

SENATE BILL 337

Introduced by Harp

2/08	Introduced
2/08	Referred to Business & Industry
2/08	First Reading
2/09	Fiscal Note Requested
2/15	Fiscal Note Received
2/16	Fiscal Note Printed
2/16	Hearing
2/19	Committee Report--Bill Passed as Amended
2/20	2nd Reading Passed
2/22	3rd Reading Passed
	Transmitted to House
2/23	Referred to Business & Economic Development
2/23	First Reading
3/12	Hearing
3/12	Tabled in Committee

1 Senate BILL NO. 357
2 INTRODUCED BY HARR
3 BY REQUEST OF THE DEPARTMENT OF COMMERCE
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE
6 BUILDING CODES; EXPANDING THE DEPARTMENT OF COMMERCE'S
7 RULEMAKING AUTHORITY AND THE APPLICABILITY OF THE RULES;
8 REVISING CONSTRUCTION PERMIT REQUIREMENTS; INCREASING
9 BUILDING CODE ENFORCEMENT REMEDIES; REVISING BUILDING CODE
10 VIOLATION PENALTIES; REVISING THE PURPOSE OF BUILDING CODES;
11 ELIMINATING REVIEW OF BUILDING PLANS BY THE DEPARTMENT OF
12 JUSTICE; ALLOWING THE DEPARTMENT OF COMMERCE TO ADOPT RULES
13 PERTAINING TO DANGEROUS BUILDINGS; REQUIRING THE DEPARTMENT
14 TO ENFORCE ANY PART OF THE STATE BUILDING CODES NOT ADOPTED
15 BY A LOCAL JURISDICTION; AMENDING THE VARIANCE APPLICATION
16 PROCEDURE; ALLOWING FOR THE ISSUANCE OF PERMITS TO AN OWNER
17 OR A PERSON DOING WORK ON A BUILDING; PROVIDING FOR
18 CERTIFICATION BY THE DEPARTMENT OF ANY BUILDING CODE ADOPTED
19 BY A LOCAL JURISDICTION; REQUIRING A COUNTY TO ADOPT AN
20 APPEAL PROCEDURE; CLARIFYING THE APPLICABILITY OF STANDARDS
21 AND RULES TO FACTORY-BUILT BUILDINGS AND RECREATIONAL
22 VEHICLES; PROVIDING FOR THE ENFORCEMENT BY COUNTIES OF
23 BUILDING STANDARDS FOR MODULAR HOMES; PROVIDING FOR
24 INSPECTIONS TO ENSURE LICENSING; REVISING EXCEPTIONS TO THE
25 APPLICATION OF PLUMBING CODES; AUTHORIZING THE INSPECTION OF

1 PLUMBING AND DRAINAGE SYSTEMS BY AUTHORIZED REPRESENTATIVES
2 OF THE DEPARTMENT; ELIMINATING THE REQUIREMENT FOR A HEARING
3 PRIOR TO THE DEPARTMENT ISSUING AN ORDER PERTAINING TO WORK
4 CONTRARY TO A PROVISION OF THE PLUMBING CODE; INCREASING THE
5 PENALTY FOR A VIOLATION OF THE PLUMBING CODE; REQUIRING
6 LOCAL JURISDICTIONS TO ENSURE THAT PERMIT APPLICANTS
7 PERFORMING ELECTRICAL WORK ARE PROPERLY LICENSED AND
8 CREATING EXEMPTIONS FROM LICENSURE FOR MINOR ELECTRICAL
9 WORK; CREATING AN EXEMPTION FROM OBTAINING A STATE PERMIT
10 FOR ELECTRICAL INSTALLATIONS GOVERNED BY A LOCAL BUILDING
11 CODE; SUBSTITUTING ELECTRICAL PERMITS FOR INSPECTION TAGS;
12 ALLOWING DISCONNECTION OF POWER WHEN ELECTRICAL CODE
13 VIOLATIONS EXIST AND OTHER RELIEF FOR ENERGIZING ELECTRICAL
14 INSTALLATIONS WITHOUT A PERMIT; INCREASING ELEVATOR AND
15 ESCALATOR INSPECTION FEES TO COVER INSPECTION AND
16 ADMINISTRATION COSTS; PROHIBITING A LOCAL JURISDICTION FROM
17 ADOPTING BUILDING CODES REGULATING ELEVATORS AND ESCALATORS;
18 PROVIDING PENALTIES FOR CODE VIOLATIONS PERTAINING TO
19 ELEVATORS AND ESCALATORS; AMENDING SECTIONS 50-60-101,
20 50-60-102, 50-60-103, 50-60-105, 50-60-107, 50-60-108,
21 50-60-109, 50-60-110, 50-60-201, 50-60-202, 50-60-203,
22 50-60-205, 50-60-206, 50-60-301, 50-60-302, 50-60-303,
23 50-60-402, 50-60-404, 50-60-503, 50-60-504, 50-60-505,
24 50-60-506, 50-60-507, 50-60-508, 50-60-509, 50-60-510,
25 50-60-511, 50-60-512, 50-60-515, 50-60-602, 50-60-603,

50-60-604, 50-60-605, 50-60-607, AND 50-60-701, MCA; AND
 REPEALING SECTIONS 50-60-106, 50-60-204, 50-60-502,
 50-60-514, AND 50-60-606, MCA."

STATEMENT OF INTENT

A statement of intent is required for this bill because it expands the department of commerce's rulemaking authority with respect to the state building code. In addition to issuing orders to effectuate the purposes of Title 50, chapter 60, the department is required to adopt rules to effectuate those purposes and its rulemaking authority is extended to parts 5 through 7 of Title 50, chapter 60, in order to include plumbing and electrical installations and elevators. The department may also establish rules with respect to the proper use of buildings and structures, including prohibiting certain uses, and with respect to the location for foundations of manufactured homes and the designation and regulation of dangerous buildings.

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

Section 1. Section 50-60-101, MCA, is amended to read:

"50-60-101. Definitions. As used in parts 1 through 4 and part 7 of this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Building" means a combination of any materials,

whether mobile, portable, or fixed, to form a structure and the related facilities for the use or occupancy by persons or property. The word "building" ~~shall~~ must be construed as though followed by the words "or part or parts thereof of the building".

(2) "Building regulations" means any law, rule, resolution, regulation, ordinance, or code, general or special, or compilation thereof enacted or adopted by the state or any municipality or county, including departments, boards, bureaus, commissions, or other agencies of the state, a county, or a municipality relating to the design, construction, reconstruction, alteration, conversion, repair, inspection, or use of buildings and installation of equipment in buildings. The term does not include zoning ordinances.

(3) "Construction" means the original construction, and equipment reconstruction, alteration, conversion, repair, inspection, or use of buildings, the installment of equipment in buildings, and the requirements or standards relating to or affecting materials used, including provisions for safety and sanitary conditions.

(4) "County jurisdictional area" means the area within a county that is not part of a municipal jurisdictional area.

~~(4)~~ (5) "Department" means the department of commerce

1 provided for in Title 2, chapter 15, part 18.

2 ~~†5†~~(6) "Equipment" means plumbing, heating, electrical,
3 ventilating, air conditioning, and refrigerating equipment,
4 elevators, dumbwaiters, escalators, and other mechanical
5 additions or installations.

6 ~~†6†~~(7) "Factory-built building" means a
7 factory-assembled structure or structures equipped with the
8 necessary service connections but not made so as to be
9 readily movable as a unit or units and designed to be used
10 with a permanent foundation. "Factory-built-building" The
11 term does not include manufactured housing constructed after
12 June 15, 1976, under the HUD, National Mobile Home
13 Construction and Safety Act of 1974.

14 ~~†7†~~(8) "Local building department" means the agency or
15 agencies of any municipality or county charged with the
16 administration, supervision, or enforcement of building
17 regulations, approval of plans, inspection of buildings, or
18 the issuance of permits, licenses, certificates, and similar
19 documents prescribed or required by state or local building
20 regulations.

21 ~~†8†~~(9) "Local legislative body" means the council or
22 commission charged with governing the municipality or
23 county.

24 ~~†9†~~(10) "Municipality" means any incorporated city or
25 town and its jurisdictional area as defined by subsection

1 ~~†10†~~~~of this section~~ (11).

2 ~~†10†~~(11) (a) "Municipal jurisdictional area" means the
3 area within the limits of an incorporated municipality
4 unless the area is extended at the written request of a
5 municipality and approved by the department.

6 (b) Upon request, the department may approve extension
7 of the jurisdictional area to include:

8 (i) all or part of the area within 4 1/2 miles of the
9 corporate limits of a municipality;

10 (ii) all of any platted subdivision which that is
11 partially within 4 1/2 miles of the corporate limits of a
12 municipality; and

13 (iii) all of any zoning district adopted pursuant to
14 Title 76, chapter 2, part 1 or 2, which that is partially
15 within 4 1/2 miles of the corporate limits of a
16 municipality.

17 (c) Distances ~~shall~~ must be measured in a straight line
18 in a horizontal plane.

19 (12) "Noncommercial" means a use that is other than
20 commercial and that is not for the ordinary purpose of
21 trade, agriculture, industry, or commerce, whether or not
22 the primary use is for profit.

23 ~~†11†~~(13) "Owner" means the owner or owners of the
24 premises or lesser estate, a mortgagee or vendee in
25 possession, assignee of rents, receiver, executor, trustee,

lessee, or other person, firm, or corporation in control of a building.

~~1127~~(14) "Recreational vehicle" means a vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use, ~~which that~~ either has its own mode of power or is mounted on or towed by another vehicle, including but not limited to a:

- (a) travel trailer;
- (b) camping trailer;
- (c) truck camper; or
- (d) motor home.

~~1137~~(15) "State agency" means any state officer, department, board, bureau, commission, or other agency of this state.

~~1147~~(16) "State building code" means the state building code provided for in 50-60-203 or any portion of the code of limited application and any of its modifications or amendments.

(17) "Transient guest" means a person who pays a fee to stay at a place for 180 days or less at which sleeping accommodations are furnished."

Section 2. Section 50-60-102, MCA, is amended to read:

"50-60-102. Applicability. (1) (a) The state building codes ~~do~~ code does not apply to:

- ~~1157~~(i) residential buildings containing less than five

dwelling units or their attached-to structures, any farm or ranch building, and any private noncommercial garage or private noncommercial storage structure used only for the owner's own use and not located on property used in a commercial manner, located within ~~the--municipality's~~ a municipal or county's county jurisdictional area, unless the local legislative body or board of county commissioners by ordinance or resolution makes the state building code applicable to these structures; or

~~1167~~(ii) mines and or buildings on mine property regulated under Title 82, chapter 4, and provided that the mine or building is subject to inspection under the Federal Mine Safety and Health Act.

(b) The exceptions provided by subsection (1)(a) do not apply to parts 5 through 7 of this chapter or to any building used as or in conjunction with a hotel, motel, inn, motor court, guest or dude ranch, tourist home, public lodginghouse, or other place where sleeping accommodations are furnished for a fee to a transient guest.

(2) The state may not enforce the state building code under 50-60-205 for the buildings referred to in subsection (1) unless the local legislative body by ordinance or resolution requests the department to enforce the state building code and makes the state building code applicable to the buildings and the department approves the request.

1 Local governments that have made the state building codes
2 applicable to the aforementioned buildings referred to in
3 subsection (1) may enforce within their jurisdictional areas
4 the state building code as adopted by the respective local
5 government.

6 (3) An owner seeking to do work that the owner believes
7 is not subject to a building code requirement shall provide
8 the department, if the department has jurisdiction, with any
9 documentation or information that it may require so that the
10 department may determine whether the work is subject to the
11 building code requirement. The documentation or information
12 provided must be in the form of an affidavit or affirmation,
13 and the provider is subject to the penalties for false
14 swearing in 45-7-202.

