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*M. Olson*  
House BILL NO. 388 *Bauer* *W. J. Fee*  
INTRODUCED BY *Simon* ~~BENEDICT HARR~~ *Wells* *Case* *CRANE THOMAS*  
*REINOLD* ~~DENNY~~ *Storal* *McCallister*  
A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING AND REVISING BUILDING CODE LAW TERMS;

EXPANDING THE TYPES OF BUILDINGS EXEMPT FROM BUILDING CODES; EXPANDING THE DUTIES OF MUNICIPALITIES AND COUNTIES; PROVIDING THAT RULE CHANGES ARE OF SIGNIFICANT INTEREST TO THE PUBLIC; CHANGING PROVISIONS RELATING TO CERTIFICATION OF BUILDING CODES BY THE DEPARTMENT OF COMMERCE; AND AMENDING SECTIONS 50-60-101, 50-60-102, 50-60-106, 50-60-203, 50-60-204, AND 50-60-302, MCA."

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".

(2) (a) "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, including departments, boards, bureaus, commissions, or other agencies of the state or a municipality relating to the design, construction, reconstruction, alteration, conversion, repair, inspection, or use of buildings and installation of equipment in buildings.

(b) The term does not include zoning ordinances.

(3) "Code enforcement program" means the plan for enforcement of the building regulations adopted by a municipality or county and includes the local building department and the staff associated with executing any aspect of the program's purposes or functions.

~~(3)~~(4) "Construction" means the original construction and equipment of buildings and requirements or standards relating to or affecting materials used, including provisions for safety and sanitary conditions.

~~(4)~~(5) "Department" means the department of commerce provided for in Title 2, chapter 15, part

1 18.

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

4 ~~(6)(7)~~ (a) "Factory-built building" means a factory-assembled structure or structures equipped with  
5 the necessary service connections but not made so as to be readily movable as a unit or units and designed  
6 to be used with a permanent foundation.

7 (b) "Factory-built building" does not include manufactured housing constructed after June 15,  
8 1976, under the HUD, National Mobile Home Construction and Safety Act of 1974.

9 ~~(7)(8)~~ "Local building department" means the agency or agencies of any municipality charged with  
10 the administration, supervision, or enforcement of building regulations, approval of plans, inspection of  
11 buildings, or the issuance of permits, licenses, certificates, and similar documents prescribed or required  
12 by state or local building regulations.

13 ~~(8)(9)~~ "Local legislative body" means the council or commission charged with governing the  
14 municipality.

15 ~~(9)(10)~~ "Municipality" means any incorporated city or town and its jurisdictional area as defined  
16 by ~~subsection (10) of~~ in this section.

17 ~~(10)(11)~~ (a) "Municipal jurisdictional area" means the area within the limits of an incorporated  
18 municipality ~~unless the area is extended at the written request of a municipality.~~

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

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

21 ~~(ii) all of any platted subdivision which is partially within 4 1/2 miles of the corporate limits of a~~  
22 ~~municipality; and~~

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

25 ~~(c) Distances shall be measured in a straight line in a horizontal plane.~~

26 ~~(11)(12)~~ "Owner" means the owner or owners of the premises or lesser estate, a mortgagee or  
27 vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or  
28 corporation in control of a building.

29 ~~(12)(13)~~ "Recreational vehicle" means a vehicular type unit primarily designed as temporary living  
30 quarters for recreational, camping, or travel use, which either has its own mode of power or is mounted

1 on or towed by another vehicle, including but not limited to a:

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

6 ~~(13)~~(14) "State agency" means any state officer, department, board, bureau, commission, or other  
 7 agency of this state.

8 ~~(14)~~(15) "State building code" means the state building code provided for in 50-60-203 or any  
 9 portion of the code of limited application and any of its modifications or amendments."  
 10

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

12 **"50-60-102. Applicability.** (1) Except as provided in subsection (5), state building codes do not  
 13 apply to:

14 (a) residential buildings containing less than five dwelling units or their attached-to structures, any  
 15 farm or ranch building of any size, and any private garage or private storage structure of any size used only  
 16 for the owner's own use, located within the municipality's or county's jurisdictional area, unless the local  
 17 legislative body or board of county commissioners by ordinance or resolution makes the state building code  
 18 applicable to these structures;

19 (b) mines and buildings on mine property regulated under Title 82, chapter 4, and subject to  
 20 inspection under the Federal Mine Safety and Health Act; or

21 (c) petroleum refineries, industrial process facilities, the primary economic activity of which occurs  
 22 at petroleum refineries, sugar beet refineries, primary metal smelters and refineries, gas and other fuels  
 23 processing facilities, pulp and paper mills, cement plants, lime and mineral products plants, sulfur plants,  
 24 chemical plants, power plants, or fertilizer manufacturing plants, except:

25 (i) a structure classified under chapter 7, section 701, group B, division 2, and chapter 9, section  
 26 901, group H, outside of process units, of the 1991 edition of the Uniform Building Code; or

27 (ii) a structure located outside of processing units and used for office, professional, or service-type  
 28 transactions, including storage of records and accounts and a structure used for consumption of food and  
 29 beverages.

30 (2) Except as provided in subsection (5), the state may not enforce the state building code under

1 50-60-205 for the buildings referred to in subsection (1). Local governments that have made the state  
2 building codes applicable to the buildings referred to in subsection (1) may enforce within their jurisdictional  
3 areas the state building code as adopted by the respective local government.

4 (3) When good and sufficient cause exists, a written request for limitation of the state building  
5 code may be filed with the department for filing as a permanent record.

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

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

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

13 (5) (a) For purposes of promoting the energy efficiency of home design and operation, the  
14 provisions of the state building code relating to energy conservation adopted pursuant to 50-60-203(1)  
15 apply to residential buildings, except:

16 (i) farm and ranch buildings; and

17 (ii) any private garage or private storage structure attached to a residential building and used only  
18 for the owner's own use.

19 (b) The provisions of the state building code relating to energy conservation in residential buildings  
20 are enforceable:

21 (i) by the department only for those residential buildings containing five or more dwelling units or  
22 otherwise subject to the state building code; and

23 (ii) through the builder self-certification program provided for in 50-60-802 for those residential  
24 buildings containing less than five dwelling units and not otherwise subject to the state building code."  
25

26 **Section 3.** Section 50-60-106, MCA, is amended to read:

27 **"50-60-106. Powers and duties of municipalities.** (1) The examination, approval, or disapproval  
28 of plans and specifications, the issuance and revocation of building permits, licenses, certificates, and  
29 similar documents, the inspection of buildings, and the administration and enforcement of building  
30 regulations within the municipal jurisdictional area ~~shall be~~ are the responsibility of the municipalities of the

1 state.

2 (2) Each municipality ~~may~~ or county certified under 50-60-302 shall, within its jurisdictional area:

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

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

10 (c) during and in the course of construction order in writing the remedying of any condition found  
11 to exist in, on, or about any building that is being constructed in violation of the applicable state or  
12 municipal building code. Orders may be served upon the owner or his authorized agent personally or by  
13 sending by registered or certified mail a copy of the order to the owner or his authorized agent at the  
14 address set forth in the application for permission for the construction of the building. ~~Any~~ A local building  
15 department, by action of an authorized officer, may grant in writing such time as may be reasonably  
16 necessary for achieving compliance with the order.

17 (d) issue certificates of occupancy, as provided in 50-60-107;

18 (e) issue permits, licenses, and ~~such~~ other required documents in connection with the construction  
19 of ~~the buildings as required~~ a building;

20 (f) ensure that all construction-related fees or charges imposed and collected by the municipality  
21 or county are necessary, reasonable, and uniform and are:

22 (i) used only for building code enforcement, which consists of those necessary and reasonable  
23 costs directly and specifically identifiable for the enforcement of building codes, plus a maximum of an  
24 additional 10% of the identified direct costs to cover indirect costs; and

25 (ii) reduced if the amount of the fees or charges accumulates above the amount needed to enforce  
26 building codes for 6 months. The excess must be placed in a reserve account and may only be used for  
27 building code enforcement. Collection and expenditure of fees and charges must be fully documented.

28 (3) Each municipality or county certified under 50-60-302 may, within its jurisdictional area:

29 ~~(a)~~ (a) make, amend, and repeal rules for the administration and enforcement of the provisions of  
30 this section and for the collection of ~~reasonable fees, which shall be comparable to fees imposed or~~

1 ~~prescribed by existing local building regulations~~ and charges related to construction;  
 2 ~~(b)~~ prohibit the commencement of construction until a permit has been issued by the local  
 3 building department after a showing of compliance with the requirements of the applicable provisions of  
 4 the state or municipal building code; and  
 5 (c) enter into a private contract with the owner or builder of a building that is not or will not be  
 6 within the jurisdiction of the municipality or county under which the municipality or county will provide  
 7 reviews, inspections, orders, and certificates of occupancy for a fee and under conditions agreed upon by  
 8 the parties. Municipal or county powers of enforcement may not be exercised."

9  
 10 **Section 4.** Section 50-60-203, MCA, is amended to read:

11 **"50-60-203. Department to adopt state building code by rule.** (1) (a) The department shall adopt  
 12 rules relating to the construction of, the installation of equipment in, and standards for materials to be used  
 13 in all buildings or classes of buildings, including provisions dealing with safety, sanitation, and conservation  
 14 of energy. ~~The department may amend or repeal the rules.~~ The adoption, amendment, or repeal of a rule  
 15 is of significant public interest for purposes of 2-3-103.

16 (b) ~~In adopting rules~~ Rules concerning the conservation of energy, ~~the department shall~~ must  
 17 conform ~~these rules~~ to the policy established in 50-60-801 and to relevant policies developed under the  
 18 provisions of Title 90, chapter 4, part 10.

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

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

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

26  
 27 **Section 5.** Section 50-60-204, MCA, is amended to read:

28 **"50-60-204. Public hearing required -- effective date of certain rules.** (1) Except as provided in  
 29 subsection (2), a rule, amendment, or repeal of the state building code is a matter of significant public  
 30 interest for purposes of 2-3-103 and may not take effect until after a public hearing by the department.

1           (2) If a hearing with adequate public notice pursuant to 2-3-103 has been held by the department  
2 of justice with respect to the duties contained in chapter 3 of this title or by the board of plumbers, the  
3 department of public health and human services, or the state electrical board on a proposed rule relating  
4 to building and equipment standards in their respective fields, a public hearing by the department is not  
5 required. The proposed rule is effective upon approval of the department and filing with the secretary of  
6 state as a part of the state building code."

7

8           **Section 6.** Section 50-60-302, MCA, is amended to read:

9           **"50-60-302. Certification of municipal and county building codes.** (1) A county or municipality  
10 may not enforce a building code unless:

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

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

15           (c) all inspectors inspecting or approving any installations, which if accomplished commercially  
16 require state licensure, must themselves be properly and currently state-licensed as journeymen in that craft  
17 or occupation before being permitted to inspect or approve any installations.

18           (2) The department shall ~~set forth~~ adopt additional rules and standards governing the certification  
19 of municipal and county building code enforcement programs ~~as required in subsection (1)~~ which must  
20 include provisions for prompt revocation of certification for lack of compliance with any applicable statute  
21 or rule. The rules and standards must include provisions for the department to ensure that all code  
22 enforcement program functions are being properly performed at all times.

23           (3) In addition to maintaining the continued compliance oversight required in subsection (1), the  
24 department shall conduct a detailed and fully documented annual review to ensure continued local  
25 government compliance with all requirements of applicable statutes and rules.

26           (4) If the certification of any local government code enforcement program is revoked for any  
27 violation or deficiency, the state resumes its original jurisdiction for state building code enforcement within  
28 the municipal or county area and the local government may not be permitted to continue to exercise any  
29 building code enforcement authority over incomplete construction projects."

30

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0388, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

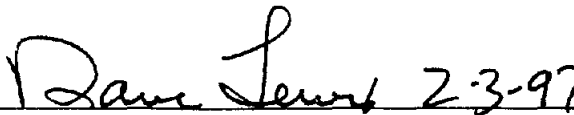
A bill for an act defining and revising building code law terms; expanding the types of buildings exempt from building codes; expanding the duties of municipalities and counties; providing that rule changes are of significant interest to the public; changing provisions relating to certification of building codes by the Department of Commerce.

ASSUMPTIONS:

Department of Commerce/Building Codes Bureau:

1. Passage of HB 388 will result in the nine municipalities with extended municipal building codes enforcement jurisdictions (extended jurisdictions) losing authority to enforce building codes in their extended jurisdictions and the responsibility for issuing building, mechanical, plumbing and electrical permits and completing the required inspections in those lost extended jurisdictions will return to the Department of Commerce (DOC), Building Codes Bureau.
2. A survey was conducted of the nine municipalities with extended jurisdiction to determine the number of building permits issued in fiscal year 1996 for new buildings other than four-plexes or less. Elimination of the extended jurisdictions will result in an annual increase to the bureau's workload of 250 building, 200 mechanical, 800 plumbing and 900 electrical permits, with associated plan review and inspection responsibilities.
3. HB 388 requires licensed plumbers and electricians to conduct local government plumbing and electrical installation inspections on commercial installations, respectively. The bureau anticipates that an additional 12 certified local government building codes enforcement programs (certified local programs) decertifying for plumbing code enforcement and five certified local programs decertifying for electrical code enforcement.
4. The certified local program decertification for plumbing and electrical code enforcement is expected to result in an annual increase to the bureau's workload of 500 plumbing permits and 200 electrical permits, with associated inspection responsibilities.
5. HB 388 requires the rigorous annual auditing of certified local code enforcement programs and limits eligible program costs and reserves and will result in an estimated 20-25 certified local programs voluntarily or involuntarily decertifying, beyond those decertifying for lack of licensed plumbing and electrical inspectors.
6. State assumption of the jurisdiction and code enforcement responsibilities in the eliminated extended jurisdictional areas, in the certified local programs expected to decertify for plumbing and electrical code enforcement because of lack of licensed inspectors, and the auditing requirement created by HB 388 will require 9.00 FTE. The estimated need would be 6.00 FTE inspectors (2 electrical, 3 plumbing/mechanical, and 1 building), grade 14, 1.00 FTE plan reviewer, grade 15, 1.00 FTE auditor, grade 12, and 1.00 FTE clerical position, grade 8, to handle the additional permitting, inspecting, and auditing activities. The estimated personal services costs for the 9.00 FTE is \$273,281 in fiscal year 1998 and fiscal year 1999.
7. Additional operating expenses are estimated at \$67,238 in both fiscal year 1998 and fiscal year 1999 and six additional vehicles will be required in fiscal year 1998 for the new inspectors at an estimated cost of \$78,000.

