
State Building Code Administration

CHAPTER 2

As we noted in Chapter 1, the state building code is a collection of overlapping provisions that apply differently throughout the state, depending on the type of building and its geographic location. In this chapter, we examine how this complex set of requirements is administered--that is, how it is developed, adopted, and enforced--on the state level. We asked the following questions:

- **Is the process for developing and adopting the building code reasonable, consistent, and timely?**
- **What does the Department of Administration do to help ensure that the building code is being enforced consistently?**
- **What problems affect code administration?**

To answer these questions, we examined documents from national and state organizations, including state and model codes. We contacted 45 organizations that are interested in or affected by the state building code, and we interviewed staff from several state agencies and municipalities. Finally, we attended meetings of advisory groups that are involved in various building code issues or processes.

In this chapter we have generally limited our discussion to seven major provisions of the state building code. These provisions--accessibility, construction, electrical, energy, fire protection,¹ mechanical, and plumbing--may overlap with one another or with provisions of other state codes, such as the state fire code.²

Overall, we found that promulgating and enforcing the state building code are complex processes that involve several state agencies and, at times, local jurisdictions. Both processes--promulgation and enforcement--have been marred by poor coordination and complex lines of authority. Regardless, agency staff

¹ Most fire protection provisions are found in the construction provisions of the *1998 Minnesota State Building Code*.

² Some state building code provisions also overlap with provisions of codes that are promulgated and enforced by the Department of Labor and Industry, such as the state code related to high pressure piping. Because this code affects only a small number of buildings, we did not specifically examine how the departments of Administration and Labor and Industry coordinate related activities.

have eventually resolved all major issues, although not without some tension and ill will.

CODE DEVELOPMENT AND ADOPTION

As noted in Chapter 1, the state building code is a compilation of many code provisions. Although Minnesota statutes give the Department of Administration the overall responsibility for promulgating the building code, we found that:

- **Statutory responsibility for developing or adopting various building code provisions is divided among several state agencies.**

As shown in Figure 2.1, four different agencies are responsible for developing or adopting various code provisions. The Department of Administration is responsible for developing and adopting the accessibility, construction, fire protection, and mechanical code provisions. The State Board of Electricity and the Department of Health are responsible for developing the code’s electrical and plumbing provisions respectively, but the Department of Administration formally adopts them. In addition, the Department of Administration retains authority to modify these provisions prior to adoption. In contrast, statutes give the Department of Public Service the authority to independently develop and adopt energy rules that the Department of Administration must subsequently fold into the state building code. The Department of Administration does not have the authority to modify the energy provisions adopted by the Department of Public Service.

Four state agencies develop or adopt various code provisions.

Figure 2.1: Responsibility for Promulgating Building Code Provisions

State Building Code Provisions	Promulgation Responsibility	
	Development	Adoption
Accessibility	Administration	Administration
Construction	Administration	Administration
Electrical	Board of Electricity	Administration
Energy	Public Service	Public Service
Fire Protection	Administration	Administration
Mechanical	Administration	Administration
Plumbing	Health	Administration

SOURCE: Office of the Legislative Auditor.

As long as agencies develop or adopt unrelated code provisions, there are likely to be few problems. However, we found that:

- **Overlap among different provisions of the building code and between the building code and some other state codes has made it difficult for state agencies to promulgate the building code.**

Coordination is critical when agencies have different code priorities and perspectives.

During code development, agencies must understand how proposed changes in some provisions affect other building code provisions as well as similar provisions in related state codes. The more extensive the overlap between two code provisions or between two codes, the more care must be taken to avoid conflicting or inconsistent requirements. When promulgation authority is located in separate agencies, there are more opportunities for inconsistent language. Coordination is even more critical when the agencies have different philosophies and priorities. For example, statutes require that the energy provisions of the building code “. . . be designed to equal or exceed the most energy-conserving codes adopted by any state.”³ In contrast, statutes require that the state building code set basic minimum standards. Likewise, statutes require that the fire protection provisions of the building code be cost-conscious, but statutes do not specifically require this of the state fire code. Balancing the overall goals of the building code--ensuring health and safety, providing uniformity, containing costs, and adhering to model codes--becomes even more difficult when the various agencies that promulgate the code emphasize or prioritize these goals differently.

