

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 1810

H. P. 1346

House of Representatives, April 4, 1975

Speaker laid before the House and on Motion of Mrs. Najarian of Portland, referred to the Committee on Legal Affairs. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mrs. Najarian of Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FIVE

AN ACT to Establish the Maine Building Code.

Be it enacted by the People of the State of Maine, as follows:

30 MRSA c. 239, sub-c. III-A, is enacted to read:

SUBCHAPTER III-A
MAINE BUILDING CODE
ARTICLE I
BASIC PROVISIONS

§ 4851. Short title

This subchapter shall be known and may be cited as the "Maine Building Code."

§ 4852. Declaration of purpose

It is found and declared that many communities within this State do not have building codes and that the building codes which do exist in communities of this State, as enacted and applied, are not uniform and impede the utilization of new and improved technology, techniques, methods and materials in the construction of buildings.

It is further found and declared that uniformity of building codes and uniformity in procedures for enforcing building codes throughout the State are matters of state-wide interest and concern, in that uniformity would increase the efficiency of the building industry and the available supply of housing and other buildings, and further assure the safety of the products as well as eliminate substandard construction.

It is further found and declared that local communities can and should have the responsibility for carrying out and enforcing the uniform building code; and that in order to accomplish this purpose, it is necessary to register and provide in-service training for local officials responsible for such enforcement; and that a vital and necessary part of the enforcement program of a uniform building code is the registration of persons and organizations whose activities are to be regulated and controlled by such code; and that it is appropriate and reasonable that such persons and organizations contribute to the cost of the administration and enforcement of the provisions of this subchapter by paying an annual registration fee.

It is intended, by this subchapter, to create conditions in this State which will facilitate uniformity in building code enforcement, promote the use of new and improved technologies, techniques, methods and materials, improve the supply and safety of housing and other buildings by adopting the BOCA Basic Building Code as a minimum requirement and provide for the proper training of local code enforcement officials.

§ 4853. Definitions

As used in this subchapter, unless the context otherwise indicates, the following words shall have the following meanings.

1. **Administrator.** "Administrator" means the Maine Building Code Administrator created by this subchapter.
2. **Authority.** "Authority" means the Maine State Housing Authority.
3. **Building.** "Building" means any combination of materials, whether portable or fixed, which comprises a structure affording facilities or shelter for any use or occupancy. The word "building" shall be construed, wherever used herein, as if followed by the words "or part or parts thereof and all equipment therein," unless the context clearly requires a different meaning. "Building" shall not mean industrialized housing or mobile homes certified pursuant to the Industrialized Housing Law of the State of Maine.
4. **Building tradesman.** "Building tradesman" means an individual, firm, corporation, association or partnership engaged in construction activities as defined in subsection 5.
5. **Construction.** "Construction" means the erection, reconstruction, demolition, alteration, conversion, repair and equipping of buildings.
6. **Local building official.** "Local building official" means an individual appointed by a local enforcement agency to carry out and enforce the provisions of the Maine Building Code.
7. **Local enforcement agency.** "Local enforcement agency" means the agency or agencies of local government with authority to make inspections of buildings and to enforce the laws, ordinances and regulations enacted by the local governments which establish standards and requirements applicable to the construction, alteration, repair or demolition of buildings.
8. **Local government.** "Local government" means any county, city, municipal corporation, town or other political subdivision of this State with au-

thority to establish standards and requirements applicable to the construction, alteration, repair or demolition of buildings.

§ 4854. State Building Code Division

1. Division established. The Maine State Housing Authority shall establish a State Building Code Division, hereinafter referred to as the "division."

2. Division to be under Maine State Housing Authority; supervision. The division shall be a part of the Maine State Housing Authority and shall execute its powers and duties under the supervision of the director of the authority and under the direction of the administrator.