(Continued)

  
DAVE LEWIS, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning

BRUCE SIMON, PRIMARY SPONSOR      DATE

Fiscal Note for HB0388, as introduced

**HB 388**



(continued)

8. The FTEs and cost estimates included in this fiscal note assume that none of the major certified local programs, i.e., Billings, Bozeman, Missoula, Kalispell, Great Falls, Helena, or Butte-Silver Bow County, will voluntarily or involuntarily decertify during the 1999 biennium. If even one of the major certified local programs decertifies or is decertified, additional inspector, plan reviewer, and clerical FTEs will be needed immediately and additional personal services, operating, and equipment costs will be incurred.
9. Revenues from the additional permitting and inspections fees are expected to be sufficient to cover the anticipated code enforcement and auditing costs.

FISCAL IMPACT:

**Department of Commerce/Building Codes Bureau:**

Expenditures:

	<u>FY98</u>	<u>FY99</u>
	<u>Difference</u>	<u>Difference</u>
FTE	9.00	9.00
Personal Services	273,281	273,281
Operating Expenses	67,238	67,238
Equipment	<u>78,000</u>	<u>0</u>
Total	418,519	340,519

Revenues:

Building Permit Fees (02)	342,500	342,500
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Net Impact:

Building Codes SSR (02)	(76,019)	1,981
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EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

1. Loss of the extended jurisdiction areas will result in a substantial loss of revenue from permit fees to the Cities of Billings, Bozeman, Columbia Falls, Kalispell and Missoula and some loss of revenues from permit fees to the Cities of Deer Lodge, Fort Benton, Miles City, and Whitefish. In total, revenue from issuance of approximately 1,000 building, 800 mechanical, 800 plumbing and 900 electrical permits will be lost annually to the nine cities that have extended jurisdictions.
2. Loss of certification for electrical and plumbing code enforcement for the 12 cities expected to decertify rather than comply with the requirement to have licensed electricians and plumbers doing electrical and plumbing code enforcement on commercial installations, will result in substantial annual loss of revenue from permit fees from a total of 500 plumbing and 200 electrical permits. For those cities that do not decertify, additional costs will be experienced by the requirement to hire licensed plumbers and electricians to do plumbing and electrical code enforcement.
3. Loss of permit fee revenues will result from the additional industries exempted from state and local codes enforcement, e.g., sugar beet refineries, primary metal smelters and refineries, gas and other fuels processing facilities, pulp and paper mills, cement plants, lime and mineral products plants, sulfur plants, chemical plants, power plants, and fertilizer manufacturing plants.
4. If "construction-related fees or charges" includes fees unrelated to building code enforcement, i.e., building, mechanical, plumbing or electrical permit fees, such as system development fees, the limitations may adversely affect local government's ability to raise revenue to maintain infrastructure.

TECHNICAL NOTES:

1. Loss of the extended jurisdiction areas may have a public health impact because approximately 800 single family dwellings in four-plexes and less will no longer receive building and mechanical permits and inspections for compliance with minimum codes.

(Continued)

2. Because of the larger areas served, state code enforcement is less efficient and inspections are less timely than local government code enforcement; therefore, loss of extended jurisdiction areas may result in less service for building owners/contractors.
3. Exemption of the 10 additional major industries from the need to comply with state and local building codes may expose employees to greater risk due to noncompliance with minimum codes and may put local fire department firefighters at risk while fighting fires at facilities that do not comply with minimum codes.
4. Exemption of the 10 additional major industries from the need to comply with state and local building codes may result in less plumber and electrician license law enforcement since such license law enforcement typically only happens during normal inspections for code compliance.
5. HB 388 contains auditing requirements which limits program eligible costs and may discourage cities, towns, and particularly counties from assuming the responsibility of local building code enforcement and may result in as many as 20-25 currently certified local code enforcement programs voluntarily decertifying.
6. HB 388 limits when a local building official can order a building owner to correct observed code violations. Language in HB 388 prohibits inspectors from ordering code violations corrected once construction is completed. This places a significant liability on inspectors in that they may be required to issue certificates of occupancy for buildings with known code deficiencies.
7. HB 388 appears to include local system development fees and charges in building permit program related fees because of the wording "construction-related fees or charges" in amendments to 50-60-106(2)(f), MCA, instead of using the words "building permit fees". If such system development fees (unrelated to building code enforcement) are included in the code enforcement programs budget and reserves limited to 6 months, the proposed legislation may have the effect of forcing reduction of system development fees.
8. Should a large certified local program such as Billings, Bozeman, Missoula, Kalispell, Great Falls, Helena, or Butte-Silver Bow County become decertified, the bureau will be unable to absorb the additional code enforcement workload unless allowed to hire additional inspectors, plan reviewers and clerical staff immediately.

HOUSE BILL NO. 388

INTRODUCED BY SIMON, BENEDICT, HARP, WELLS, PROUSE, GRINDE, THOMAS, MOLNAR, BAER,  
MCGEE, KEENAN, SPRAGUE, TUSS, DENNY, SLITER, JABS, MARSHALL, STOVALL, MILLS,  
MCCULLOCH, COCCHIARELLA, HERTEL, EMERSON

A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING AND REVISING BUILDING CODE LAW TERMS;  
EXPANDING THE TYPES OF BUILDINGS EXEMPT FROM BUILDING CODES; EXPANDING THE DUTIES OF  
MUNICIPALITIES AND COUNTIES; PROVIDING THAT RULE CHANGES ARE OF SIGNIFICANT INTEREST  
TO THE PUBLIC; CHANGING PROVISIONS RELATING TO CERTIFICATION OF BUILDING CODES BY THE  
DEPARTMENT OF COMMERCE; ~~AND~~ AMENDING SECTIONS 50-60-101, 50-60-102, 50-60-106,  
50-60-203, 50-60-204, AND 50-60-302, MCA; AND PROVIDING AN EFFECTIVE DATE."

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".

(2) (a) "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, including  
departments, boards, bureaus, commissions, or other agencies of the state or a municipality relating to the  
design, construction, reconstruction, alteration, conversion, repair, inspection, or use of buildings and  
installation of equipment in buildings.

(b) The term does not include zoning ordinances.

(3) "Code enforcement program" means the plan for enforcement of the building regulations  
adopted by a municipality or county and includes the local building department and the staff associated  
with executing any aspect of the program's purposes or functions.

~~(3)~~(4) "Construction" means the original construction and equipment of buildings and requirements

1 or standards relating to or affecting materials used, including provisions for safety and sanitary conditions.

2 ~~(4)~~(5) "Department" means the department of commerce provided for in Title 2, chapter 15, part  
3 18.

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

6 ~~(6)~~(7) (a) "Factory-built building" means a factory-assembled structure or structures equipped with  
7 the necessary service connections but not made so as to be readily movable as a unit or units and designed  
8 to be used with a permanent foundation.

9 (b) "Factory-built building" does not include manufactured housing constructed after June 15,  
10 1976, under the HUD, National Mobile Home Construction and Safety Act of 1974.

11 ~~(7)~~(8) "Local building department" means the agency or agencies of any municipality charged with  
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13 buildings, or the issuance of permits, licenses, certificates, and similar documents prescribed or required  
14 by state or local building regulations.

15 ~~(8)~~(9) "Local legislative body" means the council or commission charged with governing the  
16 municipality.

17 ~~(9)~~(10) "Municipality" means any incorporated city or town and its jurisdictional area as defined  
18 by subsection ~~(10)~~ of in this section.

19 ~~(10)~~(11) ~~(a)~~ "Municipal jurisdictional area" means the area within the limits of an incorporated  
20 municipality ~~unless the area is extended at the written request of a municipality.~~

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

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

23 ~~(ii) all of any platted subdivision which is partially within 4 1/2 miles of the corporate limits of a~~  
24 ~~municipality; and~~

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

27 ~~(c) Distances shall be measured in a straight line in a horizontal plane.~~

28 ~~(11)~~(12) "Owner" means the owner or owners of the premises or lesser estate, a mortgagee or  
29 vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or  
30 corporation in control of a building.

1           ~~(12)~~(13) "Recreational vehicle" means a vehicular type unit primarily designed as temporary living  
2 quarters for recreational, camping, or travel use, which either has its own mode of power or is mounted  
3 on or towed by another vehicle, including but not limited to a:

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

8           ~~(13)~~(14) "State agency" means any state officer, department, board, bureau, commission, or other  
9 agency of this state.

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

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19 legislative body or board of county commissioners by ordinance or resolution makes the state building code  
20 applicable to these structures;

21           (b) mines and buildings on mine property regulated under Title 82, chapter 4, and subject to  
22 inspection under the Federal Mine Safety and Health Act; or

23           (c) ~~petroleum refineries,~~ industrial process facilities, the primary economic activity of which occurs  
24 at petroleum refineries, sugar beet refineries, primary metal smelters and refineries, gas and other fuels  
25 processing facilities, pulp and paper mills, cement plants, lime and mineral products plants, sulfur plants,  
26 chemical plants, power plants, ELECTRICAL SUPPLY STATIONS SUBJECT TO THE NATIONAL ELECTRICAL  
27 SAFETY CODE, or fertilizer manufacturing plants, except:

28           ~~(i) a structure classified under chapter 7, section 701, group B, division 2, and chapter 9, section~~  
29 ~~901, group H, outside of process units, of the 1991 edition of the Uniform Building Code; or~~

30           ~~(ii) a structure located outside of processing units and used for office, professional, or service-type~~

1 transactions, including storage of records and accounts and a structure used for consumption of food and  
2 beverages.

3 (2) Except as provided in subsection (5), the state may not enforce the state building code under  
4 50-60-205 for the buildings referred to in subsection (1). Local governments that have made the state  
5 building codes applicable to the buildings referred to in subsection (1) may enforce within their jurisdictional  
6 areas the state building code as adopted by the respective local government.

7 (3) When good and sufficient cause exists, a written request for limitation of the state building  
8 code may be filed with the department for filing as a permanent record.

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

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

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

16 (5) (a) For purposes of promoting the energy efficiency of home design and operation, the  
17 provisions of the state building code relating to energy conservation adopted pursuant to 50-60-203(1)  
18 apply to residential buildings, except:

19 (i) farm and ranch buildings; and

20 (ii) any private garage or private storage structure attached to a residential building and used only  
21 for the owner's own use.

22 (b) The provisions of the state building code relating to energy conservation in residential buildings  
23 are enforceable:

24 (i) by the department only for those residential buildings containing five or more dwelling units or  
25 otherwise subject to the state building code; and

26 (ii) through the builder self-certification program provided for in 50-60-802 for those residential  
27 buildings containing less than five dwelling units and not otherwise subject to the state building code."  
28

29 **Section 3.** Section 50-60-106, MCA, is amended to read:

30 **"50-60-106. Powers and duties of municipalities.** (1) The examination, approval, or disapproval

1 of plans and specifications, the issuance and revocation of building permits, licenses, certificates, and  
 2 similar documents, the inspection of buildings, and the administration and enforcement of building  
 3 regulations within the municipal jurisdictional area ~~shall be~~ are the responsibility of the municipalities of the  
 4 state.

5 (2) Each municipality ~~may~~ or county certified under 50-60-302 shall, within its jurisdictional area:

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

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

13 (c) during and in the course of construction order in writing the remedying of any condition found  
 14 to exist in, on, or about any building that is being constructed in violation of the applicable state or  
 15 municipal building code. Orders may be served upon the owner or his authorized agent personally or by  
 16 sending by registered or certified mail a copy of the order to the owner or his authorized agent at the  
 17 address set forth in the application for permission for the construction of the building. ~~Any~~ A local building  
 18 department, by action of an authorized officer, may grant in writing such time as may be reasonably  
 19 necessary for achieving compliance with the order.

20 (d) issue certificates of occupancy, as provided in 50-60-107;

21 (e) issue permits, licenses, and such other required documents in connection with the construction  
 22 of the buildings as required a building;

23 (f) ensure that all construction-related fees or charges imposed and collected by the municipality  
 24 or county are necessary, reasonable, and uniform and are:

25 (i) used only for building code enforcement, which consists of those necessary and reasonable  
 26 costs directly and specifically identifiable for the enforcement of building codes, plus a maximum of an  
 27 additional 10% of the identified direct costs to cover indirect costs; and **INDIRECT COSTS CHARGED ON**  
 28 **THE SAME BASIS AS OTHER LOCAL GOVERNMENT PROGRAMS NOT PAYING ADMINISTRATIVE**  
 29 **CHARGES AS DIRECT CHARGES. IF INDIRECT COSTS ARE WAIVED FOR ANY LOCAL GOVERNMENT**  
 30 **PROGRAM, THEY MUST ALSO BE WAIVED FOR THE PROGRAM ESTABLISHED IN THIS SECTION.**

1 INDIRECT CHARGES ARE LIMITED TO THE CHARGES THAT ARE ALLOWED UNDER FEDERAL COST  
 2 ACCOUNTING PRINCIPLES THAT ARE APPLICABLE TO A LOCAL GOVERNMENT.

3 (ii) reduced if the amount of the fees or charges accumulates above the amount needed to enforce  
 4 building codes for 6 months. The excess must be placed in a reserve account and may only be used for  
 5 building code enforcement. Collection and expenditure of fees and charges must be fully documented.

6 (3) Each municipality or county certified under 50-60-302 may, within its jurisdictional area:

7 ~~(a)~~ make, amend, and repeal rules for the administration and enforcement of the provisions of  
 8 this section and for the collection of reasonable fees, ~~which shall be comparable to fees imposed or~~  
 9 ~~prescribed by existing local building regulations and charges related to construction;~~

10 ~~(b)~~ prohibit the commencement of construction until a permit has been issued by the local  
 11 building department after a showing of compliance with the requirements of the applicable provisions of  
 12 the state or municipal building code; and

13 (c) enter into a private contract with the owner or builder of a building that is not or will not be  
 14 within the jurisdiction of the municipality or county under which the municipality or county will provide  
 15 reviews, inspections, orders, and certificates of occupancy for a fee and under conditions agreed upon by  
 16 the parties. Municipal or county powers of enforcement may not be exercised."

17

18 **Section 4.** Section 50-60-203, MCA, is amended to read:

19 **"50-60-203. Department to adopt state building code by rule.** (1) (a) The department shall adopt  
 20 rules relating to the construction of, the installation of equipment in, and standards for materials to be used  
 21 in all buildings or classes of buildings, including provisions dealing with safety, sanitation, and conservation  
 22 of energy. ~~The department may amend or repeal the rules.~~ The adoption, amendment, or repeal of a rule  
 23 is of significant public interest for purposes of 2-3-103.