15 (4) Where--good--and--sufficient--cause--exists,--a
16 written--request--for--limitation--of Any owner desiring to
17 change the use of any building or installation, whether or
18 not completed under an exception to the state building code
19 may-be-filed-with promulgated under parts 1 through 7 of
20 this chapter, may not be granted a change of use until the
21 owner has acquired any required permit, any required plan
22 review or inspection has been completed by the department
23 for--filing--as--a--permanent--record or local building
24 department, and the owner has otherwise complied with all
25 applicable state building code requirements.

1 ~~(4)~~(5) The department may limit the application of any
2 rule or portion of the state building code to include or
3 exclude:

4 (a) specified classes or types of buildings according
5 to use or other distinctions as may make differentiation or
6 separate classification or regulation necessary, proper, or
7 desirable;

8 (b) specified areas of the state based upon size,
9 population density, special conditions prevailing therein in
10 an area, or other factors which that make differentiation or
11 separate classification or regulation necessary, proper, or
12 desirable."

13 **Section 3.** Section 50-60-103, MCA, is amended to read:

14 "50-60-103. **Administration by department.** The
15 department shall administer parts 1 through 4 7 and for that
16 purpose shall:

17 (1) adopt rules and issue orders necessary to
18 effectuate the purposes of parts 1 through 4 7 and enforce
19 the rules and orders by all appropriate administrative and
20 judicial proceedings;

21 (2) enter, inspect, and examine buildings or premises
22 necessary for the proper performance of its duties under
23 parts 1 through 4 7;

24 (3) study the operation of the state building code,
25 local building regulations, and other laws related to the

1 construction of buildings to ascertain their effects upon
2 the cost of building construction and the effectiveness of
3 their provisions for health and safety;

4 (4) recommend tests or require the testing and approval
5 of materials, devices, and methods of construction to
6 ascertain their acceptability under the requirements of the
7 state building code and issue certification of such
8 acceptability;

9 (5) appoint experts, consultants, and technical
10 advisers for assistance and recommendations relative to the
11 formulation and adoption of the state building code;

12 (6) advise, consult, and cooperate with other agencies
13 of the state, local governments, industries, and interested
14 persons or groups;

15 (7) establish by rule the proper uses of buildings and
16 structures and prohibit certain uses of buildings and
17 structures; and

18 (8) establish by rule building standards regarding the
19 location and placement of foundations for manufactured
20 housing."

21 **Section 4.** Section 50-60-105, MCA, is amended to read:

22 "50-60-105. Hearings authorized. The department may
23 hold hearings relating to the administration of parts 1
24 through 4 7 in accordance with the Montana Administrative
25 Procedure Act."

1 **Section 5.** Section 50-60-107, MCA, is amended to read:

2 "50-60-107. Certificate of occupancy. ~~{1} A certificate~~
3 ~~of occupancy for a building constructed in accordance with~~
4 ~~the provisions of the state or municipal building code shall~~
5 ~~certify that the building conforms to the requirements of~~
6 ~~the building regulations applicable to it;~~

7 ~~{2} Every certificate of occupancy, unless and until~~
8 ~~set aside or vacated by a court of competent jurisdiction,~~
9 ~~is binding and conclusive upon all municipal agencies as to~~
10 ~~all matters set forth, and no order, directive, or~~
11 ~~requirement at variance therewith may be made or issued by~~
12 ~~any other state or municipal agency. The state or a local~~
13 ~~building department may, in its sole discretion, issue a~~
14 ~~certificate of occupancy for a building constructed in~~
15 ~~accordance with provisions of the applicable building code~~
16 ~~certifying that the building conforms to the requirements of~~
17 ~~the building code. The issuance of a certificate may not be~~
18 ~~used as evidence of negligence or other wrongdoing against~~
19 ~~the department or its employees or a municipality or county~~
20 ~~or its employees enforcing the applicable building code."~~

21 **Section 6.** Section 50-60-108, MCA, is amended to read:

22 "50-60-108. Construction permit required. Any person
23 who desires to construct a building which that is subject to
24 the provisions of parts 1 through 4 7 must shall apply for a
25 permit from the appropriate authorities. Any permit required

by this section may be issued to the owner of the building or to the person or entity authorized to perform the work covered by the permit."

Section 7. Section 50-60-109, MCA, is amended to read:

"50-60-109. Injunctions and other relief authorized.

(1) The construction or use of the a building in violation of any provision of the state, county, or municipal building code or any lawful order of a state building official or a local building department may be enjoined by a--judge an order of the district court in the judicial district in which the building is located. The department or a local building department is not subject to any requirement of establishing the likelihood of imminent or irreparable injury when seeking injunctive relief, unless the department or local building department is seeking to restrain a person or entity without giving notice to that person or entity.

(2) The department or a local building department may require the owner or user of a building to correct any building code deficiencies that it determines exist and may collect any applicable permit fees from the owner or user of the building.

(3) The department or a local building department may bring suit against a party that has created or caused a violation or is using a building that is in violation of any applicable building code or lawful order and may request

that the district court award to a third party reasonable attorney fees, costs, and reimbursement for expenses incurred by the third party in correcting the violations.

(2)(4) This section ~~will be~~ is governed by the Montana Rules of Civil Procedure.

(5) The department or a local building department may request that a power supplier disconnect power to a building or structure owned or used in violation of any state, county, or municipal building code provision, this chapter, or a lawful order of a state building official or local building department for the period of time considered necessary by the department or local building department to protect the occupants or users of the building or structure or the general public from imminent danger to health or safety.

(6) Any action authorized by this chapter must be brought within 4 years of the discovery of the violation. The department or local building department may file a lis pendens as to the property involved.

(7) This section applies to parts 1 through 7 of this chapter."

Section 8. Section 50-60-110, MCA, is amended to read:

"50-60-110. Violation a misdemeanor. (1) Any person served with an order pursuant to the provisions of parts 1 through 4 7 who fails to comply with the order not later

than 30 days after service or within the time fixed by the department or a local building department for compliance, whichever is the greater, or any owner, builder, architect, tenant, contractor, subcontractor, construction superintendent, their agents, or any person taking part or assisting in the construction or use of any building who knowingly violates any of the applicable provisions of the applicable state, county, or municipal building code or--a municipal--building--code or any lawful order of a state building official or local building department is guilty of a misdemeanor, punishable by a fine of not less than \$75 or more than \$500 or by imprisonment in a county jail for not more than 3 months, or both.

(2) Any violation of this section is a continuing violation, and the statute of limitations is tolled until the violation ceases.

(3) The county attorney shall, upon request of the department or a local building department, prosecute any violations of the applicable code or official orders.

(4) Action taken under this section does not preclude any other remedy."

Section 9. Section 50-60-201, MCA, is amended to read:

"50-60-201. Purpose of state building code. The state building code ~~shall~~ must be designed to effectuate the general purposes of parts 1 through 4 7 and the following

specific objectives and standards to:

(1) provide reasonably uniform standards and requirements for construction and construction materials consonant with accepted standards of design, engineering, and fire prevention practices;

(2) permit to the fullest extent feasible the use of modern technical methods, devices, and improvements ~~which~~ that tend to reduce the cost of construction consistent with reasonable requirements for the health and safety of the occupants or users of buildings and, consistent with the conservation of energy, by design requirements and criteria that will result in the efficient utilization of energy, whether used directly or in a refined form, in buildings;

(3) eliminate restrictive, obsolete, conflicting, and unnecessary building regulations and requirements ~~which that~~ tend to increase unnecessarily construction costs, retard unnecessarily the use of proven new materials ~~which that~~ have been found adequate through experience or testing, or provide unwarranted preferential treatment to types or classes of materials, products, or methods of construction;

(4) ensure that any new buildings constructed with public funds are accessible to and functional for physically handicapped persons ~~according-to-the-principles-applicable-to-accessibility-to-public-buildings-for-handicapped-persons adopted, recommended, or issued as Part--if, in accordance~~

1 with all applicable department rules, including the minimum
 2 requirements set forth in the Uniform Federal Accessibility
 3 Standards, as adopted by the department by rule as it reads
 4 in the Federal Register dated August 7, 1984, and as the
 5 department may amend by rule to reflect changes in the
 6 principles;

7 (5) encourage efficiencies of design and insulation
 8 which that enable buildings to be heated in the winter with
 9 the least possible quantities of energy and to be kept cool
 10 in the summer without air conditioning equipment or with the
 11 least possible use of such the equipment;

12 (6) encourage efficiencies and criteria directed toward
 13 design of building envelopes with high thermal resistance
 14 and low air leakage and toward requiring practices in the
 15 design and selection of mechanical, electrical, and
 16 illumination systems which that promote the efficient use of
 17 energy."

18 **Section 10.** Section 50-60-202, MCA, is amended to read:

19 "50-60-202. Department to be sole state agency to
 20 promulgate building regulations -- exception. No state
 21 agency except the department may promulgate building
 22 regulations as defined in 50-60-101, except the department
 23 of justice may promulgate regulations relating to use of
 24 buildings and installation of equipment. The state fire
 25 prevention and investigation program of the department of

1 justice shall review building plans and regulations for
 2 conformity with rules promulgated by the department."

3 **Section 11.** Section 50-60-203, MCA, is amended to read:

4 "50-60-203. Department to adopt state building code by
 5 rule. (1) The department shall adopt rules relating to the
 6 construction of, the installation of equipment in, and
 7 standards for materials to be used in all buildings or
 8 classes of buildings, including provisions dealing with
 9 safety, sanitation, and conservation of energy. The
 10 department may amend or repeal such the rules.

11 (2) The department may adopt by reference nationally
 12 recognized building codes in whole or in part, but this does
 13 not prevent the department from adopting rules more
 14 stringent than those contained in such the codes.

15 (3) The rules, when adopted as provided in parts 1
 16 through 4 7, constitute the "state building code" and are
 17 acceptable for the buildings to which they are applicable.

18 (4) The department shall adopt rules that permit the
 19 installation of below-grade liquefied petroleum gas-burning
 20 appliances in single-family dwellings.

21 (5) The department may adopt rules pertaining to
 22 dangerous buildings, including authority for the department
 23 or a local building department to assess costs incurred or
 24 to be incurred in dismantling any structure when the
 25 department or local building department considers it

necessary to protect the general health, safety, and welfare of the public. In addition to any other relief authorized by law, the department or a local building department may place a lien on the real property upon which the improvement was located until the costs and interest on the costs, if any, have been recovered in their entirety."

Section 12. Section 50-60-205, MCA, is amended to read:

"50-60-205. When state building code applies -- health care facility doors. (1) If a municipality or county does not adopt a the state building code or part of the state building code as provided in 50-60-301, the state building code or the portion of the state building code not adopted applies within the municipal or county jurisdictional area and the ~~state-with~~ department shall enforce the code in these areas.

(2) Any provision of a building code requiring the installation or maintenance of self-closing or automatic closing corridor doors to patient rooms does not apply to health care facilities as defined in 50-5-101."

Section 13. Section 50-60-206, MCA, is amended to read:

"50-60-206. Variances to and review of state building code. (1) The department has the power, on satisfactory proof ~~after-a-public-hearing~~, to:

(a) vary or modify, in whole or part, the application of any provision or requirement of the state building code

if strict compliance would cause any undue hardship. A petition for a variance must be filed with the department within 30 days after the date the department determines that a provision or requirement of the building code is applicable and mails notice to the petitioner. but-no A variance or modification shall may not affect adversely provisions for health, safety, and security, and equally safe and proper alternatives may be prescribed. therefor;

(b) if the department has jurisdiction, reverse, modify, or annul, in whole or part, any ruling, direction, determination, or order of any state agency or local building department affecting or relating to the construction of any building, the construction of which is pursuant or purports to be pursuant to the provisions of the state building code;

(c) review ~~within---30--days~~ after disapproval any application for permission for the construction of a building pursuant to the provisions of the state building code. ~~or-plans-or--specifications--submitted--in--connection therewith~~ A petition for review must be filed within 30 days after the date the department mailed notice to the applicant denying the permit.;

~~(d)--reverse,--modify,--or--annul--the--disapproval--in--whole or--part;~~

~~(e)--within--30--days--make--a--determination--that--the~~

1 application-or-plans-or--specifications--are---in---compliance
 2 with--the--provisions--of--the--state-building-code--if-this
 3 determination-is-made,-the-officer--charged--with--the--duty
 4 shall-issue-any-permit,-license,-certificate,-authorization,
 5 or-other-document-required-for-the-construction;

6 (2) An application for a variance,-modification,
 7 reversal,-annulment, or review of the denial of a building
 8 permit may be made by any person aggrieved pursuant to the
 9 Montana Administrative Procedure Act, provided that the
 10 application is filed with the department within the time
 11 required by subsection (1).