There have been few problems among the construction, electrical, and plumbing provisions of the building code, partly because the Department of Administration has ultimate adoption authority for these provisions. However, several new energy code provisions that the Department of Public Service recently adopted are not consistent with proposed changes to the code’s mechanical provisions being developed by the Department of Administration. And, as we discuss later, the departments of Administration and Public Safety have had numerous problems developing and adopting the overlapping provisions of the building and fire codes.

As discussed in Chapter 1, many provisions of the building code are based on nationally-developed model codes, as directed by statute. Currently, five of the seven building code provisions considered here (accessibility, construction, electrical, fire protection, and mechanical) are based directly on model codes.⁴ In contrast, the energy and plumbing provisions of the building code are homegrown in that the state agencies have developed them largely independently and have not adopted and amended any single national model code.

³ *Minn. Stat.* §16B.165, subd. 1.

⁴ Although the present accessibility code is based on a model code, the Department of Administration is currently developing its own accessibility provisions for the building code based on national guidelines rather than a model code.

We looked at what steps the departments of Administration, Health, and Public Service and the State Board of Electricity have followed in developing and adopting various building code provisions. We found that:

- **State agencies have followed a well-defined process to develop and adopt building code provisions.**

This process largely follows the Administrative Procedure Act requirements. This act sets forth a series of steps that agencies must follow to notify the public about proposed code changes and to provide opportunities for their participation. The first step in this process is to publish a formal “request for comments on planned rules and amendments to rules” in the *State Register*. Agency staff prepare background information and update language for various code provisions to facilitate code development. At about the same time, the sponsoring agency establishes a task force or technical advisory group to help review and revise the proposed language.

Agencies follow the Administrative Procedure Act when promulgating building code provisions.

These advisory groups have commonly been a mix of industry representatives solicited from various organizations, local code enforcement personnel, and state agency staff. For example, the Department of Administration recently used two technical advisory committees that included building officials, contractors, architects, and structural engineers, to help develop construction code amendments. These committees met three or four times from November 1997 through February 1998. According to department staff, meetings generally must be infrequent, in part because construction industry representatives are usually less available during the building season. In addition to providing considerable administrative support to the committees, the supervising agency must also work with code specialists in other agencies to ensure that final provisions are consistent with other building code provisions and with provisions in other related codes.

Once the advisory groups and agency staff have prepared the proposed code language, the agency publishes a “notice of intent to adopt rules” that includes references to model codes and draft language for the various amendments. If no one requests a public hearing, the agency publishes a “notice of adopted permanent rules” about two months later. Shortly after this, the agency may begin to enforce the new code provisions.

As noted earlier, state agencies base most building code provisions on nationally-developed model codes. We think that the advantages of basing the state building code on model codes have generally far outweighed the disadvantages. First, model codes that are published by the same organization or designed to be companion documents (such as the *Uniform Building Code* and the *Uniform Fire Code*) have already been carefully scrutinized to avoid conflicts with each other. Second, many of the arguments about the advantages and disadvantages of proposed provisions have been debated and decided on the national level with little reason for further discussion at the state level. Third, model codes are “consensus” documents that have been developed by committees comprised of a broad range of construction and design professionals and practitioners from various states, including Minnesota.

On the other hand, model codes are reviewed and revised on a staggered schedule every three years.⁵ Subsequently, changing provisions of the state building code that are based on model codes have been tied to the three-year national cycle, which has made it somewhat difficult to adopt several code provisions simultaneously.

