



Legislative Audit Division

State of Montana

Report to the Legislature

November 2000

Limited Scope Performance Audit

Audit Follow-up and Review: Enforcement of State Building Codes

Department of Commerce

This report focuses on:

- < The Department of Commerce's successful implementation of prior performance audit recommendations.
- < Current questions posed by the Legislative Audit Committee.
- < Recent changes in the enforcement of state building codes.

Direct comments/inquiries to:
Legislative Audit Division
Room 160, State Capitol
PO Box 201705
Helena MT 59620-1705

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Members of the performance audit staff hold degrees in disciplines appropriate to the audit process. Areas of expertise include business and public administration, statistics, economics, accounting, logistics, computer science, and engineering.

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Scott A. Seecat, Legislative Auditor
John W. Northey, Legal Counsel
Tori Hunthausen, IT & Operations Manager



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James Gillett, Financial-Compliance Audit

November 2000

The Legislative Audit Committee
of the Montana State Legislature:

The Department of Commerce and local governments share responsibility for enforcement of state building codes. We examined this cooperative effort of administering and enforcing state building codes in Montana and issued our findings in January 1998. This report presents information from the prior performance audit and examines implementation status of prior audit recommendations. At the request of the committee, we also conducted a limited scope performance audit of several current aspects of local government activities associated with enforcing state building codes. The report presents information relative to that request and discusses changes to code enforcement which occurred over the past three-year period.

We appreciate the efforts of the Department of Commerce to successfully implement the prior audit recommendations. We would also like to thank local governments for their cooperation and assistance during the audit.

Respectfully submitted,

(Signature on File)

Scott A. Seecat
Legislative Auditor

Legislative Audit Division

Limited Scope Performance Audit

Audit Follow-up and Review: Enforcement of State Building Codes

Department of Commerce

Members of the audit staff involved in this audit were Lisa Blanford and Jim Nelson.

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Appointed and Administrative Officials

Department of Commerce

Peter S. Blouke, Ph.D., Director

Andy Poole, Deputy Director

James F. Brown, P.E., Administrator, Building Codes Division

Introduction

The Legislative Audit Committee requested a limited scope performance audit of several aspects of local government activities associated with enforcing state building codes including: inspector qualifications, liability issues, general operations, inspection consistency and effectiveness, community perceptions, and finances. These questions are closely tied to our past performance audit of Administration and Enforcement of State Building Codes in Montana which was issued in January 1998. While prior performance audit recommendations were directed toward the Department of Commerce, recommendations also impacted local government code enforcement programs. We addressed current Legislative Audit Committee questions in conjunction with follow-up audit work on our 1998 audit.

Prior Audit Issues

The Department of Commerce fully implemented all 11 prior audit recommendations. Recommendations included revisiting the nature of code enforcement statewide through an independent review of statutory exemptions granted for certain construction and equipment installation situations. The review was conducted by a five-person Building Codes Exemption Task Force. Information from this review will be presented for future legislative consideration.

Five recommendations specifically aimed at improving city and county code enforcement programs by: ensuring all entities enforce the same codes, improving qualifications of building inspectors, working toward achieving more uniform interpretation of code requirements, and ensuring compliance with financial and general program-related statutory requirements. The department assumed a stronger oversight role, as directed by the Legislature, and implemented audit recommendations for improving local-level code enforcement.

Other audit recommendations relate to daily operations of the department. The department implemented both recommendations addressing department coordination with other state agencies. The department also implemented recommendations related to training, policy development, and intra department communication.

Report Summary

Current Audit Issues

There were several statutory changes enacted during the prior two legislative sessions. A key change mandated the Department of Commerce assume a stronger oversight role over local government building code enforcement programs. Legislative restrictions were also placed on city and county building department finances and stipulate: building permit revenues only be used to fund code enforcement, a separate accounting of program revenues and expenditures, a limit to the amount of surplus revenue which can accumulate, and requiring fees be reduced if excess revenue accumulates. Other changes established minimum staff qualifications. Some local government officials have expressed frustration with the various statutory requirements placed on local code enforcement programs and may seek legislation to exempt some cities from these requirements.

