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H.792

Introduced by Representatives Campbell of St. Johnsbury, Anthony of Barre
City, Austin of Colchester, Berbeco of Winooski, Bluemle of
Burlington, Bos-Lun of Westminster, Burke of Brattleboro,
Chesnut-Tangerman of Middletown Springs, Dodge of Essex,
Farlice-Rubio of Barnet, Goldman of Rockingham, Headrick of
Burlington, Hooper of Burlington, Jerome of Brandon, Krasnow
of South Burlington, LaBounty of Lyndon, Logan of
Burlington, Masland of Thetford, Morris of Springfield,
Mulvaney-Stanak of Burlington, Ode of Burlington, Patt of
Worcester, Rachelson of Burlington, Small of Winooski,
Stebbins of Burlington, Taylor of Colchester, and Torre of
Moretown

Referred to Committee on

Date:

Subject: Public safety; building energy, residential building code

Statement of purpose of bill as introduced: This bill proposes to change the
name of the Division of Fire Safety to the Division of Fire and Building
Safety, to require the Division of Fire and Building Safety to adopt a statewide
residential building code, to transfer jurisdiction over the Residential and
Commercial Building Energy Standards from the Department of Public Service

1 to the Division of Fire and Building Safety, to require the Office of
2 Professional Regulation to make certain changes to the building contractor
3 registry, to require the Division of Fire Safety to make certain energy code-
4 related changes to its new database system, and to require the Department of
5 Public Service to design an online application and certification tool for small
6 residential projects.

7 An act relating to the Residential and Commercial Building Energy
8 Standards

9 It is hereby enacted by the General Assembly of the State of Vermont:

10 Sec. 1. FINDINGS AND INTENT

11 (a) The General Assembly finds that:

12 (1) Vermont established Residential Building Energy Standards (RBES)
13 in 1997 and Commercial Building Energy Standards (CBES) in 2007.

14 Collectively, these standards are Vermont's building energy codes and, like
15 fire or building codes where they have been adopted, are mandatory and have
16 the force of law.

17 (2) Though the RBES and CBES are mandatory, there is no single State
18 office designated to administer, interpret, adjudicate conflicts, issue variances,
19 and enforce compliance with them.

1 (3) The Department of Public Service is responsible for adopting and
2 updating the RBES and CBES regularly, but does not have the capacity to fully
3 administer and enforce them.

4 (4) The Division of Fire Safety (DFS) in the Department of Public
5 Safety is responsible for developing, administering, and enforcing building
6 codes, but does not currently have the expertise or capacity to also administer
7 or enforce the RBES and CBES. DFS has jurisdiction over all “public
8 buildings,” which includes commercial buildings and most habitable buildings
9 but does not include owner-occupied single-family homes.

10 (5) Vermont has not adopted a residential building construction code
11 and has no statewide construction standards for single-family homes.
12 Vermont’s lack of a statewide residential building construction code hinders
13 energy code administration because the State lacks basic administrative and
14 enforcement infrastructure that a statewide residential building construction
15 code would provide. The lack of a statewide residential building construction
16 code may also limit the State’s ability to access certain federal funding.

17 (6) While the RBES do apply to single-family residences, the
18 Department of Public Service has advised the General Assembly that the
19 enabling legislation does not provide clear authority for municipalities to
20 administer and enforce the RBES at the local level.

1 (7) Designating a single State office to administer both the building
2 construction codes and the RBES and CBES will promote efficiency,
3 streamline services, provide clarity to both industry and members of the
4 general public, and advance sound, building science-based practices that create
5 safer, healthier, more comfortable, more durable, and more efficient buildings.
6 Vermont is the only state that does not have the means to provide unified
7 administration of building construction codes and energy standards at either
8 the State or local level.

9 (8) Recent studies indicate that compliance with RBES is at about
10 54 percent and compliance with CBES is at about 87 percent, and both rates of
11 compliance are declining. Both the RBES and CBES are scheduled to become
12 more stringent to meet the goal of “net-zero-ready” by 2030. Without a
13 comprehensive strategy to improve administration, train new workers and the
14 existing workforce, and increase compliance, the rates are likely to continue to
15 decline.

16 (9) 2023 Acts and Resolves No. 47 created the Building Energy Code
17 Study Committee to recommend strategies for increasing compliance with the
18 RBES and CBES. The Committee’s report was submitted to the General
19 Assembly in December 2023.

20 (b) It is the intent of the General Assembly to:

1 § 2731. RULES; INSPECTIONS; VARIANCES

2 (a) Rules.

3 (1) The Commissioner is authorized to adopt rules regarding the
4 construction of buildings and owner-occupied single-family residences,
5 maintenance and operation of premises, and prevention of fires and removal of
6 fire hazards, and to prescribe standards necessary to protect the public,
7 employees, and property against harm arising out of or likely to arise out of
8 fire.

9 * * *

10 (b) Inspections.

11 (1) The Commissioner shall conduct inspections of premises and may
12 inspect owner-occupied single-family residences to ensure that the rules
13 adopted under this subchapter are being observed and may establish priorities
14 for enforcing these rules and standards based on the relative risks to persons
15 and property from fire of particular types of premises.

16 (2) The Commissioner may also conduct inspections to ensure that
17 buildings and single-family residences are constructed in accordance with
18 approved plans and drawings.

19 * * *

20 (1) Energy standard certificates. Provision of a certificate as required by ~~30~~
21 ~~V.S.A. § 51~~ section 2772 of this title (residential building energy standards) or

1 ~~53~~ section 2774 of this title (commercial building energy standards) shall be a
2 condition precedent to the issuance of a certificate of use or occupancy for a
3 public building or owner-occupied single-family residence under the rules
4 adopted pursuant to this section.

