

HOUSE BILL NO. 224

INTRODUCED BY Z. PERRY

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS GOVERNING CERTIFIED LOCAL GOVERNMENT BUILDING CODE PROGRAMS; ALLOWING A LOCAL GOVERNMENT TO ACCUMULATE FEES AND CHARGES NECESSARY FOR BUILDING CODE ENFORCEMENT FOR AN INCREASED PERIOD OF TIME; PROVIDING THAT RULES ADOPTED BY THE DEPARTMENT OF LABOR AND INDUSTRY MAY NOT REQUIRE ADDITIONAL AUDITS OF LOCAL PROGRAMS; AMENDING SECTIONS 50-60-106 AND 50-60-302, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 50-60-106, MCA, is amended to read:

"50-60-106. Powers and duties of counties, cities, and towns. (1) As allowed by Title 50, chapter 60, part 3, the examination, approval, or disapproval of plans and specifications, the issuance and revocation of building permits, licenses, certificates, and similar documents, the inspection of buildings, and the administration and enforcement of building regulations within the limits of a city or town are the responsibility of the city or town. The examination, approval, or disapproval of plans and specifications, the issuance and revocation of building permits, licenses, certificates, and similar documents, the inspection of buildings, and the administration and enforcement of building regulations within the portion of a county that is covered by a county building code enforcement program are the responsibility of the county.

(2) Each county, city, or town certified under 50-60-302 shall, within its jurisdictional area:

(a) examine, approve, or disapprove plans and specifications for the construction of any building, the construction of which is pursuant or purports to be pursuant to the applicable provisions of the state building code or county, city, or town building code, and direct the inspection of the buildings during and in the course of construction;

(b) require that construction of buildings be in accordance with the applicable provisions of the state building code or county, city, or town building code, subject to the powers of variance or modification granted to the department;

(c) make available to building contractors at a price that is commensurate with reproduction costs a



1 checklist devised by the department pursuant to 50-60-118 for single-family dwellings and provide to contractors
2 who attach a completed checklist to the plans submitted for examination the relevant building permit or notice
3 of plan disapproval within 10 working days of the contractor's submission;

4 (d) during and in the course of construction, order in writing the remedying of any condition found to exist
5 in, on, or about any building that is being constructed in violation of the state building code or county, city, or town
6 building code. Orders may be served upon the owner or the owner's authorized agent personally or by sending
7 by certified mail a copy of the order to the owner or the owner's authorized agent at the address set forth in the
8 application for permission for the construction of the building. A county, city, or town certified pursuant to
9 50-60-302, by action of its building official, may grant in writing time as may be reasonably necessary for
10 achieving compliance with the order. For the purposes of subsection (2)(a) and this subsection (2)(d), the phrase
11 "during and in the course of construction" refers to the construction of a building until all necessary building
12 permits have been obtained and all work authorized by those permits has been fully approved by the building
13 official having jurisdiction.

14 (e) issue certificates of occupancy as provided in 50-60-107;

15 (f) issue permits, licenses, and other required documents in connection with the construction of a
16 building;

17 (g) ensure that all construction-related fees or charges imposed and collected by the county, city, or town
18 are necessary, reasonable, and uniform and are:

19 (i) except as provided in subsection (2)(g)(iii), used only for building code enforcement, which consists
20 of those necessary and reasonable costs directly and specifically identifiable for the enforcement of building
21 codes, plus indirect costs charged on the same basis as other local government proprietary funds not paying
22 administrative charges as direct charges. If indirect costs are waived for any local government proprietary fund,
23 they must also be waived for the program established in this section. Indirect charges are limited to the charges
24 that are allowed under federal cost accounting principles that are applicable to a local government.

25 (ii) reduced if the amount of the fees or charges accumulates above the amount needed to enforce
26 building codes for ~~12~~ 24 months. The excess must be placed in a reserve account and may be used only for
27 building code enforcement. Collection and expenditure of fees and charges must be fully documented.

28 (iii) allocated and remitted to the department, in an amount not to exceed 0.5% of the building fees or
29 charges collected, for the building codes education program established in 50-60-116.