12 (3) An--application--for--a---variance,-modification,
 13 reversal,-annulment,-or-review-shall-stay-all-proceedings-in
 14 furtherance--of--the--action-appealed-from-unless-there-is-a
 15 showing-by-the--state--agency--that--a---stay--would--involve
 16 imminent--peril--to--life The department may waive minor
 17 building code violations that do not constitute an imminent
 18 threat to property or to the health, safety, or welfare of
 19 any person or property.

20 (4) The department, in hearings conducted under this
 21 section, shall is not be bound by common-law or statutory
 22 rules of evidence. A municipality or county may, by
 23 ordinance, provide a variance procedure that is acceptable
 24 to the department."

25 NEW SECTION. Section 14. Issuance of permits. In its

1 discretion, the department may issue building, electrical,
 2 plumbing, and mechanical permits to the owner of a building
 3 or structure where the work is to be performed or to the
 4 person or entity authorized by law to perform the work
 5 covered by the permit.

6 **Section 15.** Section 50-60-301, MCA, is amended to read:

7 "50-60-301. Municipal--and--county Power and duties of
 8 municipalities and counties -- building codes authorized --
 9 health care facility doors. (1) The-local-legislative-body
 10 of-a-municipality-or-county-may-adopt--a---building--code--by
 11 ordinance-to-apply-to-the-municipal-or-county-jurisdictional
 12 area A municipality or county may assume responsibility for
 13 the examination and 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 enforcement of building
 17 regulations within the municipality or county.

18 (2) A municipal municipality or county building--code
 19 may; include-only-codes-adopted-by-the-department;

20 (a) adopt a building code by ordinance provided that
 21 the building code may only include building codes adopted by
 22 the department;

23 (b) enter, inspect, and examine buildings or premises,
 24 as necessary, for enforcement of the municipal or county
 25 building code;

(c) examine and approve or disapprove construction plans and specifications for any building subject to the municipal or county building code and inspect the building during the course of construction;

(d) require the construction of buildings in accordance with the municipal or county building code, subject to the power of variance granted to the municipality or county by this chapter;

(e) in writing, order the remedy of any violation of the municipal or county building code. The order may be served upon the owner or the owner's authorized agent, personally or by mail sent to the address set forth in the construction application. A local building department may grant, in writing, a reasonable time for compliance with the order.

(f) issue certificates of occupancy, permits, licenses, and other documents as required for the construction of buildings;

(g) adopt rules for the enforcement and administration of the provisions of this section and for the collection of reasonable fees for the administration and enforcement of this section; and

(h) prohibit the commencement of construction until a permit has been issued by the local building department based upon a showing of compliance with the municipal or

county building code.

(3) Any provision of a building code requiring the installation or maintenance of self-closing or automatic closing corridor doors to patient rooms does not apply to health care facilities as defined in 50-5-101."

Section 16. Section 50-60-302, MCA, is amended to read:

"50-60-302. Certification of municipal and county building codes. (1) A county-or municipality or county may not enforce a building code unless the code adopted and a plan for enforcement of the code have been filed with and certified by the department.

(2) The department shall set forth rules and standards governing the certification of municipal and county building code programs as required in subsection (1)."

Section 17. Section 50-60-303, MCA, is amended to read:

"50-60-303. Municipal or county appeal procedure. (1) If a municipality or county adopts a ~~municipal~~ building code, it shall also establish an appeal procedure by ordinance ~~which that~~ is acceptable to the department.

(2) If a municipality or county does not adopt a code, appeals on the application of the state building code within the municipal or county jurisdictional area ~~shall~~ must be made to the department."

Section 18. Section 50-60-402, MCA, is amended to read:

"50-60-402. Factory-built buildings and recreational

1 vehicles to comply with standards. (1) No A person, firm, or
 2 corporation may not manufacture, sell, or offer for sale any
 3 new factory-built building or recreational vehicle unless
 4 such the factory-built building or recreational vehicle, and
 5 its components, systems, and appliances have been
 6 constructed and assembled in accordance with the standards
 7 herein defined in this section.

8 (2) Any factory-built building or recreational vehicle
 9 unit which that has been approved by the department ~~shall be~~
 10 deemed is considered to be in full compliance with the
 11 standards and rules prescribed in parts 1 through 4 7.

12 (3) All approved factory-built buildings or
 13 recreational vehicle units ~~thus--approved--shall--be~~ are
 14 acceptable as meeting the requirements of parts 1 through 4
 15 7 throughout the state of Montana without further inspection
 16 or fees except for zoning, utility connections, and
 17 foundation permits required by local ordinance."

18 **Section 19.** Section 50-60-404, MCA, is amended to read:

19 "50-60-404. **Enforcement of building construction**
 20 **standards for modular homes.** (1) The provisions of this
 21 chapter apply to factory-built modular or prebuilt homes or
 22 buildings.

23 (2) A municipality or county may regulate the
 24 construction of factory-built modular or prebuilt homes or
 25 buildings as provided in ~~50-60-306~~ 50-60-301 and 50-60-302

1 if:

2 (a) the homes or buildings are constructed inside the
 3 jurisdiction of the municipality or county;

4 (b) the homes or buildings are sold primarily to
 5 persons in the county in which the factory is located;

6 (c) the factory does not manufacture more than 100
 7 homes or buildings a year; and

8 (d) the municipality or county has an agency or officer
 9 assigned to inspect and enforce building construction
 10 standards.

11 (3) Inspection and enforcement approval given by a
 12 municipality or county under this section may be recognized
 13 and accepted by any other municipality or county of the
 14 state to which the factory-built home or building is
 15 transported for final installation. Additional inspections
 16 need not be conducted."

17 NEW SECTION. **Section 20.** Inspection to ensure
 18 licensing. The department may enter, inspect, and examine
 19 buildings and premises for purposes of verifying that
 20 persons performing work on the buildings or premises are
 21 properly licensed pursuant to Title 37, chapter 69, part 3,
 22 whether the work is covered by a state, county, or municipal
 23 building code.

24 NEW SECTION. **Section 21.** License required. The
 25 municipality or county shall ensure that persons applying

for permits or performing work are properly licensed under or are exempt from the provisions of Title 37, chapter 69, part 3.

Section 22. Section 50-60-503, MCA, is amended to read:

"50-60-503. **Exceptions.** This part ~~shall~~ may not be construed to apply to or to affect plumbing installations in any mines, mills, smelters, refineries, public utilities, railroads, or plumbing installations on farms ~~having their own-individual or ranches, provided that the installation is used in conjunction with an agricultural or livestock-raising operation and is not connected to either a public water supply or sewage disposal system. Any building used as or in conjunction with a hotel, motel, inn, motor court, guest or dude ranch, tourist home, public lodginghouse, or other place where sleeping accommodations are furnished to transient guests for a fee is subject to the requirements of this part.~~"

Section 23. Section 50-60-504, MCA, is amended to read:

"50-60-504. **Department to prescribe minimum standards.** The department of-commerce shall by rule prescribe minimum standards ~~which that~~ are uniform and ~~which--are--thereafter effective--for that~~ apply to all plumbing installations or maintenance, except ~~where when~~ exempt by 50-60-503."

Section 24. Section 50-60-505, MCA, is amended to read:

"50-60-505. **Permit required.** (1) It is unlawful for any

person to engage in ~~the-business, trade, or~~ work having to do with the installation, removal, alteration, or repair of plumbing and drainage systems or parts ~~thereof of systems~~ without first obtaining a permit from the department of commerce.

(2) A separate permit ~~shall~~ must be obtained for each building or structure.

(3) ~~No A~~ person may not allow any other person to do or cause to be done any work under a permit secured by the permittee except persons in ~~his the~~ the permittee's employ.

(4) When a permit has been obtained to connect an existing building or existing work to the public sewer or to connect to a new private disposal facility, backfilling of private sewage disposal facilities abandoned consequent to the connection is included in the permit."

Section 25. Section 50-60-506, MCA, is amended to read:

"50-60-506. **Exceptions to permit requirement.** (1) ~~No A~~ permit is not required for any minor replacement or repair work, the performance of which does not have a significant potential for creating a condition hazardous to public health, and safety, or welfare.

(2) ~~No A~~ permit is not required ~~where when~~ the installation is exempt under the provisions of 37-69-102 or 50-60-503.

(3) ~~No A~~ state permit is not required whenever the

1 installation occurs in an area governed by a municipality or
 2 county and where when there is in effect a municipal or
 3 county building code which that covers plumbing
 4 installations and which that provides inspection procedures.

5 (4) ~~Nothing-contained-in-this~~ This part shall does not
 6 prohibit the owner of residential property from making an
 7 installation for all sanitary plumbing and potable water
 8 supply piping without a permit providing-he if the owner
 9 does the work himself.

10 (5) The provisions of this part do not apply to
 11 regularly employed maintenance personnel doing maintenance
 12 work on the business premises of their employer unless the
 13 work is subject to the permit provisions of this part."

14 **Section 26.** Section 50-60-507, MCA, is amended to read:

15 "50-60-507. Application for and issuance of permit. (1)
 16 A person required to apply for a state permit under this
 17 part shall make application on forms provided by the
 18 department ~~of-commerce~~ or its authorized representative. He
 19 The applicant shall give provide to the department a
 20 description of the character of the work proposed to be done
 21 and the location, ownership, occupancy, and use of the
 22 premises in connection ~~therewith~~ with the work.

23 (2) The department or its authorized representative may
 24 require sketches, specifications, or drawings and such other
 25 information it deems considers necessary in order to

1 determine the scope of the work contemplated.

2 (3) If the department determines that the sketches,
 3 specifications, drawings, descriptions, and information
 4 furnished by the applicant are in compliance with the state
 5 plumbing code, it shall issue the permit applied for upon
 6 payment of the required fee as established by the
 7 department."

8 **Section 27.** Section 50-60-508, MCA, is amended to read:

9 "50-60-508. Permit fees. (1) The department ~~of-commerce~~
 10 shall establish state permit fees in accordance with the
 11 Montana Administrative Procedure Act, and the state permit
 12 fees shall must be deposited to the state special revenue
 13 fund of the department for use in the administration and
 14 enforcement of this part and the Montana state plumbing
 15 code.

16 (2) For ~~the--purpose~~ purposes of 50-60-505 through
 17 50-60-513, a sanitary plumbing outlet on or to which a
 18 plumbing fixture or appliance may be set or attached ~~shall~~
 19 must be construed to be a fixture. Fees for reconnection and
 20 retest of plumbing systems in relocated buildings ~~shall must~~
 21 be based on the number of plumbing fixtures, gas systems,
 22 water heaters, and the like involved."

23 **Section 28.** Section 50-60-509, MCA, is amended to read:

24 "50-60-509. Person commencing work without a state
 25 permit to pay double the permit fee -- exception. Any person

1 who commences any work for which a state permit is required
 2 without first obtaining a permit shall, if subsequently
 3 permitted to obtain a permit, pay double the permit fee for
 4 the work, except that this provision does not apply to
 5 emergency work when it is proved to the satisfaction of the
 6 department ~~of-commerce~~ or its authorized representative that
 7 the work was urgently necessary and that it was not
 8 practical to obtain a permit ~~before---the~~ prior to
 9 commencement of the work. In all ~~such~~ these cases, a permit
 10 ~~shall~~ must be obtained as soon as it is practical to do so,
 11 and if there is unreasonable delay in applying for the
 12 permit, a double fee ~~shall~~ must be charged."