5 * * *

6 § 2734. PENALTIES

7 (a) A person who violates any provision of this subchapter or subchapter
8 2B of this chapter or any order or rule issued pursuant to this subchapter shall
9 be fined not more than \$10,000.00. The State's Attorney of the county in
10 which the violation occurs shall prosecute the violation and may commence a
11 proceeding in the Superior Court to compel compliance with the order or rule,
12 and the court may make orders and decrees in relation to the proceeding by
13 way of writ of injunction or otherwise.

14 * * *

15 (c) The Commissioner may, after notice and opportunity for hearing, assess
16 an administrative penalty of not more than \$1,000.00 for each violation of this
17 subchapter or subchapter 2B of this chapter or any rule adopted under this
18 subchapter. Penalties assessed pursuant to this subsection shall be based on the
19 severity of the violation. An election by the Commissioner to proceed under
20 this subsection shall not limit or restrict the Commissioner's authority under
21 subsection (a) of this section.

1 (d) Violation of any rule adopted under this subchapter or subchapter 2B of
2 this chapter shall be prima facie evidence of negligence in any civil action for
3 damage or injury that is the result of the violation.

4 (e) A fine or other penalty related to a failure to comply with section 2772
5 of this title (residential building energy standards) shall not be imposed against
6 the owner of an owner-occupied single-family residence if all of the following
7 apply:

8 (1) The owner of the residential construction is the builder, as defined in
9 section 2771 of this chapter.

10 (2) The owner utilizes the owner-occupied single-family residence as
11 the owner's dwelling.

12 (3) The owner in fact directs the details of construction with regard to
13 the installation of materials or assemblies not in compliance with the
14 Residential Building Energy Standards adopted pursuant to section 2772 of
15 this title.

16 * * *

17 § 2736. MUNICIPAL ENFORCEMENT

18 (a)(1) The legislative body of a municipality may appoint one or more
19 trained and qualified officials and may establish procedures to enforce rules
20 and standards adopted under subsection 2731(a) of this title and sections 2772

1 (residential building energy standards) and 2774 (commercial building energy
2 standards) of this title.

3 (2) After considering the type of buildings within the municipality, if the
4 Commissioner determines that the training, qualifications, and procedures are
5 sufficient, ~~he or she~~ the Commissioner may assign responsibility to the
6 municipality for enforcement of some or all of ~~these~~ the rules and standards
7 adopted under subsection 2731(a) of this title and sections 2772 (residential
8 building energy standards) and 2774 (commercial building energy standards)
9 of this title. The Commissioner may also assign responsibility for enforcement
10 of the rules of the Access Board adopted under section 2902 of this title.

11 (3) The Commissioner shall provide continuing review, consultation,
12 and assistance as may be necessary.

13 (4) The assignment of responsibility may be revoked by the
14 Commissioner after notice and an opportunity for hearing if the Commissioner
15 determines that the training, qualifications, or procedures are insufficient.

16 (5) The assignment of responsibility shall not affect the Commissioner's
17 authority under this subchapter.

18 * * *

19 (c)(1) Subject to rules adopted under section 2731 of this title, municipal
20 officials appointed under this section may enter any premises or owner-

1 occupied single-family residence in order to carry out the responsibilities of
2 this section.

3 (2) The officials may order the repair, rehabilitation, closing,
4 demolition, or removal of any premises to the same extent as the
5 Commissioner may under section 2733 of this title.

6 * * *

7 (f) Nothing in this section shall be interpreted to decrease the authority of
8 municipal officials under other laws, including laws concerning building codes
9 and laws concerning housing codes.

10 * * *

11 § 2738. FIRE PREVENTION AND BUILDING INSPECTION SPECIAL
12 FUND

13 (a) The Fire Prevention and Building Inspection Special Fund revenues
14 shall be from the following sources:

15 (1) fees relating to construction and inspection of public ~~building~~
16 buildings and owner-occupied single-family residences and fire prevention
17 inspections under section 2731 of this title;

18 * * *

1 Sec. 3. REPEAL

2 30 V.S.A. chapter 2, subchapter 1 (building energy standards) is repealed.

3 Sec. 4. 20 V.S.A. chapter 173, subchapter 2B is added to read:

4 Subchapter 2B. Building Energy Standards

5 § 2771. DEFINITIONS

6 As used in this subchapter:

7 (1) “Builder” means the general contractor or other person in charge of
8 construction, who has the power to direct others with respect to the details to
9 be observed in construction.

10 (2) “CBES” means the Commercial Building Energy Standards adopted
11 pursuant to section 2774 of this subchapter.

12 (3) “Commercial buildings” means all buildings that are not residential
13 buildings as defined in subdivision (7) of this section or farm structures as
14 defined in 24 V.S.A. § 4413. With respect to a structure that is a mixed-use
15 building that shares residential and commercial users:

16 (A) if the structure is three stories or fewer in height, the term
17 “commercial building” includes all commercial uses within the structure and
18 all common areas and facilities that serve both residential and commercial
19 uses; and

20 (B) if the structure is four stories or more in height, the term
21 “commercial building” includes all uses and areas within the structure.

1 (4) “Director” means the Director of the Division of Fire and Building
2 Safety.

3 (5) “IECC” means the International Energy Conservation Code of the
4 International Code Council.

5 (6) “RBES” means the Residential Building Energy Standards adopted
6 pursuant to section 2772 of this subchapter.

7 (7) “Residential buildings” means one-family dwellings, two-family
8 dwellings, and multifamily housing three stories or fewer in height.

9 (A) With respect to a structure that is three stories or fewer in height
10 and is a mixed-use building that shares residential and commercial users, the
11 term “residential building” includes the living spaces in the structure and the
12 nonliving spaces in the structure that serve only the residential users such as
13 common hallways, laundry facilities, residential management offices,
14 community rooms, storage rooms, and foyers.

