or structure. Such licenses are suspendable or revocable for acts contrary to regulation. An owner in fee can delegate such responsibility to a qualified contractor or design professional as their designated agent.

Benefits. The use of state-wide mandatory regulations for construction of buildings and structures is the most effective, under-utilized way to:

- Increase the importance of public safety for Maine citizens;
- Enhance the economic viability of the state through use of the best energy technology;
- Protect against destruction of property through better design and construction requirements.