24 ~~(b) In adopting rules~~ Rules concerning the conservation of energy, ~~the department shall must~~  
 25 conform ~~these rules~~ to the policy established in 50-60-801 and to relevant policies developed under the  
 26 provisions of Title 90, chapter 4, part 10.

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

30 (3) The rules, when adopted as provided in parts 1 through 4, constitute the "state building code"



1 and are acceptable for the buildings to which they are applicable.

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

4  
5 **Section 5.** Section 50-60-204, MCA, is amended to read:

6 "**50-60-204. Public hearing required -- effective date of certain rules.** (1) Except as provided in  
7 subsection (2), a rule, amendment, or repeal of the state building code is a matter of significant public  
8 interest for purposes of 2-3-103 and may not take effect until after a public hearing by the department.

9 (2) If a hearing with adequate public notice pursuant to 2-3-103 has been held by the department  
10 of justice with respect to the duties contained in chapter 3 of this title or by the board of plumbers, the  
11 department of public health and human services, or the state electrical board on a proposed rule relating  
12 to building and equipment standards in their respective fields, a public hearing by the department is not  
13 required. The proposed rule is effective upon approval of the department and filing with the secretary of  
14 state as a part of the state building code."

15

16 **Section 6.** Section 50-60-302, MCA, is amended to read:

17 "**50-60-302. Certification of municipal and county building codes.** (1) A county or municipality  
18 may not enforce a building code unless;

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

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

23 (c) all inspectors inspecting or approving any installations, which if accomplished commercially  
24 require state licensure, must themselves be properly and currently state-licensed as journeymen in that craft  
25 or occupation OR BE CERTIFIED BY THE INTERNATIONAL COUNCIL OF BUILDING OFFICIALS before being  
26 permitted to inspect or approve any installations.

27 (2) The department shall ~~set forth~~ adopt additional rules and standards governing the certification  
28 of municipal and county building code enforcement programs as required in subsection (1) which must  
29 include provisions for prompt revocation of certification for lack of compliance with any applicable statute  
30 or rule. The rules and standards must include provisions for the department to ensure that all code

1 enforcement program functions are being properly performed at all times.

2 (3) In addition to maintaining the continued compliance oversight required in subsection (1), the  
3 department shall conduct a detailed and fully documented annual review to ensure continued local  
4 government compliance with all requirements of applicable statutes and rules.

5 (4) If the certification of any local government code enforcement program is revoked for any  
6 violation or deficiency, the state resumes its original jurisdiction for state building code enforcement within  
7 the municipal or county area and the local government may not be permitted to continue to exercise any  
8 building code enforcement authority over incomplete construction projects."

9

10 NEW SECTION. SECTION 7. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE JULY 1, 1997.

11

-END-

## 1 HOUSE BILL NO. 388

2 INTRODUCED BY SIMON, BENEDICT, HARP, WELLS, PROUSE, GRINDE, THOMAS, MOLNAR, BAER,  
 3 MCGEE, KEENAN, SPRAGUE, TUSS, DENNY, SLITER, JABS, MARSHALL, STOVALL, MILLS,  
 4 MCCULLOCH, COCCHIARELLA, HERTEL, EMERSON

5  
 6 A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING AND REVISING BUILDING CODE LAW TERMS;  
 7 EXPANDING THE TYPES OF BUILDINGS EXEMPT FROM BUILDING CODES; EXPANDING THE DUTIES OF  
 8 MUNICIPALITIES AND COUNTIES; PROVIDING THAT RULE CHANGES ARE OF SIGNIFICANT INTEREST  
 9 TO THE PUBLIC; CHANGING PROVISIONS RELATING TO CERTIFICATION OF BUILDING CODES BY THE  
 10 DEPARTMENT OF COMMERCE; ~~AND~~ AMENDING SECTIONS 50-60-101, 50-60-102, 50-60-106,  
 11 50-60-203, 50-60-204, AND 50-60-302, MCA; AND PROVIDING AN A DELAYED EFFECTIVE DATE."

12  
 13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14  
 15 **Section 1.** Section 50-60-101, MCA, is amended to read:

16 "50-60-101. **Definitions.** As used in parts 1 through 4 and part 7 of this chapter, unless the  
 17 context requires otherwise, the following definitions apply:

18 (1) "Building" means a combination of any materials, whether mobile, portable, or fixed, to form  
 19 a structure and the related facilities for the use or occupancy by persons or property. The word "building"  
 20 ~~shall~~ must be construed as though followed by the words "or part or parts thereof".

21 (2) (a) "Building regulations" means any law, rule, resolution, regulation, ordinance, or code,  
 22 general or special, or compilation thereof enacted or adopted by the state or any municipality, including  
 23 departments, boards, bureaus, commissions, or other agencies of the state or a municipality relating to the  
 24 design, construction, reconstruction, alteration, conversion, repair, inspection, or use of buildings and  
 25 installation of equipment in buildings.

26 (b) The term does not include zoning ordinances.

27 (3) "Code enforcement program" means the plan for enforcement of the building regulations  
 28 adopted by a municipality or county and includes the local building department and the staff associated  
 29 with executing any aspect of the program's purposes or functions.

30 ~~(3)~~(4) "Construction" means the original construction and equipment of buildings and requirements

1 or standards relating to or affecting materials used, including provisions for safety and sanitary conditions.

2 ~~(4)~~(5) "Department" means the department of commerce provided for in Title 2, chapter 15, part  
3 18.

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

6 ~~(6)~~(7) (a) "Factory-built building" means a factory-assembled structure or structures equipped with  
7 the necessary service connections but not made so as to be readily movable as a unit or units and designed  
8 to be used with a permanent foundation.

9 (b) "Factory-built building" does not include manufactured housing constructed after June 15,  
10 1976, under the HUD, National Mobile Home Construction and Safety Act of 1974.

11 ~~(7)~~(8) "Local building department" means the agency or agencies of any municipality charged with  
12 the administration, supervision, or enforcement of building regulations, approval of plans, inspection of  
13 buildings, or the issuance of permits, licenses, certificates, and similar documents prescribed or required  
14 by state or local building regulations.

15 ~~(8)~~(9) "Local legislative body" means the council or commission charged with governing the  
16 municipality.

17 ~~(9)~~(10) "Municipality" means any incorporated city or town and its jurisdictional area as defined  
18 by ~~subsection (10) of~~ in this section.

19 ~~(10)~~(11) (a) "Municipal jurisdictional area" means the area within the limits of an incorporated  
20 municipality ~~unless the area is extended at the written request of a municipality.~~

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

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

23 ~~(ii) all of any platted subdivision which is partially within 4 1/2 miles of the corporate limits of a  
24 municipality; and~~

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

27 ~~(c) Distances shall be measured in a straight line in a horizontal plane.~~

28 ~~(11)~~(12) "Owner" means the owner or owners of the premises or lesser estate, a mortgagee or  
29 vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or  
30 corporation in control of a building.

1           ~~(12)~~(13) "Recreational vehicle" means a vehicular type unit primarily designed as temporary living  
2 quarters for recreational, camping, or travel use, which either has its own mode of power or is mounted  
3 on or towed by another vehicle, including but not limited to a:

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

8           ~~(13)~~(14) "State agency" means any state officer, department, board, bureau, commission, or other  
9 agency of this state.

10           ~~(14)~~(15) "State building code" means the state building code provided for in 50-60-203 or any  
11 portion of the code of limited application and any of its modifications or amendments."

12

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

14           "**50-60-102. Applicability.** (1) Except as provided in subsection (5), state building codes do not  
15 apply to:

16           (a) residential buildings containing less than five dwelling units or their attached-to structures, any  
17 farm or ranch building of any size, and any private garage or private storage structure of any size used only  
18 for the owner's own use, located within the municipality's or county's jurisdictional area, unless the local  
19 legislative body or board of county commissioners by ordinance or resolution makes the state building code  
20 applicable to these structures;

21           (b) mines and buildings on mine property regulated under Title 82, chapter 4, and subject to  
22 inspection under the Federal Mine Safety and Health Act; or

23           (c) ~~petroleum refineries, industrial process facilities, the primary economic activity of which occurs~~  
24 at petroleum refineries, sugar beet refineries, primary metal smelters and refineries, gas and other fuels  
25 processing facilities, pulp and paper mills, cement plants, lime and mineral products plants, sulfur plants,  
26 chemical plants, power plants, ELECTRICAL SUPPLY STATIONS SUBJECT TO THE NATIONAL ELECTRICAL  
27 SAFETY CODE, or fertilizer manufacturing plants, except:

28           ~~(i) a structure classified under chapter 7, section 701, group B, division 2, and chapter 9, section~~  
29 901, group H, outside of process units, of the 1991 edition of the Uniform Building Code; or

30           ~~(ii) a structure located outside of processing units and used for office, professional, or service-type~~

1 transactions, including storage of records and accounts and a structure used for consumption of food and  
2 beverages.

3 (2) Except as provided in subsection (5), the state may not enforce the state building code under  
4 50-60-205 for the buildings referred to in subsection (1). Local governments that have made the state  
5 building codes applicable to the buildings referred to in subsection (1) may enforce within their jurisdictional  
6 areas the state building code as adopted by the respective local government.

7 (3) When good and sufficient cause exists, a written request for limitation of the state building  
8 code may be filed with the department for filing as a permanent record.

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

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

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

16 (5) (a) For purposes of promoting the energy efficiency of home design and operation, the  
17 provisions of the state building code relating to energy conservation adopted pursuant to 50-60-203(1)  
18 apply to residential buildings, except:

19 (i) farm and ranch buildings; and

20 (ii) any private garage or private storage structure attached to a residential building and used only  
21 for the owner's own use.

22 (b) The provisions of the state building code relating to energy conservation in residential buildings  
23 are enforceable:

24 (i) by the department only for those residential buildings containing five or more dwelling units or  
25 otherwise subject to the state building code; and

26 (ii) through the builder self-certification program provided for in 50-60-802 for those residential  
27 buildings containing less than five dwelling units and not otherwise subject to the state building code."  
28

29 **Section 3.** Section 50-60-106, MCA, is amended to read:

30 **"50-60-106. Powers and duties of municipalities.** (1) The examination, approval, or disapproval

1 of plans and specifications, the issuance and revocation of building permits, licenses, certificates, and  
 2 similar documents, the inspection of buildings, and the administration and enforcement of building  
 3 regulations within the municipal jurisdictional area ~~shall be~~ are the responsibility of the municipalities of the  
 4 state.

5 (2) Each municipality ~~may~~ or county certified under 50-60-302 shall, within its jurisdictional area:

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

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

13 (c) during and in the course of construction order in writing the remedying of any condition found  
 14 to exist in, on, or about any building that is being constructed in violation of the applicable state or  
 15 municipal building code. Orders may be served upon the owner or his authorized agent personally or by  
 16 sending by registered or certified mail a copy of the order to the owner or his authorized agent at the  
 17 address set forth in the application for permission for the construction of the building. ~~Any~~ A local building  
 18 department, by action of an authorized officer, may grant in writing such time as may be reasonably  
 19 necessary for achieving compliance with the order.

20 (d) issue certificates of occupancy, as provided in 50-60-107;

21 (e) issue permits, licenses, and ~~such~~ other required documents in connection with the construction  
 22 ~~of the buildings as required~~ a building;

23 (f) ensure that all construction-related fees or charges imposed and collected by the municipality  
 24 or county are necessary, reasonable, and uniform and are:

25 (i) used only for building code enforcement, which consists of those necessary and reasonable  
 26 costs directly and specifically identifiable for the enforcement of building codes, plus a maximum of an  
 27 additional 10% of the identified direct costs to cover indirect costs; and INDIRECT COSTS CHARGED ON  
 28 THE SAME BASIS AS OTHER LOCAL GOVERNMENT PROGRAMS NOT PAYING ADMINISTRATIVE  
 29 CHARGES AS DIRECT CHARGES. IF INDIRECT COSTS ARE WAIVED FOR ANY LOCAL GOVERNMENT  
 30 PROGRAM, THEY MUST ALSO BE WAIVED FOR THE PROGRAM ESTABLISHED IN THIS SECTION.

1 INDIRECT CHARGES ARE LIMITED TO THE CHARGES THAT ARE ALLOWED UNDER FEDERAL COST  
 2 ACCOUNTING PRINCIPLES THAT ARE APPLICABLE TO A LOCAL GOVERNMENT.

3 (ii) reduced if the amount of the fees or charges accumulates above the amount needed to enforce  
 4 building codes for 6 months. The excess must be placed in a reserve account and may only be used for  
 5 building code enforcement. Collection and expenditure of fees and charges must be fully documented.

6 (3) Each municipality or county certified under 50-60-302 may, within its jurisdictional area:

7 ~~(a)~~ (a) make, amend, and repeal rules for the administration and enforcement of the provisions of  
 8 this section and for the collection of reasonable fees, which shall be comparable to fees imposed or  
 9 prescribed by existing local building regulations and charges related to construction;

10 ~~(b)~~ (b) prohibit the commencement of construction until a permit has been issued by the local  
 11 building department after a showing of compliance with the requirements of the applicable provisions of  
 12 the state or municipal building code; and

13 (c) enter into a private contract with the owner or builder of a building that is not or will not be  
 14 within the jurisdiction of the municipality or county under which the municipality or county will provide  
 15 reviews, inspections, orders, and certificates of occupancy for a fee and under conditions agreed upon by  
 16 the parties. Municipal or county powers of enforcement may not be exercised."

17

18 **Section 4.** Section 50-60-203, MCA, is amended to read:

19 **"50-60-203. Department to adopt state building code by rule.** (1) (a) The department shall adopt  
 20 rules relating to the construction of, the installation of equipment in, and standards for materials to be used  
 21 in all buildings or classes of buildings, including provisions dealing with safety, sanitation, and conservation  
 22 of energy. ~~The department may amend or repeal the rules.~~ The adoption, amendment, or repeal of a rule  
 23 is of significant public interest for purposes of 2-3-103.

24 ~~(b) In adopting rules~~ Rules concerning the conservation of energy, ~~the department shall~~ must  
 25 conform these rules to the policy established in 50-60-801 and to relevant policies developed under the  
 26 provisions of Title 90, chapter 4, part 10.

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

30 (3) The rules, when adopted as provided in parts 1 through 4, constitute the "state building code"



1 and are acceptable for the buildings to which they are applicable.