15 (B) “Residential buildings” do not include hunting camps.

16 (8) “Residential construction” means new construction of residential
17 buildings, and the construction of additions, alterations, renovations, or repairs
18 to an existing residential building.

19 (9) “Stretch code” means a building energy code for residential
20 buildings that achieves greater energy savings than the RBES and is adopted in
21 accordance with subsection 2772(c) of this subchapter.

1 § 2772. RESIDENTIAL BUILDING ENERGY STANDARDS; STRETCH

2 CODE

3 (a) Adoption of Residential Building Energy Standards (RBES). The
4 Director shall adopt RBES as provided pursuant to this section and residential
5 construction shall be in compliance with the RBES adopted by the Director.

6 (b) Revision and interpretation of RBES. The Director shall amend and
7 update the RBES by means of administrative rules adopted in accordance with
8 3 V.S.A. chapter 25. The Director shall endeavor to update and revise the
9 RBES promptly after the issuance of updated standards for residential
10 construction under the IECC. The Department of Public Service shall provide
11 technical assistance and expert advice to the Director in the interpretation of
12 the RBES and in the formulation of specific proposals for amending the RBES.
13 Prior to final adoption of each required revision of the RBES, the Director
14 shall convene an advisory committee to include the Commissioner of Public
15 Service or designee, one or more mortgage lenders, builders, building
16 designers, individuals with expertise in building science, utility representatives,
17 architects, civil, mechanical, and electrical engineers, environmental
18 organizations, consumer advocates, energy efficiency experts, the Attorney
19 General or designee, and other persons with experience and expertise that the
20 Director and Commissioner deem to be appropriate, such as consumer
21 advocates and energy conservation experts. The advisory committee may

1 provide the Director with additional recommendations for revision of the
2 RBES, including the frequency of the updates.

3 (1) Any amendments to the RBES shall be:

4 (A) consistent with duly adopted State energy policy, as specified in
5 30 V.S.A. § 202a, and consistent with duly adopted State housing policy;

6 (B) evaluated relative to their technical applicability and reliability;

7 and

8 (C) cost-effective and affordable from the consumer's perspective.

9 (2) Each time the RBES are amended by the Director, the amended
10 RBES shall become effective upon a date specified in the adopted rule, which
11 shall not be less than three months after the date of adoption. Persons
12 commencing residential construction before the effective date of the amended
13 RBES shall have the option of complying with the applicable provisions of the
14 earlier or the amended RBES. After the effective date of the amended RBES,
15 any person commencing residential construction shall comply with the most
16 recent version of the RBES.

17 (3) The RBES shall include standards for:

18 (A) ventilation;

19 (B) sealed combustion or induced or forced draft combustion
20 equipment when exhaust-only ventilation systems are installed; and

1 (C) adequate replacement air ducted directly to the combustion area
2 of wood and pellet stoves and fireplaces.

3 (4)(A)(i) The Division of Fire and Building Safety, in consultation with
4 the Department of Public Service, shall develop and disseminate criteria that
5 builders may use in lieu of any computer software, calculations and trade-off
6 worksheets, or systems analysis to comply with the prescriptive compliance
7 approach for the IECC. An example package that complies with the IECC
8 prescriptive compliance approach shall be included in the rules and updated as
9 appropriate.

10 (ii) The Division of Fire and Building Safety, in consultation with
11 the Department of Public Service, may, as determined to be appropriate by the
12 Director of Fire and Building Safety, develop and disseminate information and
13 guidance regarding compliance with the performance and Energy Rating Index
14 approaches to compliance with the IECC.

15 (B) To provide for flexibility, additional packages that are equivalent
16 to the example package developed pursuant to subdivision (4)(A) of this
17 subsection (b) and that satisfy the performance approach shall be disseminated
18 by the Division of Fire and Building Safety in consultation with Department of
19 Public Service. Each time the RBES are amended by the Director, the
20 Division of Fire and Building Safety shall, in consultation with the Department

1 of Public Service, develop modified compliance packages that will become
2 available to the public by the date that the amendment becomes effective.

3 (5) A home energy rating conducted at the time of construction by a
4 Vermont-accredited home energy rating organization shall be an acceptable
5 means of demonstrating compliance if the rating indicates energy performance
6 equivalent to the RBES.

7 (c) Stretch code. The Director may adopt a stretch code by rule. This
8 stretch code shall meet the requirements of subdivision (b)(1) of this section.
9 The stretch code shall be available for adoption by municipalities under
10 24 V.S.A. chapter 117 and, on final adoption by the Director, shall apply in
11 proceedings under 10 V.S.A. chapter 151 (Act 250) in accordance with
12 subsection (d) of this section.

13 (d) Role of RBES and stretch code in Act 250. Substantial and reliable
14 evidence of compliance with the RBES and the stretch code established and
15 updated under this section shall serve as a presumption of compliance with
16 10 V.S.A. § 6086(a)(9)(F), except no presumption shall be created insofar as
17 compliance with subdivision (a)(9)(F) involves the role of electric resistance
18 space heating. In attempting to rebut a presumption of compliance created
19 under this subsection, a challenge may only focus on the question of whether
20 or not there will be compliance with the RBES and stretch code established
21 and updated under this subsection. A presumption under this subsection shall

1 not be overcome by evidence that the RBES and stretch code adopted and
2 updated under this section fail to comply with 10 V.S.A. § 6086(a)(9)(F).

3 (e) Certification.

4 (1) Issuance; recording.

5 (A)(i) A certification may be issued by a licensed professional
6 engineer, a licensed architect, or an accredited home energy rating
7 organization.