Statutory changes impacted both local and state programs. Since January 1998, 11 cities reverted their inspection functions back to the department and 43 cities and counties continue to enforce codes. While the cities which de-certified had minimal building activity, residential construction is no longer inspected in these communities as it is exempt from state jurisdiction. The state assumed jurisdiction for commercial construction and equipment installation in de-certified cities.

Legislative Audit Committee questions are specifically addressed in the report. In general, we found:

- < Inspector qualifications have improved.
- < Liability issues are part of doing business.
- < Local inspections are occurring.
- < Changes have improved consistency of code interpretation.
- < Perceptions of building owners, contractors, and city officials are generally positive.
- < Changes positively impacted inspection effectiveness while controls limit revenue generation.

Chapter I - Introduction

Introduction

The Legislative Audit Committee requested a limited scope performance audit of several aspects of local government activities associated with enforcing state building codes. Those aspects relate to the following questions:

1. Are city and county building code inspectors qualified? If so, by what standards?
2. Do local governments acquire liability when they approve construction and are they liable for failure of approved construction?
3. Do local inspectors, regardless of qualifications or training, really inspect construction?
4. Are inspections consistent throughout a city, county, between cities, or across the state?
5. What are the perceptions of building owners, contractors, and city officials about city and county conducted inspections?
6. Are inspections effective or are they just a source of revenue for local government?

These questions are closely tied to our past performance audit of Administration and Enforcement of State Building Codes in Montana (97P-01) issued in January 1998. During the prior performance audit, we examined the roles, responsibilities, and operations of both the Department of Commerce, Building Codes Division, and local government code enforcement programs. While prior performance audit recommendations were directed towards the Department of Commerce, recommendations also impacted local government code enforcement programs. The Department of Commerce was granted statutory oversight authority over local code enforcement programs beginning in July 1998.

The previous audit resulted in recommendations specifically aimed at improving city and county code enforcement programs by:

- < Ensuring city and county programs adopt and enforce the correct state building codes;

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- < Improving qualifications of local building officials, plan reviewers, and inspectors through a training program;
- < Working toward achieving more uniform interpretation of codes statewide;
- < Examining city and county building code program finances to ensure compliance with related statutory provisions; and
- < Conducting thorough recertification of local government building code programs.

Since follow-up audit work was scheduled to determine implementation status of recommendations made in the Administration and Enforcement of State Building Codes in Montana (97P-01) performance audit, we addressed current Legislative Audit Committee questions as part of the follow-up. This report presents information from the prior performance audit, examines implementation status of prior audit recommendations, and discusses changes to code enforcement which occurred over the past three-year period.

Audit Objectives

This limited scope performance audit focused on the following objectives:

1. Determine if the Department of Commerce, Building Codes Division, implemented the recommendations made in the performance audit of Administration and Enforcement of State Building Codes in Montana (97P-01).
2. Answer Legislative Audit Committee questions related to local government building code enforcement programs.
3. Identify recent changes which occurred in the administration and enforcement of state building codes.

Audit Scope and Methodology

Field work was performed during July and August 2000.

Audit Implementation Status

We reviewed Building Code Division activities to ascertain the status of implementing prior performance audit recommendations. We interviewed department officials and staff, reviewed policy and files related to local government oversight and certification, and reviewed other documentation and correspondence related to program operations.

Municipal and County Code Enforcement Activities

We traveled to 12 of the 43 cities and counties which elected to enforce building codes locally. We discussed program operations with city and county government management and building code department officials. We accompanied municipal building inspectors during visits to local construction sites. We reviewed permit applications, permits, inspection forms, correspondence, violation notices, and reports. We gathered information pertaining to the operation of municipal building enforcement programs including numbers and types of permits issued, building program finances, staffing levels and inspector qualifications. We also visited construction sites when not in the company of municipal building inspectors. While on-site, we looked for municipal construction permits and looked for evidence of inspector site visits.

We gathered input from representatives of the various construction trades affected by local government building code enforcement programs. While at construction sites, we discussed local inspection programs with contractors and building owners to obtain their input and suggestions regarding enforcement of state building codes.