If Minnesota simply adopted model codes every three years without amendments, the promulgation process would be much easier. However, we found that:

- **Minnesota has continually amended different provisions of the state building code.**

Although this has complicated the promulgation process, there may be good reasons for most amendments. Model codes are, by their nature, broad documents that may not address all of Minnesota's particular needs. Thus, the state has amended many of the model code provisions that it incorporates into the building code. Likewise, the Department of Administration regularly updates and amends the homegrown provisions of the building code. According to department staff and our own review of recent amendments, most of the changes have reflected:

1. the unique needs of a cold-weather state such as Minnesota,
2. attempts to moderate costs,
3. the need to comply with changes in Minnesota laws,
4. new national code language,
5. technological improvements, or
6. miscellaneous goals such as creating a more user-friendly format or replacing unrealistic provisions.

For example, the Department of Administration amended a provision of the *Uniform Building Code* that set minimum allowable snowloads for different regions of the state.⁶ The *Uniform Building Code* simply defined the snowload zones using a series of gradient lines that cut through some counties. The Department of Administration amended the code to divide the state into two zones by county, ensuring that one county was not split into two different zones. The department also recently amended the plumbing code provisions to reflect new technology. For example, the provisions that define the materials used for underground soil and waste piping were expanded to include stainless steel pipe as an option.⁷

⁵ There may be some changes in this cycle over the next few years if national code organizations shift to a comprehensive international code.

⁶ Department of Administration, *1998 Minnesota State Building Code* (St. Paul, 1998), ch. 1305.4416.

⁷ *Ibid.*, ch. 4715.0570.

We looked at the time that has elapsed between the availability of model codes and the adoption of those codes and their amendments. The longer it takes to promulgate new code provisions, the longer builders and others must wait to benefit from improvements in the building code. Several organizations that we contacted said that they thought it has taken too long to update building code provisions. We found that:

- **Although the time required to promulgate different code provisions has varied, it has generally been consistent with timelines in other states.**

For the most part, adopting model codes with no state amendments has taken the least amount of time. For example, the Department of Administration adopted the *National Electrical Code* without amendments in 1996, only 11 months after it was initially published. In contrast, it has taken much longer to adopt amended model codes. For instance, we have estimated that it will take the Department of Administration more than two years to promulgate the latest mechanical provisions of the building code, partly because the department must ensure that these provisions are consistent with similar requirements in the code's energy provisions. Likewise, amending and adopting the construction provisions of the building code took about one and a half years from publication of the *Uniform Building Code* in Spring 1997 to formal adoption in Fall 1998.

Adopting new provisions not directly based on a single model code takes more time.

However, it has taken considerably longer to adopt entirely new code provisions that are not directly based on a single model code. For example, as noted previously, the 1991 Legislature required the Department of Public Service to adopt energy provisions that would equal or exceed the most stringent requirements adopted by any other state. To comply with this mandate, the department has spent the last seven years writing and re-writing certain ventilation-related requirements for one- and two- family homes and they are still not finished. Although the department adopted some ventilation requirements for one- and two-family homes in 1994, it did not make them mandatory until January 1, 1998. The department spent the next four years studying and refining these requirements to make them more workable for code officials and more acceptable to builders. The department adopted new ventilation requirements for these homes in 1998 but did not make them effective until 1999.⁸ However, as we discuss later, the department has had to re-open the rulemaking process to amend certain energy code provisions, which may further delay implementing these requirements.

Although promulgating the state building code has been a lengthy process for some provisions, Minnesota's timeframe has not been that different from other states with similar code provisions. Wisconsin took about nine months to adopt the model electrical code, similar to Minnesota. Iowa and Michigan reported taking about two years to adopt their model construction code provisions; Rhode

⁸ Department of Public Service, *Statement of Need and Reasonableness* (St. Paul, November 1997), 2.