8 (ii) The Director will develop and make available to the public a
9 certificate that lists key features of the RBES. Any person certifying shall use
10 this certificate or one substantially like it to certify compliance with RBES.

11 (iii) Certification shall be issued by completing and signing a
12 certificate and permanently affixing it to the outside of the heating or cooling
13 equipment, to the electrical service panel located inside the building, or in a
14 visible location in the vicinity of one of these three areas.

15 (iv) The certificate shall certify that the residential building has
16 been constructed in compliance with the requirements of the RBES.

17 (v) The person certifying under this subsection shall provide a
18 copy of each certificate to the Division of Fire and Building Safety.

19 (B) A builder may contract with a licensed professional engineer, a
20 licensed architect, or an accredited home energy rating organization to issue

1 certification and to indemnify the builder from any liability to the owner of the
2 residential construction caused by noncompliance with the RBES.

3 (2) Condition precedent. Provision of a certificate as required by
4 subdivision (1) of this subsection shall be a condition precedent to:

5 (A) issuance by the Division of Fire and Building Safety or a
6 municipal official acting under section 2736 of this chapter of any final
7 occupancy permit required by the rules of the Commissioner of Public Safety
8 for use or occupancy of residential construction; and

9 (B) issuance by a municipality of a certificate of occupancy for
10 residential construction if the municipality requires such a certificate under
11 24 V.S.A. chapter 117.

12 (f) Action for damages.

13 (1) Except as otherwise provided in this subsection, a person aggrieved
14 by noncompliance with this section may bring a civil action against a builder
15 or a person who has the obligation of certifying compliance under subsection
16 (d) of this section. This action may seek injunctive relief, damages, court
17 costs, and attorney's fees. As used in this subdivision, "damages" means:

18 (A) costs incidental to increased energy consumption; and

19 (B) labor, materials, and other expenses associated with bringing the
20 structure into compliance with RBES in effect on the date construction was
21 commenced.

1 (2) A person’s failure to affix the certification as required by this section
2 shall not be an affirmative defense in such an action against the person.

3 (3) The rights and remedies created by this section shall not be
4 construed to limit any rights and remedies otherwise provided by law.

5 (g) Applicability and exemptions. The construction of a residential
6 addition to a building shall not create a requirement that the entire building
7 comply with this subchapter. The following residential construction shall not
8 be subject to the requirements of this subchapter:

9 (1) Buildings or additions whose peak energy use design rate for all
10 purposes is less than 3.4 BTUs per hour, per square foot, or less than one watt
11 per square foot of floor area.

12 (2) Homes subject to Title VI of the National Manufactured Housing
13 Construction and Safety Standards Act of 1974 (42 U.S.C. §§ 5401–5426).

14 (3) Buildings or additions that are neither heated nor cooled.

15 (4) Residential construction by an owner, if all of the following apply:

16 (A) The owner of the residential construction is the builder, as
17 defined under this section.

18 (B) The residential construction is used as a dwelling by the owner.

19 (C) The owner in fact directs the details of construction with regard
20 to the installation of materials not in compliance with RBES.

1 (D) The owner discloses in writing to a prospective buyer, before
2 entering into a binding purchase and sales agreement, with respect to the nature
3 and extent of any noncompliance with RBES. Any statement or certificate
4 given to a prospective buyer shall itemize how the home does not comply with
5 RBES and shall itemize which measures do not meet the RBES standards in
6 effect at the time construction commenced. Any certificate given under this
7 subsection (g) shall be sent to the Division of Fire and Building Safety within
8 30 days following sale of the property by the owner.

9 (h) Title validity not affected. A defect in marketable title shall not be
10 created by a failure to issue certification or a certificate, as required under
11 subsection (e) or subdivision (g)(4) of this section, or by a failure under that
12 subsection to affix a certificate or to provide a copy of a certificate to the
13 Division of Fire and Building Safety.

14 § 2773. HOME ENERGY RATING ORGANIZATION ACCREDITATION

15 (a) The Department of Public Service shall carry out an accreditation
16 process for home energy rating organizations, in consultation with the Division
17 of Fire and Building Safety and representatives of interested parties, including
18 builders, building designers, building science experts, mortgage lenders, real
19 estate licensees, home appraisers, utilities, nonutility fuel suppliers, the
20 Vermont Housing Finance Agency, and contractors who provide home energy
21 rating services. As part of the accreditation process, the Department of Public

1 Service shall consider any national home energy rating system guidelines and
2 shall determine whether each provider of home energy ratings in the State of
3 Vermont complies with the accreditation criteria adopted pursuant to this
4 section.

5 (b) Once the Department of Public Service carries out an accreditation
6 process pursuant to subsection (a) of this section, no organization shall provide
7 home energy rating services in the State unless the organization has been
8 accredited by the Department.

9 (c) The Department shall consult with the organizations described in
10 subsection (a) of this section to facilitate a public information program to
11 inform homeowners, renters, sellers, and others regarding the accreditation
12 process and of the statewide home energy rating organizations accredited by
13 the Department.

14 § 2774. COMMERCIAL BUILDING ENERGY STANDARDS

15 (a) Adoption of commercial building energy standards. The Director shall
16 adopt Commercial Building Energy Standards to ensure that commercial
17 building construction must be designed and constructed in a manner that
18 complies with the most recent edition of ANSI/ASHRAE/IESNA standard
19 90.1 or of the IECC, whichever provides the greatest level of energy savings,
20 that is in effect on the date the CBES are adopted.