System Operational Changes

We discussed program operations with local government and state officials to identify significant changes which occurred to Montana's code enforcement program. We examined legislative changes enacted as a result of the 1997 and 1999 Legislative Sessions. We also reviewed statutes and administrative rules which impacted both local and state operations. We reviewed documentation and policy

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to gain an understanding of the changes and impacts to local and state code enforcement programs.

Overview: Administering and Enforcing State Building Codes

Montana adopted statewide building construction standards in 1969. Statewide building construction standards are a collection of uniform standards and requirements for construction of buildings and installation of equipment and materials used in buildings. They are based on what are generally accepted as good standards of construction. These uniform standards are developed by nationally recognized organizations and are intended to provide basic minimum provisions considered necessary for protection of property, and for the health, safety, and welfare of the public. Groups of individual codes are commonly referred to as “state building codes”. There are currently 12 nationally developed uniform and model codes which have been incorporated by reference and constitute state building codes in Montana.

Adopting State Building Codes

State law designates the Department of Commerce as the sole agency to promulgate building regulations. This provision is designed to ensure a uniform set of standards exists which applies to construction statewide. As a general rule, the department adopts national model codes and has statutory authority to amend those codes.

Enforcing State Building Codes

In Montana, building codes are enforced by both state and local governments. The Department of Commerce has general responsibility for enforcing building codes and has jurisdiction over most construction in the state. Local governments, either city or county, can elect to enforce codes within their jurisdiction. A local government may adopt all or part of state building codes and enforce those sections it chose to adopt. Responsibility for enforcing any part of state building codes not adopted by the local government remains with the department. For example, a city could adopt and enforce the Uniform Plumbing Code yet leave enforcement of building, mechanical, and electrical codes within the city limits to the department. There is no difference between the building codes administered by the department and the codes administered by local governments.

In order for a local government to enforce state building codes, statutes require its program to first be certified by the Department of Commerce. Certification requirements include submitting an enforcement plan to the department, filing current adopted codes and a list of fees imposed, meeting minimum qualifications for inspection staff, adhering to financial reporting requirements, and preparation of an annual operations report. Once certified, municipal and county programs must continue to comply with applicable statutes and department certification rules in order to maintain certification. The department developed a program to monitor local compliance with certification requirements.

The department and local governments use essentially the same methods to monitor compliance with state building codes. Officials rely on issuing permits, reviewing construction plans, and conducting inspections. Both the department and local governments assess fees to cover the costs of monitoring compliance with model codes.

For additional information regarding Montana's building code enforcement program refer to the prior audit report: Administration and Enforcement of State Building Codes in Montana (97P-01).

Report Organization

Chapter II contains a discussion of the prior performance audit recommendations and presents information regarding implementation statutes. It contains information regarding the direction both state and local operations were mandated to take by the 1997 Legislature and presents information on the statewide code enforcement program as it was in 1998. Chapter III contains information regarding significant program changes to both state and local government code enforcement programs which resulted from legislation enacted during the 1997 and 1999 Legislative Sessions. It also answers current questions posed by the Legislative Audit Committee.

Chapter II - Prior Audit Issues

Introduction

In January 1998, we issued our performance audit on the Administration and Enforcement of State Building Codes in Montana (97P-01). The report contained 11 audit recommendations to the Department of Commerce. These recommendations were directed toward reexamining the statutory umbrella of state building codes, improving local government code enforcement programs, addressing interagency coordination and communication, and enhancing department operations. We requested and received information from the department on its progress in implementing the recommendations in February 1999. At that time the majority of recommendations had been implemented by the department. The department continued its efforts to implement the remaining audit recommendations. In July 2000, we conducted audit work to examine implementation status. The results of our follow-up work indicate all 11 prior audit recommendations have been fully implemented by the department.

Montana's Building Code Enforcement Program

During the prior audit, we examined the structure of Montana's building code enforcement program. We determined there was strong justification for establishing minimum levels of building standards and a system of reviewing adherence to these standards. Evidence showed the adoption and enforcement of uniform codes provides a benefit to the citizens of the state. We also determined Montana's current system of combined state and local-level regulation is a reasonable approach. It can provide an effective and efficient means of enforcing state building codes.