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

4  
5 **Section 5.** Section 50-60-204, MCA, is amended to read:

6 **"50-60-204. Public hearing required -- effective date of certain rules.** (1) Except as provided in  
7 subsection (2), a rule, amendment, or repeal of the state building code is a matter of significant public  
8 interest for purposes of 2-3-103 and may not take effect until after a public hearing by the department.

9 (2) If a hearing with adequate public notice pursuant to 2-3-103 has been held by the department  
10 of justice with respect to the duties contained in chapter 3 of this title or by the board of plumbers, the  
11 department of public health and human services, or the state electrical board on a proposed rule relating  
12 to building and equipment standards in their respective fields, a public hearing by the department is not  
13 required. The proposed rule is effective upon approval of the department and filing with the secretary of  
14 state as a part of the state building code."

15  
16 **Section 6.** Section 50-60-302, MCA, is amended to read:

17 **"50-60-302. Certification of municipal and county building codes.** (1) A county or municipality  
18 may not enforce a building code unless:

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

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

23 (c) all inspectors inspecting or approving any installations, which if accomplished commercially  
24 require state licensure, must themselves be properly and currently state-licensed as journeymen in that craft  
25 or occupation OR BE CERTIFIED BY THE INTERNATIONAL COUNCIL OF BUILDING OFFICIALS before being  
26 permitted to inspect or approve any installations.

27 (2) The department shall ~~set forth~~ adopt additional rules and standards governing the certification  
28 of municipal and county building code enforcement programs ~~as required in subsection (1)~~ which must  
29 include provisions for prompt revocation of certification for lack of compliance with any applicable statute  
30 or rule. The rules and standards must include provisions for the department to ensure that all code

1 enforcement program functions are being properly performed at all times.

2 (3) In addition to maintaining the continued compliance oversight required in subsection (1), the  
3 department shall conduct a detailed and fully documented annual review to ensure continued local  
4 government compliance with all requirements of applicable statutes and rules.

5 (4) If the certification of any local government code enforcement program is revoked for any  
6 violation or deficiency, the state resumes its original jurisdiction for state building code enforcement within  
7 the municipal or county area and the local government may not be permitted to continue to exercise any  
8 building code enforcement authority over incomplete construction projects."

9

10 NEW SECTION. SECTION 7. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE JULY 1, ~~1997~~ 1998.

11

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0388, third reading

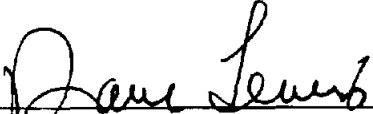
DESCRIPTION OF PROPOSED LEGISLATION:

A bill for an act defining and revising building code law terms; expanding the types of buildings exempt from building codes; expanding the duties of municipalities and counties; providing that rule changes are of significant interest to the public; changing provisions relating to certification of building codes by the Department of Commerce.

ASSUMPTIONS:

1. Passage of HB 388 will result in the nine municipalities with extended municipal building codes enforcement jurisdictions (extended jurisdictions) losing authority to enforce building codes in their extended jurisdictions and the responsibility for issuing building, mechanical, plumbing and electrical permits and completing the required inspections in those lost extended jurisdictions will return to the Department of Commerce (DOC), Building Codes Bureau.
2. Elimination of the extended jurisdictions will result in an annual increase to the bureau's workload of 250 building, 200 mechanical, 800 plumbing and 900 electrical permits, with associated plan review and inspection responsibilities.
3. HB 388 requires licensed plumbers and electricians to conduct local government plumbing and electrical installation inspections on commercial installations, respectively. The bureau anticipates that an additional 12 certified local government building codes enforcement programs (certified local programs) decertifying for plumbing code enforcement and five certified local programs decertifying for electrical code enforcement.
4. The certified local program decertification for plumbing and electrical code enforcement is expected to result in an annual increase to the bureau's workload of 500 plumbing permits and 200 electrical permits, with associated inspection responsibilities.
5. HB 388 requires the rigorous annual auditing of certified local code enforcement programs and limits eligible program costs and reserves and will result in an estimated 20-25 certified local programs voluntarily or involuntarily decertifying, beyond those decertifying for lack of licensed plumbing and electrical inspectors.
6. State assumption of the jurisdiction and code enforcement responsibilities in the eliminated extended jurisdictional areas, in the certified local programs expected to decertify for plumbing and electrical code enforcement because of lack of licensed inspectors and the auditing requirement created by HB 388 will require an additional 9.00 FTE. The estimated need would be 6.00 FTE inspectors (two electrical, three plumbing/mechanical, and one building), grade 14, 1.00 FTE plan reviewer, grade 15, 1.00 FTE auditor, grade 12, and 1.00 FTE clerical position, grade 8, to handle the additional permitting, inspecting, and auditing activities. The estimated personal services cost for the 9.00 FTE is \$273,281 in fiscal year 1999.
7. Additional operating expenses are estimated at \$67,238 and 6 additional vehicles will be required for the new inspectors at an estimated cost of \$78,000.
8. The FTEs and cost estimates included in this fiscal note assume that none of the major certified local programs, i.e., Billings, Bozeman, Missoula, Kalispell, Great Falls, Helena, or Butte-Silver Bow County, will voluntarily or involuntarily decertify during the 1999 biennium. If even one of the major certified local programs decertifies or is decertified, additional inspector, plan reviewer, and clerical FTEs will be needed immediately and additional personal services, operating, and equipment costs will be incurred.
9. Revenues from the additional permitting and inspections fees are expected to be sufficient to cover the anticipated code enforcement and auditing costs.

(Continued)

 3-11-97  
DAVE LEWIS, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning

BRUCE SIMON, PRIMARY SPONSOR      DATE

Fiscal Note for HB0388, third reading

Am. HB 388-#2

FISCAL IMPACT:

**Department of Commerce/Building Codes Bureau:**

	<u>FY98</u>	<u>FY99</u>
<u>Expenditures:</u>	<u>Difference</u>	<u>Difference</u>
FTE	0	9.00
Personal Services	0	273,281
Operating Expenses	0	67,238
Equipment	<u>0</u>	<u>78,000</u>
Total	0	418,519
<u>Revenues:</u>		
Building Permit Fees (02)	0	342,500
<u>Net Impact:</u>		
Building Codes SSR (02)	0	(76,019)

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

1. Loss of the extended jurisdiction areas will result in a substantial loss of revenue from permit fees to the Cities of Billings, Bozeman, Columbia Falls, Kalispell, and Missoula and some loss of revenues from permit fees to the Cities of Deer Lodge, Fort Benton, Miles City, and Whitefish. In total, revenue from issuance of approximately 1,000 building, 800 mechanical, 800 plumbing and 900 electrical permits will be lost annually to the 9 cities that have extended jurisdictions.
2. Loss of certification for electrical and plumbing code enforcement for the 12 cities expected to decertify rather than comply with the requirement to have licensed electricians and plumbers doing electrical and plumbing code enforcement on commercial installations, will result in substantial annual loss of revenue from permit fees from a total of 500 plumbing and 200 electrical permits. For those cities that do not decertify, additional costs will be experienced by the requirement to hire licensed plumbers and electricians to do plumbing and electrical code enforcement.
3. Loss of permit fee revenues will result from the additional industries exempted from state and local codes enforcement, i.e., sugar beet refineries, primary metal smelters and refineries, gas and other fuels processing facilities, pulp and paper mills, cement plants, lime and mineral products plants, sulfur plants, chemical plants, power plants and fertilizer manufacturing plants.
4. If "construction-related fees or charges" include fees unrelated to building code enforcement, i.e., building, mechanical, plumbing or electrical permit fees, such as system development fees, the limitations may adversely affect local government's ability to raise revenue to maintain infrastructure.

TECHNICAL NOTES:

1. Loss of the extended jurisdiction areas may have a public health impact because approximately 800 single family dwellings in 4-plexes and less annually will no longer receive building and mechanical permits and inspections for compliance with minimum codes.
2. Because of the larger areas served, state code enforcement is less efficient and inspections are less timely than local government code enforcement; therefore, loss of extended jurisdiction areas may result in less service for building owners/contractors.
3. Exemption of the 10 additional major industries from the need to comply with state and local building codes may expose employees to greater risk due to noncompliance with minimum codes and may put local fire department firefighters at risk while fighting fires at facilities that do not comply with minimum codes.
4. Exemption of the 10 additional major industries from the need to comply with state and local building codes may result in less plumber and electrician license law enforcement since such license law enforcement typically only happens during normal inspections for code compliance.
5. HB 388 contains auditing requirements which limit program eligible costs and may discourage cities, towns, and particularly counties from assuming the responsibility of local building code enforcement and may result in as many as 20-25 currently certified local code enforcement programs voluntarily decertifying.

6. HB 388 limits when a local building official can order a building owner to correct observed code violations. Language in HB 388 prohibits inspectors from ordering code violations corrected once construction is completed. This places a significant liability on inspectors in that they may be required to issue certificates of occupancy for buildings with known code deficiencies.
7. HB 388 appears to include local system development fees and charges in building permit program related fees because of the wording "construction-related fees or charges" in amendments to 50-60-106(2)(f), MCA, instead of using the words "building permit fees". If such system development fees (unrelated to building code enforcement) are included in the code enforcement programs budget and reserves limited to 6 months, the proposed legislation may have the effect of forcing reduction of system development fees.
8. Should a large certified local program such as Billings, Bozeman, Missoula, Kalispell, Great Falls, Helena or Butte-Silver Bow County become decertified, the bureau will be unable to absorb the additional code enforcement workload unless allowed to hire additional inspectors, plan reviewers and clerical staff immediately.

## 1 HOUSE BILL NO. 388

2 INTRODUCED BY SIMON, BENEDICT, HARP, WELLS, PROUSE, GRINDE, THOMAS, MOLNAR, BAER,  
3 MCGEE, KEENAN, SPRAGUE, TUSS, DENNY, SLITER, JABS, MARSHALL, STOVALL, MILLS,  
4 MCCULLOCH, COCCHIARELLA, HERTEL, EMERSON

5  
6 A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING AND REVISING BUILDING CODE LAW TERMS;  
7 EXPANDING THE TYPES OF BUILDINGS EXEMPT FROM BUILDING CODES; EXPANDING THE DUTIES OF  
8 MUNICIPALITIES AND COUNTIES; PROVIDING THAT RULE CHANGES ARE OF SIGNIFICANT INTEREST  
9 TO THE PUBLIC; CHANGING PROVISIONS RELATING TO CERTIFICATION OF BUILDING CODES BY THE  
10 DEPARTMENT OF COMMERCE; ~~AND AND~~ AMENDING SECTIONS 50-60-101, 50-60-102, 50-60-106,  
11 50-60-203, 50-60-204, AND 50-60-302, MCA; ~~AND PROVIDING AN A DELAYED EFFECTIVE DATE.~~"

12  
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14  
15 **Section 1.** Section 50-60-101, MCA, is amended to read:

16 "50-60-101. **Definitions.** As used in parts 1 through 4 and part 7 of this chapter, unless the  
17 context requires otherwise, the following definitions apply:

18 (1) "Building" means a combination of any materials, whether mobile, portable, or fixed, to form  
19 a structure and the related facilities for the use or occupancy by persons or property. The word "building"  
20 ~~shall~~ must be construed as though followed by the words "or part or parts thereof".

21 (2) (a) "Building regulations" means any law, rule, resolution, regulation, ordinance, or code,  
22 general or special, or compilation thereof enacted or adopted by the state or any municipality, including  
23 departments, boards, bureaus, commissions, or other agencies of the state or a municipality relating to the  
24 design, construction, reconstruction, alteration, conversion, repair, inspection, or use of buildings and  
25 installation of equipment in buildings.

26 (b) The term does not include zoning ordinances.

27 (3) "Code enforcement program" means the plan for enforcement of the building regulations  
28 adopted by a municipality or county and includes the local building department and the staff associated  
29 with executing any aspect of the program's purposes or functions.

30 ~~(3)(4)~~ "Construction" means the original construction and equipment of buildings and requirements

1 or standards relating to or affecting materials used, including provisions for safety and sanitary conditions.

2 ~~(4)(5)~~ "Department" means the department of commerce provided for in Title 2, chapter 15, part  
3 18.

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

6 ~~(6)(7)~~ (a) "Factory-built building" means a factory-assembled structure or structures equipped with  
7 the necessary service connections but not made so as to be readily movable as a unit or units and designed  
8 to be used with a permanent foundation.

9 (b) "Factory-built building" does not include manufactured housing constructed after June 15,  
10 1976, under the HUD, National Mobile Home Construction and Safety Act of 1974.

11 ~~(7)(8)~~ "Local building department" means the agency or agencies of any municipality charged with  
12 the administration, supervision, or enforcement of building regulations, approval of plans, inspection of  
13 buildings, or the issuance of permits, licenses, certificates, and similar documents prescribed or required  
14 by state or local building regulations.

15 ~~(8)(9)~~ "Local legislative body" means the council or commission charged with governing the  
16 municipality.

17 ~~(9)(10)~~ "Municipality" means any incorporated city or town and its jurisdictional area as defined  
18 ~~by subsection (10) of~~ in this section.

19 ~~(10)(11) (a)(A)~~ "Municipal jurisdictional area" means the area within the limits of an incorporated  
20 municipality ~~unless the area is extended at the written request of a municipality~~ UNLESS THE AREA IS  
21 EXTENDED AT THE WRITTEN REQUEST OF A MUNICIPALITY.

22 (B) UPON REQUEST OF A MUNICIPALITY WITH THE WRITTEN CONSENT OF THE COUNTY IN  
23 WHICH THE MUNICIPALITY IS LOCATED, THE DEPARTMENT MAY APPROVE EXTENSION OF THE  
24 JURISDICTIONAL AREA TO INCLUDE:

25 (I) ALL OR PART OF THE AREA WITHIN 4 1/2 MILES OF THE CORPORATE LIMITS OF A  
26 MUNICIPALITY;

27 (II) ALL OF ANY PLATTED SUBDIVISION THAT IS PARTIALLY WITHIN 4 1/2 MILES OF THE  
28 CORPORATE LIMITS OF A MUNICIPALITY; AND

29 (III) ALL OF ANY ZONING DISTRICT ADOPTED PURSUANT TO TITLE 76, CHAPTER 2, PART 1 OR  
30 2, THAT IS PARTIALLY WITHIN 4 1/2 MILES OF THE CORPORATE LIMITS OF A MUNICIPALITY.

1 (C) DISTANCES MUST BE MEASURED IN A STRAIGHT LINE ON A HORIZONTAL PLANE.