1 (b) Revision and interpretation of energy standards. The Director shall
2 endeavor to amend and update the CBES by means of administrative rules
3 adopted in accordance with 3 V.S.A. chapter 25 promptly after the issuance of
4 updated standards for commercial construction under the IECC or
5 ASHRAE/ANSI/IESNA standard 90.1, whichever provides the greatest level
6 of energy savings. Prior to final adoption of each required revision of the
7 CBES, the Director shall convene an advisory committee to include the
8 Commissioner of Public Service or designee, one or more mortgage lenders,
9 builders, building designers, individuals with expertise in building science,
10 utility representatives, architects, civil, mechanical, and electrical engineers,
11 environmental organizations, consumer advocates, energy efficiency experts,
12 the Attorney General or designee, and other persons with experience and
13 expertise that the Director and Commissioner deem to be appropriate, such as
14 consumer advocates and energy conservation experts. The advisory committee
15 may provide the Director with additional recommendations for revision of the
16 CBES, including the frequency of the updates.

17 (1) Any amendments to the CBES shall be:

18 (A) consistent with duly adopted State energy policy, as specified in
19 30 V.S.A. § 202a; and

20 (B) evaluated relative to their technical applicability and reliability.

1 (2) Each time the CBES are amended by the Director, the amended
2 CBES shall become effective upon a date specified in the adopted rule, which
3 shall not be less than three months after the date of adoption. Persons
4 submitting an application for any local permit authorizing commercial
5 construction, or an application for construction plan approval by the Division
6 of Fire and Building Safety pursuant to this chapter before the effective date of
7 the amended CBES shall have the option of complying with the applicable
8 provisions of the earlier or the amended CBES. After the effective date of the
9 amended CBES, any person submitting an application for commercial
10 construction in an area subject to the CBES shall comply with the most recent
11 version of the CBES.

12 (3) The Director may adopt rules interpreting and implementing the
13 CBES.

14 (4) The Director may grant written variances or exemptions from the
15 CBES or rules adopted under this section where strict compliance would entail
16 practical difficulty or unnecessary hardship, or is otherwise found unwarranted,
17 provided that:

18 (A) Any such variance or exemption shall be consistent with State
19 energy policy, as specified in 30 V.S.A. § 202a.

20 (B) Any petitioner for such a variance or exemption can demonstrate
21 that the methods, means, or practices proposed to be taken in lieu of

1 compliance with the rule or rules provide, in the opinion of the Director, equal
2 energy efficiency to that attained by compliance with the rule or rules.

3 (C) A copy of any such variance or exemption shall be recorded by
4 the petitioner in the land records of the city or town in which the building is
5 located.

6 (D) A record of each variance or exemption shall be maintained by
7 the Director, together with the certifications received by the Director.

8 (c) Requirement for compliance. Commercial building construction with
9 respect to which any local building permit application or application for
10 construction plan approval by the Division of Fire and Building Safety
11 pursuant to this chapter has been submitted shall be designed and constructed
12 in substantial compliance with the CBES adopted by the Director pursuant to
13 this section.

14 (d) Certification requirement.

15 (1)(A) The design of commercial buildings shall be certified by the
16 primary designer as compliant with CBES in accordance with this subsection,
17 except as compliance is excused by a variance or exemption issued under
18 subdivision (b)(4) of this section.

19 (B)(i) If applicable law requires that the primary designer be a
20 licensed professional engineer, licensed architect, or other licensed

1 professional, a member of a pertinent licensed profession shall issue this
2 certification.

3 (ii) If one or more licensed professional engineers or licensed
4 architects is involved in the design of the project, one of these licensees shall
5 issue this certificate.

6 (iii) If a licensed professional engineer or a licensed architect is
7 not involved in designing the project, the design shall be reviewed and certified
8 by a licensed professional engineer or a licensed architect.

9 (C) Any certification shall be accompanied by an affidavit and shall
10 certify that the commercial building was designed in substantial compliance
11 with the requirements of the CBES and that, if applicable, the designer acted in
12 accordance with the designer's professional duty of care in designing the
13 building.

14 (D) The Director shall develop and make available to the public a
15 certificate that lists key requirements of the CBES, sets forth certifying
16 language in accordance with this subdivision (1), and requires disclosure of
17 persons relied upon by the primary designer who have contracted to indemnify
18 the primary designer for damages arising out of that reliance. Any person
19 certifying under this subdivision shall use this certificate or one substantially
20 like it to satisfy these certification obligations.

1 (E) Certification shall be issued by completing and signing a
2 certificate and permanently affixing it to the outside of the heating or cooling
3 equipment, to the electrical service panel located inside the building, or in a
4 visible location in the vicinity of one of these three areas.

5 (i) In certifying under this subsection (d), the certifying person
6 may reasonably rely on one or more supporting affidavits received from other
7 persons who contributed to the design affirming that the portions of the design
8 produced by them were properly certifiable under this subsection (d).

9 (ii) The certifying person may contract for indemnification from
10 those on which the person relies pursuant to this subdivision (1) against
11 damages arising out of that reliance. This indemnification shall not limit any
12 rights of action of an aggrieved party.

13 (2)(A) The construction of a commercial building shall be certified as
14 compliant with CBES in accordance with this subsection (d), except as
15 compliance is excused by a variance or exemption issued under subdivision
16 (b)(4) of this section.

17 (B) This certification shall be issued by the general contractor,
18 construction manager, or other party having primary responsibility for
19 coordinating the construction of the subject building, or in the absence of such
20 a person, by an accredited energy rating organization approved by the Director.

1 (C) Any certification shall be accompanied by an affidavit and shall
2 certify that the subject commercial building was constructed in accordance
3 with the ordinary standard of care applicable to the participating construction
4 trades and that the subject commercial building was constructed substantially
5 in accordance with the construction documents, including the plans and
6 specifications certified under subdivision (1) of this subsection (d) for that
7 building.