13 **Section 29.** Section 50-60-510, MCA, is amended to read:

14 "50-60-510. Inspection by department to insure ensure
 15 compliance. ~~All~~ The department or its authorized
 16 representative may inspect all plumbing and drainage systems
 17 ~~may--be--inspected--by--the--department--of--commerce--or--its~~
 18 ~~authorized-representative~~ to insure ensure compliance with
 19 the requirements of the state plumbing code."

20 **Section 30.** Section 50-60-511, MCA, is amended to read:

21 "50-60-511. Duty of permittee regarding inspection and
 22 compliance. (1) It is the duty of the person doing work
 23 authorized by the permit to notify the department ~~of~~
 24 ~~commerce~~, orally or in writing, that the work is ready for
 25 inspection. The notification ~~shall~~ must be given not less

1 than ~~24~~ 48 hours before the work is to be inspected.

2 (2) It is the duty of the person doing the work
 3 authorized by the permit to ensure that the work performed
 4 before notification and after notification pending
 5 inspection complies with the state plumbing code."

6 **Section 31.** Section 50-60-512, MCA, is amended to read:

7 "50-60-512. Department authorized to order work stopped
 8 for noncompliance. Whenever any work is being done contrary
 9 to the provisions of the state plumbing code, the department
 10 ~~of-commerce~~ or its authorized representative may~~---after--a~~
 11 ~~hearing--conducted--under--the--provisions--of--the--Montana~~
 12 ~~Administrative--Procedure--Act~~, order work stopped by notice
 13 in writing served on any person engaged in the work."

14 **Section 32.** Section 50-60-515, MCA, is amended to read:

15 "50-60-515. Penalty for violations -- exceptions. A
 16 person who ~~works-at~~ is employed in the field of plumbing or
 17 who maintains or conducts a plumbing business or an
 18 individual who connects or disconnects plumbing ~~from-a~~
 19 ~~public-water-or-sewer-system~~ in violation of any provisions
 20 of this part or at a time when he the person is not exempt
 21 from the provisions of this part pursuant to the provisions
 22 of ~~a-duty-enacted-and-subsisting~~ an ordinance of a city, or
 23 a town, or a county is guilty of a misdemeanor and~~---upon~~
 24 ~~conviction--thereof--in-any-court-of-competent-jurisdiction~~,
 25 ~~shall-be-punished~~ punishable by a fine of not less than \$10

1 \$75 and not more than \$100 \$500 or by imprisonment for not
 2 more than 3 months, or both, for each separate offense.
 3 ~~However,--this--part--shall--not--be--construed--to--apply--to--or~~
 4 ~~affect--plumbing--or--pipefitting--as--indicated--in--the--37-69-102~~
 5 ~~and--50-60-503--exceptions.~~ Any violation of this part is a
 6 continuing violation, and the statute of limitations is
 7 tolled until the violation ceases."

8 **NEW SECTION. Section 33.** License required. The
 9 municipality or county shall ensure that persons applying
 10 for permits or performing electrical installation work are
 11 properly licensed or exempt from the provisions of Title 37,
 12 chapter 68, part 3.

13 **NEW SECTION. Section 34.** Exemption from permit
 14 requirement for minor procedures. The department may by rule
 15 exempt from the electrical permit and inspection provisions
 16 minor procedures or installations, the performance of which
 17 does not have a significant potential for creating a
 18 condition hazardous to the public health, safety, or
 19 welfare.

20 **Section 35.** Section 50-60-602, MCA, is amended to read:
 21 "50-60-602. Exceptions. (1) ~~Nothing-in-this~~ This part
 22 ~~shall-be-deemed-to~~ does not apply to the installation,
 23 alteration, or repair of electrical signal or communications
 24 equipment owned or operated by a public utility, or a city,
 25 or a county.

1 (2) The inspection provisions of this part do not apply
 2 to regularly employed maintenance electricians doing
 3 maintenance work on the business premises of their employer
 4 nor do they apply to line work on the business premises of
 5 the employer or to ordinary and customary in-plant or onsite
 6 installations, modifications, additions, or repairs.

7 (3) Any person who plugs in an electrical appliance
 8 where an approved electrical outlet is already installed
 9 ~~shall~~ may not be considered as an installer.

10 (4) ~~No--provisions of-this~~ This part shall does not in
 11 any manner interfere with, hamper, preclude, or prohibit any
 12 vendor of any electrical appliance from selling, delivering,
 13 and connecting any electrical appliance if the connection
 14 does not necessitate the installation of electrical wiring
 15 of the structure where the appliance is to be connected.

16 (5) A state permit is not required whenever the
 17 installation occurs in an area governed by a municipality or
 18 county with a building code in effect covering electrical
 19 installations and providing inspection procedures for
 20 electrical installations."

21 **Section 36.** Section 50-60-603, MCA, is amended to read:
 22 "50-60-603. Electrical installations to comply with
 23 building codes adopted by department. (1) All installations
 24 in this state of wires and equipment to convey electric
 25 current and installations of apparatus to be operated by

current, except as provided in 50-60-602, shall must be made substantially in accord with building codes adopted by the department of-commerce.

(2) Rules and standards relating to buildings and equipment shall must be promulgated by the department."

NEW SECTION. Section 37. Inspection to ensure licensing. The department may enter, inspect, and examine buildings and premises for purposes of verifying that persons performing work on the buildings or premises are properly licensed pursuant to Title 37, chapter 68, part 3, whether the work is covered by a state, county, or municipal building code.

Section 38. Section 50-60-604, MCA, is amended to read:

"50-60-604. Department to make inspections, issue inspection-tags electrical permits, and establish fees. The department of-commerce or a local building department shall make inspections of electrical installations, issue inspection--tags electrical permits for these installations, and establish and charge a reasonable and uniform fee for the inspections. Inspection fees which may not exceed the expense actual expenses of providing the inspection and administering this part."

Section 39. Section 50-60-605, MCA, is amended to read:

"50-60-605. Power supplier not to energize installation without inspection---tag electrical permit -- power

disconnection for violation of electrical code. (1) Individuals, firms, cooperatives, corporations, or municipalities selling electricity are power suppliers. Except for temporary connections which that the department may authorize by rule for a period not exceeding 14 days without a preconnection inspection, power suppliers may not connect with or energize an electrical installation under this part unless the owner or a licensed electrical contractor has delivered to the power supplier an inspection tag electrical permit covering the installation, issued by the department of-commerce.

(2) The department or a local building department may order a power supplier to disconnect power to a building or structure when the department or the local building department has determined that an electrical code violation exists or when a required electrical permit has not been obtained."

Section 40. Section 50-60-607, MCA, is amended to read:

"50-60-607. Unlawful acts -- civil penalties -- injunctive relief. (1) It is unlawful for a person, partnership, company, firm, association, or corporation other than a power supplier to energize an electrical installation under this part unless an application for an inspection--tag electrical permit covering the installation together-with-the-inspection-fee, has-been-forwarded-to--the

department--of-commerce has been issued by the department or a local building department and all required inspection fees have been paid.

(2) A person violating subsection (1) is guilty of a misdemeanor punishable by a fine of not less than \$75 or more than \$500 or imprisonment in a county jail for not more than 3 months, or both. A violation of subsection (1) is a continuing violation, and the statute of limitations is tolled until the violation ceases.

(3) An action under this section does not bar enforcement of this part, any rules or orders issued pursuant to this part by injunction or other appropriate remedy, or any injunction issued pursuant to 50-60-109.

(4) The department, or the county attorney at the department's request, may bring any state building code enforcement proceeding in the name of the state."

Section 41. Section 50-60-701, MCA, is amended to read:

"50-60-701. Inspection of passenger elevators and escalators -- fees. (1) All passenger elevators and escalators in--public--places may be inspected by the department to insure ensure compliance with the requirements of the state building code. The department shall establish and charge a reasonable and uniform fee for the inspections that may not exceed the expense-of actual expenses incurred in providing the---inspection elevator and escalator

inspections and in administering this part.

(2) In lieu of inspection by the department, inspections of passenger elevators and escalators to assure ensure compliance with the state building code may be made by:

(a) a maintenance company representative certified by the department who regularly maintains or services the elevator or escalator equipment; or

(b) an insurance company representative certified by the department who regularly inspects an elevator or escalator insured by the company against public liability and who maintains a service record of the elevator or escalator.

(3) When an inspection of a passenger elevator or escalator is made pursuant to subsection (2), a copy of the condition report must be provided to the owner and must be sent to the department. The department may not charge more than \$10 for receiving and processing a condition report for each elevator or escalator in any building and for issuing certificates of inspection therefor if the certified maintenance or insurance company inspector doing the inspection certifies to the department that all deficient elevator or escalator conditions noted in the condition report have been corrected and no follow-up followup by the department in that regard is necessary.

1 ~~(4) A municipality or county may not adopt building~~
2 ~~code provisions regulating elevators and escalators."~~

3 **NEW SECTION. Section 42.** Violations -- civil penalties
4 -- injunctive relief. (1) A person violating this part is
5 guilty of a misdemeanor punishable by a fine of not less
6 than \$75 or more than \$500 or imprisonment in a county jail
7 for not more than 3 months, or both. Any violation of this
8 part is a continuing violation, and the statute of
9 limitations is tolled until the violation ceases.

10 (2) An action under this section does not bar
11 enforcement of this part, any rules or orders issued
12 pursuant to this part by injunction or other appropriate
13 remedy, or any injunction issued pursuant to 50-60-109.

14 (3) The department, or the county attorney at the
15 department's request, may bring any state building code
16 enforcement proceeding in the name of the state.

17 **NEW SECTION. Section 43. Repealer.** Sections 50-60-106,
18 50-60-204, 50-60-502, 50-60-514, and 50-60-606, MCA, are
19 repealed.

20 **NEW SECTION. Section 44. Codification instruction.** (1)
21 [Section 14] is intended to be codified as an integral part
22 of Title 50, chapter 60, part 2, and the provisions of Title
23 50, chapter 60, part 2, apply to [section 14].

24 (2) [Sections 20 and 21] are intended to be codified as
25 an integral part of Title 50, chapter 60, part 5, and the

1 provisions of Title 50, chapter 60, part 5, apply to
2 [sections 20 and 21].

3 (3) [Sections 33, 34, and 37] are intended to be
4 codified as an integral part of Title 50, chapter 60, part
5 6, and the provisions of Title 50, chapter 60, part 6, apply
6 to [sections 33, 34, and 37].

7 (4) [Section 42] is intended to be codified as an
8 integral part of Title 50, chapter 60, part 7, and the
9 provisions of Title 50, chapter 60, part 7, apply to
10 [section 42].

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0337, as introduced.

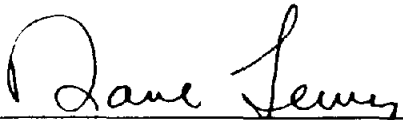
DESCRIPTION OF PROPOSED LEGISLATION: An act generally revising the building codes.


ASSUMPTIONS:

1. There is no fiscal impact to the Department of Commerce (DOC) since most of the requirements already exist and the bill simply clarifies existing duties.
2. The amendment contained in Section 2 (on page 8 lines 22-25) could require the DOC to become involved in local code enforcement programs, but because the department has approval authority over the arrangement, any increased budget would be taken to future legislative sessions.

FISCAL IMPACT:

No fiscal impact this biennium.

