

# STATE BUILDING CODE

## OVERVIEW

In 1987 when the State Building Code was originally adopted by the Nebraska legislature they inadvertently delegated away their legislative authority. Therefore this section of law dealing with code adoption has to be redrawn.

## STATUS

- The NSHBA Codes Committee will investigate this matter more thoroughly and make recommendations.
- The firm of Fullencamp, Doyle & Jouben has been retained to secure a declaratory judgment should a local code jurisdiction proceed to adopt the 2009 IRC with the mandatory requirement for fire sprinklers. Such a declaratory judgment would halt the adoption of the 2009 IRC by a local code jurisdiction as they would not have legislative authority to adopt the 2009 IRC.
- Senator Gloor has requested an AG's opinion on the matter.

## RECOMMENDATIONS

Awaiting recommendations from the NSHBA Codes Committee.

## ISSUES BRIEFING

In Nebraska, the National Electrical Code is adopted by specific edition by the state legislature and is then administered by the State Electrical Board. The International Energy Conservation Code is adopted by specific edition by the state legislature and is then administered by the State Energy Office and local code jurisdictions must enforce that edition or something stricter. The Life Safety Code is adopted by specific edition by the state legislature and is then administered by the State Fire Marshall. As far as plumbing is concerned each local code jurisdiction may adopt what they desire. However, if there is no plumbing ordinance then the American National Standards Institute Uniform Plumbing Code, ANSI A40-1993, serves as the default plumbing code.

The building code in Nebraska is composed of two codes the International Building Code (commercial building) and the International Residential Code. Whenever a new edition of the codes (IBC or IRC) is published, it is automatically considered the state building code. Bill drafters contend that the Nebraska Legislature has inadvertently delegated away their legislative authority to the International Codes Council which publishes these codes. (*high lighted below*)

Furthermore local code jurisdictions must regularly update its code within two years of the publication date of the new edition. No political subdivision may adopt or enforce a local building or construction code other than as provided by the state building code.

**71-6403. State building code; adopted; amendments.**

(1) There is hereby created the state building code. The Legislature hereby adopts by reference:

(a) The International Building Code (IBC), 2000 edition, published by the International Code Council;

(b) The International Residential Code (IRC), 2000 edition, published by the International Code Council; and

(c) The Uniform Code for Building Conservation.

(2) The codes adopted by reference in subsection (1) of this section shall constitute the state building code except as amended pursuant to the Building Construction Act or as otherwise authorized by state law.

(3) Whenever a new edition of the codes adopted in subsection (1) of this section is published, such new edition shall be considered the state building code.

The adoption of a process could be as simple as specifying the particular edition or more elaborate to provide input by builders, code officials and interested parties using a board, commission or an advisory committee as a number of states have done. Here are several examples of alternative adoption processes.

- In Minnesota the International Residential Code (IRC), International Building Code (IBC), and the International Fire Code (IFC) are under the jurisdiction of a state board, the Construction Codes and Licensing Division and the State Fire Marshal Division. The Construction Codes and Licensing Division is also responsible for licensing building firms in the state.
- In Utah where the codes are under the jurisdiction of a state board titled Uniform Building Code Commission and it recommends to the legislature amendments to the building code prior to its adoption by the state legislature. A similar pattern is also found in North Dakota where a state advisory committee concerning building codes is lodged in the Department of Commerce.
- Idaho is an example where there are no boards or advisory committees so the specific code version is adopted with amendments at the state level and the local code jurisdiction may amend by ordinance the adopted codes or provisions of the referenced codes to reflect local concerns, provided such amendments establish at least an equivalent level of protection to that of the adopted building code.

In Nebraska local code jurisdictions can amend the state building code as follows for use in their jurisdiction.

**71-6406. Political subdivision; building code; adopt; amend; enforce.**

(1) Any political subdivision may enact, administer, or enforce a local building or construction code if or as long as such political subdivision adopts the state building code. The political subdivision shall regularly update its code. For purposes of this section, a code shall be deemed to be regularly updated if the most recent edition is adopted by the political subdivision within two years after the publication date of the edition. No political subdivision may adopt or enforce a local building or construction code other than as provided by this section.

(2) A political subdivision may amend its local building or construction code if the amendment:

- (a) Conforms generally with the state building code;
- (b) Adopts a special or differing building standard to reduce unnecessary costs of construction, increase safety, durability, or efficiency, or address special local conditions within its jurisdiction; or
- (c) Adopts any supplement, new edition, or appendix.

(3) A political subdivision may adopt and promulgate amendments for the proper administration and enforcement of its local building or construction code including organization of enforcement, qualifications of staff members, examination of plans, inspections, appeals, permits, and fees. Any amendment adopted pursuant to this section shall be published separately from the local building or construction code. Fees, if any, for services which monitor a builder's application of codes shall be negotiable between the political subdivisions involved, but such fees shall not exceed the actual expenses incurred by the political subdivision doing the monitoring.

(4) Notwithstanding the provisions of the Building Construction Act, a public building of a political subdivision shall be built in accordance with the applicable local building or construction code.