8 (D) The Director shall develop and make available to the public a
9 certificate that sets forth certifying language in accordance with this
10 subdivision (2) and that requires disclosure of persons who have been relied
11 upon by the person with primary responsibility for coordinating the
12 construction of the building and who have contracted to indemnify that person
13 for damages arising out of that reliance. The person certifying under this
14 subdivision shall use that certificate or one substantially like it to satisfy these
15 certification obligations.

16 (E) Certification shall be issued by completing and signing a
17 certificate and permanently affixing it to the outside of the heating or cooling
18 equipment, to the electrical service panel located inside the building, or in a
19 visible location in the vicinity of one of these three areas.

20 (F)(i) In certifying under this subdivision (2), the certifying person
21 may reasonably rely on one or more supporting affidavits received from

1 subcontractors or others engaged in the construction of the subject commercial
2 building affirming that the portions of the building constructed by them were
3 properly certifiable under this subdivision (2).

4 (ii) The certifying person may contract for indemnification from
5 those on which the person relies pursuant to this subdivision (2) against
6 damages arising out of that reliance. This indemnification shall not limit any
7 rights of action of an aggrieved party.

8 (3) Any person certifying under this subsection shall provide a copy of
9 the person's certificate and any accompanying affidavit to the Department of
10 Public Service.

11 (4) Provision of a certificate as required by subdivision (1) of this
12 subsection and of a certificate as required by subdivision (2) of this subsection
13 shall be conditions precedent to:

14 (A) issuance by the Division of Fire and Building Safety, or a
15 municipal official acting under section 2736 of this chapter, of any final
16 occupancy permit required by the rules of the Commissioner of Public Safety
17 for use or occupancy of a commercial building that is also a public building;
18 and

19 (B) issuance by a municipality of a certificate of occupancy for
20 commercial construction if the municipality requires such a certificate under
21 24 V.S.A. chapter 117.

1 (e) Exemptions.

2 (1) The following commercial buildings, or portions of those buildings,
3 separated from the remainder of the building by thermal envelope assemblies
4 complying with this section shall be exempt from the building thermal
5 envelope provisions of the CBES:

6 (A) those that do not contain conditioned space; and

7 (B) those with a peak design rate of energy usage less than an amount
8 specified in the CBES adopted under subsection (b) of this section.

9 (2) The CBES adopted pursuant to this section shall not apply to
10 equipment or portions of building energy systems that use energy primarily to
11 provide for industrial or manufacturing processes.

12 (f) Private right of action for damages against a certifier.

13 (1) Except as otherwise provided in this subsection, a person aggrieved
14 by another person's breach of that other person's representations contained in a
15 certification or supporting affidavit issued or received as provided under
16 subsection (d) of this section, within 10 years after the earlier of completion of
17 construction or occupancy of the affected commercial building or portion of
18 that building, may bring a civil action in Superior Court against a person who
19 has an obligation of certifying compliance under subsection (d) of this section
20 alleging breach of the representations contained in that person's certification.
21 This action may seek injunctive relief, damages arising from the aggrieved

1 party's reliance on the accuracy of those representations, court costs, and
2 reasonable attorney's fees in an amount to be determined by the court. For
3 purposes of this subdivision, "damages" includes costs incidental to increased
4 energy consumption.

5 (2) A person's failure to affix the certification as required by this section
6 shall not be an affirmative defense in such an action against the person.

7 (3) The rights and remedies created by this section shall not be
8 construed to limit any rights and remedies otherwise provided by law.

9 (4) The right of action established in this subsection shall not be waived
10 by contract or other agreement.

11 (5) It shall be a defense to an action under this subsection that either at
12 the time of completion or at any time thereafter, the commercial building or
13 portion of building covered by a certificate under subsection (d) of this section,
14 as actually constructed, met or exceeded the overall performance standards
15 established in the CBES in effect on the date construction was commenced.

16 (g) State or local enforcement. Any person who knowingly makes a false
17 certification under subsection (d) of this section, or any party who fails to
18 certify under subsection (d) of this section when required to do so, shall be
19 subject to a civil penalty of not more than \$250.00 per day, up to \$10,000.00
20 for each year the violation continues.

1 (h) Title validity not affected. A defect in marketable title shall not be
2 created by a failure to record a variance or exemption pursuant to subdivision
3 (b)(4) of this section, by a failure to issue certification or a certificate, as
4 required under subsection (d) of this section, or by a failure under that
5 subsection to affix a certificate or provide a copy of a certificate to the
6 Department of Public Service.

7 § 2775. COMPLIANCE PLAN

8 (a) The Director shall:

9 (1)(A) Adopt and regularly update a plan for ensuring compliance with
10 the energy standards adopted under this subchapter in new and renovated
11 residential and commercial building space.

12 (B) In preparing the plan and any updates to it, the Director shall:

13 (i) consider enforcement mechanisms for building energy codes
14 that have been adopted in other jurisdictions; and

15 (ii) solicit comments and recommendations from one or more
16 mortgage lenders; builders; building designers; building scientists; architects;
17 civil, mechanical, and electrical engineers; utility representatives;
18 environmental organizations; consumer advocates; energy efficiency experts;
19 the Attorney General; and other persons who are potentially affected or have
20 relevant expertise.

1 (2) Coordinate with the Office of Economic Opportunity, the Office of
2 Professional Regulation, the Department of Public Service, and any private
3 energy organizations, as the Director deems appropriate, to implement
4 trainings and services in support of building energy code certification and
5 building science education.

6 (b) The Director may:

7 (1) Establish a system for measuring the rate of compliance each year
8 with the energy standards adopted under this chapter. If the Director
9 establishes such a system, the Director shall annually measure the rate of
10 compliance and publish that information on the website of the Division of Fire
11 and Building Safety.