 2-13-93
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 2/16/93
JOHN HARP, PRIMARY SPONSOR DATE

Fiscal Note for SB0337, as introduced

SB 337

APPROVED BY COMM. ON
BUSINESS & INDUSTRY

1 SENATE BILL NO. 337
2 INTRODUCED BY HARP
3 BY REQUEST OF THE DEPARTMENT OF COMMERCE
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE
6 BUILDING CODES; EXPANDING THE DEPARTMENT OF COMMERCE'S
7 RULEMAKING AUTHORITY AND THE APPLICABILITY OF THE RULES;
8 REVISING CONSTRUCTION PERMIT REQUIREMENTS; INCREASING
9 BUILDING CODE ENFORCEMENT REMEDIES; REVISING BUILDING CODE
10 VIOLATION PENALTIES; REVISING THE PURPOSE OF BUILDING CODES;
11 ELIMINATING REVIEW OF BUILDING PLANS BY THE DEPARTMENT OF
12 JUSTICE; ALLOWING THE DEPARTMENT OF COMMERCE TO ADOPT RULES
13 PERTAINING TO DANGEROUS BUILDINGS; REQUIRING THE DEPARTMENT
14 TO ENFORCE ANY PART OF THE STATE BUILDING CODES NOT ADOPTED
15 BY A LOCAL JURISDICTION; AMENDING THE VARIANCE APPLICATION
16 PROCEDURE; ALLOWING FOR THE ISSUANCE OF PERMITS TO AN OWNER
17 OR A PERSON DOING WORK ON A BUILDING; PROVIDING FOR
18 CERTIFICATION BY THE DEPARTMENT OF ANY BUILDING CODE ADOPTED
19 BY A LOCAL JURISDICTION; REQUIRING A COUNTY TO ADOPT AN
20 APPEAL PROCEDURE; CLARIFYING THE APPLICABILITY OF STANDARDS
21 AND RULES TO FACTORY-BUILT BUILDINGS AND RECREATIONAL
22 VEHICLES; PROVIDING FOR THE ENFORCEMENT BY COUNTIES OF
23 BUILDING STANDARDS FOR MODULAR HOMES; PROVIDING FOR
24 INSPECTIONS TO ENSURE LICENSING; REVISING EXCEPTIONS TO THE
25 APPLICATION OF PLUMBING CODES; AUTHORIZING THE INSPECTION OF

1 PLUMBING AND DRAINAGE SYSTEMS BY AUTHORIZED REPRESENTATIVES
2 OF THE DEPARTMENT; ELIMINATING THE REQUIREMENT FOR A HEARING
3 PRIOR TO THE DEPARTMENT ISSUING AN ORDER PERTAINING TO WORK
4 CONTRARY TO A PROVISION OF THE PLUMBING CODE; INCREASING THE
5 PENALTY FOR A VIOLATION OF THE PLUMBING CODE; REQUIRING
6 LOCAL JURISDICTIONS TO ENSURE THAT PERMIT APPLICANTS
7 PERFORMING ELECTRICAL WORK ARE PROPERLY LICENSED AND
8 CREATING EXEMPTIONS FROM LICENSE PERMITTING REQUIREMENTS
9 FOR MINOR ELECTRICAL WORK; CREATING AN EXEMPTION FROM
10 OBTAINING A STATE PERMIT FOR ELECTRICAL INSTALLATIONS
11 GOVERNED BY A LOCAL BUILDING CODE; SUBSTITUTING ELECTRICAL
12 PERMITS FOR INSPECTION TAGS; ALLOWING DISCONNECTION OF POWER
13 WHEN ELECTRICAL CODE VIOLATIONS EXIST AND OTHER RELIEF FOR
14 ENERGIZING ELECTRICAL INSTALLATIONS WITHOUT A PERMIT;
15 INCREASING ELEVATOR AND ESCALATOR INSPECTION FEES TO COVER
16 INSPECTION AND ADMINISTRATION COSTS; PROHIBITING A LOCAL
17 JURISDICTION FROM ADOPTING BUILDING CODES REGULATING
18 ELEVATORS AND ESCALATORS; PROVIDING PENALTIES FOR CODE
19 VIOLATIONS PERTAINING TO ELEVATORS AND ESCALATORS; AMENDING
20 SECTIONS 50-60-101, 50-60-102, 50-60-103, 50-60-105,
21 50-60-107, 50-60-108, 50-60-109, 50-60-110, 50-60-201,
22 50-60-202, 50-60-203, 50-60-205, 50-60-206, 50-60-301,
23 50-60-302, 50-60-303, 50-60-402, 50-60-404, 50-60-503,
24 50-60-504, 50-60-505, 50-60-506, 50-60-507, 50-60-508,
25 50-60-509, 50-60-510, 50-60-511, 50-60-512, 50-60-515,

50-60-602, 50-60-603, 50-60-604, 50-60-605, 50-60-607, AND
50-60-701, MCA; AND REPEALING SECTIONS 50-60-106, 50-60-204,
50-60-502, 50-60-514, AND 50-60-606, MCA."

STATEMENT OF INTENT

A statement of intent is required for this bill because it expands the department of commerce's rulemaking authority with respect to the state building code. In addition to issuing orders to effectuate the purposes of Title 50, chapter 60, the department is required to adopt rules to effectuate those purposes and its rulemaking authority is extended to parts 5 through 7 of Title 50, chapter 60, in order to include plumbing and electrical installations and elevators. The department may also establish rules with respect to the proper use of buildings and structures, including prohibiting certain uses, and with respect to the location for foundations of manufactured homes and the designation and regulation of dangerous buildings.

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

Section 1. Section 50-60-101, MCA, is amended to read:

"50-60-101. Definitions. As used in parts 1 through 4 and-part 7 of this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Building" means a combination of any materials,

whether mobile, portable, or fixed, to form a structure and the related facilities for the use or occupancy by persons or property. The word "building" ~~shall~~ must be construed as though followed by the words "or part or parts thereof of the building".

(2) "Building regulations" means any law, rule, resolution, regulation, ordinance, or code, general or special, or compilation thereof enacted or adopted by the state or any municipality or county, including departments, boards, bureaus, commissions, or other agencies of the state, a county, or a municipality relating to the design, construction, reconstruction, alteration, conversion, repair, inspection, or use of buildings and installation of equipment in buildings. The term does not include zoning ordinances.

(3) "Construction" means the original construction, and equipment reconstruction, alteration, conversion, repair, inspection, or use of buildings, the installment of equipment in buildings, and the requirements or standards relating to or affecting materials used, including provisions for safety and sanitary conditions.

(4) "County jurisdictional area" means the area within a county that is not part of a municipal jurisdictional area.

~~(4)~~(5) "Department" means the department of commerce

1 provided for in Title 2, chapter 15, part 18.

2 ~~(5)~~(6) "Equipment" means plumbing, heating, electrical,
3 ventilating, air conditioning, and refrigerating equipment,
4 elevators, dumbwaiters, escalators, and other mechanical
5 additions or installations.

6 ~~(6)~~(7) "Factory-built building" means a
7 factory-assembled structure or structures equipped with the
8 necessary service connections but not made so as to be
9 readily movable as a unit or units and designed to be used
10 with a permanent foundation. "~~Factory-built buildings~~" The
11 term does not include manufactured housing constructed after
12 June 15, 1976, under the HUD, National Mobile Home
13 Construction and Safety Act of 1974.

14 ~~(7)~~(8) "Local building department" means the agency or
15 agencies of any municipality or county charged with the
16 administration, supervision, or enforcement of building
17 regulations, approval of plans, inspection of buildings, or
18 the issuance of permits, licenses, certificates, and similar
19 documents prescribed or required by state or local building
20 regulations.

21 ~~(8)~~(9) "Local legislative body" means the council or
22 commission charged with governing the municipality or
23 county.

24 ~~(9)~~(10) "Municipality" means any incorporated city or
25 town and its jurisdictional area as defined by subsection

1 ~~(10)~~-of-this-section (11).

2 ~~(10)~~(11) (a) "Municipal jurisdictional area" means the
3 area within the limits of an incorporated municipality
4 unless the area is extended at the written request of a
5 municipality and approved by the department.

6 (b) Upon request, the department may approve extension
7 of the jurisdictional area to include:

8 (i) all or part of the area within 4 1/2 miles of the
9 corporate limits of a municipality;

10 (ii) all of any platted subdivision which that is
11 partially within 4 1/2 miles of the corporate limits of a
12 municipality; and

13 (iii) all of any zoning district adopted pursuant to
14 Title 76, chapter 2, part 1 or 2, which that is partially
15 within 4 1/2 miles of the corporate limits of a
16 municipality.

17 (c) Distances ~~shall~~ must be measured in a straight line
18 in a horizontal plane.

19 ~~(12)~~ "Noncommercial" means a use that is other than
20 commercial and that is not for the ordinary purpose of
21 trade, agriculture, industry, or commerce, whether or not
22 the primary use is for profit.

23 ~~(11)~~(13) "Owner" means the owner or owners of the
24 premises or lesser estate, a mortgagee or vendee in
25 possession, assignee of rents, receiver, executor, trustee,

lessee, or other person, firm, or corporation in control of a building.

~~(12)~~(14) "Recreational vehicle" means a vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use, ~~which that~~ either has its own mode of power or is mounted on or towed by another vehicle, including but not limited to a:

- (a) travel trailer;
- (b) camping trailer;
- (c) truck camper; or
- (d) motor home.

~~(13)~~(15) "State agency" means any state officer, department, board, bureau, commission, or other agency of this state.

~~(14)~~(16) "State building code" means the state building code provided for in 50-60-203 or any portion of the code of limited application and any of its modifications or amendments.

(17) "Transient guest" means a person who pays a fee to stay at a place for 180 days or less at which sleeping accommodations are furnished."

Section 2. Section 50-60-102, MCA, is amended to read:

"50-60-102. Applicability. (1) (a) The state building codes ~~do~~ code does not apply to:

- ~~(a)~~(i) residential buildings containing less than five

dwelling units or their attached-to structures, any farm or ranch building, and any private noncommercial garage or private noncommercial storage structure used only for the owner's own use and not located on property used in a commercial manner, located within ~~the--municipality's~~ a municipal or county's county jurisdictional area, unless the local legislative body or board of county commissioners by ordinance or resolution makes the state building code applicable to these structures; or

~~(b)~~(ii) mines and or buildings on mine property regulated under Title 82, chapter 4, and provided that the mine or building is subject to inspection under the Federal Mine Safety and Health Act.

(b) The exceptions provided by subsection (1)(a) do not apply to parts 5 through 7 of this chapter or to any building used as or in conjunction with a hotel, motel, inn, motor court, guest or dude ranch, tourist home, public lodginghouse, or other place where sleeping accommodations are furnished for a fee to a transient guest.

(2) The state may not enforce the state building code under 50-60-205 for the buildings referred to in subsection (1) SUBSECTIONS (1)(A)(I) AND (1)(B) unless the local legislative body by ordinance or resolution requests the department to enforce the state building code and makes the state building code applicable to the buildings and the

department approves the request. Local governments that have made the state building codes applicable to the aforementioned buildings referred to in subsection--(1) SUBSECTIONS (1)(A)(I) AND (1)(B) may enforce within their jurisdictional areas the state building code as adopted by the respective local government.

(3) An owner seeking to do work that the owner believes is not subject to a building code requirement shall provide the department, if the department has jurisdiction, with any documentation or information that it may require so that the department may determine whether the work is subject to the building code requirement. The documentation or information provided must be in the form of an affidavit or affirmation, and the provider is subject to the penalties for false swearing in 45-7-202.

(3)(4) Where---good--and--sufficient--cause--exists--a written-request-for-limitation--of Any owner desiring to change the use of any building or installation, whether or not completed under an exception to the state building code may--be--filed--with promulgated under parts 1 through 7 of this chapter, may not be granted a change of use until the owner has acquired any required permit, any required plan review or inspection has been completed by the department for---filing---as--a--permanent--record or local building department, and the owner has otherwise complied with all

applicable state building code requirements.

(4)(5) The department may limit the application of any rule or portion of the state building code to include or exclude:

(a) specified classes or types of buildings according to use or other distinctions as may make differentiation or separate classification or regulation necessary, proper, or desirable;

(b) specified areas of the state based upon size, population density, special conditions prevailing therein in an area, or other factors which that make differentiation or separate classification or regulation necessary, proper, or desirable."