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

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

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

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

8 ~~(c) Distances shall be measured in a straight line in a horizontal plane.~~

9 ~~(11)(12)~~ "Owner" means the owner or owners of the premises or lesser estate, a mortgagee or  
10 vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or  
11 corporation in control of a building.

12 ~~(12)(13)~~ "Recreational vehicle" means a vehicular type unit primarily designed as temporary living  
13 quarters for recreational, camping, or travel use, which either has its own mode of power or is mounted  
14 on or towed by another vehicle, including but not limited to a:

15 (a) travel trailer;

16 (b) camping trailer;

17 (c) truck camper; or

18 (d) motor home.

19 ~~(13)(14)~~ "State agency" means any state officer, department, board, bureau, commission, or other  
20 agency of this state.

21 ~~(14)(15)~~ "State building code" means the state building code provided for in 50-60-203 or any  
22 portion of the code of limited application and any of its modifications or amendments."

23

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

25 **"50-60-102. Applicability.** (1) Except as provided in subsection (5), state building codes do not  
26 apply to:

27 (a) residential buildings containing less than five dwelling units or their attached-to structures, any  
28 farm or ranch building of any size, and any private garage or private storage structure of any size used only  
29 for the owner's own use, located within the municipality's or county's jurisdictional area, unless the local  
30 legislative body or board of county commissioners by ordinance or resolution makes the state building code



1 applicable to these structures;

2 (b) mines and buildings on mine property regulated under Title 82, chapter 4, and subject to  
3 inspection under the Federal Mine Safety and Health Act; or

4 (c) ~~petroleum refineries, industrial process facilities, the primary economic activity of which occurs~~  
5 ~~at petroleum refineries, sugar beet refineries, primary metal smelters and refineries, gas and other fuels~~  
6 ~~processing facilities, pulp and paper mills, cement plants, lime and mineral products plants, sulfur plants,~~  
7 ~~chemical plants, power plants, ELECTRICAL SUPPLY STATIONS SUBJECT TO THE NATIONAL ELECTRICAL~~  
8 ~~SAFETY CODE, or fertilizer manufacturing plants, except:~~

9 ~~(i) a structure classified under chapter 7, section 701, group B, division 2, and chapter 9, section~~  
10 ~~901, group H, outside of process units, of the 1991 edition of the Uniform Building Code; or~~

11 ~~(ii) a structure located outside of processing units and used for office, professional, or service-type~~  
12 ~~transactions, including storage of records and accounts and a structure used for consumption of food and~~  
13 ~~beverages~~ PIPING, VESSELS, AND EQUIPMENT AND PROCESS-RELATED STRUCTURES LOCATED  
14 OUTSIDE OF ANOTHER STRUCTURE OCCUPIED ON A REGULAR BASIS BY EMPLOYEES OR THE PUBLIC.

15 (2) Except as provided in subsection (5), the state may not enforce the state building code under  
16 50-60-205 for the buildings referred to in subsection (1). Local governments that have made the state  
17 building codes applicable to the buildings referred to in subsection (1) may enforce within their jurisdictional  
18 areas the state building code as adopted by the respective local government.

19 (3) When good and sufficient cause exists, a written request for limitation of the state building  
20 code may be filed with the department for filing as a permanent record.

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

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

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

28 (5) (a) For purposes of promoting the energy efficiency of home design and operation, the  
29 provisions of the state building code relating to energy conservation adopted pursuant to 50-60-203(1)  
30 apply to residential buildings, except:

- 1 (i) farm and ranch buildings; and
- 2 (ii) any private garage or private storage structure attached to a residential building and used only
- 3 for the owner's own use.
- 4 (b) The provisions of the state building code relating to energy conservation in residential buildings
- 5 are enforceable:
- 6 (i) by the department only for those residential buildings containing five or more dwelling units or
- 7 otherwise subject to the state building code; and
- 8 (ii) through the builder self-certification program provided for in 50-60-802 for those residential
- 9 buildings containing less than five dwelling units and not otherwise subject to the state building code."

10

11 **Section 3.** Section 50-60-106, MCA, is amended to read:

12 **"50-60-106. Powers and duties of municipalities.** (1) The examination, approval, or disapproval

13 of plans and specifications, the issuance and revocation of building permits, licenses, certificates, and

14 similar documents, the inspection of buildings, and the administration and enforcement of building

15 regulations within the municipal jurisdictional area ~~shall be~~ are the responsibility of the municipalities of the

16 state.

17 (2) Each municipality ~~may~~ or county certified under 50-60-302 shall, within its jurisdictional area:

18 (a) examine, approve, or disapprove plans and specifications for the construction of any building,

19 the construction of which is pursuant or purports to be pursuant to the applicable provisions of the state

20 or municipal building code, and direct the inspection of the buildings during and in the course of

21 construction;

22 (b) require that construction of buildings be in accordance with the applicable provisions of the

23 state or municipal building code, subject to the powers of variance or modification granted to the

24 department;

25 (c) during and in the course of construction order in writing the remedying of any condition found

26 to exist in, on, or about any building that is being constructed in violation of the applicable state or

27 municipal building code. Orders may be served upon the owner or his authorized agent personally or by

28 sending by registered or certified mail a copy of the order to the owner or his authorized agent at the

29 address set forth in the application for permission for the construction of the building. ~~Any~~ A local building

30 department, by action of an authorized officer, may grant in writing such time as may be reasonably

1 necessary for achieving compliance with the order. FOR THE PURPOSES OF THIS SUBSECTION (2)(C), THE  
 2 PHRASE "DURING AND IN THE COURSE OF CONSTRUCTION" REFERS TO THE CONSTRUCTION OF A  
 3 BUILDING UNTIL ALL NECESSARY BUILDING PERMITS HAVE BEEN OBTAINED AND THE MUNICIPALITY  
 4 OR COUNTY HAS ISSUED FORMAL WRITTEN APPROVALS OR HAS ISSUED A CERTIFICATE OF  
 5 OCCUPANCY FOR THE BUILDING.

6 (d) issue certificates of occupancy, as provided in 50-60-107;

7 (e) issue permits, licenses, and such other required documents in connection with the construction  
 8 of the buildings as required a building;

9 (f) ensure that all construction-related fees or charges imposed and collected by the municipality  
 10 or county are necessary, reasonable, and uniform and are:

11 (i) used only for building code enforcement, which consists of those necessary and reasonable  
 12 costs directly and specifically identifiable for the enforcement of building codes, plus a maximum of an  
 13 additional 10% of the identified direct costs to cover indirect costs; and INDIRECT COSTS CHARGED ON  
 14 THE SAME BASIS AS OTHER LOCAL GOVERNMENT PROGRAMS NOT PAYING ADMINISTRATIVE  
 15 CHARGES AS DIRECT CHARGES. IF INDIRECT COSTS ARE WAIVED FOR ANY LOCAL GOVERNMENT  
 16 PROGRAM, THEY MUST ALSO BE WAIVED FOR THE PROGRAM ESTABLISHED IN THIS SECTION.  
 17 INDIRECT CHARGES ARE LIMITED TO THE CHARGES THAT ARE ALLOWED UNDER FEDERAL COST  
 18 ACCOUNTING PRINCIPLES THAT ARE APPLICABLE TO A LOCAL GOVERNMENT.

19 (ii) reduced if the amount of the fees or charges accumulates above the amount needed to enforce  
 20 building codes for 6 12 months. The excess must be placed in a reserve account and may only be used  
 21 for building code enforcement. Collection and expenditure of fees and charges must be fully documented.

22 (3) Each municipality or county certified under 50-60-302 may, within its jurisdictional area:

23 ~~(a)~~ (a) make, amend, and repeal rules for the administration and enforcement of the provisions of  
 24 this section and for the collection of reasonable fees, which shall be comparable to fees imposed or  
 25 prescribed by existing local building regulations and charges related to construction;

26 ~~(b)~~ (b) prohibit the commencement of construction until a permit has been issued by the local  
 27 building department after a showing of compliance with the requirements of the applicable provisions of  
 28 the state or municipal building code; and

29 (c) enter into a private contract with the owner or builder of a building that is not or will not be  
 30 within the jurisdiction of the municipality or county under which the municipality or county will provide

1 reviews, inspections, orders, and certificates of occupancy for a fee and under conditions agreed upon by  
 2 the parties. Municipal or county powers of enforcement may not be exercised."

3

4 **Section 4.** Section 50-60-203, MCA, is amended to read:

5 **"50-60-203. Department to adopt state building code by rule.** (1) (a) The department shall adopt  
 6 rules relating to the construction of, the installation of equipment in, and standards for materials to be used  
 7 in all buildings or classes of buildings, including provisions dealing with safety, sanitation, and conservation  
 8 of energy. ~~The department may amend or repeal the rules.~~ The adoption, amendment, or repeal of a rule  
 9 is of significant public interest for purposes of 2-3-103.

10 (b) ~~In adopting rules~~ Rules concerning the conservation of energy, ~~the department shall~~ must  
 11 conform ~~these rules~~ to the policy established in 50-60-801 and to relevant policies developed under the  
 12 provisions of Title 90, chapter 4, part 10.

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

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

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

20

21 **Section 5.** Section 50-60-204, MCA, is amended to read:

22 **"50-60-204. Public hearing required -- effective date of certain rules.** (1) Except as provided in  
 23 subsection (2), a rule, amendment, or repeal of the state building code is a matter of significant public  
 24 interest for purposes of 2-3-103 and may not take effect until after a public hearing by the department.

25 (2) If a hearing with adequate public notice pursuant to 2-3-103 has been held by the department  
 26 of justice with respect to the duties contained in chapter 3 of this title or by the board of plumbers, the  
 27 department of public health and human services, or the state electrical board on a proposed rule relating  
 28 to building and equipment standards in their respective fields, a public hearing by the department is not  
 29 required. The proposed rule is effective upon approval of the department and filing with the secretary of  
 30 state as a part of the state building code."

1           **Section 6.** Section 50-60-302, MCA, is amended to read:

2           "**50-60-302. Certification of municipal and county building codes.** (1) A county or municipality  
3 may not enforce a building code unless:

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

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

8           (c) all inspectors inspecting or approving any installations, which if accomplished commercially  
9 require state licensure, must themselves be properly and currently state-licensed as journeymen in that craft  
10 or occupation OR BE CERTIFIED BY THE INTERNATIONAL COUNCIL OF BUILDING OFFICIALS A  
11 NATIONALLY RECOGNIZED ENTITY FOR TESTING AND CERTIFICATION OF INSPECTORS THAT IS  
12 APPROVED BY THE DEPARTMENT OR HAVE SUFFICIENT INSPECTION WORK EXPERIENCE TO BE  
13 CONSIDERED QUALIFIED BY AND ACCEPTABLE TO THE COUNTY OR MUNICIPALITY before being  
14 permitted to inspect or approve any installations.

15           (2) The department shall ~~set forth~~ adopt additional rules and standards governing the certification  
16 of municipal and county building code enforcement programs ~~as required in subsection (1)~~ which must  
17 include provisions for prompt revocation of certification for lack of compliance REFUSAL OR FAILURE TO  
18 COMPLY with any applicable statute or rule. THE DEPARTMENT MAY ALLOW A COUNTY OR  
19 MUNICIPALITY A REASONABLE AMOUNT OF TIME, NOT TO EXCEED 6 MONTHS, TO CORRECT  
20 IDENTIFIED CODE ENFORCEMENT PROGRAM DEFICIENCIES, UNLESS THE DEFICIENCIES CONSTITUTE  
21 AN IMMEDIATE THREAT TO THE PUBLIC HEALTH, SAFETY, OR WELFARE, IN WHICH CASE THE  
22 DEPARTMENT MAY REQUIRE IMMEDIATE CORRECTION. FAILURE TO CORRECT DEFICIENCIES WITHIN  
23 THE TIME SET BY THE DEPARTMENT CONSTITUTES A BASIS FOR IMMEDIATE DECERTIFICATION OF THE  
24 CODE ENFORCEMENT PROGRAM. CONTINUED OPERATION OF A COUNTY OR MUNICIPAL CODE  
25 ENFORCEMENT PROGRAM IN VIOLATION OF A DEPARTMENT ORDER TO CORRECT DEFICIENCIES MAY  
26 BE ENJOINED OR SUBJECT TO A WRIT OF MANDAMUS BY A JUDGE OF THE DISTRICT COURT IN THE  
27 JURISDICTION IN WHICH THE COUNTY OR MUNICIPALITY IS LOCATED. The rules and standards must  
28 include provisions for the department to ensure that all code enforcement program functions are being  
29 properly performed at all times.

30           (3) In addition to maintaining the continued compliance oversight required in subsection (1), the

1 ~~department shall conduct~~ REQUIRE a detailed and fully documented annual review REPORT FROM A LOCAL  
 2 GOVERNMENT WITH A CERTIFIED CODE ENFORCEMENT PROGRAM to ensure continued local government  
 3 compliance with all requirements of applicable statutes and rules. IF REVIEW OF THE ANNUAL REPORT  
 4 IDENTIFIES COMPLIANCE PROBLEMS, THE DEPARTMENT SHALL IMMEDIATELY CONDUCT AN ONSITE  
 5 EVALUATION.

6 (4) If the certification of any local government code enforcement program is revoked for any  
 7 violation or deficiency, the state resumes its original jurisdiction for state building code enforcement within  
 8 the municipal or county area and the local government may not be permitted to continue to exercise any  
 9 building code enforcement authority over RETAINS THE RESPONSIBILITY FOR COMPLETION OF  
 10 INSPECTIONS AND ISSUANCE OF CERTIFICATES OF OCCUPANCY ON ANY incomplete construction  
 11 projects PREVIOUSLY PERMITTED BY THE LOCAL GOVERNMENT, UNLESS THE REASON FOR THE  
 12 DECERTIFICATION IS DIRECTLY RELATED TO THE PROTECTION OF HEALTH, SAFETY, AND WELFARE  
 13 OF THE PUBLIC.

14 (5) IF A LOCAL GOVERNMENT VOLUNTARILY DECERTIFIES ITS CODE ENFORCEMENT  
 15 PROGRAM, THE DEPARTMENT MUST BE GIVEN WRITTEN NOTIFICATION OF THE INTENDED  
 16 DECERTIFICATION AT LEAST 90 DAYS PRIOR TO THE DATE OF DECERTIFICATION. THE LOCAL  
 17 GOVERNMENT RETAINS THE RESPONSIBILITY FOR COMPLETION OF INSPECTIONS AND ISSUANCE OF  
 18 CERTIFICATES OF OCCUPANCY ON ANY INCOMPLETE CONSTRUCTION PROJECTS PERMITTED BY THE  
 19 LOCAL GOVERNMENT PRIOR TO DECERTIFYING ITS CODE ENFORCEMENT PROGRAM."