3. State Building Code Administrator; duties. The director of the authority shall appoint and employ a State Building Code Administrator who shall:

- A. Administer and enforce this subchapter and the Maine Building Code;
- B. Prepare and implement procedures for the registration of local building officials and building tradesmen;
- C. Formulate, gather and submit proposed amendments to the Maine Building Code;
- D. Employ necessary staff assistants and consultants, within the limits of available funds and with the approval of the director, to assist in carrying out this subchapter and the Maine Building Code; and
- E. With the prior approval of a majority of the commissioners of the authority, act in their behalf and perform any and all of the powers and duties of the authority in accordance with this subchapter, or the Maine Housing Authorities Act.

4. Appointment of director; renewal; removal. The director shall consider administrative experience as well as experience in building construction and inspection, in appointing an administrator and may appoint him for a term of years not to exceed 4 years. After such term, the administrator may be reappointed. If the administrator is appointed for a term of years, he may be removed only for good cause following a hearing before the commissioners of the authority, at which hearing he may be represented by counsel.

§ 4855. Powers of the authority

1. To adopt, amend or repeal certain code provisions. The authority may adopt, amend or repeal provisions of the Maine Building Code governing the following matters:

- A. The construction of all buildings and inspection thereof for compliance with the Maine Building Code;
- B. The issuance and revocation of permits or licenses for building;
- C. The use or occupancy of buildings;

D. The standards and requirements for materials to be used in connection therewith, including but not limited to standards and requirements for safety, noise insulation and abatement, energy conservation, ingress and egress, and sanitary conditions; and

E. The method for establishing and determining fees charged for permits issued pursuant to the Maine Building Code, including minimum fees for various types of building construction activity.

2. Additional powers. The authority may also:

A. Hold public hearings, and in connection therewith invite witnesses and take testimony, in connection with the administration of this subchapter and the Maine Building Code. When public hearings are held by the administrator without a quorum of commissioners being present, he shall keep or cause to be kept accurate and thorough, though not necessarily verbatim, minutes so that the commissioner may review any decision he makes on the basis of material presented at such public hearing. Whenever a commissioner attends the public hearing, the authority may exercise all investigative powers granted by the Maine Housing Authorities Act;

B. Make a continual study of the operation of the Maine Building Code and other laws relating to the construction of buildings to ascertain their effect upon the cost of building construction and determine the effectiveness of their provisions for health, safety and security;

C. Decide, upon application by a private party, local enforcement agency, building official or code enforcement officer, that new technologies, techniques and materials which have been tested, where necessary, and found to meet the objectives of the Maine Building Code, shall be deemed to meet that code. These determinations may, when they are of general application, be enacted as amendments to the Maine Building Code;

D. Appoint experts, consultants, technical advisers and advisory committees for assistance and recommendations relative to the amendment of the State Building Code and for carrying out the purposes of this subchapter; and

E. Carry out inspections of buildings and audit local enforcement agencies.

§ 4856. Maine Building Code

1. Adoption of 1970 Edition of Code of the Building Officials and Code Administrators International, Inc. There is hereby adopted as the "Maine Building Code," the 1970 Edition of the Code of the Building Officials and Code Administrators International, Inc., including all amendments and supplements thereto through 1974.

2. Effective date of code. The effective date of the Maine Building Code as distinguished from the Maine Building Code Act shall be January 1, 1976 unless the authority shall set a later date. In the event the authority sets a

later date, it shall formally advise the appropriate Joint Standing Committee of the State Legislature of its reasons for delay.

3. Amendments to achieve certain objectives. Amendments to the Maine Building Code, as provided by section 4857, shall be designed to achieve the following specific objectives:

- A. Provide uniform standards and requirements for, among other things, construction and construction materials consonant with accepted standards of engineering and fire prevention practices;
- B. To the extent practicable, set forth the standards, specifications and requirements in terms of performance objectives so as to facilitate the use of new technology, techniques and materials;
- C. To the extent practicable, make the Maine Building Code consistent with the codes and standards of other states;
- D. See that such code does not increase the cost of construction in the State unnecessarily; and,
- E. See that the State will be allowed to be represented adequately in the code modification proceedings of the model code group whose code is adopted hereby.