Section 3. Section 50-60-103, MCA, is amended to read:

"50-60-103. Administration by department. The department shall administer parts 1 through 4 7 and for that purpose shall:

(1) adopt rules and issue orders necessary to effectuate the purposes of parts 1 through 4 7 and enforce the rules and orders by all appropriate administrative and judicial proceedings;

(2) enter, inspect, and examine buildings or premises necessary for the proper performance of its duties under parts 1 through 4 7;

(3) study the operation of the state building code,

1 local building regulations, and other laws related to the
2 construction of buildings to ascertain their effects upon
3 the cost of building construction and the effectiveness of
4 their provisions for health and safety;

5 (4) recommend tests or require the testing and approval
6 of materials, devices, and methods of construction to
7 ascertain their acceptability under the requirements of the
8 state building code and issue certification of such
9 acceptability;

10 (5) appoint experts, consultants, and technical
11 advisers for assistance and recommendations relative to the
12 formulation and adoption of the state building code;

13 (6) advise, consult, and cooperate with other agencies
14 of the state, local governments, industries, and interested
15 persons or groups; AND

16 (7) establish by rule the proper uses of buildings and
17 structures and prohibit certain uses of buildings and
18 structures; and

19 (8) establish by rule building standards regarding the
20 location and placement of foundations for manufactured
21 housing."

22 **Section 4.** Section 50-60-105, MCA, is amended to read:

23 "50-60-105. Hearings authorized. The department may
24 hold hearings relating to the administration of parts 1
25 through 4 7 in accordance with the Montana Administrative

1 Procedure Act."

2 **Section 5.** Section 50-60-107, MCA, is amended to read:

3 "50-60-107. Certificate of occupancy. ~~{1} A certificate~~
4 ~~of occupancy for a building constructed in accordance with~~
5 ~~the provisions of the state or municipal building code shall~~
6 ~~certify that the building conforms to the requirements of~~
7 ~~the building regulations applicable to it.~~

8 ~~{2} Every certificate of occupancy, unless and until~~
9 ~~set aside or vacated by a court of competent jurisdiction,~~
10 ~~is binding and conclusive upon all municipal agencies as to~~
11 ~~all matters set forth and no order, directive, or~~
12 ~~requirement at variance therewith may be made or issued by~~
13 ~~any other state or municipal agency. The state or a local~~
14 ~~building department may, in its sole discretion, issue a~~
15 ~~certificate of occupancy for a building constructed in~~
16 ~~accordance with provisions of the applicable building code~~
17 ~~certifying that the building conforms to the requirements of~~
18 ~~the building code. The issuance of a certificate may not be~~
19 ~~used as evidence of negligence or other wrongdoing against~~
20 ~~the department or its employees or a municipality or county~~
21 ~~or its employees enforcing the applicable building code."~~

22 **Section 6.** Section 50-60-108, MCA, is amended to read:

23 "50-60-108. Construction permit required. Any person
24 who desires to construct a building which that is subject to
25 the provisions of parts 1 through 4 7 must shall apply for a

1 permit from the appropriate authorities. Any permit required
 2 by this section may be issued to the owner of the building
 3 or to the person or entity authorized to perform the work
 4 covered by the permit."

5 **Section 7.** Section 50-60-109, MCA, is amended to read:

6 **"50-60-109. Injunctions and other relief authorized.**

7 (1) The construction or use of the a building in violation
 8 of any provision of the state, county, or municipal building
 9 code or any lawful order of a state building official or a
 10 local building department may be enjoined by a judge an
 11 order of the district court in the judicial district in
 12 which the building is located. The department or a local
 13 building department is not subject to any requirement of
 14 establishing the likelihood of imminent or irreparable
 15 injury when seeking injunctive relief, unless the department
 16 or local building department is seeking to restrain a person
 17 or entity without giving notice to that person or entity.

18 (2) The department or a local building department may
 19 require the owner or user of a building to correct any
 20 building code deficiencies that it determines exist and may
 21 collect any applicable permit fees from the owner or user of
 22 the building.

23 (3) The department or a local building department may
 24 bring suit against a party that has created or caused a
 25 violation or is using a building that is in violation of any

1 applicable building code or lawful order and may request
 2 that the district court award to a third party reasonable
 3 attorney fees, costs, and reimbursement for expenses
 4 incurred by the third party in correcting the violations.

5 ~~(2)~~(4) This section ~~will be~~ is governed by the Montana
 6 Rules of Civil Procedure.

7 ~~(5) The department or a local building department may~~
 8 ~~request that a power supplier disconnect power to a building~~
 9 ~~or structure owned or used in violation of any state,~~
 10 ~~county, or municipal building code provision; this chapter,~~
 11 ~~or a lawful order of a state building official or local~~
 12 ~~building department for the period of time considered~~
 13 ~~necessary by the department or local building department to~~
 14 ~~protect the occupants or users of the building or structure~~
 15 ~~or the general public from imminent danger to health or~~
 16 ~~safety.~~

17 ~~(6)~~(5) Any action authorized by this chapter must be
 18 brought within 4 years of the discovery of the violation.
 19 The department or local building department may file a lis
 20 pendens as to the property involved.

21 ~~(7)~~(6) This section applies to parts 1 through 7 of
 22 this chapter."

23 **Section 8.** Section 50-60-110, MCA, is amended to read:

24 **"50-60-110. Violation a misdemeanor. (1)** Any person
 25 served with an order pursuant to the provisions of parts 1

through 4 7 who fails to comply with the order not later than 30 days after service or within the time fixed by the department or a local building department for compliance, whichever is the greater, or any owner, builder, architect, tenant, contractor, subcontractor, construction superintendent, their agents, or any person taking part or assisting in the construction or use of any building who knowingly violates any of the applicable provisions of the applicable state, county, or municipal building code or a municipal-building-code or any lawful order of a state building official or local building department is guilty of a misdemeanor, punishable by a fine of not less than \$75 or more than \$500 or by imprisonment in a county jail for not more than 3 months, or both.

(2) Any violation of this section is a continuing violation, and the statute of limitations is tolled until the violation ceases.

(3) The county attorney shall, upon request of the department or a local building department, prosecute any violations of the applicable code or official orders.

(4) Action taken under this section does not preclude any other remedy."

Section 9. Section 50-60-201, MCA, is amended to read:

"50-60-201. Purpose of state building code. The state building code shall must be designed to effectuate the

general purposes of parts 1 through 4 7 and the following specific objectives and standards to:

(1) provide reasonably uniform standards and requirements for construction and construction materials consonant with accepted standards of design, engineering, and fire prevention practices;

(2) permit to the fullest extent feasible the use of modern technical methods, devices, and improvements which that tend to reduce the cost of construction consistent with reasonable requirements for the health and safety of the occupants or users of buildings and, consistent with the conservation of energy, by design requirements and criteria that will result in the efficient utilization of energy, whether used directly or in a refined form, in buildings;

(3) eliminate restrictive, obsolete, conflicting, and unnecessary building regulations and requirements which that tend to increase unnecessarily construction costs, retard unnecessarily the use of proven new materials which that have been found adequate through experience or testing, or provide unwarranted preferential treatment to types or classes of materials, products, or methods of construction;

(4) ensure that any new buildings constructed with public funds are accessible to and functional for physically handicapped persons according-to-the--principles--applicable to-accessibility-to-public-buildings-for-handicapped-persons

adopted, recommended, or issued as Part II, in accordance with all applicable department rules, including the minimum requirements set forth in the Uniform Federal Accessibility Standards, as adopted by the department by rule as it reads in the Federal Register dated August 77-19847 and as the department may amend by rule to reflect changes in the principles;

(5) encourage efficiencies of design and insulation which that enable buildings to be heated in the winter with the least possible quantities of energy and to be kept cool in the summer without air conditioning equipment or with the least possible use of such the equipment;

(6) encourage efficiencies and criteria directed toward design of building envelopes with high thermal resistance and low air leakage and toward requiring practices in the design and selection of mechanical, electrical, and illumination systems which that promote the efficient use of energy."

Section 10. Section 50-60-202, MCA, is amended to read:

"50-60-202. Department to be sole state agency to promulgate building regulations -- exception. No state agency except the department may promulgate building regulations as defined in 50-60-101, except the department of justice may promulgate regulations relating to use of buildings and installation of equipment. The--state--fire

prevention--and--investigation--program--of--the--department--of--justice--shall--review--building--plans--and--regulations--for--conformity--with--rules--promulgated--by--the--department."

Section 11. Section 50-60-203, MCA, is amended to read:

"50-60-203. Department to adopt state building code by rule. (1) The department shall adopt rules relating to the construction of, the installation of equipment in, and standards for materials to be used in all buildings or classes of buildings, including provisions dealing with safety, sanitation, and conservation of energy. The department may amend or repeal such the rules.

(2) The department may adopt by reference nationally recognized building codes in whole or in part, but this does not prevent the department from adopting rules more stringent than those contained in such the codes.

(3) The rules, when adopted as provided in parts 1 through 4 7, constitute the "state building code" and are acceptable for the buildings to which they are applicable.

(4) The department shall adopt rules that permit the installation of below-grade liquefied petroleum gas-burning appliances in single-family dwellings.

(5) The department may adopt rules pertaining to dangerous buildings, including authority for the department or a local building department to assess costs incurred or to be incurred in dismantling any structure when the

department or local building department considers it necessary to protect the general health, safety, and welfare of the public. In addition to any other relief authorized by law, the department or a local building department may place a lien on the real property upon which the improvement was located until the costs and interest on the costs, if any, have been recovered in their entirety."

Section 12. Section 50-60-205, MCA, is amended to read:

"50-60-205. When state building code applies -- health care facility doors. (1) If a municipality or county does not adopt a the state building code or part of the state building code as provided in 50-60-301, the state building code or the portion of the state building code not adopted applies within the municipal or county jurisdictional area and the state--~~will~~ department shall enforce the code in these areas.

(2) Any provision of a building code requiring the installation or maintenance of self-closing or automatic closing corridor doors to patient rooms does not apply to health care facilities as defined in 50-5-101."

Section 13. Section 50-60-206, MCA, is amended to read:

"50-60-206. Variances to and review of state building code. (1) The department has the power, on satisfactory proof ~~after a public hearing~~, to:

(a) vary or modify, in whole or part, the application

of any provision or requirement of the state building code if strict compliance would cause any undue hardship. A petition for a variance must be filed with the department within 30 days after the date the department determines that a provision or requirement of the building code is applicable and mails notice to the petitioner. but--no A variance or modification shall may not affect adversely provisions for health, safety, and security, and equally safe and proper alternatives may be prescribed, therefor;

(b) if the department has jurisdiction, reverse, modify, or annul, in whole or part, any ruling, direction, determination, or order of any state agency or local building department affecting or relating to the construction of any building, the construction of which is pursuant or purports to be pursuant to the provisions of the state building code;

(c) review ~~within--30--days~~ after disapproval any application for permission for the construction of a building pursuant to the provisions of the state building code. ~~or--plans--or--specifications-submitted-in-connection therewith~~ A petition for review must be filed within 30 days after the date the department mailed notice to the applicant denying the permit.

~~(d)--reverse, modify, or annul the disapproval in--whole or part;~~

(e) within 30 days make a determination that the application or plans or specifications are in compliance with the provisions of the state building code; if this determination is made, the officer charged with the duty shall issue any permit, license, certificate, authorization, or other document required for the construction.

(2) An application for a variance, modification, reversal, annulment, or review of the denial of a building permit may be made by any person aggrieved pursuant to the Montana Administrative Procedure Act, provided that the application is filed with the department within the time required by subsection (1).

(3) An application for a variance, modification, reversal, annulment, or review shall stay all proceedings in furtherance of the action appealed from unless there is a showing by the state agency that a stay would involve imminent peril to life. The department may waive minor building code violations that do not constitute an imminent threat to property or to the health, safety, or welfare of any person or property.

(4) The department, in hearings conducted under this section, shall is not be bound by common-law or statutory rules of evidence. A municipality or county may, by ordinance, provide a variance procedure that is acceptable to the department."

NEW SECTION. **Section 14.** Issuance of permits. In its discretion, the department may issue building, electrical, plumbing, and mechanical permits to the owner of a building or structure where the work is to be performed or to the person or entity authorized by law to perform the work covered by the permit.