20  
 21 NEW SECTION. SECTION 7. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE JULY 1, 1997 1998.

22 -END-

## 1 HOUSE BILL NO. 388

2 INTRODUCED BY SIMON, BENEDICT, HARP, WELLS, PROUSE, GRINDE, THOMAS, MOLNAR, BAER,  
 3 MCGEE, KEENAN, SPRAGUE, TUSS, DENNY, SLITER, JABS, MARSHALL, STOVALL, MILLS,  
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5  
 6 A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING AND REVISING BUILDING CODE LAW TERMS;  
 7 EXPANDING THE TYPES OF BUILDINGS EXEMPT FROM BUILDING CODES; EXPANDING THE DUTIES OF  
 8 MUNICIPALITIES AND COUNTIES; PROVIDING THAT RULE CHANGES ARE OF SIGNIFICANT INTEREST  
 9 TO THE PUBLIC; CHANGING PROVISIONS RELATING TO CERTIFICATION OF BUILDING CODES BY THE  
 10 DEPARTMENT OF COMMERCE; ~~AND AND~~ AMENDING SECTIONS 50-60-101, 50-60-102, 50-60-106,  
 11 50-60-203, 50-60-204, AND 50-60-302, MCA; ~~AND PROVIDING AN A DELAYED EFFECTIVE DATE; AND~~  
 12 PROVIDING A DELAYED EFFECTIVE DATE."

13  
 14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15  
 16 **Section 1.** Section 50-60-101, MCA, is amended to read:

17 **"50-60-101. Definitions.** As used in parts 1 through 4 and part 7 of this chapter, unless the  
 18 context requires otherwise, the following definitions apply:

19 (1) "Building" means a combination of any materials, whether mobile, portable, or fixed, to form  
 20 a structure and the related facilities for the use or occupancy by persons or property. The word "building"  
 21 ~~shall~~ must be construed as though followed by the words "or part or parts thereof".

22 (2) (a) "Building regulations" means any law, rule, resolution, regulation, ordinance, or code,  
 23 general or special, or compilation thereof enacted or adopted by the state or any municipality, including  
 24 departments, boards, bureaus, commissions, or other agencies of the state or a municipality relating to the  
 25 design, construction, reconstruction, alteration, conversion, repair, inspection, or use of buildings and  
 26 installation of equipment in buildings.

27 (b) The term does not include zoning ordinances.

28 (3) "Code enforcement program" means the plan for enforcement of the building regulations  
 29 adopted by a municipality or county and includes the local building department and the staff associated  
 30 with executing any aspect of the program's purposes or functions.

1           ~~(3)~~(4) "Construction" means the original construction and equipment of buildings and requirements  
2 or standards relating to or affecting materials used, including provisions for safety and sanitary conditions.

3           ~~(4)~~(5) "Department" means the department of commerce provided for in Title 2, chapter 15, part  
4 18.

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

7           ~~(6)~~(7) (a) "Factory-built building" means a factory-assembled structure or structures equipped with  
8 the necessary service connections but not made so as to be readily movable as a unit or units and designed  
9 to be used with a permanent foundation.

10           **(b)** "Factory-built building" does not include manufactured housing constructed after June 15,  
11 1976, under the HUD, National Mobile Home Construction and Safety Act of 1974.

12           ~~(7)~~(8) "Local building department" means the agency or agencies of any municipality charged with  
13 the administration, supervision, or enforcement of building regulations, approval of plans, inspection of  
14 buildings, or the issuance of permits, licenses, certificates, and similar documents prescribed or required  
15 by state or local building regulations.

16           ~~(8)~~(9) "Local legislative body" means the council or commission charged with governing the  
17 municipality.

18           ~~(9)~~(10) "Municipality" means any incorporated city or town and its jurisdictional area as defined  
19 ~~by subsection (10) of~~ in this section.

20           ~~(10)~~(11) ~~(a)~~(A) "Municipal jurisdictional area" means the area within the limits of an incorporated  
21 municipality ~~unless the area is extended at the written request of a municipality~~ UNLESS THE AREA IS  
22 EXTENDED AT THE WRITTEN REQUEST OF A MUNICIPALITY.

23           **(B) UPON REQUEST OF A MUNICIPALITY WITH THE WRITTEN CONSENT OF THE COUNTY IN**  
24 **WHICH THE MUNICIPALITY IS LOCATED, THE DEPARTMENT MAY APPROVE EXTENSION OF THE**  
25 **JURISDICTIONAL AREA TO INCLUDE:**

26           **(I) ALL OR PART OF THE AREA WITHIN 4 1/2 MILES OF THE CORPORATE LIMITS OF A**  
27 **MUNICIPALITY;**

28           **(II) ALL OF ANY PLATTED SUBDIVISION THAT IS PARTIALLY WITHIN 4 1/2 MILES OF THE**  
29 **CORPORATE LIMITS OF A MUNICIPALITY; AND**

30           **(III) ALL OF ANY ZONING DISTRICT ADOPTED PURSUANT TO TITLE 76, CHAPTER 2, PART 1 OR**



1 2. THAT IS PARTIALLY WITHIN 4 1/2 MILES OF THE CORPORATE LIMITS OF A MUNICIPALITY.

2 (C) DISTANCES MUST BE MEASURED IN A STRAIGHT LINE ON A HORIZONTAL PLANE.

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

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

5 ~~(ii) all of any platted subdivision which is partially within 4 1/2 miles of the corporate limits of a~~  
6 ~~municipality; and~~

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

9 ~~(c) Distances shall be measured in a straight line in a horizontal plane.~~

10 ~~(11)~~(12) "Owner" means the owner or owners of the premises or lesser estate, a mortgagee or  
11 vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or  
12 corporation in control of a building.

13 ~~(12)~~(13) "Recreational vehicle" means a vehicular type unit primarily designed as temporary living  
14 quarters for recreational, camping, or travel use, which either has its own mode of power or is mounted  
15 on or towed by another vehicle, including but not limited to a:

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

20 ~~(13)~~(14) "State agency" means any state officer, department, board, bureau, commission, or other  
21 agency of this state.

22 ~~(14)~~(15) "State building code" means the state building code provided for in 50-60-203 or any  
23 portion of the code of limited application and any of its modifications or amendments."  
24

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

26 **"50-60-102. Applicability.** (1) Except as provided in subsection (5), state building codes do not  
27 apply to:

- 28 (a) residential buildings containing less than five dwelling units or their attached-to structures, any  
29 farm or ranch building of any size, and any private garage or private storage structure of any size used only  
30 for the owner's own use, located within the municipality's or county's jurisdictional area, unless the local

1 legislative body or board of county commissioners by ordinance or resolution makes the state building code  
2 applicable to these structures;

3 (b) mines and buildings on mine property regulated under Title 82, chapter 4, and subject to  
4 inspection under the Federal Mine Safety and Health Act; or

5 (c) ~~petroleum refineries, industrial process facilities, the primary economic activity of which occurs~~  
6 ~~at petroleum refineries, sugar beet refineries, primary metal smelters and refineries, gas and other fuels~~  
7 ~~processing facilities, pulp and paper mills, cement plants, lime and mineral products plants, sulfur plants,~~  
8 ~~chemical plants, power plants, ELECTRICAL SUPPLY STATIONS SUBJECT TO THE NATIONAL ELECTRICAL~~  
9 ~~SAFETY CODE, or fertilizer manufacturing plants, except;~~

10 ~~(i) a structure classified under chapter 7, section 701, group B, division 2, and chapter 9, section~~  
11 ~~901, group H, outside of process units, of the 1991 edition of the Uniform Building Code; or~~

12 ~~(ii) a structure located outside of processing units and used for office, professional, or service type~~  
13 ~~transactions, including storage of records and accounts and a structure used for consumption of food and~~  
14 ~~beverages~~ PIPING, VESSELS, AND EQUIPMENT AND PROCESS-RELATED STRUCTURES LOCATED  
15 OUTSIDE OF ANOTHER STRUCTURE OCCUPIED ON A REGULAR BASIS BY EMPLOYEES OR THE PUBLIC.

16 (2) Except as provided in subsection (5), the state may not enforce the state building code under  
17 50-60-205 for the buildings referred to in subsection (1). Local governments that have made the state  
18 building codes applicable to the buildings referred to in subsection (1) may enforce within their jurisdictional  
19 areas the state building code as adopted by the respective local government.

20 (3) When good and sufficient cause exists, a written request for limitation of the state building  
21 code may be filed with the department for filing as a permanent record.

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

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

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

29 (5) (a) For purposes of promoting the energy efficiency of home design and operation, the  
30 provisions of the state building code relating to energy conservation adopted pursuant to 50-60-203(1)

1 apply to residential buildings, except:

2 (i) farm and ranch buildings; and

3 (ii) any private garage or private storage structure attached to a residential building and used only  
4 for the owner's own use.

5 (b) The provisions of the state building code relating to energy conservation in residential buildings  
6 are enforceable:

7 (i) by the department only for those residential buildings containing five or more dwelling units or  
8 otherwise subject to the state building code; and

9 (ii) through the builder self-certification program provided for in 50-60-802 for those residential  
10 buildings containing less than five dwelling units and not otherwise subject to the state building code."  
11

12 **Section 3.** Section 50-60-106, MCA, is amended to read:

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

18 (2) Each municipality ~~may~~ or county certified under 50-60-302 shall, within its jurisdictional area:

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

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

26 (c) during and in the course of construction order in writing the remedying of any condition found  
27 to exist in, on, or about any building that is being constructed in violation of the applicable state or  
28 municipal building code. Orders may be served upon the owner or his authorized agent personally or by  
29 sending by registered or certified mail a copy of the order to the owner or his authorized agent at the  
30 address set forth in the application for permission for the construction of the building. ~~Any~~ A local building

1 department, by action of an authorized officer, may grant in writing such time as may be reasonably  
 2 necessary for achieving compliance with the order. FOR THE PURPOSES OF THIS SUBSECTION (2)(C), THE  
 3 PHRASE "DURING AND IN THE COURSE OF CONSTRUCTION" REFERS TO THE CONSTRUCTION OF A  
 4 BUILDING UNTIL ALL NECESSARY BUILDING PERMITS HAVE BEEN OBTAINED AND THE MUNICIPALITY  
 5 OR COUNTY HAS ISSUED FORMAL WRITTEN APPROVALS OR HAS ISSUED A CERTIFICATE OF  
 6 OCCUPANCY FOR THE BUILDING.

7 (d) issue certificates of occupancy, as provided in 50-60-107;

8 (e) issue permits, licenses, and such other required documents in connection with the construction  
 9 of the buildings as required a building;

10 (f) ensure that all construction-related fees or charges imposed and collected by the municipality  
 11 or county are necessary, reasonable, and uniform and are:

12 (i) used only for building code enforcement, which consists of those necessary and reasonable  
 13 costs directly and specifically identifiable for the enforcement of building codes, plus a maximum of an  
 14 additional 10% of the identified direct costs to cover indirect costs; and INDIRECT COSTS CHARGED ON  
 15 THE SAME BASIS AS OTHER LOCAL GOVERNMENT PROGRAMS NOT PAYING ADMINISTRATIVE  
 16 CHARGES AS DIRECT CHARGES. IF INDIRECT COSTS ARE WAIVED FOR ANY LOCAL GOVERNMENT  
 17 PROGRAM, THEY MUST ALSO BE WAIVED FOR THE PROGRAM ESTABLISHED IN THIS SECTION.  
 18 INDIRECT CHARGES ARE LIMITED TO THE CHARGES THAT ARE ALLOWED UNDER FEDERAL COST  
 19 ACCOUNTING PRINCIPLES THAT ARE APPLICABLE TO A LOCAL GOVERNMENT.

20 (ii) reduced if the amount of the fees or charges accumulates above the amount needed to enforce  
 21 building codes for 6 12 months. The excess must be placed in a reserve account and may only be used  
 22 for building code enforcement. Collection and expenditure of fees and charges must be fully documented.

23 (3) Each municipality or county certified under 50-60-302 may, within its jurisdictional area;

24 ~~(a)~~ (a) make, amend, and repeal rules for the administration and enforcement of the provisions of  
 25 this section and for the collection of reasonable fees, which shall be comparable to fees imposed or  
 26 prescribed by existing local building regulations and charges related to construction;

27 ~~(b)~~ (b) prohibit the commencement of construction until a permit has been issued by the local  
 28 building department after a showing of compliance with the requirements of the applicable provisions of  
 29 the state or municipal building code; and

30 (c) enter into a private contract with the owner or builder of a building that is not or will not be

1 within the jurisdiction of the municipality or county under which the municipality or county will provide  
2 reviews, inspections, orders, and certificates of occupancy for a fee and under conditions agreed upon by  
3 the parties. Municipal or county powers of enforcement may not be exercised."  
4

5 **Section 4.** Section 50-60-203, MCA, is amended to read:

6 **"50-60-203. Department to adopt state building code by rule.** (1) (a) The department shall adopt  
7 rules relating to the construction of, the installation of equipment in, and standards for materials to be used  
8 in all buildings or classes of buildings, including provisions dealing with safety, sanitation, and conservation  
9 of energy. ~~The department may amend or repeal the rules.~~ The adoption, amendment, or repeal of a rule  
10 is of significant public interest for purposes of 2-3-103.

11 (b) ~~In adopting rules~~ Rules concerning the conservation of energy, ~~the department shall~~ must  
12 conform ~~these rules~~ to the policy established in 50-60-801 and to relevant policies developed under the  
13 provisions of Title 90, chapter 4, part 10.

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

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

19 (4) The department shall adopt rules that permit the installation of below-grade liquefied petroleum  
20 gas-burning appliances in single-family dwellings."  
21

22 **Section 5.** Section 50-60-204, MCA, is amended to read:

23 **"50-60-204. Public hearing required -- effective date of certain rules.** (1) Except as provided in  
24 subsection (2), a rule, amendment, or repeal of the state building code is a matter of significant public  
25 interest for purposes of 2-3-103 and may not take effect until after a public hearing by the department.

26 (2) If a hearing with adequate public notice pursuant to 2-3-103 has been held by the department  
27 of justice with respect to the duties contained in chapter 3 of this title or by the board of plumbers, the  
28 department of public health and human services, or the state electrical board on a proposed rule relating  
29 to building and equipment standards in their respective fields, a public hearing by the department is not  
30 required. The proposed rule is effective upon approval of the department and filing with the secretary of

1 state as a part of the state building code."

