

# **Resolve 46**

## **Directing the Development of a Building Code and Building Rehabilitation Code Implementation Plan**

### **Executive Summary**

#### **Context:**

In the spring of 2007, the Business, Research and Economic Development (BRED) Committee of the Legislature passed Resolve 46, which directed state agencies to develop a proposal that would implement the building codes and resolve conflicts between building codes and other related codes in statute.

For six months, a Steering Committee consisting of Department of Economic and Community Development, Maine Historic Preservation Commission, the State Fire Marshal, Department of Professional and Financial Regulation and chaired by the State Planning Office conducted research and analysis and gathered stakeholder input. Based on this work, the Steering Committee offers the recommendations below.

It should be noted that the Brookings report of 2006 and the Climate Action Plan of 2004 recommended that Maine adopt uniform statewide building and energy codes. Subsequent to that report, the Governor's Council on Quality of Place and the Legislature's Committee on Future Maine Prosperity recommended implementation of uniform statewide building codes.

#### **Process:**

**Focus Groups** were conducted by Market Decisions, a research firm in Portland. The purpose of the focus groups was to provide unbiased, baseline information from which to develop a proposal. Four focus groups were held, one for architects and designers, one for builders and contractors, one for code and fire officials, and one for developers and lenders. A full report on the focus groups can be found at [www.maine.gov/spo](http://www.maine.gov/spo)

**A Consulting Firm**, the Sullivan Group out of Massachusetts and New Hampshire, was contracted to provide guidance and advice on the technical details of this proposal.

**Public Meetings** were held in Bangor, Portland and Presque Isle to gather feedback on a preliminary draft proposal. A total of 120 people attended these sessions.

**Meetings and Presentations** were given to 14 interest groups, including but not limited to building trade associations, code associations, the service center coalition, and the downtown coalition. A complete listing can be found at [www.maine.gov/spo](http://www.maine.gov/spo).

**Public Comments** were accepted throughout the process over 70 written comments were received from individuals and groups.

## **Key Findings:**

1. Municipalities voluntarily adopt, amend and enforce building codes. About 70 towns have adopted a building code and versions of these codes differ from town to town, leading to our current “patchwork quilt” of codes. Lack of uniform building codes creates unnecessary confusion, and added time and cost to the permitting process.
2. While the state has identified model building and energy codes in statute, few or no resources have been allocated to administer and enforce them. Resources have been lacking at the state and local level to adequately update, train, inspect and enforce these codes. If code compliance is a public priority, then funding can be made available from a number of sources.
3. Training for the IRC, IBC, IEBC and IECC building and energy codes is not regularly offered in Maine, and we have found strong interest from code officers, builders and architects for training and certification in these codes. Increasing the number of people trained would improve building design and quality, code enforcement and public safety.
4. State professional boards and agencies (electric, plumbing, elevator, fire, energy etc) adopt and enforce codes and standards separately, creating uncoordinated and sometimes contradictory regulations. As a result, the permitting process is complex, time consuming and costly.
5. While there are conflicts when you compare the language of various codes, the more significant “harmonization” issue is a lack of clarity in the permitting process at the state and local level.
6. Code compliance for existing and historic buildings is typically negotiated on a project by project basis. This system generally works, but could work better. Typically, experienced building professionals are able to work with the current system, but less experienced and out of state builders and investors find it complicated and time consuming. The rehab code (IEBC) currently codified in Maine statute does increase options for bringing old buildings into code compliance, but design professionals and code enforcement officers need training in this code for it to be used effectively.
7. Some provisions of the Maine Human Rights Act (the statute governing accessibility), the elevator laws and Maine Flood Hazard Development Standards are stricter than national standards. These standards add cost and sometimes act as a barrier to investment, particularly in rehabilitating older buildings. In other cases, these standards may offer additional value. The financial and social costs and benefits of these stricter regulations need to be evaluated.

## **Summary of Recommendations:**

The Steering Committee finds that nationally the best practice for building and energy code adoption and enforcement is a state and local partnership. In this partnership, the most effective and efficient role for the state is adoption and ongoing maintenance of the codes, and in providing training to the codes. Enforcement is achieved most effectively and efficiently by local plan review and inspection.

Nationally, local code compliance programs are paid for as a fee for service. To that end, the International Code Council has developed a framework to assist jurisdictions in determining a permit fee structure that will pay for local code enforcement activities. Below are the Steering Committee's recommendations for a state and local partnership for implementing the building and energy codes in Maine.

### **1. The Legislature should put a framework in place that will establish statewide uniform building and energy codes.**

There is almost unanimous support among stakeholder groups that Maine would benefit from uniform statewide building and energy codes that would replace separate codes in each town. In order to achieve this, a framework needs to be set up to amend, update, adopt and support these codes. The Steering Committee recommends a state level Technical Building Codes Board, comprised of experts in building construction, fire prevention, energy and historic preservation, be appointed. This board would have the authority to:

- Adopt and amend national building and energy codes for Maine
- Update codes on a regular basis
- Proactively identify and resolve conflicts between codes
- Provide code interpretation and technical assistance to towns
- Publish amendments, interpretations and conflict resolution decisions
- Ensure that training in building and energy codes is available, accessible and affordable

### **2. The Steering Committee recommends that Code Enforcement remain at the local level. The Steering Committee recommends Option A.**

The Committee knew that there were differing opinions statewide about the regulation of building construction, but were surprised by the level of support that was expressed for mandatory statewide enforcement of a uniform building code. Many code officers and environmental groups expressed support for mandatory codes in all towns. On the other hand a number of small towns, particularly in rural areas, voiced the opinion that code enforcement should be optional for all towns. On balance, the Committee recommends option A, which would require code enforcement where the majority of new building is taking place, in towns with more than 2000 residents.

