

Maine's New Building and Energy Code

Kate R. Knox | May 1, 2008

On April 24, 2008, Governor Baldacci signed into law a bill establishing the Maine Uniform Building and Energy Code (the "Code"). This law has important implications for municipalities as it expressly limits home rule authority by voiding any local building code ordinance that is inconsistent with the new statewide Code as of July 1, 2010. In addition, by July 2010, the Code must be enforced in all municipalities that have more than 2,000 residents and that have previously adopted codes. Municipalities that have more than 2,000 residents and that have not adopted building codes on a local level have until 2012 to implement the new Code. In Towns with a population of under 2,000, the Code will apply to all new structures, but the Towns are exempted from all enforcement provisions of the Code (i.e., small Towns will not be required to enforce the Code).

The Legislature has created the Technical Building Codes and Standards Board (the "Board"), which will have responsibility for the adoption and amendment of the statewide Code. That Board, consisting of eleven members appointed by the Governor, must include code enforcement officers from both service center and non-service center communities. The Board will be housed in the Department of Public Safety's new Bureau of Building Codes and Standards, which will be in charge of staffing the Board and developing and implementing statewide Code training. That training will be provided to all municipalities free of charge (funded by a \$.04 per square foot surcharge on commercial development) and must be offered in geographically diverse areas so as to assure equal access among rural and urban communities.

Starting in 2010, all new construction in Maine must conform to the requirements of the Maine Uniform Building and Energy Code. In addition, municipalities with populations over 2,000 that are switching from local codes to the statewide Code will be required to enforce the new code starting on July 1, 2010. Enforcement provisions require ongoing compliance inspections during construction, and no occupancy shall be permitted without the issuance of a compliance certificate.

Municipalities may ensure compliance with the Code through one of the following four avenues. First, municipalities may enforce with their own building and code enforcement officials recovering costs through building permit fees. Second, municipalities may enter into contractual agreements with county or regional authorities to share the use of certified building officials. Third, municipalities may enter into interlocal agreements with other municipalities to share the use of certified building officials. Finally, municipalities who do not wish to conduct building

inspections may require the building owner to contract privately with a certified independent third-party inspector, who then submits proof of inspection to the municipality.

The substance of the Code itself will initially come from 6 codes: (1) the 2009 edition of the International Building Code; (2) the 2009 edition of the International Existing Building Code; (3) the 2009 edition of the International Residential Code; (4) the 2009 edition of the International Energy Conservation Code; (5) the ASHRAE Standards 62.1, 62.2 and 90.1; and (6) the Maine model radon standard for new residential construction. The Board will review, and amend these Codes before adopting them to assure they are appropriately customized for Maine's unique building needs (e.g., seasonal camps and non-traditional building materials). In preparation for that review and amendment process, the Board must hold its first meeting by November 1, 2008 and a report back to the legislature is required by March 1, 2009.

While the new Code does not go into effect until 2010 at the earliest, municipalities should pay close attention to the workings of the Board, especially as the Board begins to harmonize the various code provisions. In addition, municipalities should begin to discuss their preferred enforcement options and develop compliance systems appropriate to that mechanism.

We encourage you to speak with Kate Knox (207-774-1200; kknox@bernsteinshur.com) of [Bernstein Shur's Municipal and Regulatory Practice Group](#) for more information and assistance.