2

3 **Section 6.** Section 50-60-302, MCA, is amended to read:

4 **"50-60-302. Certification of municipal and county building codes.** (1) A county or municipality  
5 may not enforce a building code unless:

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

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

10 (c) all inspectors inspecting or approving any installations, which if accomplished commercially  
11 require state licensure, must themselves be properly and currently state-licensed as journeymen in that craft  
12 or occupation OR BE CERTIFIED BY THE INTERNATIONAL COUNCIL OF BUILDING OFFICIALS A  
13 NATIONALLY RECOGNIZED ENTITY FOR TESTING AND CERTIFICATION OF INSPECTORS THAT IS  
14 APPROVED BY THE DEPARTMENT OR HAVE SUFFICIENT INSPECTION WORK EXPERIENCE TO BE  
15 CONSIDERED QUALIFIED BY AND ACCEPTABLE TO THE COUNTY OR MUNICIPALITY before being  
16 permitted to inspect or approve any installations.

17 (2) The department shall ~~set forth~~ adopt additional rules and standards governing the certification  
18 of municipal and county building code enforcement programs ~~as required in subsection (1)~~ which must  
19 include provisions for prompt revocation of certification for lack of compliance REFUSAL OR FAILURE TO  
20 COMPLY with any applicable statute or rule. THE DEPARTMENT MAY ALLOW A COUNTY OR  
21 MUNICIPALITY A REASONABLE AMOUNT OF TIME, NOT TO EXCEED 6 MONTHS, TO CORRECT  
22 IDENTIFIED CODE ENFORCEMENT PROGRAM DEFICIENCIES, UNLESS THE DEFICIENCIES CONSTITUTE  
23 AN IMMEDIATE THREAT TO THE PUBLIC HEALTH, SAFETY, OR WELFARE, IN WHICH CASE THE  
24 DEPARTMENT MAY REQUIRE IMMEDIATE CORRECTION. FAILURE TO CORRECT DEFICIENCIES WITHIN  
25 THE TIME SET BY THE DEPARTMENT CONSTITUTES A BASIS FOR IMMEDIATE DECERTIFICATION OF THE  
26 CODE ENFORCEMENT PROGRAM. CONTINUED OPERATION OF A COUNTY OR MUNICIPAL CODE  
27 ENFORCEMENT PROGRAM IN VIOLATION OF A DEPARTMENT ORDER TO CORRECT DEFICIENCIES MAY  
28 BE ENJOINED OR SUBJECT TO A WRIT OF MANDAMUS BY A JUDGE OF THE DISTRICT COURT IN THE  
29 JURISDICTION IN WHICH THE COUNTY OR MUNICIPALITY IS LOCATED. The rules and standards must  
30 include provisions for the department to ensure that all code enforcement program functions are being

1 properly performed at all times.

2 (3) In addition to maintaining the continued compliance oversight required in subsection (1), the  
 3 department shall ~~conduct~~ REQUIRE a detailed and fully documented annual ~~review~~ REPORT FROM A LOCAL  
 4 GOVERNMENT WITH A CERTIFIED CODE ENFORCEMENT PROGRAM to ensure continued local government  
 5 compliance with all requirements of applicable statutes and rules. IF REVIEW OF THE ANNUAL REPORT  
 6 IDENTIFIES COMPLIANCE PROBLEMS, THE DEPARTMENT SHALL IMMEDIATELY CONDUCT AN ONSITE  
 7 EVALUATION.

8 (4) If the certification of any local government code enforcement program is revoked for any  
 9 violation or deficiency, the state resumes its original jurisdiction for state building code enforcement within  
 10 the municipal or county area and the local government ~~may not be permitted to continue to exercise any~~  
 11 ~~building code enforcement authority over~~ RETAINS THE RESPONSIBILITY FOR COMPLETION OF  
 12 INSPECTIONS AND ISSUANCE OF CERTIFICATES OF OCCUPANCY ON ANY incomplete construction  
 13 projects PREVIOUSLY PERMITTED BY THE LOCAL GOVERNMENT, UNLESS THE REASON FOR THE  
 14 DECERTIFICATION IS DIRECTLY RELATED TO THE PROTECTION OF HEALTH, SAFETY, AND WELFARE  
 15 OF THE PUBLIC.

16 (5) IF A LOCAL GOVERNMENT VOLUNTARILY DECERTIFIES ITS CODE ENFORCEMENT  
 17 PROGRAM, THE DEPARTMENT MUST BE GIVEN WRITTEN NOTIFICATION OF THE INTENDED  
 18 DECERTIFICATION AT LEAST 90 DAYS PRIOR TO THE DATE OF DECERTIFICATION. THE LOCAL  
 19 GOVERNMENT RETAINS THE RESPONSIBILITY FOR COMPLETION OF INSPECTIONS AND ISSUANCE OF  
 20 CERTIFICATES OF OCCUPANCY ON ANY INCOMPLETE CONSTRUCTION PROJECTS PERMITTED BY THE  
 21 LOCAL GOVERNMENT PRIOR TO DECERTIFYING ITS CODE ENFORCEMENT PROGRAM."

22  
 23 NEW SECTION. SECTION 7. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE JULY 1, 1997 1998.

24  
 25 NEW SECTION. SECTION 7. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE JULY 1, 1998.

26 -END-



## FREE CONFERENCE COMMITTEE

on House Bill 388

Report No. 1, April 16, 1997

Page 1 of 2

Mr. Speaker and Mr. President:

We, your Free Conference Committee met and considered **House Bill 388** (reference copy -- salmon) and recommend that **House Bill 388** be amended as follows:

1. Page 3, following line 2.

Insert: "(d) The initial written consent by a county to an extended municipal jurisdiction area must disclose the scope of the building codes to be enforced, the type of structures to be subject to the building codes, and the schedule of fees to be charged for permits. If after the county's initial written consent, the municipality wishes to change either the scope of the building codes enforced or the type of structures covered, the changes must first be approved in writing by the county. Unapproved changes result in the rescission of the county approval of the extended municipal jurisdiction area."

2. Page 4, line 4.

Strike: "or"

3. Page 4, line 5.

Following: "(c)"

Strike: "industrial process"

Insert: "petroleum refineries and pulp and paper mills, except a structure classified under chapter 7, section 701, group B, division 2, and chapter 9, section 901, group H, outside of process units, of the 1991 edition of the Uniform Building Code; or"

4. Page 4, line 14.

Following: "beverages"

Insert: "(d) industrial process"

5. Page 6, line 15.

Strike: "PROGRAMS"

Insert: "proprietary funds"

ADOPT

REJECT

FCCR#1  
HB 388

AC HB 388-1

811143CC.Hgd




6. Page 6, line 17.  
Strike: the first "PROGRAM"  
Insert: "proprietary fund"

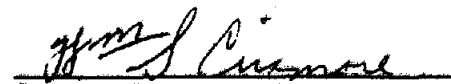
7. Page 8, lines 14 and 15.  
Strike: "OR" on line 14 through "MUNICIPALITY" ON LINE 15

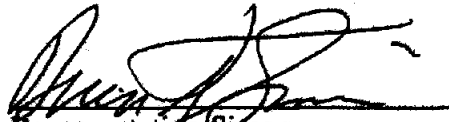
And this FREE Conference Committee report be adopted.

For the House:


For the Senate:

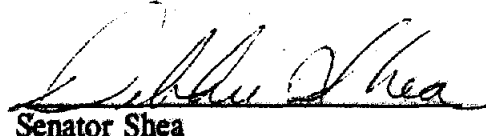
  
\_\_\_\_\_  
Representative Hanson, Chair

  
\_\_\_\_\_  
Senator Crismore, Chair

  
\_\_\_\_\_  
Representative Simon

  
\_\_\_\_\_  
Senator Emerson

  
\_\_\_\_\_  
Representative Wyatt

  
\_\_\_\_\_  
Senator Shea

## 1 HOUSE BILL NO. 388

2 INTRODUCED BY SIMON, BENEDICT, HARP, WELLS, PROUSE, GRINDE, THOMAS, MOLNAR, BAER,  
 3 MCGEE, KEENAN, SPRAGUE, TUSS, DENNY, SLITER, JABS, MARSHALL, STOVALL, MILLS,  
 4 MCCULLOCH, COCCHIARELLA, HERTEL, EMERSON

5  
 6 A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING AND REVISING BUILDING CODE LAW TERMS;  
 7 EXPANDING THE TYPES OF BUILDINGS EXEMPT FROM BUILDING CODES; EXPANDING THE DUTIES OF  
 8 MUNICIPALITIES AND COUNTIES; PROVIDING THAT RULE CHANGES ARE OF SIGNIFICANT INTEREST  
 9 TO THE PUBLIC; CHANGING PROVISIONS RELATING TO CERTIFICATION OF BUILDING CODES BY THE  
 10 DEPARTMENT OF COMMERCE; ~~AND AND~~ AMENDING SECTIONS 50-60-101, 50-60-102, 50-60-106,  
 11 50-60-203, 50-60-204, AND 50-60-302, MCA; ~~AND PROVIDING AN A DELAYED EFFECTIVE DATE; AND~~  
 12 PROVIDING A DELAYED EFFECTIVE DATE."

13  
 14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15  
 16 **Section 1.** Section 50-60-101, MCA, is amended to read:

17 **"50-60-101. Definitions.** As used in parts 1 through 4 and part 7 of this chapter, unless the  
 18 context requires otherwise, the following definitions apply:

19 (1) "Building" means a combination of any materials, whether mobile, portable, or fixed, to form  
 20 a structure and the related facilities for the use or occupancy by persons or property. The word "building"  
 21 ~~shall~~ must be construed as though followed by the words "or part or parts thereof".

22 (2) (a) "Building regulations" means any law, rule, resolution, regulation, ordinance, or code,  
 23 general or special, or compilation thereof enacted or adopted by the state or any municipality, including  
 24 departments, boards, bureaus, commissions, or other agencies of the state or a municipality relating to the  
 25 design, construction, reconstruction, alteration, conversion, repair, inspection, or use of buildings and  
 26 installation of equipment in buildings.

27 (b) The term does not include zoning ordinances.

28 (3) "Code enforcement program" means the plan for enforcement of the building regulations  
 29 adopted by a municipality or county and includes the local building department and the staff associated  
 30 with executing any aspect of the program's purposes or functions.

1           ~~(3)~~(4) "Construction" means the original construction and equipment of buildings and requirements  
2 or standards relating to or affecting materials used, including provisions for safety and sanitary conditions.

3           ~~(4)~~(5) "Department" means the department of commerce provided for in Title 2, chapter 15, part  
4 18.

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

7           ~~(6)~~(7) (a) "Factory-built building" means a factory-assembled structure or structures equipped with  
8 the necessary service connections but not made so as to be readily movable as a unit or units and designed  
9 to be used with a permanent foundation.

10           (b) "Factory-built building" does not include manufactured housing constructed after June 15,  
11 1976, under the HUD, National Mobile Home Construction and Safety Act of 1974.

12           ~~(7)~~(8) "Local building department" means the agency or agencies of any municipality charged with  
13 the administration, supervision, or enforcement of building regulations, approval of plans, inspection of  
14 buildings, or the issuance of permits, licenses, certificates, and similar documents prescribed or required  
15 by state or local building regulations.

16           ~~(8)~~(9) "Local legislative body" means the council or commission charged with governing the  
17 municipality.

18           ~~(9)~~(10) "Municipality" means any incorporated city or town and its jurisdictional area as defined  
19 ~~by subsection (10) of~~ in this section.

20           ~~(10)~~(11) ~~(a)~~(A) "Municipal jurisdictional area" means the area within the limits of an incorporated  
21 municipality ~~unless the area is extended at the written request of a municipality~~ UNLESS THE AREA IS  
22 EXTENDED AT THE WRITTEN REQUEST OF A MUNICIPALITY.

23           (B) UPON REQUEST OF A MUNICIPALITY WITH THE WRITTEN CONSENT OF THE COUNTY IN  
24 WHICH THE MUNICIPALITY IS LOCATED, THE DEPARTMENT MAY APPROVE EXTENSION OF THE  
25 JURISDICTIONAL AREA TO INCLUDE:

26           (I) ALL OR PART OF THE AREA WITHIN 4 1/2 MILES OF THE CORPORATE LIMITS OF A  
27 MUNICIPALITY;

28           (II) ALL OF ANY PLATTED SUBDIVISION THAT IS PARTIALLY WITHIN 4 1/2 MILES OF THE  
29 CORPORATE LIMITS OF A MUNICIPALITY; AND

30           (III) ALL OF ANY ZONING DISTRICT ADOPTED PURSUANT TO TITLE 76, CHAPTER 2, PART 1 OR

1 2, THAT IS PARTIALLY WITHIN 4 1/2 MILES OF THE CORPORATE LIMITS OF A MUNICIPALITY.

2 (C) DISTANCES MUST BE MEASURED IN A STRAIGHT LINE ON A HORIZONTAL PLANE.

3 (D) THE INITIAL WRITTEN CONSENT BY A COUNTY TO AN EXTENDED MUNICIPAL  
 4 JURISDICTION AREA MUST DISCLOSE THE SCOPE OF THE BUILDING CODES TO BE ENFORCED, THE  
 5 TYPE OF STRUCTURES TO BE SUBJECT TO THE BUILDING CODES, AND THE SCHEDULE OF FEES TO  
 6 BE CHARGED FOR PERMITS. IF AFTER THE COUNTY'S INITIAL WRITTEN CONSENT, THE MUNICIPALITY  
 7 WISHES TO CHANGE EITHER THE SCOPE OF THE BUILDING CODES ENFORCED OR THE TYPE OF  
 8 STRUCTURES COVERED, THE CHANGES MUST FIRST BE APPROVED IN WRITING BY THE COUNTY.  
 9 UNAPPROVED CHANGES RESULT IN THE RESCISSION OF THE COUNTY APPROVAL OF THE EXTENDED  
 10 MUNICIPAL JURISDICTION AREA.

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

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

13 ~~(ii) all of any platted subdivision which is partially within 4 1/2 miles of the corporate limits of a~~  
 14 ~~municipality; and~~

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

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

18 ~~(11)(12)~~ "Owner" means the owner or owners of the premises or lesser estate, a mortgagee or  
 19 vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or  
 20 corporation in control of a building.

21 ~~(12)(13)~~ "Recreational vehicle" means a vehicular type unit primarily designed as temporary living  
 22 quarters for recreational, camping, or travel use, which either has its own mode of power or is mounted  
 23 on or towed by another vehicle, including but not limited to a:

24 (a) travel trailer;

25 (b) camping trailer;

26 (c) truck camper; or

27 (d) motor home.