Our review showed statutes inconsistent regarding what buildings and equipment installations must meet minimum standards and also what situations require a permit and inspection to ensure compliance with codes. In Montana, the Legislature exempted entire classes of buildings from meeting minimum building and mechanical code requirements. In addition, some plumbing and electrical installations are exempt from complying with plumbing or electrical codes. Because of the many statutory changes over the years and the many parties with an interest in the state building code and enforcement program, changes were made to the system in a piecemeal manner without comprehensive evaluation. Because the

Chapter II - Prior Audit Issues

department is generally responsible for administering state building codes, we issued the following recommendation:

Examine Statutory Exemptions

Prior Recommendation #1

The Department of Commerce work with various local governments, building contractors, construction trade groups, insurance industry representatives, and fire officials to determine whether changes need to be made to laws or rules covering current exemptions to the state building, electrical, mechanical, and plumbing codes.

Recommendation Implemented

In response to this recommendation, the department created a five-person Building Codes Exemptions Task Force to examine the issue of statutory exemptions to state building codes. They held public meetings around the state during 1999 to gather input. The meetings were publicized and the task force also accepted written comments. After consideration of information gathered during this project, the task force issued a report of their determinations and findings in April 2000. The task force issued 12 recommendations which include repealing some exemptions and maintaining others. The Building Codes Council (created by 1999 legislation) subsequently reviewed the task force's findings and recommendations and expressed an interest in pursuing some of the task force recommendations. The council plans on seeking legislative changes during the upcoming 2001 Legislative Session.

Improving Local Building Code Enforcement Programs

Statute requires a city or county to be certified by the department before it can enforce codes locally. In order to be certified, a county or municipality must comply with statutes and rules which include: providing the department with a plan for enforcement, list of fees, and adopting the current code. Inspection staff must be either professionally licensed as journeymen or certified by a nationally recognized entity for testing and certification of inspectors. There are also statutory provisions which detail financial reporting requirements and dictate how revenues from building permits can be used by local governments.

Chapter II - Prior Audit Issues

Given this legislatively mandated oversight role and based on audit work conducted with both department and local government operations, we issued five audit recommendations to the department to improve services being provided by municipal and county building code programs. These five recommendations are discussed in the following sections.

Adopt Uniform Codes

Prior Recommendation #2

The department:

- A. Ensure city and county building code programs adopt the current state building code by requiring local governments to provide copies of adopted ordinances.**
- B. Provide an explanation of statutory and administrative rule requirements pertaining to adoption of state building codes to city and county building officials.**

Recommendations Implemented

Statutes require all entities enforcing building codes adopt current state building codes. Past audit work revealed some cities were enforcing incorrect versions of state building codes. The department took action to ensure city and county programs adopt the correct codes. The department provided an explanation of statutory and administrative rule requirements pertaining to adoption of state building codes to local building officials. The department also requires local governments to provide copies of the local ordinance adopting state building codes as part of the department's annual report process or whenever the department updates state building codes.

Chapter II - Prior Audit Issues

Improve Local Inspector Proficiency

Prior Recommendation #3

The department:

- A. Organize an effort to increase training and educational opportunities provided to city and county building officials, plan review staff, and inspectors.**
- B. Establish a video and publication lending library.**
- C. Use existing training programs available from various groups to supplement educational efforts.**

Recommendation Implemented

In the past, the largest cities generally offered training opportunities to staff and required or encouraged professional licensure or staff certification while most smaller cities did not. One of the factors which limited training and education of local inspectors was the lack of any organized training effort for building inspectors in the state. The department approached implementation of this recommendation in several ways. First, it adopted administrative rules which require all local inspectors to be either certified by a national building code certification agency or professionally licensed in the trade they are inspecting, thus establishing a demonstration of proficiency. It also made arrangements for a private sector entity to provide training in the state to prepare local inspectors for the certification exam. In addition, the department organized several other training seminars for building officials and inspectors. These seminars are conducted by national code groups. The Building Codes Division offers “one-on-one” on the job training to local inspectors. Several larger cities in the state also participate in this on-the-job training program. A lending library has been established and its contents made available to local inspectors. An educational trust was established during the 1999 Legislative Session as a means of providing funding support for the continued training of municipal and state inspectors and construction trades persons. The trust is funded by allocating 0.5 percent of building permit fees to a state special revenue account.

