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HOUSE BILL NO. 465

INTRODUCED BY J. KARLEN, G. NIKOLAKAKOS, K. ZOLNIKOV, A. BUCKLEY, D. FERN, T. FRANCE, C. SPRUNGER, P. TUSS, D. BAUM

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE USE OF CONSTRUCTION-RELATED FEES OR CHARGES THAT MAY BE IMPOSED BY A COUNTY, CITY, OR TOWN FOR ACTIVITIES IN SUPPORT OF THE ISSUANCE OF A BUILDING PERMIT; INCREASING THE RESERVE AMOUNT REQUIRED BEFORE CONSTRUCTION-RELATED FEES OR CHARGES MAY BE REDUCED; PROHIBITING THE DEPARTMENT OF LABOR AND INDUSTRY FROM ~~AUDITING~~ CONDUCTING CERTAIN AUDITS OF A COUNTY, CITY, OR TOWN BUILDING CODE ENFORCEMENT PROGRAM EXCEPT AS PART OF A FINANCIAL AUDIT; AND AMENDING SECTIONS 50-60-106 AND 50-60-302, MCA."

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

Section 1. Section 50-60-106, MCA, is amended to read:

"50-60-106. Powers and duties of counties, cities, and towns. (1) As allowed by Title 50, chapter 60, part 3, the examination, approval, or disapproval of plans and specifications, the issuance and revocation of building permits, licenses, certificates, and similar documents, the inspection of buildings, and the administration and enforcement of building regulations within the limits of a city or town are the responsibility of the city or town. The examination, approval, or disapproval of plans and specifications, the issuance and revocation of building permits, licenses, certificates, and similar documents, the inspection of buildings, and the administration and enforcement of building regulations within the portion of a county that is covered by a county building code enforcement program are the responsibility of the county.

(2) Each county, city, or town certified under 50-60-302 shall, within its jurisdictional area:

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

1 (b) require that construction of buildings be in accordance with the applicable provisions of the
2 state building code or county, city, or town building code, subject to the powers of variance or modification
3 granted to the department;

4 (c) make available to building contractors at a price that is commensurate with reproduction costs
5 a checklist devised by the department pursuant to 50-60-118 for single-family dwellings and provide to
6 contractors who attach a completed checklist to the plans submitted for examination the relevant building permit
7 or notice of plan disapproval within 10 working days of the contractor's submission;

8 (d) during and in the course of construction, order in writing the remedying of any condition found
9 to exist in, on, or about any building that is being constructed in violation of the state building code or county,
10 city, or town building code. Orders may be served upon the owner or the owner's authorized agent personally or
11 by sending by certified mail a copy of the order to the owner or the owner's authorized agent at the address set
12 forth in the application for permission for the construction of the building. A county, city, or town certified
13 pursuant to 50-60-302, by action of its building official, may grant in writing time as may be reasonably
14 necessary for achieving compliance with the order. For the purposes of subsection (2)(a) and this subsection
15 (2)(d), the phrase "during and in the course of construction" refers to the construction of a building until all
16 necessary building permits have been obtained and all work authorized by those permits has been fully
17 approved by the building official having jurisdiction.

18 (e) issue certificates of occupancy as provided in 50-60-107;

19 (f) issue permits, licenses, and other required documents in connection with the construction of a
20 building;

21 (g) ensure that all construction-related fees or charges imposed and collected by the county, city,
22 or town are necessary, reasonable, and uniform and are:

23 (i) except as provided in subsection (2)(g)(iii), used only for activities in support of reviewing and
24 issuing a building permit and for building code enforcement, which consists of those necessary and reasonable
25 costs directly and specifically identifiable for the enforcement of building codes, plus indirect costs charged on
26 the same basis as other local government proprietary funds not paying administrative charges as direct
27 charges. If indirect costs are waived for any local government proprietary fund, they must also be waived for the
28 program established in this section. Indirect charges are limited to the charges that are allowed under federal

1 cost accounting principles that are applicable to a local government.

2 (ii) reduced if the amount of the fees or charges accumulates above the amount needed to enforce
3 building codes for ~~12~~36 months. The excess must be placed in a reserve account and may be used only for
4 building code enforcement. Collection and expenditure of fees and charges must be fully documented.

5 (iii) allocated and remitted to the department, in an amount not to exceed 0.5% of the building fees
6 or charges collected, for the building codes education program established in 50-60-116.