28 ~~(13)(14)~~ "State agency" means any state officer, department, board, bureau, commission, or other  
 29 agency of this state.

30 ~~(14)(15)~~ "State building code" means the state building code provided for in 50-60-203 or any

1 portion of the code of limited application and any of its modifications or amendments."

2

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

4 **"50-60-102. Applicability.** (1) Except as provided in subsection (5), state building codes do not  
5 apply to:

6 (a) residential buildings containing less than five dwelling units or their attached-to structures, any  
7 farm or ranch building of any size, and any private garage or private storage structure of any size used only  
8 for the owner's own use, located within the municipality's or county's jurisdictional area, unless the local  
9 legislative body or board of county commissioners by ordinance or resolution makes the state building code  
10 applicable to these structures;

11 (b) mines and buildings on mine property regulated under Title 82, chapter 4, and subject to  
12 inspection under the Federal Mine Safety and Health Act; ~~or~~

13 (c) ~~petroleum refineries, industrial process~~ PETROLEUM REFINERIES AND PULP AND PAPER MILLS,  
14 EXCEPT A STRUCTURE CLASSIFIED UNDER CHAPTER 7, SECTION 701, GROUP B, DIVISION 2, AND  
15 CHAPTER 9, SECTION 901, GROUP H, OUTSIDE OF PROCESS UNITS, OF THE 1991 EDITION OF THE  
16 UNIFORM BUILDING CODE; OR facilities, the primary economic activity of which occurs at petroleum  
17 refineries, sugar beet refineries, primary metal smelters and refineries, gas and other fuels processing  
18 facilities, pulp and paper mills, cement plants, lime and mineral products plants, sulfur plants, chemical  
19 plants, power plants, ELECTRICAL SUPPLY STATIONS SUBJECT TO THE NATIONAL ELECTRICAL SAFETY  
20 CODE, or fertilizer manufacturing plants, except;

21 ~~(i) a structure classified under chapter 7, section 701, group B, division 2, and chapter 9, section~~  
22 ~~901, group H, outside of process units, of the 1991 edition of the Uniform Building Code; or~~

23 ~~(ii) a structure located outside of processing units and used for office, professional, or service-type~~  
24 ~~transactions, including storage of records and accounts and a structure used for consumption of food and~~  
25 ~~beverages~~

26 (D) INDUSTRIAL PROCESS PIPING, VESSELS, AND EQUIPMENT AND PROCESS-RELATED  
27 STRUCTURES LOCATED OUTSIDE OF ANOTHER STRUCTURE OCCUPIED ON A REGULAR BASIS BY  
28 EMPLOYEES OR THE PUBLIC.

29 (2) Except as provided in subsection (5), the state may not enforce the state building code under  
30 50-60-205 for the buildings referred to in subsection (1). Local governments that have made the state

1 building codes applicable to the buildings referred to in subsection (1) may enforce within their jurisdictional  
2 areas the state building code as adopted by the respective local government.

3 (3) When good and sufficient cause exists, a written request for limitation of the state building  
4 code may be filed with the department for filing as a permanent record.

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

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

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

12 (5) (a) For purposes of promoting the energy efficiency of home design and operation, the  
13 provisions of the state building code relating to energy conservation adopted pursuant to 50-60-203(1)  
14 apply to residential buildings, except:

15 (i) farm and ranch buildings; and

16 (ii) any private garage or private storage structure attached to a residential building and used only  
17 for the owner's own use.

18 (b) The provisions of the state building code relating to energy conservation in residential buildings  
19 are enforceable:

20 (i) by the department only for those residential buildings containing five or more dwelling units or  
21 otherwise subject to the state building code; and

22 (ii) through the builder self-certification program provided for in 50-60-802 for those residential  
23 buildings containing less than five dwelling units and not otherwise subject to the state building code."  
24

25 **Section 3.** Section 50-60-106, MCA, is amended to read:

26 **"50-60-106. Powers and duties of municipalities.** (1) The examination, approval, or disapproval  
27 of plans and specifications, the issuance and revocation of building permits, licenses, certificates, and  
28 similar documents, the inspection of buildings, and the administration and enforcement of building  
29 regulations within the municipal jurisdictional area ~~shall be~~ are the responsibility of the municipalities of the  
30 state.

1 (2) Each municipality ~~may~~ or county certified under 50-60-302 shall, within its jurisdictional area:

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

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

9 (c) during and in the course of construction order in writing the remedying of any condition found  
10 to exist in, on, or about any building that is being constructed in violation of the applicable state or  
11 municipal building code. Orders may be served upon the owner or his authorized agent personally or by  
12 sending by registered or certified mail a copy of the order to the owner or his authorized agent at the  
13 address set forth in the application for permission for the construction of the building. ~~Any~~ A local building  
14 department, by action of an authorized officer, may grant in writing such time as may be reasonably  
15 necessary for achieving compliance with the order. FOR THE PURPOSES OF THIS SUBSECTION (2)(C), THE  
16 PHRASE "DURING AND IN THE COURSE OF CONSTRUCTION" REFERS TO THE CONSTRUCTION OF A  
17 BUILDING UNTIL ALL NECESSARY BUILDING PERMITS HAVE BEEN OBTAINED AND THE MUNICIPALITY  
18 OR COUNTY HAS ISSUED FORMAL WRITTEN APPROVALS OR HAS ISSUED A CERTIFICATE OF  
19 OCCUPANCY FOR THE BUILDING.

20 (d) issue certificates of occupancy, as provided in 50-60-107;

21 (e) issue permits, licenses, and ~~such~~ other required documents in connection with the construction  
22 of ~~the buildings as required~~ a building;

23 (f) ensure that all construction-related fees or charges imposed and collected by the municipality  
24 or county are necessary, reasonable, and uniform and are:

25 (i) used only for building code enforcement, which consists of those necessary and reasonable  
26 costs directly and specifically identifiable for the enforcement of building codes, plus a maximum of an  
27 additional 10% of the identified direct costs to cover indirect costs; and INDIRECT COSTS CHARGED ON  
28 THE SAME BASIS AS OTHER LOCAL GOVERNMENT PROGRAMS PROPRIETARY FUNDS NOT PAYING  
29 ADMINISTRATIVE CHARGES AS DIRECT CHARGES. IF INDIRECT COSTS ARE WAIVED FOR ANY LOCAL  
30 GOVERNMENT PROGRAM PROPRIETARY FUND, THEY MUST ALSO BE WAIVED FOR THE PROGRAM

1 ESTABLISHED IN THIS SECTION. INDIRECT CHARGES ARE LIMITED TO THE CHARGES THAT ARE  
 2 ALLOWED UNDER FEDERAL COST ACCOUNTING PRINCIPLES THAT ARE APPLICABLE TO A LOCAL  
 3 GOVERNMENT.

4 (ii) reduced if the amount of the fees or charges accumulates above the amount needed to enforce  
 5 building codes for 6 12 months. The excess must be placed in a reserve account and may only be used  
 6 for building code enforcement. Collection and expenditure of fees and charges must be fully documented.

7 (3) Each municipality or county certified under 50-60-302 may, within its jurisdictional area:

8 ~~(a)~~ (a) make, amend, and repeal rules for the administration and enforcement of the provisions of  
 9 this section and for the collection of reasonable fees, which shall be comparable to fees imposed or  
 10 prescribed by existing local building regulations and charges related to construction;

11 ~~(b)~~ (b) prohibit the commencement of construction until a permit has been issued by the local  
 12 building department after a showing of compliance with the requirements of the applicable provisions of  
 13 the state or municipal building code; and

14 (c) enter into a private contract with the owner or builder of a building that is not or will not be  
 15 within the jurisdiction of the municipality or county under which the municipality or county will provide  
 16 reviews, inspections, orders, and certificates of occupancy for a fee and under conditions agreed upon by  
 17 the parties. Municipal or county powers of enforcement may not be exercised."

18

19 **Section 4.** Section 50-60-203, MCA, is amended to read:

20 **"50-60-203. Department to adopt state building code by rule.** (1) (a) The department shall adopt  
 21 rules relating to the construction of, the installation of equipment in, and standards for materials to be used  
 22 in all buildings or classes of buildings, including provisions dealing with safety, sanitation, and conservation  
 23 of energy. ~~The department may amend or repeal the rules.~~ The adoption, amendment, or repeal of a rule  
 24 is of significant public interest for purposes of 2-3-103.

25 (b) ~~In adopting rules~~ Rules concerning the conservation of energy, ~~the department shall~~ must  
 26 conform ~~these rules~~ to the policy established in 50-60-801 and to relevant policies developed under the  
 27 provisions of Title 90, chapter 4, part 10.

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



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

3 (4) The department shall adopt rules that permit the installation of below-grade liquefied petroleum  
4 gas-burning appliances in single-family dwellings."  
5

6 **Section 5.** Section 50-60-204, MCA, is amended to read:

7 **"50-60-204. Public hearing required -- effective date of certain rules.** (1) Except as provided in  
8 subsection (2), a rule, amendment, or repeal of the state building code is a matter of significant public  
9 interest for purposes of 2-3-103 and may not take effect until after a public hearing by the department.

10 (2) If a hearing with adequate public notice pursuant to 2-3-103 has been held by the department  
11 of justice with respect to the duties contained in chapter 3 of this title or by the board of plumbers, the  
12 department of public health and human services, or the state electrical board on a proposed rule relating  
13 to building and equipment standards in their respective fields, a public hearing by the department is not  
14 required. The proposed rule is effective upon approval of the department and filing with the secretary of  
15 state as a part of the state building code."  
16

17 **Section 6.** Section 50-60-302, MCA, is amended to read:

18 **"50-60-302. Certification of municipal and county building codes.** (1) A county or municipality  
19 may not enforce a building code unless;

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

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

24 (c) all inspectors inspecting or approving any installations, which if accomplished commercially  
25 require state licensure, must themselves be properly and currently state-licensed as journeymen in that craft  
26 or occupation OR BE CERTIFIED BY THE INTERNATIONAL COUNCIL OF BUILDING OFFICIALS A  
27 NATIONALLY RECOGNIZED ENTITY FOR TESTING AND CERTIFICATION OF INSPECTORS THAT IS  
28 APPROVED BY THE DEPARTMENT OR HAVE SUFFICIENT INSPECTION WORK EXPERIENCE TO BE  
29 CONSIDERED QUALIFIED BY AND ACCEPTABLE TO THE COUNTY OR MUNICIPALITY before being  
30 permitted to inspect or approve any installations.

1           (2) The department shall ~~set forth~~ adopt additional rules and standards governing the certification  
2 of municipal and county building code enforcement programs ~~as required in subsection (1)~~ which must  
3 include provisions for prompt revocation of certification for lack of compliance REFUSAL OR FAILURE TO  
4 COMPLY with any applicable statute or rule. THE DEPARTMENT MAY ALLOW A COUNTY OR  
5 MUNICIPALITY A REASONABLE AMOUNT OF TIME, NOT TO EXCEED 6 MONTHS, TO CORRECT  
6 IDENTIFIED CODE ENFORCEMENT PROGRAM DEFICIENCIES, UNLESS THE DEFICIENCIES CONSTITUTE  
7 AN IMMEDIATE THREAT TO THE PUBLIC HEALTH, SAFETY, OR WELFARE, IN WHICH CASE THE  
8 DEPARTMENT MAY REQUIRE IMMEDIATE CORRECTION. FAILURE TO CORRECT DEFICIENCIES WITHIN  
9 THE TIME SET BY THE DEPARTMENT CONSTITUTES A BASIS FOR IMMEDIATE DECERTIFICATION OF THE  
10 CODE ENFORCEMENT PROGRAM. CONTINUED OPERATION OF A COUNTY OR MUNICIPAL CODE  
11 ENFORCEMENT PROGRAM IN VIOLATION OF A DEPARTMENT ORDER TO CORRECT DEFICIENCIES MAY  
12 BE ENJOINED OR SUBJECT TO A WRIT OF MANDAMUS BY A JUDGE OF THE DISTRICT COURT IN THE  
13 JURISDICTION IN WHICH THE COUNTY OR MUNICIPALITY IS LOCATED. The rules and standards must  
14 include provisions for the department to ensure that all code enforcement program functions are being  
15 properly performed at all times.

16           (3) In addition to maintaining the continued compliance oversight required in subsection (1), the  
17 department shall ~~conduct~~ REQUIRE a detailed and fully documented annual ~~review~~ REPORT FROM A LOCAL  
18 GOVERNMENT WITH A CERTIFIED CODE ENFORCEMENT PROGRAM to ensure continued local government  
19 compliance with all requirements of applicable statutes and rules. IF REVIEW OF THE ANNUAL REPORT  
20 IDENTIFIES COMPLIANCE PROBLEMS, THE DEPARTMENT SHALL IMMEDIATELY CONDUCT AN ONSITE  
21 EVALUATION.

22           (4) If the certification of any local government code enforcement program is revoked for any  
23 violation or deficiency, the state resumes its original jurisdiction for state building code enforcement within  
24 the municipal or county area and the local government ~~may not be permitted to continue to exercise any~~  
25 building code enforcement authority over RETAINS THE RESPONSIBILITY FOR COMPLETION OF  
26 INSPECTIONS AND ISSUANCE OF CERTIFICATES OF OCCUPANCY ON ANY incomplete construction  
27 projects PREVIOUSLY PERMITTED BY THE LOCAL GOVERNMENT, UNLESS THE REASON FOR THE  
28 DECERTIFICATION IS DIRECTLY RELATED TO THE PROTECTION OF HEALTH, SAFETY, AND WELFARE  
29 OF THE PUBLIC.

30           (5) IF A LOCAL GOVERNMENT VOLUNTARILY DECERTIFIES ITS CODE ENFORCEMENT

1 PROGRAM, THE DEPARTMENT MUST BE GIVEN WRITTEN NOTIFICATION OF THE INTENDED  
2 DECERTIFICATION AT LEAST 90 DAYS PRIOR TO THE DATE OF DECERTIFICATION. THE LOCAL  
3 GOVERNMENT RETAINS THE RESPONSIBILITY FOR COMPLETION OF INSPECTIONS AND ISSUANCE OF  
4 CERTIFICATES OF OCCUPANCY ON ANY INCOMPLETE CONSTRUCTION PROJECTS PERMITTED BY THE  
5 LOCAL GOVERNMENT PRIOR TO DECERTIFYING ITS CODE ENFORCEMENT PROGRAM."

6  
7 NEW SECTION. SECTION 7. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE JULY 1, 1997 1998.

8  
9 NEW SECTION. SECTION 7. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE JULY 1, 1998.

10 -END-