Island and Virginia required about a year. According to a 1993 study by the Minnesota Department of Administration, most other states took less than two years to adopt a model code with or without amendments.⁹

Some time delays have been unavoidable. Developing proposed revisions to model codes generally cannot begin until the model codes have been published, although draft documents have sometimes been available. Also, volunteer advisory groups have not always been an efficient mechanism for developing proposed revisions due to constraints on members' time. On the other hand, using advisory groups has helped build a broad base of support for proposed changes that may forestall the need for public hearings. Finally, although complying with the Administrative Procedure Act can take several months, a 1993 study by our office found that the act's requirements were not a major source of delay in administrative rulemaking.¹⁰

At the same time, some delays in code adoption could have been avoided. We found that:

- **Poor coordination between the Department of Administration on the one hand and the departments of Public Service and Public Safety on the other has resulted in unnecessary delays or conflicts.**

There has been a lack of coordination among state agencies.

As we previously noted, the building code's energy provisions promulgated by the Department of Public Service cover some of the same subject matter as the code's mechanical provisions. Although the Department of Administration is ultimately responsible for enforcing the energy code provisions, it did not formally participate on the Department of Public Service's code advisory committee. Shortly before the energy provisions were adopted in July 1998, the Department of Administration began developing new mechanical code provisions, but did not formally involve the Department of Public Service in the mechanical code advisory committee. At that time, the Department of Administration questioned how building officials would enforce some of the new energy provisions and how inconsistent requirements among the code's construction, energy, and mechanical provisions would be resolved. For example, department staff thought that the energy provisions did not clearly identify what mechanical components building officials were required to test to ensure that they were functioning properly. Consequently, the Department of Public Service decided to re-open the rulemaking process to amend the energy provisions.

Likewise, Department of Administration staff said that they may re-open the rulemaking process to amend some ventilation requirements in the code's construction provisions. Specifically, the department tried to anticipate some language that it expected to be in the new energy provisions by referencing specific ventilation standards. However, energy code provisions that were ultimately adopted did not contain these standards. Consequently, the Department of Administration may need to amend the building code to eliminate

⁹ Department of Administration, *A Study of the Minnesota State Building Code Adoption Process* (St. Paul, August 1993).

¹⁰ Office of the Legislative Auditor, *Administrative Rulemaking* (St. Paul, March 1993).

There were delays and conflicts in promulgating the most recent building and fire codes.

inconsistencies. Because the energy provisions of the building code will not become effective until mid-July 1999, the practical impact of these events is limited. However, it suggests that separating the authority to adopt various building code provisions causes problems.

Just as good coordination is necessary when different agencies promulgate different provisions of the same code, good coordination is critical when agencies that have different philosophies and priorities promulgate separate codes that address the same subject matter. We found coordination problems between the recently adopted state building and fire codes. Discrepancies between these two codes are especially onerous to builders because they must comply with the building code to receive their certificate of occupancy, and must continue to comply with the building code as well as the fire code in order to keep it.

Despite this, the Department of Public Safety adopted the state fire code in June 1998 even though the department had not resolved all of its differences with the Department of Administration. For example, the two agencies were unable to come to an agreement about automatic closing doors in educational facilities. Despite disagreement on the part of the Department of Administration, the Department of Public Safety adopted the state fire code with a provision that relaxes the requirement for self-closing or automatic closing doors between corridors and classrooms or offices when automatic sprinkler protection and smoke detection systems are used.¹¹ This forced the Department of Administration to delay adopting the building code so that it could revise the code to be compatible with state fire code provisions. Although both departments contributed to this complicated, frustrating sequence of events, such problems are likely to recur without better coordination. It should be noted that the Department of Public Safety formally involved staff from the Building Codes and Standards Division in the committee it used to develop the state fire code, but the Department of Administration did not formally involve staff from the Department of Public Safety when developing the state building code.¹²

In addition, when reviewing the Department of Administration's proposed amendments to the building code, the administrative law judge identified an additional exception in the proposed building code that was not in the recently-adopted fire code. The judge cited the discrepancy because the Department of Administration's *Statement of Need and Reasonableness* claimed that the exception was necessary to conform to the state fire code.¹³ Consequently, the department had to revise the proposed building code once again.