4. Effect of code on local building regulations and permits. Until the effective date of the Maine Building Code, building regulations adopted by a local government shall continue in effect unless repealed by local law or ordinance. Thereafter, building regulations adopted by a local government shall be void and of no effect, except as reserved to the local government in section 4862. A building permit validly issued pursuant to local building regulations prior to the effective date of the Maine Building Code is valid thereafter and the construction of a building may be completed pursuant to and in accordance with that permit. In areas of the State having no building regulations or not requiring building permits, the construction of a building started before the effective date of the Maine Building Code may be completed without a building permit.

5. Effect of code on building regulations promulgated by bodies acting under state statutes. Building regulations promulgated by any board, department, commission, agency, instrumentality or authority pursuant to any act of this State shall continue in effect until altered by the promulgating body. If any such regulations shall be determined by the promulgating body or by the authority to be inconsistent with the Maine Building Code, then the authority and the promulgating body shall determine which regulations shall apply to any given building. It is the intent of the Legislature that, when reasonably possible, the Maine Building Code shall supersede other regulations, but conflicts should be resolved expeditiously so that construction not be delayed pending a determination of which regulations shall be followed. Industrialized housing and mobile homes certified pursuant to the Industrialized Housing Law shall be deemed to comply with this subchapter. Nothing contained in this subchapter shall be construed to limit in any way the requirement that all installations of electrical equipment shall

comply with the current edition of the National Electrical Code, pamphlet #70, as amended, published by the National Fire Protection Association and the applicable orders and rules and regulations of the Electricians' Examining Board nor to limit in any way the rights and duties of state electrical inspectors as set forth in Title 32, chapter 17; or the requirement that all installations of plumbing fixtures shall comply with the rules and regulations of the Department of Health and Welfare as set forth in the current edition of the Maine Plumbing Code; or the requirement that the installation of oil burners shall comply with the rules, regulations and standards adopted by the Oilburnermen's Licensing Board.

6. **Applicability.** This Act shall not apply to any building, the construction of which is subject to the jurisdiction of the Bureau of Public Improvements of the State of Maine.

§ 4857. Amendments

1. **Local amendments.** A local government may, where local conditions necessitate such action, adopt amendments to the Maine Building Code. Any amendment shall take the form of an ordinance and shall be enacted pursuant to the provisions of Title 30, chapter 209. All amendments shall be in the form of revisions to the Maine Building Code, and shall reference the applicable code sections to be amended.

A. Amendments adopted by local governments shall be applicable only to building activities within the jurisdiction of said local government.

B. The adopted amendment shall offer at least equal quality, strength, effectiveness, fire resistance, durability and safety as the Maine Building Code. The opinion of the authority shall be final as to when a local amendment meets this requirement.

C. Within 30 days of adoption, the local government shall file a copy of the amendment with the authority. The authority shall then notify of the amendments, all registered local building officials who, in the opinion of the authority, may have reason to use said information.

2. **Agency may consider amendments from certain sources.** In addition to amendments made pursuant to section 4855, the authority may consider and make amendments to the Maine Building Code from the following sources:

A. Local amendments adopted pursuant to subsection 1; and

B. Amendments or supplements to the 1970 BOCA Code adopted by the Building Officials and Code Administrators International, Inc.

§ 4858. Administration

1. **Local agencies to examine, approve or disapprove plans and specifications; local building official.** Local enforcement agencies or local governments are responsible for the examination and approval or disapproval of plans and specifications, the issuance and revocation of building permits, certificates of occupancy, and similar documents, and the inspection of

buildings pursuant to the provisions of the Maine Building Code. The local enforcement agency or local government shall act through the local building official when such official shall have been appointed and certified. Prior to the appointment of a local building official, the senior elected or appointed official of the local government shall be responsible for performing such duties of a local building official as he reasonably may. References to powers and duties of local building officials in other sections of this subchapter shall apply to such other local official who may be carrying out the functions of a local building official pursuant to this section.