Section 15. Section 50-60-301, MCA, is amended to read:

"50-60-301. Municipal and county Power and duties of municipalities and counties -- building codes authorized -- health care facility doors. (1) ~~The local legislative body of a municipality or county may adopt a building code by ordinance to apply to the municipal or county jurisdictional area~~ A municipality or county may assume responsibility for the examination and 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 enforcement of building regulations within the municipality or county.

(2) A ~~municipal~~ municipality or county building code may include only codes adopted by the department.

(a) adopt a building code by ordinance provided that the building code may only include building codes adopted by the department;

(b) enter, inspect, and examine buildings or premises, as necessary, for enforcement of the municipal or county

1 building code;

2 (c) examine and approve or disapprove construction
3 plans and specifications for any building subject to the
4 municipal or county building code and inspect the building
5 during the course of construction;

6 (d) require the construction of buildings in accordance
7 with the municipal or county building code, subject to the
8 power of variance granted to the municipality or county by
9 this chapter;

10 (e) in writing, order the remedy of any violation of
11 the municipal or county building code. The order may be
12 served upon the owner or the owner's authorized agent,
13 personally or by mail sent to the address set forth in the
14 construction application. A local building department may
15 grant, in writing, a reasonable time for compliance with the
16 order.

17 (f) issue certificates of occupancy, permits, licenses,
18 and other documents as required for the construction of
19 buildings;

20 (g) adopt rules for the enforcement and administration
21 of the provisions of this section and for the collection of
22 reasonable fees for the administration and enforcement of
23 this section; and

24 (h) prohibit the commencement of construction until a
25 permit has been issued by the local building department

1 based upon a showing of compliance with the municipal or
2 county building code.

3 (3) Any provision of a building code requiring the
4 installation or maintenance of self-closing or automatic
5 closing corridor doors to patient rooms does not apply to
6 health care facilities as defined in 50-5-101."

7 **Section 16.** Section 50-60-302, MCA, is amended to read:

8 **"50-60-302. Certification of municipal and county**
9 **building codes.** (1) A ~~county or~~ municipality or county may
10 not enforce a building code unless the code adopted and a
11 plan for enforcement of the code have been filed with and
12 certified by 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 **Section 17.** Section 50-60-303, MCA, is amended to read:

17 **"50-60-303. Municipal or county appeal procedure.** (1)
18 If a municipality or county adopts a ~~municipal~~ building
19 code, it shall also establish an appeal procedure by
20 ordinance which ~~that~~ is acceptable to the department.

21 (2) If a municipality or county does not adopt a code,
22 appeals on the application of the state building code within
23 the municipal or county jurisdictional area ~~shall~~ must be
24 made to the department."

25 **Section 18.** Section 50-60-402, MCA, is amended to read:

"50-60-402. Factory-built buildings and recreational vehicles to comply with standards. (1) No A person, firm, or corporation may not manufacture, sell, or offer for sale any new factory-built building or recreational vehicle unless ~~such~~ the factory-built building or recreational vehicle, and its components, systems, and appliances have been constructed and assembled in accordance with the standards herein defined in this section.

(2) Any factory-built building or recreational vehicle unit ~~which that~~ has been approved by the department ~~shall be~~ deemed is considered to be in full compliance with the standards and rules prescribed in parts 1 through 4 7.

(3) All approved factory-built buildings or recreational vehicle units ~~thus--approved--shall--be~~ are acceptable as meeting the requirements of parts 1 through 4 7 throughout the state of Montana without further inspection or fees except for zoning, utility connections, and foundation permits required by local ordinance."

Section 19. Section 50-60-404, MCA, is amended to read:

"50-60-404. Enforcement of building construction standards for modular homes. (1) The provisions of this chapter apply to factory-built modular or prebuilt homes or buildings.

(2) A municipality or county may regulate the construction of factory-built modular or prebuilt homes or

buildings as provided in ~~50-60-106~~ 50-60-301 and 50-60-302 if:

(a) the homes or buildings are constructed inside the jurisdiction of the municipality or county;

(b) the homes or buildings are sold primarily to persons in the county in which the factory is located;

(c) the factory does not manufacture more than 100 homes or buildings a year; and

(d) the municipality or county has an agency or officer assigned to inspect and enforce building construction standards.

(3) Inspection and enforcement approval given by a municipality or county under this section may be recognized and accepted by any other municipality or county of the state to which the factory-built home or building is transported for final installation. Additional inspections need not be conducted."

NEW SECTION. Section 20. Inspection to ensure licensing. The department may enter, inspect, and examine buildings and premises for purposes of verifying that persons performing work on the buildings or premises are properly licensed pursuant to Title 37, chapter 69, part 3, whether the work is covered by a state, county, or municipal building code.

NEW SECTION. Section 21. License required. The

1 municipality or county shall ensure that persons applying
2 for permits or performing work are properly licensed under
3 or are exempt from the provisions of Title 37, chapter 69,
4 part 3.

5 **Section 22.** Section 50-60-503, MCA, is amended to read:

6 "50-60-503. **Exceptions.** This part ~~shall~~ may not be
7 construed to apply to or to affect plumbing installations in
8 any mines, mills, smelters, refineries, public utilities,
9 railroads, or plumbing installations on farms ~~having--their~~
10 own-individual or ranches, provided that the installation is
11 used in conjunction with an agricultural or
12 livestock-raising operation and is not connected to either a
13 public water supply or sewage disposal system. Any building
14 used as or in conjunction with a hotel, motel, inn, motor
15 court, guest or dude ranch, tourist home, public
16 lodginghouse, or other place where sleeping accommodations
17 are furnished to transient guests for a fee is subject to
18 the requirements of this part."

19 **Section 23.** Section 50-60-504, MCA, is amended to read:

20 "50-60-504. **Department** to prescribe minimum standards.
21 The department ~~of-commerce~~ shall by rule prescribe minimum
22 standards which that are uniform and ~~which-are-thereafter~~
23 effective-for that apply to all plumbing installations or
24 maintenance, except where when exempt by 50-60-503."

25 **Section 24.** Section 50-60-505, MCA, is amended to read:

1 "50-60-505. **Permit required.** (1) It is unlawful for any
2 person to engage in ~~the-business,-trade,-or~~ work having to
3 do with the installation, removal, alteration, or repair of
4 plumbing and drainage systems or parts thereof of systems
5 without first obtaining a permit from the department of
6 commerce.

7 (2) A separate permit ~~shall~~ must be obtained for each
8 building or structure.

9 (3) No A person may not allow any other person to do or
10 cause to be done any work under a permit secured by the
11 permittee except persons in his the permittee's employ.

12 (4) When a permit has been obtained to connect an
13 existing building or existing work to the public sewer or to
14 connect to a new private disposal facility, backfilling of
15 private sewage disposal facilities abandoned consequent to
16 the connection is included in the permit."

17 **Section 25.** Section 50-60-506, MCA, is amended to read:

18 "50-60-506. **Exceptions to permit requirement.** (1) No A
19 permit is not required for any minor replacement or repair
20 work, the performance of which does not have a significant
21 potential for creating a condition hazardous to public
22 health, and safety, or welfare.

23 (2) No A permit is not required where when the
24 installation is exempt under the provisions of 37-69-102 or
25 50-60-503.

(3) No A state permit is not required whenever the installation occurs in an area governed by a municipality or county and where when there is in effect a municipal or county building code which that covers plumbing installations and which that provides inspection procedures.

(4) ~~Nothing--contained-in-this~~ This part shall does not prohibit the owner of residential property from making an installation for all sanitary plumbing and potable water supply piping without a permit providing--he if the owner does the work himself.

(5) The provisions of this part do not apply to regularly employed maintenance personnel doing maintenance work on the business premises of their employer unless the work is subject to the permit provisions of this part."

Section 26. Section 50-60-507, MCA, is amended to read:

"50-60-507. Application for and issuance of permit. (1) A person required to apply for a state permit under this part shall make application on forms provided by the department ~~of-commerce~~ or its authorized representative. He The applicant shall give provide to the department a description of the character of the work proposed to be done and the location, ownership, occupancy, and use of the premises in connection ~~therewith~~ with the work.

(2) The department or its authorized representative may require sketches, specifications, or drawings and ~~such~~ other

information it ~~deems~~ considers necessary in order to determine the scope of the work contemplated.

(3) If the department determines that the sketches, specifications, drawings, descriptions, and information furnished by the applicant are in compliance with the state plumbing code, it shall issue the permit applied for upon payment of the required fee as established by the department."

Section 27. Section 50-60-508, MCA, is amended to read:

"50-60-508. Permit fees. (1) The department ~~of-commerce~~ shall establish state permit fees in accordance with the Montana Administrative Procedure Act, and the state permit fees shall must be deposited to the state special revenue fund of the department for use in the administration and enforcement of this part and the Montana state plumbing code.

(2) For ~~the--purpose~~ purposes of 50-60-505 through 50-60-513, a sanitary plumbing outlet on or to which a plumbing fixture or appliance may be set or attached ~~shall~~ must be construed to be a fixture. Fees for reconnection and retest of plumbing systems in relocated buildings ~~shall must~~ be based on the number of plumbing fixtures, gas systems, water heaters, and the like involved."

Section 28. Section 50-60-509, MCA, is amended to read:

"50-60-509. Person commencing work without a state

1 permit to pay double the permit fee -- exception. Any person
 2 who commences any work for which a state permit is required
 3 without first obtaining a permit shall, if subsequently
 4 permitted to obtain a permit, pay double the permit fee for
 5 the work, except that this provision does not apply to
 6 emergency work when it is proved to the satisfaction of the
 7 department of-commerce or its authorized representative that
 8 the work was urgently necessary and that it was not
 9 practical to obtain a permit before--the prior to
 10 commencement of the work. In all such these cases, a permit
 11 shall must be obtained as soon as it is practical to do so,
 12 and if there is unreasonable delay in applying for the
 13 permit, a double fee shall must be charged."

14 **Section 29.** Section 50-60-510, MCA, is amended to read:

15 "50-60-510. Inspection by department to insure ensure
 16 compliance. ~~All~~ The department or its authorized
 17 representative may inspect all plumbing and drainage systems
 18 ~~may-be-inspected-by--the--department--of--commerce--or--its~~
 19 ~~authorized--representative~~ to insure ensure compliance with
 20 the requirements of the state plumbing code."

21 **Section 30.** Section 50-60-511, MCA, is amended to read:

22 "50-60-511. Duty of permittee regarding inspection and
 23 compliance. (1) It is the duty of the person doing work
 24 authorized by the permit to notify the department of
 25 commerce, orally or in writing, that the work is ready for

1 inspection. The notification shall must be given not less
 2 than ~~24~~ 48 hours before the work is to be inspected.

3 (2) It is the duty of the person doing the work
 4 authorized by the permit to ensure that the work performed
 5 before notification and after notification pending
 6 inspection complies with the state plumbing code."

7 **Section 31.** Section 50-60-512, MCA, is amended to read:

8 "50-60-512. Department authorized to order work stopped
 9 for noncompliance. Whenever any work is being done contrary
 10 to the provisions of the state plumbing code, the department
 11 of-commerce or its authorized representative may, after a
 12 hearing--conducted--under--the--provisions--of--the--Montana
 13 Administrative-Procedure-Act, order work stopped by notice
 14 in writing served on any person engaged in the work."

15 **Section 32.** Section 50-60-515, MCA, is amended to read:

16 "50-60-515. Penalty for violations -- exceptions. A
 17 person who ~~works-at~~ is employed in the field of plumbing or
 18 who maintains or conducts a plumbing business or an
 19 individual who connects or disconnects plumbing from--a
 20 ~~public--water-or-sewer-system~~ in violation of any provisions
 21 of this part or at a time when he the person is not exempt
 22 from the provisions of this part pursuant to the provisions
 23 of ~~a-duty-enacted-and-subsisting~~ an ordinance of a city, or
 24 a town, or a county is guilty of a misdemeanor and, upon
 25 ~~conviction-thereof-in-any-court-of--competent--jurisdiction,~~

~~shall--be-punished~~ punishable by a fine of not less than ~~\$10~~ \$75 and not more than ~~\$100~~ \$500 or by imprisonment for not more than 3 months, or both, for each separate offense. ~~However, this part shall not be construed to apply to or affect plumbing or pipefitting as indicated in the 37-69-102 and 50-60-503 exceptions.~~ Any violation of this part is a continuing violation, and the statute of limitations is tolled until the violation ceases."