¹¹ State of Minnesota Department of Public Safety Fire Marshal Division, "Statement of Need and Reasonableness," 1997, URL <http://www.dps.state.mn.us/fmarshal/firecode/97MUFC-2-SNR.html>, (September 1998).

¹² Likewise, the Department of Administration has not formally involved staff from the Department of Labor and Industry when developing the building code's mechanical provisions, even though these provisions overlap with rules promulgated by the Department of Labor and Industry.

¹³ Bruce H. Johnson, Administrative Law Judge, to the Department of Administration, August 17, 1998, Letter.

Even when agencies that promulgate related codes coordinate their activities closely, problems may ensue when these codes do not become effective at the same time. For example, the newly-adopted state fire code, which became effective in July 1998, added new sprinkler requirements that were not part of the building code then in effect. Although the sprinkler requirements were part of the proposed 1998 building code, they did not formally become effective until the building code was adopted several months later. Consequently, the state building and fire codes did not complement one another for several months and buildings completed during that time might not have complied with relevant fire code provisions even though they complied with the building code.

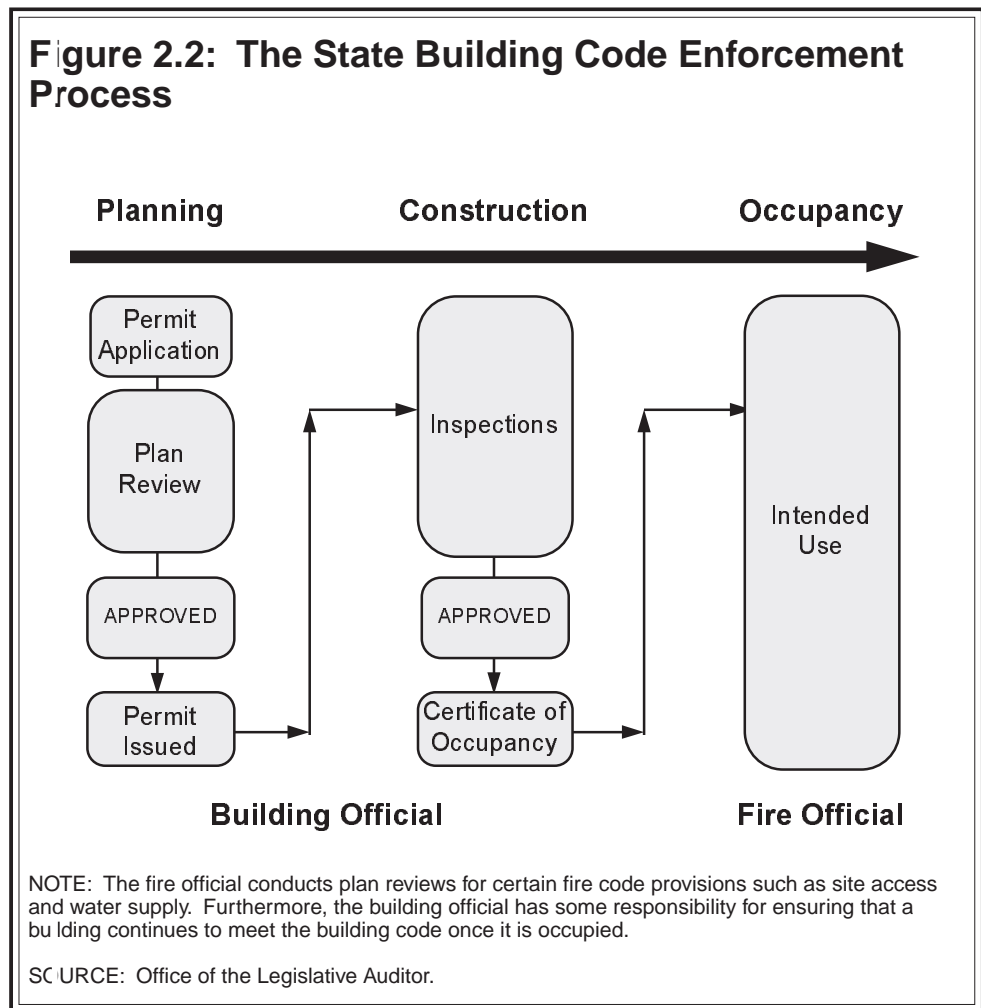
ENFORCEMENT MECHANISMS

Just as the responsibility for developing and adopting the provisions of the building code is divided among several state agencies, responsibility for enforcing the code is divided among various state agencies as well as local government. Who enforces various building code provisions, in what type of building, and in what geographic part of the state depends on the specific code provision.

Enforcement is divided between state and local government.

Figure 2.2 illustrates the building code enforcement process which has several important stages: plan review (leading to issuing the building permit), inspection, and issuing the certificate of occupancy. During plan review, building plans are reviewed to ensure that construction will comply with all provisions of the building code and certain provisions of the fire code such as site access and water supply. As discussed in Chapter 1, equivalencies may be issued at this time to allow a designer or builder to meet the intent of building code provisions by using alternate procedures or materials. For example, although the building code requires that buildings' interior walls must contain a fire for a specified period of time, building officials may allow builders to install walls that are less fire-resistant if certain types of sprinkling systems are installed in the building. Once equivalencies are approved and the building official determines that the plan satisfies all building code provisions, a building permit is issued. This first phase is especially important to builders since the project cannot proceed without the approved permit. Most importantly, problems or mistakes caught at this time are least likely to have construction time and cost implications.

