

SB 211 INTRODUCED BY STORY
LOCAL GOVERNMENTS TO INSPECT BUILDINGS FOR BUILDING
CODE ENFORCEMENT

1/24 INTRODUCED
1/24 REFERRED TO LOCAL GOVERNMENT
1/24 FISCAL NOTE REQUESTED
1/29 FISCAL NOTE RECEIVED
1/29 HEARING
2/21 TABLED IN COMMITTEE

1 Senate BILL NO. 211
2 INTRODUCED BY Stony
3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO MAKE CITIES AND
5 COUNTIES RESPONSIBLE FOR BUILDING CODE INSPECTIONS; AMENDING
6 SECTIONS 50-60-103, 50-60-106, AND 50-60-302, MCA; AND
7 REPEALING SECTION 50-60-104, MCA."
8

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

10 Section 1. Section 50-60-103, MCA, is amended to read:
11 "50-60-103. Administration by department. The
12 department shall administer parts 1 through 4 and for that
13 purpose shall:

14 (1) issue orders necessary to effectuate the purposes
15 of parts 1 through 4 and enforce the orders by all
16 appropriate administrative and judicial proceedings;

17 ~~{2)--enter,--inspect,--and--examine--buildings--or--premises~~
18 ~~necessary--for--the--proper--performance--of--its--duties--under~~
19 ~~parts-1-through-4;~~

20 {3}(2) study the operation of the state building code,
21 local building regulations, and other laws related to the
22 construction of buildings to ascertain their effects upon
23 the cost of building construction and the effectiveness of
24 their provisions for health and safety;

25 {4}(3) recommend tests or require the testing and

1 approval of materials, devices, and methods of construction
2 to ascertain their acceptability under the requirements of
3 the state building code and issue certification of such
4 acceptability;

5 {5}(4) appoint experts, consultants, and technical
6 advisers for assistance and recommendations relative to the
7 formulation and adoption of the state building code; and

8 {6}(5) advise, consult, and cooperate with other
9 agencies of the state, local governments, industries, and
10 interested persons or groups."

11 Section 2. Section 50-60-106, MCA, is amended to read:

12 "50-60-106. Powers and duties of municipalities. (1)
13 The examination, approval, or disapproval of plans and
14 specifications, the issuance and revocation of building
15 permits, licenses, certificates, and similar documents, the
16 inspection of buildings, and the administration and
17 enforcement of building regulations within the municipal
18 jurisdictional area shall be the responsibility of the
19 municipalities of the state.

20 (2) Each municipality may:

21 (a) examine, approve, or disapprove plans and
22 specifications for the construction of any building, the
23 construction of which is pursuant or purports to be pursuant
24 to the provisions of the state or municipal building code,
25 and direct the inspection of the buildings during and in the



1 course of construction;

2 (b) require that construction of buildings be in

3 accordance with the applicable provisions of the state or

4 municipal building code, subject to the powers of variance

5 or modification granted to the department;

6 (c) enter, inspect, and examine buildings or premises

7 as required for the enforcement of the state or municipal

8 building code;

9 ~~(c)~~(d) order in writing the remedying of any condition

10 found to exist in, on, or about any building in violation of

11 the state or municipal building code; orders may be served

12 upon the owner or his authorized agent personally or by

13 sending by registered or certified mail a copy of the order

14 to the owner or his authorized agent at the address set

15 forth in the application for permission for the construction

16 of the building; any local building department, by action of

17 an authorized officer, may grant in writing such time as may

18 be reasonably necessary for achieving compliance with the

19 order;

20 ~~(d)~~(e) issue certificates of occupancy, permits,

21 licenses, and such other documents in connection with the

22 construction of the buildings as required;

23 ~~(e)~~(f) make, amend, and repeal rules for the

24 administration and enforcement of the provisions of this

25 section and for the collection of reasonable fees, which

1 shall be comparable to fees imposed or prescribed by

2 existing local building regulations; and

3 ~~(f)~~(g) prohibit the commencement of construction until

4 a permit has been issued by the local building department

5 after a showing of compliance with the requirements of the

6 applicable provisions of the state or municipal building

7 code."