7 (3) Each county, city, or town with a building code enforcement program that has been certified
8 under 50-60-302 may, within the area of its jurisdiction:

9 (a) make, amend, and repeal rules for the administration and enforcement of the provisions of this
10 section and for the collection of fees and charges related to construction; and

11 (b) prohibit the commencement of construction until a permit has been issued by the building code
12 enforcement authority having jurisdiction after a showing of compliance with the requirements of the applicable
13 provisions of the state building code or county, city, or town building code or other county, city, or town
14 ordinance or resolution that pertains to the proposed construction. A county, city, or town subject to this
15 subsection (3) may, as part of its building code or by town ordinance or resolution, adopt voluntary energy
16 conservation standards for new construction for the purpose of providing incentives to encourage voluntary
17 energy conservation. The incentive-based energy conservation standards adopted may exceed any applicable
18 energy conservation standards contained in the state building code. New construction is not required to meet
19 local standards that exceed state energy conservation standards unless the building contractor elects to receive
20 a local incentive.

21 (4) Each county, city, or town with a building code enforcement program that has been certified
22 under 50-60-302 may perform inspections of buildings that are outside its jurisdictional limits, subject to the
23 following conditions:

24 (a) The inspections are requested in writing by the owners or builders of the buildings to be
25 inspected.

26 (b) The inspections are not done in lieu of inspections by another county, city, or town that has
27 jurisdiction over the buildings to be inspected.

28 (c) (i) The county, city, or town powers of enforcement possessed as a result of building code

1 enforcement certification by the department may not be exercised in conjunction with the requested
2 inspections.

3 (ii) Similar powers of building code enforcement may not be contractually created or required by
4 the requester and the inspecting jurisdiction.

5 (5) In situations in which buildings may be annexed into an inspecting city's or town's jurisdiction
6 subsequent to a requested inspection, the city or town may not require owners or builders to have duplicative
7 inspections of those buildings prior to annexation as a condition precedent to receiving any public services or
8 utilities."

9

10 **Section 2.** Section 50-60-302, MCA, is amended to read:

11 **"50-60-302. Certification of county, city, or town building codes.** (1) A county, city, or town may
12 not enforce a building code unless:

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

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

17 (c) all inspectors inspecting or approving any installations, which if accomplished commercially
18 require state licensure, must themselves be properly and currently state-licensed as journeymen in that craft or
19 occupation or be certified by a nationally recognized entity for testing and certification of inspectors that is
20 approved by the department before being permitted to inspect or approve any installations.

21 (2) ~~(a)~~ Subject to subsection (2)(b), the department shall adopt additional rules and standards
22 governing the certification of county, city, and town building code enforcement programs that must include
23 provisions for prompt revocation of certification for refusal or failure to comply with any applicable statute or
24 rule. The department may allow a county, city, or town a reasonable amount of time, not to exceed 6 months, to
25 correct identified code enforcement program deficiencies, unless the deficiencies constitute an immediate
26 threat to the public health, safety, or welfare, in which case the department may require immediate correction.
27 Failure to correct deficiencies within the time set by the department constitutes a basis for immediate
28 decertification of the code enforcement program. Continued operation of a county, city, or town code

Amendment - 1st Reading-white - Requested by: Jonathan Karlen - (H) Local Government

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Drafter: Laura Sankey Keip, 406-444-4410

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1 enforcement program in violation of a department order to correct deficiencies may be enjoined or subject to a
2 writ of mandamus by a judge of the district court in the jurisdiction in which the county, city, or town is located.

3 (b)_____ The rules and standards must include provisions for the department to ensure that all code
4 enforcement program functions are being properly performed. The rules may not require ~~an audit a financial~~
5 audit or a review of fees of a county, city, or town code enforcement program that is in addition to or separate
6 from an audit conducted under 2-7-503.

7 (3) If the certification of any local government code enforcement program is revoked for any
8 violation or deficiency, the state resumes its original jurisdiction for state building code enforcement within the
9 county, city, or town area and the local government retains the responsibility for completion of inspections and
10 issuance of certificates of occupancy on any incomplete construction projects previously permitted by the
11 county, city, or town, unless the reason for the decertification is directly related to the protection of health,
12 safety, and welfare of the public.

13 (4) If a county, city, or town voluntarily decertifies its code enforcement program, the department
14 must be given written notification of the intended decertification at least 90 days prior to the date of
15 decertification. The county, city, or town retains the responsibility for completion of inspections and issuance of
16 certificates of occupancy on any incomplete construction projects permitted by the county, city, or town prior to
17 decertifying its code enforcement program."

18 - END -