Refine Code Interpretation

Prior Recommendation #4

The department work towards achieving a more uniform interpretation of the state building code by establishing a statewide code interpretation procedure which should include:

- A. Forums for discussing code interpretation issues.**
- B. Documenting decisions.**
- C. Maintaining permanent records of interpretations.**
- D. Distributing decisions to local government building officials and other interested parties.**

***Recommendation
Implemented***

There are many local jurisdictions responsible for administering and interpreting state building codes. There was no process to address consistency of code interpretation by all the enforcing entities. In order to facilitate working towards achieving more uniform interpretation of codes, the department adopted a statewide code interpretation procedure. It includes both a formal code interpretation process and a less formal technical advisory process. It provides for involvement by the affected party, department, Building Codes Council, and local building officials. Code interpretations are binding on local code enforcement programs while technical advisories are not. A process has also been established for maintaining permanent records of interpretations and distributing decisions to local building officials and other interested parties.

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Ensure Compliance with Financial Requirements

Prior Recommendation #5

The department take the following steps to monitor city and county building code program compliance with financial-related statutes and administrative rules:

- A. Develop an internal process for monitoring compliance.**
- B. Develop documented internal guidelines regarding monitoring.**
- C. Require contract auditors specifically test municipal compliance with applicable statutes and administrative rules during future local government audits.**

Monitor Certification Requirements

Prior Recommendation #6

The department:

- A. Develop a process to monitor city and county compliance with certification requirements.**
- B. Prepare written internal guidelines for use by department staff to monitor local government certification.**
- C. Develop a compliance checklist.**
- D. Develop a method for recording possible concerns or deficiencies with local government programs for follow-up by department staff.**

Recommendations #5 and #6 Implemented

These two audit recommendations relate to statutory and administrative rule certification requirements which apply to local jurisdictions electing to enforce building codes. Local governments must comply with these requirements in order to be certified by the department to enforce codes locally. The Department of Commerce is responsible for ensuring statutory compliance and authorizing local enforcement programs. In the past, the department's opinion was it lacked clear statutory authority to oversee local government operations. However, that issue was resolved during the 1997 Legislative Session. Legislation was enacted which required the department to continually oversee local operations. The legislation had an effective date of July 1, 1998.

The department formalized its oversight program by developing a process for monitoring compliance which includes documented internal guidelines and related checklists. In addition, management designated one FTE as a compliance specialist whose responsibilities include oversight of local government programs to ensure compliance with certification provisions. Compliance review is accomplished through a combination of annual reports and on-site evaluations by the department's compliance specialist. Local governments are required to submit an annual report to the department which must contain specific information pertaining to its operations. Local governments must also provide for an independent audit of building program finances to ensure compliance with financial-related statutes and administrative rules. Failure on the part of a local government code enforcement program to comply with statutory and administrative rule requirements results in decertification.

Interagency Communication and Coordination

As a regulator of building construction, the Department of Commerce, Building Codes Division, interacts with other state agencies during the course of administering and enforcing model codes. We issued two recommendations to the department which if implemented would improve interagency communication and coordination.

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Determine Jurisdiction

Prior Recommendation #7

The Department of Commerce seek a Memo of Understanding with the Department of Justice, Fire Prevention and Investigation Bureau which specifies jurisdiction of each agency and how agency activities will be coordinated.

Clarify Plumbing Licensing

Prior Recommendation #8

The department work with the Board of Plumbers and obtain an Attorney General's opinion to clarify which situations are exempt from licensing laws for plumbers.

Recommendations #7 and #8 Implemented

The Building Codes Division and the Department of Justice, Fire Prevention and Investigation Bureau, each have responsibilities for enforcing codes which contain standards designed to protect and preserve life and property from fire and explosive hazards. Past uncertainty regarding jurisdiction of each agency and a lack of coordination between them sometimes resulted in the two agencies issuing conflicting requirements for fire-related safety issues. In order to clarify jurisdiction and coordination issues, representatives from the two agencies met and developed a Memo of Understanding. The memo was signed by the Departments of Commerce and Justice on August 17, 1998.