8 Section 3. Section 50-60-302, MCA, is amended to read:

9 "50-60-302. Certification of municipal and county

10 building codes. (1) A county or municipality may not enforce

11 a building code unless the code adopted and a plan for

12 enforcement of the code have been filed with the department.

13 (2) The department shall set forth rules and standards

14 governing the certification of municipal and county building

15 code programs as required in subsection (1).

16 (3) A county that adopts a building code shall:

17 (a) examine and approve or disapprove plans and

18 specifications;

19 (b) issue and revoke building permits, licenses,

20 certificates, and similar documents;

21 (c) inspect buildings;

22 (d) administer and enforce building regulations within

23 the area of the county not in any municipal jurisdictional

24 area; and

25 (e) make, amend, and repeal rules for the

1 administration and enforcement of the county building code
2 and for the collection of reasonable fees."

3 NEW SECTION. Section 4. Extension of authority. Any
4 existing authority of the department of commerce to make
5 rules on the subject of the provisions of this act is
6 extended to the provisions of this act.

7 NEW SECTION. Section 5. Repealer. Section 50-60-104,
8 MCA, is repealed.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

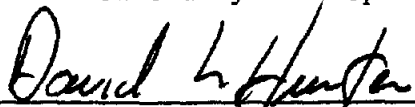
In compliance with a written request, there is hereby submitted a Fiscal Note for SB211, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to make cities and counties responsible for building code inspections.

ASSUMPTIONS:

1. Assume that since plumbing, electrical and elevator codes are addressed by Title 50, Chapter 60, Parts 5,6 and 7, and the act does not address these parts, the Department of Commerce will still be required to enforce the codes. These parts are able to operate apart from parts 1 through 4.
2. Assume that since the repeal of Section 50-60-104, MCA removes the Department of Commerce's authority to set fees for the review of plans and inspection of schools, factory-built buildings and recreational vehicles, another funding source will be needed to carry out the duties of Section 20-6-622 (review of school plans) and Title 50, Chapter 60, Part 4 (factory-built buildings and recreational vehicles), which are unchanged.
3. Assume that the proposed act deletes the Department of Commerce's authority to inspect installations under the Mechanical Code as well as the building and energy codes.
4. Assume that since a good majority of the Department of Commerce's duties addressed by Section 50-60-103, MCA are left in place, i.e. issue orders to effectuate the purposes parts 1 through 4; study the operation of state and local building regulations; recommend tests or require the testing and approval of materials, devices and methods of construction to ascertain their acceptability, under the code; appoint experts, consultants and technical advisors for assistance and recommendations relative to the formulation of the code; advise, consult and cooperate with other agencies of the state, local governments, industries and interested persons or groups; that these functions will have to be funded by funds other than the fees originally provided for in Section 50-60-104, MCA.
5. Assume that since the Department of Commerce still is required to promulgate the building regulations under Section 50-60-104, MCA, and that since part of the funding source has been removed that there will have to be other funding provided to cover the adoption of the building, energy and mechanical codes. In FY89, \$2,000 will be needed to update these codes.
6. Assume that since this proposal somewhat changes the Department of Commerce's operation, a rewriting of the rules will be necessary in FY88 costing \$2,000 for hearings, etc.
7. Assume that Section 50-60-205, MCA will have to be addressed by the legislature since it appears to be in direct conflict with the apparent intention of the act to do away with state enforcement of the building, energy and mechanical codes.
8. Assume that since the Department of Commerce will still be required to certify local government code enforcement programs under Section 50-60-302, MCA, other funding will have to be provided to replace that deleted by the repeal of Section 50-60-104, MCA.