30 (3) Each county, city, or town with a building code enforcement program that has been certified under

1 50-60-302 may, within the area of its jurisdiction:

2 (a) make, amend, and repeal rules for the administration and enforcement of the provisions of this
3 section and for the collection of fees and charges related to construction; and

4 (b) prohibit the commencement of construction until a permit has been issued by the building code
5 enforcement authority having jurisdiction after a showing of compliance with the requirements of the applicable
6 provisions of the state building code or county, city, or town building code or other county, city, or town ordinance
7 or resolution that pertains to the proposed construction. A county, city, or town subject to this subsection (3) may,
8 as part of its building code or by town ordinance or resolution, adopt voluntary energy conservation standards
9 for new construction for the purpose of providing incentives to encourage voluntary energy conservation. The
10 incentive-based energy conservation standards adopted may exceed any applicable energy conservation
11 standards contained in the state building code. New construction is not required to meet local standards that
12 exceed state energy conservation standards unless the building contractor elects to receive a local incentive.

13 (4) Each county, city, or town with a building code enforcement program that has been certified under
14 50-60-302 may perform inspections of buildings that are outside its jurisdictional limits, subject to the following
15 conditions:

16 (a) The inspections are requested in writing by the owners or builders of the buildings to be inspected.

17 (b) The inspections are not done in lieu of inspections by another county, city, or town that has
18 jurisdiction over the buildings to be inspected.

19 (c) (i) The county, city, or town powers of enforcement possessed as a result of building code
20 enforcement certification by the department may not be exercised in conjunction with the requested inspections.

21 (ii) Similar powers of building code enforcement may not be contractually created or required by the
22 requester and the inspecting jurisdiction.

23 (5) In situations in which buildings may be annexed into an inspecting city's or town's jurisdiction
24 subsequent to a requested inspection, the city or town may not require owners or builders to have duplicative
25 inspections of those buildings prior to annexation as a condition precedent to receiving any public services or
26 utilities."
27

28 **Section 2.** Section 50-60-302, MCA, is amended to read:

29 **"50-60-302. Certification of county, city, or town building codes.** (1) A county, city, or town may not
30 enforce a building code unless:

1 (a) the code enforcement program has been certified by the department as in compliance with applicable
2 statutes and department certification rules;

3 (b) the current adopted code, a current list of fees to be imposed, and a current plan for enforcement of
4 the code have been filed with and approved by the department; and

5 (c) all inspectors inspecting or approving any installations, which if accomplished commercially require
6 state licensure, must themselves be properly and currently state-licensed as journeymen in that craft or
7 occupation or be certified by a nationally recognized entity for testing and certification of inspectors that is
8 approved by the department before being permitted to inspect or approve any installations.

9 (2) (a) The Subject to subsection (2)(b), the department shall adopt additional rules and standards
10 governing the certification of county, city, and town building code enforcement programs that must include
11 provisions for prompt revocation of certification for refusal or failure to comply with any applicable statute or rule.
12 The department may allow a county, city, or town a reasonable amount of time, not to exceed 6 months, to correct
13 identified code enforcement program deficiencies, unless the deficiencies constitute an immediate threat to the
14 public health, safety, or welfare, in which case the department may require immediate correction. Failure to
15 correct deficiencies within the time set by the department constitutes a basis for immediate decertification of the
16 code enforcement program. Continued operation of a county, city, or town code enforcement program in violation
17 of a department order to correct deficiencies may be enjoined or subject to a writ of mandamus by a judge of the
18 district court in the jurisdiction in which the county, city, or town is located.

19 (b) The rules and standards must include provisions for the department to ensure that all code
20 enforcement program functions are being properly performed. The rules may not require an audit of a county,
21 city, or town code enforcement program that is in addition to or separate from the audit conducted under 2-7-503.

22 (3) If the certification of any local government code enforcement program is revoked for any violation or
23 deficiency, the state resumes its original jurisdiction for state building code enforcement within the county, city,
24 or town area and the local government retains the responsibility for completion of inspections and issuance of
25 certificates of occupancy on any incomplete construction projects previously permitted by the county, city, or
26 town, unless the reason for the decertification is directly related to the protection of health, safety, and welfare
27 of the public.

28 (4) If a county, city, or town voluntarily decertifies its code enforcement program, the department must
29 be given written notification of the intended decertification at least 90 days prior to the date of decertification. The
30 county, city, or town retains the responsibility for completion of inspections and issuance of certificates of

1 occupancy on any incomplete construction projects permitted by the county, city, or town prior to decertifying its
2 code enforcement program."

3 - END -