2. Local administration prior to effective date of code. Local governments, prior to the effective date of the Maine Building Code, may create a local enforcement agency and employ and designate a local building official to administer and enforce the Maine Building Code. The minimum qualifications of a local building official shall be established by the local government and shall be filed with the authority in registering the local building official. No local building official shall be removed from office prior to the end of the term of his employment contract except for cause after a full opportunity to be heard before the local governing body on specific charges.

3. Administrator to notify local governments in certain cases. If a local government has not carried out the provisions of subsection 2 as of the effective date of the Maine Building Code, the administrator shall notify the local governing officials of their responsibility to enforce the Maine Building Code in that jurisdiction until a local building official is appointed.

4. Local appeals boards. Local governments may appoint local appeals boards to hear appeals or use such other local appeals methods as they shall determine.

5. Joint local enforcement agencies. Two or more local governments may establish a joint local enforcement agency to serve their jurisdictions, and in this event they shall share the expenses incurred thereby proportionately according to their respective populations or by such other formula as they shall determine.

6. State assistance to local enforcement agencies. The authority, upon request, may assist a local enforcement agency in such matters as inspection, code interpretation, education, training, and information collection and dissemination.

7. Building permits. Except as otherwise provided in the Maine Building Code, the construction of a building shall not begin until a building permit is issued. A building permit shall be issued if, upon submission of an application to a local enforcement agency, the building proposed to be erected will, in the opinion of the local building official, comply with this subchapter, the Maine Building Code and all other applicable laws, ordinances, or regulations. A local enforcement agency may suspend or revoke a building permit if the building under construction pursuant thereto does not comply with this subchapter or the Maine Building Code.

8. Inspection. A local enforcement agency shall periodically inspect all construction undertaken pursuant to building permits issued by that agency

to assure compliance with this subchapter and the Maine Building Code. The owner of a building under construction is deemed to have consented to inspection by a local enforcement agency by applying for a building permit. An inspection may be made of any building at any time if a local enforcement agency has probable cause to believe that a condition hazardous to life or property exists. If a building is found not to comply with the Maine Building Code, the local enforcement agency shall notify the person named in the permit, in writing, to bring the building into compliance with the Maine Building Code, or to secure it from entry, or both.

9. Certificate of occupancy. No building constructed after the effective date of the Maine Building Code shall be used or occupied until a certificate of occupancy has been issued. Applications for certificates of occupancy shall be submitted, in writing, to the local enforcement agency pursuant to the Maine Building Code. A certificate of occupancy shall be issued if the building to which the application pertains has been constructed in accordance with the building permit, the Maine Building Code and other applicable laws and ordinances.

§ 4859. Registration of local building officials

1. Authority to be notified of appointment of local building officials. A local government which appoints a local building official shall notify the authority of such appointment. If the appointed local building official is not already registered, the local governing body shall pay a fee of \$25. The authority shall record the name of the local building official in its records and send him a certificate of registration which shall continue in force so long as he continues in the employ of the local government which appointed him, and paid for his registration.

2. Authority authorized to register certain individuals. An individual may apply directly to the authority for a certificate of registration. He shall accompany said application with a fee of \$10. The authority shall record his name in its records and send him a certificate of registration which shall continue in force for a period of 3 years upon the authority's determination that:

A. The individual has at least 5 years experience as a local building official in another state;

B. The individual has at least 5 years experience as a local building official in Maine prior to January 1, 1976; or

C. The individual can meet such standards as the division may establish by examination or otherwise.

3. Division to keep certain records. The division shall keep a record of the names and addresses of all registered local building officials and such additional personal data as the authority may require. Each registration statement shall contain such identifying information as the division may require. The authority annually shall publish a list of all currently registered local building officials.