12 (2) Adopt administrative rules pursuant to 3 V.S.A. chapter 25 to
13 implement this subchapter.

14 § 2776. PRIORITY HOUSING PROJECTS; STRETCH CODE

15 A priority housing project as defined in 10 V.S.A. § 6001 shall meet or
16 exceed the stretch codes established by the Director under this subchapter.

17 Sec. 5. ADOPTION OF RESIDENTIAL BUILDING CODE;

18 APPROPRIATION; POSITION

19 (a) The Division of Fire Safety shall adopt a residential building code to
20 take effect on January 1, 2026. The residential building code shall be based on
21 the International Residential Code and shall incorporate the recommendations

1 of the Residential Building Code Task Force established pursuant to Sec. 6 of
2 this act to the extent practicable.

3 (b)(1) The establishment of one permanent, exempt full-time residential
4 energy code administrator in the Division of Fire Safety is authorized for fiscal
5 year 2025.

6 (2) It is the intent of the General Assembly that the residential energy
7 code administrator position authorized pursuant to this subsection shall be
8 filled in time to commence work on or around January 1, 2025.

9 (c) The amount of \$50,000.00 is appropriated from the General Fund to the
10 Division of Fire Safety in fiscal year 2025 for salary and benefits of the
11 residential building code administrator authorized pursuant to subsection (b) of
12 this section.

13 Sec. 6. RESIDENTIAL BUILDING CODE TASK FORCE;

14 REPORT

15 (a) Creation. There is created the Residential Building Code Task Force to
16 examine and recommend strategies and methods for the successful adoption of
17 the International Residential Code (IRC) as a statewide residential building
18 code on January 1, 2026.

19 (b) Membership. The Task Force shall be composed of the following
20 16 members:

1 (1) one current member of the House of Representatives, appointed by
2 the Speaker of the House;

3 (2) one current member of the Senate, appointed by the Committee on
4 Committees;

5 (3) the Director of the Division of Fire Safety or designee;

6 (4) the Director of the Office of Professional Regulation or designee;

7 (5) the Director of the Office of Emergency Management or designee;

8 (6) the Commissioner of Public Service or designee;

9 (7) an individual, appointed by the American Institute of Architects,
10 Vermont chapter;

11 (8) an individual, appointed by the Associated General Contractors of
12 Vermont;

13 (9) an individual, appointed by the Vermont Builders and Remodelers
14 Association;

15 (10) an individual, appointed by the ICC Building Safety Association of
16 Vermont;

17 (11) an individual, appointed by the Vermont League of Cities and
18 Towns;

19 (12) an individual, appointed by the Vermont Association of Planning
20 and Development Agencies;

21 (13) an individual, appointed by the Vermont Housing Finance Agency;

1 (14) an individual, appointed by the Vermont Housing and Conservation
2 Board;

3 (15) an individual, appointed by the Housing & Homelessness Alliance
4 of Vermont; and

5 (16) an individual, appointed by the American Property and Casualty
6 Insurance Association.

7 (c) Powers and duties. The Task Force shall develop a strategy for the
8 adoption of the IRC as a statewide residential building code. In particular, the
9 Task Force shall:

10 (1) assess how adoption of a residential building code may impact the
11 State with respect to:

12 (A) the construction of residential structures, including services and
13 training that will need to be provided to ensure that residential structures are
14 constructed in compliance with the code; and

15 (B) resource and staffing needs of State and local entities with
16 regulatory or permitting authority related to residential construction;

17 (2) identify opportunities to streamline and simplify permitting,
18 regulation, and inspection of residential construction in relation to compliance
19 with the residential building code, plumbing code, electrical code, Residential
20 Building Energy Standards, and any other applicable building codes or
21 standards;

1 (3) examine strategies to ensure that builders and contractors are able to
2 obtain necessary training in building science and advanced construction
3 methods;

4 (4) consider and recommend:

5 (A) a fee structure for residential construction plan review and
6 inspection of residential buildings; and

7 (B) an enforcement strategy for ensuring compliance with the
8 residential building code and the Residential Building Energy Standards,
9 including methods to encourage compliance and remediation of deficiencies as
10 well as potential fines and other penalties for noncompliance;

11 (5) identify opportunities to utilize the residential building code to
12 enhance the resilience of residential structures with respect to adverse weather
13 conditions, power outages, and flooding; and

14 (6) identify legislative changes necessary to enable the adoption of the
15 residential building code and any recommendations made by the Task Force.

16 (d) Assistance.

17 (1) For purposes of scheduling meetings and witnesses, the Task Force
18 shall have the administrative assistance of the Office of Legislative Operations.

19 (2) For purposes of legal research and the preparation of recommended
20 legislation, the Task Force shall have the assistance of the Office of Legislative
21 Counsel.

1 (3) The Task Force shall have the technical assistance of the Division of
2 Fire Safety.

3 (e) Report. On or before December 15, 2024, the Task Force shall submit a
4 written report to the General Assembly with its findings and any
5 recommendations for legislative action.

6 (f) Meetings.

7 (1) The Director of Fire Safety shall call the first meeting of the Task
8 Force to occur on or before July 15, 2024.

9 (2) The Task Force shall select a chair from among its members at the
10 first meeting.

11 (3) A majority of the membership shall constitute a quorum.

12 (4) The Task Force shall cease to exist on January 1, 2025.

13 (g) Compensation and reimbursement.

14 (1) For attendance at meetings during adjournment of the General
15 Assembly, a legislative member of the Task Force shall be entitled to per diem
16 compensation and reimbursement of expenses pursuant to 2 V.S.A. § 23 for
17 not more than six meetings.