Once the permit is issued, construction may begin. During construction, the building is inspected at several stages. For example, gas, water, and sewer piping are inspected soon after the foundation is laid, but electrical inspectors do not examine wiring until just before the interior walls are covered with sheetrock. Complex buildings or those with correction orders may require more inspections. Occasionally during construction, the builder may request and receive equivalencies for some building code provisions. The inspection phase helps ensure that the building is being constructed in compliance with the building code, as reflected in the permit and approved plans. Finally, after passing all building code inspection requirements, the certificate of occupancy--an assurance that the building has passed all required inspections--is issued. From this time forward, the building must meet the requirements of both the state building and fire codes.



As shown in Figure 2.3:

- **Minnesota statutes set forth a complicated enforcement system that authorizes both state and local government to enforce the building code depending on the type of building, its geographic location, and the specific code provision.**

According to statutes, the State Building Official in the Department of Administration oversees enforcement of the state building code. Statutes authorize the Department of Administration to direct and supervise other state agencies enforcing various provisions of the building code in some public buildings, including the State Board of Electricity and the departments of Health and Labor and Industry.¹⁴

¹⁴ The Department of Administration enforces the building code in buildings paid for by the state, all public school building projects that cost at least \$100,000, and certain state-licensed facilities.

Figure 2.3: Primary Responsibility for Enforcing Building Code Provisions

State Building Code Provisions	Adopting Jurisdictions		Nonadopting Jurisdictions	
	Certain Public Buildings ¹	Other Buildings	Certain Public Buildings ¹	Other Buildings
Accessibility	Administration	Local Building Official	Administration	Local Authority
Construction	Administration	Local Building Official	Administration	N/A
Electrical	Board of Electricity	Board of Electricity	Board of Electricity	Board of Electricity
Energy	Administration	Local Building Official	Administration	N/A
Fire Protection	Administration	Local Building Official	Administration	N/A
Mechanical	Administration	Local Building Official	Administration	N/A
Plumbing	Health	Local Building Official	Health	Health

NOTE: N/A = Code provision is not applied to that building type.