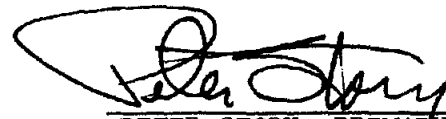


DATE

1/28/87

DAVID L. HUNTER, BUDGET DIRECTOR

Office of Budget and Program Planning



DATE

1/29/87

PETER STORY, PRIMARY SPONSOR

Fiscal Note for SB211, as introduced.

5B-211

ASSUMPTIONS CONTINUED:

9. Assume that since the proposed FY88 and FY89 budgets already contain \$31,000 vacancy savings, that the impact on personal services will be reduced that much less under the proposed act.
10. Assume under the proposed act the Department of Commerce's applicable staff will be reduced by 4.00 FTE.

FISCAL IMPACT:

<u>Expenditures/Funding:</u>	<u>FY88</u>			<u>FY89</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
Earmarked Special Revenue	\$1,016,500	\$ 851,400	(\$165,100)	\$1,158,388	\$ 922,210	(\$166,178)
General Fund	0	79,071	79,071	0	62,119	62,119
	<u>\$1,016,000</u>	<u>\$ 930,471</u>	<u>(\$ 86,029)</u>	<u>\$1,158,388</u>	<u>\$1,054,329</u>	<u>(\$104,059)</u>

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

If local government wishes to provide its residents the protection and benefits provided by the building, mechanical and energy codes, they will have to initiate their own code enforcement programs. If properly implemented, the expenditures can be off-set by the revenue generated.

If local government chooses to do nothing, there is no fiscal impact unless somehow liability would result from local government's choice not to enforce the codes.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

If local government chooses not to carry out the implementation of enforcement of the building, mechanical and energy codes, the life-safety protection of building occupants in residential buildings containing more than four dwelling units and other public facilities, i.e. bars, restaurants, churches, theaters, could be negatively impacted. It is unknown what impact the lack of building code enforcement could have on insurance rates and ability to obtain construction financing.

TECHNICAL OR MECHANICAL DEFECTS IN PROPOSED LEGISLATION OR CONFLICTS WITH EXISTING LEGISLATION:

There are a number of defects and conflicts in the way the act is currently proposed.

*Schools -- Currently Section 20-6-622, MCA requires the Department of Commerce to review and approve plans and specification for new, enlarged, or remodeled school buildings, not under the coverage of a local code enforcement program. This section of law is left in place by the proposed act. However, the Department of Commerce's funding source to carry out the duties, contained in Section 50-60-104, MCA is deleted.

*Inspections -- If no Local Code Enforcement Program - Section 50-60-205, MCA has been left in place by the proposed legislation, which requires the Department of Commerce to enforce codes where there is no local code enforcement program. This is in direct conflict with the deletion of Section 50-60-103(2), MCA, which was deleted

by the proposed legislation, and originally gave the Department of Commerce the authority to enter, inspect, and examine buildings. Further the deletion of Section 50-60-104, MCA removes the Department of Commerce's funding source for this subject section.

*Issuing Orders - Studying Operation of Building Codes - Testing and Approval of Materials, Devices and Methods of Construction; Advise, Consult and Cooperate with Agencies of the State, Local Governments, Industries and Interested Persons or Groups -- Section 50-60-103, MCA was virtually left in place, with the exception of Subsection (2), which presents difficulties since the funding source provided by Section 50-60-104, MCA has been repealed.

*Factory-built Buildings and Recreational Vehicles - Title 50, Chapter 60, Part 4, which requires the Department of Commerce to approve all factory-built buildings and recreational vehicles manufactured or offered for sale in Montana, was left in place by the proposed legislation. However, its funding source Section 50-60-104, MCA was repealed.

*Certification of Local Code Enforcement Programs - Section 50-60-302, MCA which requires the Department of Commerce to certify local code enforcement programs was left in place. However, again its funding source Section 50-60-104, MCA was repealed.

*Code adoptions - Section 50-60-202 and 203, MCA makes the Department of Commerce the sole state agency to promulgate building regulations. The proposed legislation leaves this in place. However, it repeals Section 50-60-104, MCA which at least in part provided funding for this function.