§ 4860. Public hearings

1. Hearing required; notification. The authority shall provide for public hearings prior to adopting any amendment to the Maine Building Code. At least 30 days prior to such public hearing, the authority shall publish a notice at least twice in a newspaper of general circulation in the State, and in any trade, industry or professional publication which the division deems effective in reaching persons affected.

2. Contents of notice. The notice shall:

A. Reference the statutory authority under which the adoption of the rule or amendment is proposed;

B. Give the time and place of the public hearing, and state the manner in which data, arguments, or news may be submitted, and whether orally or in writing; and,

C. Summarize the substance of the proposed amendment, stating the subjects and issues involved.

3. Copies of subchapter and code to be available to public. Printed copies of this subchapter and the Maine Building Code shall be available to the public at a price not exceeding the cost to the authority of preparation.

§ 4861. Fees

1. Permit fees. Each local government shall prescribe by ordinance a schedule of fees for permits of new construction, alterations, moving of buildings, demolition, signs, and so forth. The fee schedule for new construction shall be based on the square footage as determined by external dimensions of the structure times the number of stories, for example, 1, 1½, 2, and so forth. A minimum of .015 dollars per square foot shall be used.

2. Reports of local governments to authority; division of fees. Local governments shall report semiannually all activities under this subchapter and the Maine Building Code to the authority. In order to support the administration of this subchapter and the Maine Building Code, local governments with a registered local building official shall pay to the authority 20% of all fees received under the Code, and local governments without a registered local building official shall pay to the authority 80% of all fees received under the Code. All such fees shall be submitted to the authority at least quarterly. A local government which pays 80% of its fees to the authority in accordance with this paragraph shall be eligible to receive actual inspection assistance from the division to the extent the division, in its sole discretion, may be able to provide such assistance.

3. Special fund. Any and all funds received by the authority in the administration and enforcement of this subchapter and the Maine Building Code shall be maintained in a special fund available to the division for carrying out the purposes of this subchapter.

§ 4862. Reservation of local zoning and related powers

1. Items reserved to local government. Except as provided pursuant to this subchapter, requirements for land use setbacks, side and rear yards, site development and property lines are reserved to local government.

2. Fire zone boundaries. Local governments shall establish precise boundaries for fire zones within their jurisdictions.

§ 4863. Violations and penalties

1. Firm, corporation, partnership or association. Any person or local government deemed by the administrator to have violated any provision of this subchapter or the Maine Building Code may upon a vote of the commissioners of the authority be assessed a penalty payment of not more than \$1,000 per violation, payable to the authority for use in administering this subchapter. Violation of this subchapter shall not be cause for imprisonment.

2. Separate violations. A separate violation is deemed to have occurred with respect to each building not in compliance. Each day the violation continues constitutes a separate violation.

3. Assessment of penalties. The authority may assess the prescribed penalty payment by affidavit of the administrator. If the assessed party appeals the assessment to Superior Court, the penalty payment shall not be collectable until a finding by the court that a violation existed, that the assessed party caused or allowed to be caused said violation, and that the assessment is reasonable.

§ 4864. Injunctive relief

The authority may obtain injunctive relief from any court of competent jurisdiction to enjoin the sale, delivery, use, occupation, erection, alteration, or installation of any building covered by this subchapter upon an affidavit by the authority specifying the manner in which the building does not conform to the requirements of this subchapter or the Maine Building Code.

§ 4865. Statutory civil action

Notwithstanding any other remedies available, any person or party, in an individual capacity or on behalf of a class of persons or parties, damaged as a result of a violation of this subchapter or the Maine Building Code, has a cause of action in any court of competent jurisdiction against the person or party who committed the violation, and if the inspected party can prove his actions were approved, the local government which permitted the violation. Any award may include actual and punitive damages and the cost of litigation, including reasonable attorney's fees. Local enforcement agencies and the local governments may be sued under the provisions of this section, but their liability shall be limited to the funds available at the commencement of the action in the control of the local enforcement agency, or funds appropriated specifically to honor a claim won hereunder by an aggrieved party. The local building inspector shall not be personally liable under this section.