18 (2) Other members of the Task Force who are not otherwise
19 compensated by their employer for attendance at meetings shall be entitled to
20 per diem compensation and reimbursement of expenses as permitted under
21 32 V.S.A. § 1010 for not more than six meetings.

1 required to comply with 20 V.S.A. § 2772 (residential building energy
2 standards) and 20 V.S.A. § 2774 (commercial building energy standards).

3 * * *

4 Sec. 9. RESIDENTIAL BUILDING CONTRACTOR CONTRACT

5 TEMPLATES

6 The Office of Professional Regulation shall update any contract template
7 the Office furnishes for residential building contracting to provide that the
8 residential contractor is required to comply with 20 V.S.A. § 2772 (residential
9 building energy standards) and 20 V.S.A. § 2774 (commercial building energy
10 standards).

11 Sec. 10. RESIDENTIAL BUILDING CONTRACTOR; ENERGY

12 STANDARDS CERTIFICATION; TRADE SERVICES

13 (a) For each trade service compiled pursuant to subsection (b) of this
14 section, the Office of Professional Regulation shall develop a certification as
15 that term is defined in 26 V.S.A. § 3101a recognizing proficiency in State
16 building energy standards under 20 V.S.A. § 2772 (residential building energy
17 standards) and 20 V.S.A. § 2774 (commercial building energy standards). If
18 the Office determines the qualifications attested to by the certification
19 developed for a trade service are substantially similar to those required for
20 performance of another trade service in compliance with State building energy
21 standards, the Office may employ the certification for each such trade service.

1 (b) The Office shall compile a list of trade services offered as residential
2 construction work by persons registered under 26 V.S.A. chapter 106.

3 Sec. 11. RESIDENTIAL BUILDING CONTRACTOR REGISTRY;

4 WEBSITE UPDATES

5 (a) As part of its application to register with the residential building
6 contractor registry administered by the Vermont Secretary of State, the Office
7 of Professional Regulation shall require that a registrant:

8 (1) designate the geographic areas the registrant serves;

9 (2) designate the trade services the registrant offers from a list of trade
10 services compiled by the Office; and

11 (3) acknowledge that compliance with 20 V.S.A. § 2772 (residential
12 building energy standards) and 20 V.S.A. § 2774 (commercial building energy
13 standards) is required.

14 (b) On or before January 1, 2025, the Office of Professional Regulation
15 shall update the website for the residential building contractor registry
16 administered by the Vermont Secretary of State to:

17 (1) regularize usage of the term “residential contractor,” or another term
18 selected by the Office, across the website to replace usages of substantially
19 similar terms, such as “builder,” “contractor,” or “residential building
20 contractor”;

1 (2) publish a registrant’s designations under subdivisions (a)(1) and
2 (a)(2) of this section in the registrant’s listing on the website;

3 (3) implement a search feature to enable consumers to filter registrants
4 by trade service provided, geographic area served, voluntary certification, or
5 any other criteria the Office deems appropriate; and

6 (4) add a clear and conspicuous notice that a residential contractor is
7 required by law to comply with State building energy standards.

8 Sec. 12. PERMIT SYSTEM REDESIGN; ENERGY CODES

9 The Division of Fire Safety shall include in its permit data system redesign,
10 currently in process, data fields for salient building energy code data, such as
11 certificate tracking number, date filed, by whom, conditioned square footage,
12 an industry-standard measure of air-tightness, and energy use intensity or
13 similar metric.

14 Sec. 13. REQUEST FOR PROPOSALS; APPROPRIATION; ONLINE
15 APPLICATION

16 (a) On or before January 1, 2025, the Department of Public Service, in
17 coordination with the Division of Fire Safety, shall issue a request for
18 proposals to design an online application and certification tool for the building
19 energy codes in small residential projects. The tool shall issue a code permit
20 based on prescriptive design features, and a final certificate based on
21 prescriptive installed features and industry-standard measure of air-tightness.

1 The tool should include functionality to upload salient energy code data
2 directly to the Division of Fire Safety’s new database once completed.

3 (b) In fiscal year 2025, the sum of \$75,000.00 is appropriated from the
4 General Fund to the Department of Public Service for the project established in
5 subsection (a) of this section.

6 Sec. 14. RESIDENTIAL AND COMMERCIAL BUILDING ENERGY
7 STANDARDS; TRANSITION

8 The Residential Building Energy Standards adopted pursuant to 30 V.S.A.
9 § 51 and Commercial Building Energy Standards adopted pursuant to
10 30 V.S.A. § 53 that are in effect on December 31, 2025 shall, on January 1,
11 2026, become the Residential Building Energy Standards and the Commercial
12 Building Energy Standards of the Department of Fire and Building Safety until
13 they are amended or repealed.

14 Sec. 15. CONFORMING REVISIONS

15 When preparing the Vermont Statutes Annotated for publication, the Office
16 of Legislative Counsel shall make the following revisions throughout the
17 statutes as needed for consistency with Secs. 2, 3, and 4 of this act, as long as
18 the revisions have no other effect on the meaning of the affected statutes:

19 (1) replace “Division of Fire Safety” with “Division of Fire and
20 Building Safety”;

21 (2) replace “30 V.S.A. § 51” with “20 V.S.A. § 2772”;

- 1 (3) replace “30 V.S.A. § 53” with “20 V.S.A. § 2774”; and
2 (4) revisions that are substantially similar to those described in
3 subdivisions (1)–(3) of this section.

4 Sec. 16. EFFECTIVE DATES

- 5 (a) This section and Secs. 1, 5–9, and 11–14 shall take effect on passage.
6 (b) Sec. 10 shall take effect on January 1, 2025.
7 (c) Secs. 2–4 and 15 shall take effect on January 1, 2026.