Option A: Code enforcement required in towns with over 2000 in population

Currently, towns with populations of 2000 or more are required to have a building inspector, but inspectors are not required to inspect to a building or energy code. The Steering Committee recognizes that the key to public safety, the quality of Maine's built environment, and consumer satisfaction depends on code enforcement. Requiring code enforcement (which includes plan review and inspection) in towns that now have a building inspector would improve public safety and consumer protection. Code enforcement expenses are currently and would continue to be paid through building permit fees that are established and collected locally. *(Note: because the fees are paid for by applicants, this is not considered an unfunded mandate.)*

Option B: Building and energy codes apply statewide, but local enforcement is optional  
Towns choose whether to enforce building and energy codes. Some consumer protection is offered by the fact that codes apply statewide, even if not enforced. About seventy towns in Maine have code enforcement programs, under our current optional enforcement policy.

**3. Training and certification in building and energy codes should be offered to contractors, builders, designers and architects and be mandatory for all code officials who enforce these codes.**

Training and certification in building and energy codes (International Building Code (IBC), International Residential Code (IRC), International Existing Building Code (IEBC), and International Energy Conservation Code (IECC) would professionalize and upgrade Maine's administration of building codes. With training, code interpretation and enforcement would become more consistent. Consistent code interpretation and enforcement is key to improving the economic development climate in the state. The Steering Committee recommends that a training coordinator position be added at the state level that would be responsible for offering continuous training opportunities, using national, regional and local experts as instructors.

**4. Funding is needed to support the Technical Building Codes Board, technical assistance and training functions. While the administration has taken no position on funding, several possible options are outlined below.**

The cost of supporting the elements of this proposal (Technical Building Codes Board, and training and technical assistance for towns) is \$275,000 annually.

Option A: Increase fees currently paid to the State Fire Marshal's office and use Regional Greenhouse Gas Initiative (REGGI) funds to cover energy code portion of this proposal.  
Current state and local fees for new construction of public and commercial buildings are far below what is charged in other parts of the country. The state fire marshal's office now collects a fee for plan review for commercial and public projects over 3000 square feet. To fund this proposal from these fees, an increase of \$.02 per square foot would be

needed. This would increase fees from \$150 to \$210 for a 3000 square foot small business, or from \$2500 to \$3500 for a 50,000 square foot store. Businesses below 3000 square feet would be exempt.

An additional \$150,000 could be raised from the sale of carbon credits under the REGGI program. Administration and training in the energy code meets the funding criteria for REGGI funds.

Option B: Create a surcharge on all building permits

A surcharge on local building permits is how state code administration is funded in some states. In Maine, this model is in place for the Maine plumbing code, where state administration of the plumbing code is funded by a surcharge on plumbing permits. In public meetings, this option received little support, because people feared that a surcharge would be diverted for purposes other than code administration. If this option is chosen, a dedicated account would need to be set up for building and energy codes administration. State surcharge on local building permits based on cost of construction to generate an estimated income of \$200-\$400K):

- i. IBC (International Building Code)
  - 1. \$10 for permits up to \$50,000
  - 2. \$20 for permits up to \$200,000
  - 3. \$50 for permits up to \$1,000,000
  - 4. \$100 for permits over \$1,000,000
  
- ii. IRC (International Residential Code)
  - 1. \$5 for permits up to \$10,000
  - 2. \$10 for permits up to \$100,000
  - 3. \$20 for permits up to \$500,000
  - 4. \$50 for permits over \$500,000

Option C: Contractor licensing fees could cover the cost of this proposal.

**5. Further work should be done to make builders and contractors more accountable for the quality of their work.**

The Steering Committee recognizes that in order to ensure quality and safety in construction, more needs to be done to make contractors accountable for their work. While the Committee has not made a specific recommendation for how to do this, it does offer the following observations:

- 1. While architects and engineers are responsible for seven years for the quality of their work, there is no corresponding responsibility for a builder or contractor. As a consequence, some construction is built to last for a very short time. Design professionals

are also required to have liability insurance, which is not a corresponding responsibility for a builder or contractor.

2. Uniform building and energy codes can provide the foundation for contractor licensing, because there would be a code to which licensed contractors could be held. A possible first step toward licensing might be to require that contractors be trained and certified in these codes.

## **6. Further work should be done to make Maine’s code administration system more efficient and better coordinated.**

The Steering Committee recognizes that in order to create efficient, coordinated “one-stop shopping” for permits, a restructuring of our current state building related codes administration system is needed. Currently electric, plumbing, oil and solid fuel, fire, sewer and septic, elevator, Maine Human Rights Act building requirements, Maine Flood Hazard Development Standards, and energy codes are administered by at least five different state agencies and a number of boards and divisions within them. While each of these entities is doing good work, the lack of coordination adds cost and inconvenience to those who are subject to the regulations. Several people in our focus groups said they believed that public safety was also compromised by the lack of coordination in our code administration system.

The Steering Committee recommends that a plan be developed that would provide coordinated “one-stop shopping” for state building related codes administration. If resources are made available, this plan should to be submitted to the legislature by January, 2009.

## **7. Maine regulations that are stricter than federal standards need to be evaluated.**

Some provisions of the Maine Human Rights Act (the statute governing accessibility), the elevator laws and Maine Flood Hazard Development Standards are stricter than national standards. These standards sometimes add cost and act as a barrier to investment, particularly in rehabilitating older buildings. In other cases, these standards may provide additional value, such as reducing flood insurance premiums. These state regulations were developed before the national building codes addressed these issues and may duplicate what is now in the building codes. The Steering Committee recommends that costs and benefits of these stricter standards be evaluated. If resources are made available to do this, recommendations should be submitted to the legislature by January, 2009.