§ 4866. Severability

If any provision of this subchapter or the application thereof to any person or circumstance is held invalid, this invalidity shall not affect other provisions or applications of this subchapter which can be given effect without the invalid provisions or application, and to this end the provisions of this subchapter are severable.

ARTICLE II**REGISTRATION OF BUILDING TRADESMEN****§ 4871. Registration; persons required to register**

Not later than 90 days after the effective date of this subchapter, all building tradesmen shall register with the authority and pay an annual registration fee. Persons who are licensed by other departments or agencies of the State shall be exempt from the provisions of this section but shall provide proof of such licensing, in writing, to the authority when requesting an exemption. Persons employed by a firm, corporation, partnership or association required to register under this Article, and who practice their respective trades solely for such organization, shall not be required to register under this Article.

§ 4872. Fees

On or before the date specified in section 4871, individuals and organizations required to register under this Article, shall file with the authority the required forms and shall pay the specified fee. The fee shall be equal to 125% of the annual fees established by the authority and shall provide registration until February 1, 1977. Thereafter, annually, before February 1st, all registered individuals or organizations shall file a renewal statement and pay such renewal fee as the authority may establish. For individuals the fee shall be not less than \$6 nor more than \$12 annually. For firms, partnerships, associations, or corporations, the fee shall be not less than \$34 nor more than \$96 annually. The authority may establish fee schedules based on work volume or other reasonable criteria.

§ 4873. Records

The authority shall establish and maintain a record of each individual or organization registered under this Article, and account for all moneys received and disbursed. Such records and accounts shall be open for inspection at the authority's offices. All fees received shall be deposited in a separate account from any other fund or account maintained by the authority, and shall be used only for carrying out the requirements of this Article. The authority may charge reasonable expenses of support services to the account established in accordance with this section and may lend surplus moneys in said account to other authority divisions as may appear reasonable from time to time.

§ 4874. Right to secure permit limited

No person, firm, corporation, partnership, or association may secure a building permit from the administrator or any local building official if at

the time such person, firm, corporation, partnership, or association requests a permit, he shall be subject to a penalty assessed under section 4863 of this subchapter, which he shall not have paid. This prohibition shall not apply if the penalty assessment has been appealed in accordance with section 4863.

Any local building official who revokes a building permit from any person, firm, corporation, partnership, or association shall notify the administrator of said revocation and the reasons therefor. If, in the opinion of the administrator, the cause for the revocation reflects an inability or unwillingness on the part of the said person, firm, corporation, partnership, or association to operate in accordance with the Maine Building Code, the administrator may revoke said person, firm, corporation, partnership, or association's right to secure a building permit from any authorized official in the State of Maine until such time as the administrator shall be satisfied that said person, firm, corporation, partnership, or association will be able or willing to comply with the Maine Building Code. An appeal from any decision of the administrator to withdraw the right to secure a building permit may be made to the commissioners of the authority. An appeal from a decision of the commissioners may be made to Superior Court.

STATEMENT OF FACT

This Act adopts, as the Maine Building Code, the so-called "BOCA Building Code" of the Building Officials and Code Administrators International, Inc. The Act provides for the registration of both building construction tradesmen and local building officials and authorizes in-service training programs for such officials. The Maine State Housing Authority is authorized to review and adopt such amendments to the Maine Building Code as may be proposed by local governments or as may be adopted by the Building Officials and Code Administrators International, Inc. Local governments will, under this Act, have primary responsibility for administration and enforcement of the Maine Building Code with supervisory control exercised by the Maine State Housing Authority.