The Department of Commerce, Building Codes Division, assists licensing boards in monitoring adherence to licensing laws. There was a disagreement between the department and Board of Plumbers regarding when an individual engaged in the field of plumbing must be licensed. To resolve this issue, the department sought and obtained an Attorney General's opinion. The opinion was issued December 16, 1998, and clarified which plumbing installations are exempt from licensing laws for plumbers. A 1999 legislative

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amendment to statute further clarified this issue. Statutes now provide any person working (employed) in the field of plumbing must be licensed as either a master or journeyman plumber. Several statutory exemptions to the licensure requirement exist and include an exemption for homeowners installing their own plumbing equipment.

Department Operations

The daily operations of the Department of Commerce, Building Codes Division, center around its inspection function. This is where the bulk of the bureau's workload occurs. Activities involved with the inspection function include: processing permit applications, reviewing construction design plans, issuing permits, conducting inspections, and checking for professional licenses. The division is also responsible for administrative-related duties such as budgeting, rule-making, and overseeing municipal code enforcement programs to ensure compliance with statutory and administrative rule certification requirements.

Our review identified areas where improvements to operations could be made. The following three audit recommendations were directed at improving division operations.

Train Department Staff

Prior Recommendation #9

The department develop a comprehensive training program for Building Codes Bureau staff.

Improve Communication with Field Staff

Prior Recommendation #10

The department develop a plan for regular, on-going communication among Building Codes Bureau staff members.

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Develop Operations Manual

Prior Recommendation #11

The department develop formal operational policies and procedures and distribute to all bureau staff.

Recommendations #9, #10, and #11 Implemented

In response to the audit recommendation, the department developed a staff training plan which went into effect in December 1998. The plan designates responsibility for establishing individual training curriculum for each employee and sets a goal of providing each staff member with the opportunity for 16 hours of annual training. The department's training plan also encourages staff to obtain professional certification by defraying some of the associated costs.

Building Codes Division operations are decentralized with inspection staff located and working throughout the state. The decentralized nature of the operation makes communication and coordination between central office and field staff challenging. This contributed to inconsistencies in operations and a feeling of work isolation by field staff. The department developed a communication plan which went into effect March 1998. The plan relies on the creation of field supervisors who provide more direct supervision and guidance to field staff. In addition, a schedule of regular staff meetings was devised.

The decentralized nature of the Building Codes Division also makes it necessary to have specific program policies and procedures which serve as a guide for staff in performing duties in a consistent and accurate manner. The department completed a division operation and procedures manual and distributed it to all staff in February 1999. The department keeps the manual current by issuing periodic updates.

Chapter III - Current Code Enforcement

Introduction

This chapter contains an overview of key changes that occurred with the enforcement of state building codes during the past four years. These changes impacted both local and state operations. In this chapter, information specific to six Legislative Audit Committee questions is presented.

Changes in Montana's Code Enforcement Program

There were several statutory changes enacted during the 1997 and 1999 Legislative Sessions which impacted the way the state building codes are administered and enforced. A key change mandated the Department of Commerce assume a stronger oversight role over local government building code enforcement programs. One aspect of this oversight role includes a requirement local governments submit an annual report to the department which includes a plan of enforcement, information regarding staffing, and financial-related information. Legislative restrictions were also placed on municipal and county building code program finances. These restrictions require building permit revenues can only fund code enforcement operations and limit the amount of surplus building permit revenues which can accumulate. The department requires contract auditors specifically test municipal compliance with statutes and rules governing local building code program finances. These reviews are done in conjunction with general local government audits. Other legislative and administrative rule changes established minimum qualifications for staff performing inspection and plan review functions. Minimum qualifications allow for professional licensure or certification by a national testing agency.

Some of these changes impacted both local and state programs. Since January 1998, 11 cities reverted their inspection functions back to the Department of Commerce while 43 cities and counties elected to continue to enforce codes locally. For those communities who decertified their program, legislative changes were a contributing factor. Some local officials indicated they did not want to "hassle" with the reporting requirements while others indicated they were unable to meet the minimum qualification requirement for inspection staff. These cities had minimal building activity which accounted for less than three percent of the building permits issued by cities and counties in the state. The majority of these permits

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were for residential construction. Since residential building construction is exempt from state jurisdiction, residential construction is no longer inspected in the communities which decertified. However, all electrical installations and some plumbing installations in residential buildings are inspected by the state. In the cities which decertified, the state assumed jurisdiction for commercial building construction and equipment installations. Because of travel distances, state inspectors may not always provide as timely an inspection service as a local inspector.