¹Certain public buildings include buildings paid for by the state, all public school building projects that cost at least \$100,000, and certain state-licensed facilities. Federal buildings and local government buildings in nonadopting jurisdictions are not covered by the code. The Department of Administration often transfers enforcement responsibility for certain public buildings to local building officials.

SOURCE: Office of the Legislative Auditor.

To enforce the building code in public buildings under its jurisdiction, the Department of Administration employs 5 plan review staff and 41 contract inspectors throughout the state. The department directly enforces the accessibility, construction, energy, fire protection, and mechanical provisions of the building code. According to statute, the department shares responsibility with local authorities for enforcing the accessibility provisions of the building code in all buildings throughout the state and has three department staff to help enforce these provisions.

Although statutes authorize the Department of Administration to supervise other state agencies enforcing provisions of the building code in certain public buildings, we found that the department exercises little, if any, supervisory authority over the departments of Health and Labor and Industry and the State Board of Electricity. The Department of Health must enforce the code's plumbing provisions in some public buildings statewide and in other buildings in jurisdictions that have not adopted the building code. In addition, the Department

of Health generally retains authority for plumbing plan reviews for all buildings throughout the state. The department employs four engineers who review plans for certain public buildings and five regional plumbing inspectors to inspect these facilities. In addition, the department has agreements that allow 30 municipalities to review plans for other buildings in their jurisdiction. However, according to Department of Health staff, plumbing inspections are not done in all buildings, especially in privately-owned buildings in municipalities that have not adopted the building code.

The State Board of Electricity enforces the code's electrical provisions in all buildings statewide. The board employs 9 area representatives and contracts with 77 electrical inspectors. In addition, about 40 municipalities have adopted ordinances that give themselves authority to do their own electrical inspections.

In many cases, enforcement responsibility for some public buildings is transferred to local municipalities. Statutes require that the Department of Administration allow code-adopting municipalities to enforce the building code in some public buildings if they want to do it. However, the department must first determine that the municipality has enough qualified and trained staff to provide the necessary services.¹⁵ The department transfers inspection or plan review and inspection authority for many, but not all, public projects to some code-adopting municipalities. During fiscal years 1996 through 1998, the Department of Administration initially had enforcement responsibility for more than 1,300 buildings in code-adopting jurisdictions. The department transferred inspection and plan review responsibility to local municipalities for about 60 percent of these buildings, and retained plan review while transferring inspection authority for about 30 percent of these buildings. The department retained both plan review and inspection authority for the remaining 10 percent. In addition, the department retained plan review and inspection authority for approximately 300 public buildings located in nonadopting jurisdictions.

Municipalities that have adopted the state building code are responsible for enforcing it in all buildings in their jurisdiction other than those public buildings for which the Department of Administration is responsible. The governing body in the municipality must appoint a local building official to enforce the accessibility, construction, energy, fire protection, and mechanical provisions of the code and to inspect for the plumbing provisions of the code.¹⁶ The local building official has final authority for issuing building permits and certificates of occupancy. Municipalities often also have one or more local building *inspectors* who perform most of the building inspections. By statute, local building officials must be certified and fulfill continuing education requirements.¹⁷ However, statutes do not require that building inspectors be certified or fulfill any continuing education requirements. In general, the Department of Administration has tried to encourage consistent code enforcement through its training programs for building officials, inspectors, and others. This training has usually covered difficult issues

The state transfers enforcement authority for some public buildings to local authorities.

¹⁵ *Minn. Stat.* §16B.61, subd. 1a.

¹⁶ *Minn. Stat.* §16B.65, subd. 1 and *Minn. Stat.* §16B.71.

¹⁷ *Minn. Stat.* §16B.65.

or recent code revisions and has been presented by department staff or staff from national organizations. The State Board of Electricity and Department of Health have also provided training to inspectors who enforce the electrical and plumbing provisions of the code.