NEW SECTION. Section 33. License required. The municipality or county shall ensure that persons applying for permits or performing electrical installation work are properly licensed or exempt from the provisions of Title 37, chapter 68, part 3.

NEW SECTION. Section 34. Exemption from permit requirement for minor procedures. The department may by rule exempt from the electrical permit and inspection provisions minor procedures or installations, the performance of which does not have a significant potential for creating a condition hazardous to the public health, safety, or welfare.

Section 35. Section 50-60-602, MCA, is amended to read:

~~"50-60-602. Exceptions. (1) Nothing in this~~ This part ~~shall--be--deemed--to~~ does not apply to the installation, alteration, or repair of electrical signal or communications equipment owned or operated by a public utility, or a city,

or a county.

(2) The inspection provisions of this part do not apply to regularly employed maintenance electricians doing maintenance work on the business premises of their employer nor do they apply to line work on the business premises of the employer or to ordinary and customary in-plant or onsite installations, modifications, additions, or repairs.

(3) Any person who plugs in an electrical appliance where an approved electrical outlet is already installed ~~shall~~ may not be considered as an installer.

~~(4) No provisions of this~~ This part ~~shall~~ does not in any manner interfere with, hamper, preclude, or prohibit any vendor of any electrical appliance from selling, delivering, and connecting any electrical appliance if the connection does not necessitate the installation of electrical wiring of the structure where the appliance is to be connected.

(5) A state permit is not required whenever the installation occurs in an area governed by a municipality or county with a building code in effect covering electrical installations and providing inspection procedures for electrical installations."

Section 36. Section 50-60-603, MCA, is amended to read:

~~"50-60-603. Electrical installations to comply with building codes adopted by department. (1) All installations in this state of wires and equipment to convey electric~~

current and installations of apparatus to be operated by current, except as provided in 50-60-602, shall must be made substantially in accord with building codes adopted by the department of-commerce.

(2) Rules and standards relating to buildings and equipment shall must be promulgated by the department."

NEW SECTION. Section 37. Inspection to ensure licensing. The department may enter, inspect, and examine buildings and premises for purposes of verifying that persons performing work on the buildings or premises are properly licensed pursuant to Title 37, chapter 68, part 3, whether the work is covered by a state, county, or municipal building code.

Section 38. Section 50-60-604, MCA, is amended to read:

"50-60-604. Department to make inspections, issue inspection--tags electrical permits, and establish fees. The department of-commerce or a local building department shall make inspections of electrical installations, issue inspection-tags electrical permits for these installations, and establish and charge a reasonable and uniform fee for the inspections. Inspection fees which may not exceed the expense actual expenses of providing the inspection and administering this part."

Section 39. Section 50-60-605, MCA, is amended to read:

"50-60-605. Power supplier not to energize installation

without inspection---tag electrical permit -- power disconnection for violation of electrical code. (1) Individuals, firms, cooperatives, corporations, or municipalities selling electricity are power suppliers. Except for temporary connections which that the department may authorize by rule for a period not exceeding 14 days without a preconnection inspection, power suppliers may not connect with or energize an electrical installation under this part unless the owner or a licensed electrical contractor has delivered to the power supplier an inspection tag electrical permit covering the installation, issued by the department of-commerce.

(2) The department or a local building department may order a power supplier to disconnect power to a building or structure when the department or the local building department has determined that an electrical code violation exists or when a required electrical permit has not been obtained."

Section 40. Section 50-60-607, MCA, is amended to read:

"50-60-607. Unlawful acts -- civil penalties -- injunctive relief. (1) It is unlawful for a person, partnership, company, firm, association, or corporation other than a power supplier to energize an electrical installation under this part unless an application for an inspection-tag electrical permit covering the installation,

1 ~~together---with-the-inspection-fee,-has-been-forwarded-to-the~~
 2 ~~department-of-commerce~~ has been issued by the department or
 3 a local building department and all required inspection fees
 4 have been paid.

5 (2) A person violating subsection (1) is guilty of a
 6 misdemeanor punishable by a fine of not less than \$75 or
 7 more than \$500 or imprisonment in a county jail for not more
 8 than 3 months, or both. A violation of subsection (1) is a
 9 continuing violation, and the statute of limitations is
 10 tolled until the violation ceases.

11 (3) An action under this section does not bar
 12 enforcement of this part, any rules or orders issued
 13 pursuant to this part by injunction or other appropriate
 14 remedy, or any injunction issued pursuant to 50-60-109.

15 (4) The department, or the county attorney at the
 16 department's request, may bring any state building code
 17 enforcement proceeding in the name of the state."

18 **Section 41.** Section 50-60-701, MCA, is amended to read:

19 "50-60-701. Inspection of passenger elevators and
 20 escalators -- fees. (1) All passenger elevators and
 21 escalators in--public--places may be inspected by the
 22 department to insure ensure compliance with the requirements
 23 of the state building code. The department shall establish
 24 and charge a reasonable and uniform fee for the inspections
 25 that may not exceed the expense-of actual expenses incurred

1 in providing the---inspection elevator and escalator
 2 inspections and in administering this part.

3 (2) In lieu of inspection by the department,
 4 inspections of passenger elevators and escalators to assure
 5 ensure compliance with the state building code may be made
 6 by:

7 (a) a maintenance company representative certified by
 8 the department who regularly maintains or services the
 9 elevator or escalator equipment; or

10 (b) an insurance company representative certified by
 11 the department who regularly inspects an elevator or
 12 escalator insured by the company against public liability
 13 and who maintains a service record of the elevator or
 14 escalator.

15 (3) When an inspection of a passenger elevator or
 16 escalator is made pursuant to subsection (2), a copy of the
 17 condition report must be provided to the owner and must be
 18 sent to the department. The department may not charge more
 19 than \$10 for receiving and processing a condition report for
 20 each elevator or escalator in any building and for issuing
 21 certificates of inspection therefor if the certified
 22 maintenance or insurance company inspector doing the
 23 inspection certifies to the department that all deficient
 24 elevator or escalator conditions noted in the condition
 25 report have been corrected and no follow-up followup by the

department in that regard is necessary.

(4) A municipality or county may not adopt building code provisions regulating elevators and escalators."

NEW SECTION. Section 42. Violations -- civil penalties -- injunctive relief. (1) A person violating this part is guilty of a misdemeanor punishable by a fine of not less than \$75 or more than \$500 or imprisonment in a county jail for not more than 3 months, or both. Any violation of this part is a continuing violation, and the statute of limitations is tolled until the violation ceases.

(2) An action under this section does not bar enforcement of this part, any rules or orders issued pursuant to this part by injunction or other appropriate remedy, or any injunction issued pursuant to 50-60-109.

(3) The department, or the county attorney at the department's request, may bring any state building code enforcement proceeding in the name of the state.

NEW SECTION. Section 43. Repealer. Sections 50-60-106, 50-60-204, 50-60-502, 50-60-514, and 50-60-606, MCA, are repealed.

NEW SECTION. Section 44. Codification instruction. (1) [Section 14] is intended to be codified as an integral part of Title 50, chapter 60, part 2, and the provisions of Title 50, chapter 60, part 2, apply to [section 14].

(2) [Sections 20 and 21] are intended to be codified as

an integral part of Title 50, chapter 60, part 5, and the provisions of Title 50, chapter 60, part 5, apply to [sections 20 and 21].

(3) [Sections 33, 34, and 37] are intended to be codified as an integral part of Title 50, chapter 60, part 6, and the provisions of Title 50, chapter 60, part 6, apply to [sections 33, 34, and 37].

(4) [Section 42] is intended to be codified as an integral part of Title 50, chapter 60, part 7, and the provisions of Title 50, chapter 60, part 7, apply to [section 42].

-End-

1 SENATE BILL NO. 337

2 INTRODUCED BY HARP

3 BY REQUEST OF THE DEPARTMENT OF COMMERCE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE
6 BUILDING CODES; EXPANDING THE DEPARTMENT OF COMMERCE'S
7 RULEMAKING AUTHORITY AND THE APPLICABILITY OF THE RULES;
8 REVISING CONSTRUCTION PERMIT REQUIREMENTS; INCREASING
9 BUILDING CODE ENFORCEMENT REMEDIES; REVISING BUILDING CODE
10 VIOLATION PENALTIES; REVISING THE PURPOSE OF BUILDING CODES;
11 ELIMINATING REVIEW OF BUILDING PLANS BY THE DEPARTMENT OF
12 JUSTICE; ALLOWING THE DEPARTMENT OF COMMERCE TO ADOPT RULES
13 PERTAINING TO DANGEROUS BUILDINGS; REQUIRING THE DEPARTMENT
14 TO ENFORCE ANY PART OF THE STATE BUILDING CODES NOT ADOPTED
15 BY A LOCAL JURISDICTION; AMENDING THE VARIANCE APPLICATION
16 PROCEDURE; ALLOWING FOR THE ISSUANCE OF PERMITS TO AN OWNER
17 OR A PERSON DOING WORK ON A BUILDING; PROVIDING FOR
18 CERTIFICATION BY THE DEPARTMENT OF ANY BUILDING CODE ADOPTED
19 BY A LOCAL JURISDICTION; REQUIRING A COUNTY TO ADOPT AN
20 APPEAL PROCEDURE; CLARIFYING THE APPLICABILITY OF STANDARDS
21 AND RULES TO FACTORY-BUILT BUILDINGS AND RECREATIONAL
22 VEHICLES; PROVIDING FOR THE ENFORCEMENT BY COUNTIES OF
23 BUILDING STANDARDS FOR MODULAR HOMES; PROVIDING FOR
24 INSPECTIONS TO ENSURE LICENSING; REVISING EXCEPTIONS TO THE
25 APPLICATION OF PLUMBING CODES; AUTHORIZING THE INSPECTION OF

1 PLUMBING AND DRAINAGE SYSTEMS BY AUTHORIZED REPRESENTATIVES
2 OF THE DEPARTMENT; ELIMINATING THE REQUIREMENT FOR A HEARING
3 PRIOR TO THE DEPARTMENT ISSUING AN ORDER PERTAINING TO WORK
4 CONTRARY TO A PROVISION OF THE PLUMBING CODE; INCREASING THE
5 PENALTY FOR A VIOLATION OF THE PLUMBING CODE; REQUIRING
6 LOCAL JURISDICTIONS TO ENSURE THAT PERMIT APPLICANTS
7 PERFORMING ELECTRICAL WORK ARE PROPERLY LICENSED AND
8 CREATING EXEMPTIONS FROM ~~LICENSE~~ PERMITTING REQUIREMENTS
9 FOR MINOR ELECTRICAL WORK; CREATING AN EXEMPTION FROM
10 OBTAINING A STATE PERMIT FOR ELECTRICAL INSTALLATIONS
11 GOVERNED BY A LOCAL BUILDING CODE; SUBSTITUTING ELECTRICAL
12 PERMITS FOR INSPECTION TAGS; ALLOWING DISCONNECTION OF POWER
13 WHEN ELECTRICAL CODE VIOLATIONS EXIST AND OTHER RELIEF FOR
14 ENERGIZING ELECTRICAL INSTALLATIONS WITHOUT A PERMIT;
15 INCREASING ELEVATOR AND ESCALATOR INSPECTION FEES TO COVER
16 INSPECTION AND ADMINISTRATION COSTS; PROHIBITING A LOCAL
17 JURISDICTION FROM ADOPTING BUILDING CODES REGULATING
18 ELEVATORS AND ESCALATORS; PROVIDING PENALTIES FOR CODE

THERE ARE NO CHANGES IN THIS BILL
AND WILL NOT BE REPRINTED. PLEASE
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