Another area of operation which changed as a result of legislation is municipal building program finances. Because of the limits placed upon the amount of excess revenue which a local government can accumulate from building permits, several cities reduced their permit fees. Some fees were reduced by as much as 50 percent.

Legislative Audit Committee Questions

The following section of the report discusses those questions posed on page one of the report by the Legislative Audit Committee.

Qualification Question

Are city and county building inspectors qualified, if so by what standards?

Statutes and administrative rules dictate minimum requirements for persons inspecting buildings and equipment installation for compliance with applicable codes. Requirements include professional licensure or inspector certification. All cities we visited complied with inspector qualification requirements. We also found Department of Commerce, Building Codes Division, monitors local government compliance with qualification standards as part of their oversight responsibilities.

Liability Question

Do local governments acquire liability when they approve construction and are they liable for failure of approved construction?

While local governments acknowledge liability is an issue, they are not overly concerned. Local officials state it is a part of doing business. Training, licensure, certification, and proficiency help to

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mitigate this concern. Some local governments include language in permits in an effort to mitigate potential future liability.

Inspection Question

Do local inspectors, regardless of qualifications or training, really inspect construction?

Audit evidence shows inspections are occurring in the twelve jurisdictions we visited. Local inspectors review construction plans, conduct on-site visits, identify code violations and work with contractors and trades persons to get violations resolved prior to project completion.

Consistency Question

Are inspections consistent throughout a city, county, between cities, or across the state?

The lack of statewide consistency in interpreting various code requirements was an issue discussed during the prior performance audit. Both the technical nature of state building codes and the diversity of people conducting building code inspections make it difficult to achieve complete consistency in interpretation and application of state building codes. The codes are subject to interpretation and there will always be differences of opinion regarding its requirements. However, there have been recent changes directed at improving consistency of code interpretation both within a jurisdiction and statewide. These changes include:

- < Department of Commerce now ensures all jurisdictions enforce the same codes.
- < Professional certification and licensure of inspectors and persons reviewing plans.
- < Establishment of an educational program for inspectors and construction trades-persons.
- < Improved networking among code enforcement officials and inspectors.
- < Legislative establishment of a Building Codes Council.

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- < Development of a central code interpretation process and registry.

Perception Question

What are the perceptions of building owners, contractors, and city officials about city and county conducted inspections?

Overall, the comments we received were generally positive. Professional certification and licensure of building inspectors was well received by the construction industry in Montana. Positive comments were also expressed regarding communities which decreased building permit fees in an effort to keep fees commensurate with program costs. Contractors and their employees indicated inspectors visit construction sites and are generally good to work with, knowledgeable, and reasonable in requirements imposed.

Revenue Question

Are inspections effective or are they just a source of revenue for local government?

There have been several changes in administration and enforcement of state building codes which positively impacted inspection effectiveness - professional certification and licensure of building officials, inspectors, and plan reviewers; a statewide building codes educational program; improved networking among building inspectors and contractors; and oversight to ensure all jurisdictions enforce the same codes.

There are statutory and administrative rule restrictions on how revenues from building permits can be used. Legislation was enacted during the 1997 and 1999 Legislative Sessions which placed financial restrictions on local government building code program finances. These changes:

- < Required construction-related fees to be necessary, reasonable, and uniform.
- < Required building permit fees be used only for building code enforcement.
- < Limited how a municipality assesses indirect charges.

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- < Required accountability of building permit fees separate from other local government revenue.
- < Placed a limit on the amount of surplus revenue which can accumulate.
- < Required fees be reduced if excess revenue accumulates.

Independent audits and oversight by the Department of Commerce monitor local government compliance with these restrictions.

Some local government officials expressed frustration with the various legislative restrictions placed upon local code enforcement programs. These include financial reporting requirements, inspector qualification standards, general program reporting requirements, and oversight by the Department of Commerce, Building Codes Division. Local officials indicate they may seek legislation during the 2001 Legislative Session which would exempt some cities (based on population) from the statutory requirements placed on their programs.