Building code enforcement is further complicated by the enforcement of other related state codes. The State Fire Marshal Division in the Department of Public Safety has interagency agreements with four state agencies (the departments of Children, Families & Learning; Corrections; Health; and Human Services) to provide plan review and inspection assistance for life safety provisions of the state fire code in certain occupancies. These provisions overlap with the fire protection provisions of the state building code. According to State Fire Marshal staff, they have tried to avoid duplicating the work of building officials. However, these reviews have usually not been coordinated with the Department of Administration or with local building officials who also review project plans. Coordination between the departments of Administration and Public Safety is also important because statutes indicate that the State Fire Marshal, under the supervision of the Department of Administration, should enforce the fire and life safety provisions of the fire code in those buildings for which the Department of Administration has code enforcement authority.¹⁸ According to staff in these two agencies, the unintended result of this statute is that the State Fire Marshal is required to report to two commissioners (the commissioners of Public Safety and Administration) regarding the enforcement of the fire code.

This complex, and at times duplicative, enforcement structure has not always worked smoothly. We found that:

- **Poor coordination between the departments of Administration and Public Safety has resulted in enforcement problems in some public buildings.**

Building and fire officials are responsible for a building at different points in time.

As noted previously, while building officials are responsible for a building during the construction phase, fire officials assume responsibility immediately after the certificate of occupancy has been issued. However, building officials have granted equivalencies for certain building code provisions that overlap with the fire code without routinely informing fire officials. As a result, fire officials, unaware of these equivalencies, have determined that some public buildings have not complied with the fire code.

For example, the Department of Administration recently accepted several equivalencies during plan review for a secondary school building and did not inform the State Fire Marshal. However, State Fire Marshal staff were responsible for inspecting this school because, as stated earlier, they have an agreement with the Department of Children, Families & Learning to review plans and inspect schools for life safety provisions of the fire code. In this particular project, the building official permitted a door to be built between a theater scene shop and one of the primary exit corridors; the building code generally does not allow this. The building official granted this equivalency because, among other reasons, the walls

¹⁸ *Minn. Stat.* §299F.011, subd. 3.

Equivalencies granted by building officials are not always communicated to fire officials.

and doors of the scene shop were more fire-resistant than the code required and there were smoke detectors installed in the room. Since the fire official was not informed of this equivalency and did not agree with it, there was confusion regarding the building's subsequent compliance with the fire code. Ultimately, the fire official accepted the equivalency. However, State Fire Marshal staff have indicated that if a fire official disagrees with an equivalency and thinks it jeopardizes the life safety of the building's occupants, the fire official has the statutory authority to write a correction order and require it to be fixed before the building can continue to be occupied.

In addition to the conflicts over equivalencies, there were several other problems with this school building that resulted from poor coordination between the building and fire officials. Specifically, the fire inspector cited an exit passageway and storeroom as not compliant with the building code despite the fact that the building official had approved them and determined that they were consistent with building code interpretations at the local and national levels. These differences in code interpretation between the building and fire officials caused delays in issuing the final certificate of occupancy. Several months of telephone calls, letters, written interpretations from national authorities, and meetings of state and local personnel were required to resolve these disagreements.

As noted earlier, local building officials are responsible for much of the enforcement of the building code and statutes give the Department of Administration overall responsibility to ensure that these officials carry out their responsibilities. However:

- **The Department of Administration has little supervisory authority over local building officials and has little information about how they enforce the building code.**

Although statutes provide that the State Building Official must assume local enforcement responsibilities if the Commissioner of Administration determines that a local government is not properly enforcing the state building code, this has rarely happened.¹⁹ The statutes only permit the state to remove a local building official; there are no intermediate disciplinary alternatives available. As such, this authority may be "too blunt a sword" to be an effective means of discipline. It may be reasonable to give the Department of Administration more general disciplinary authority over local building officials.

The state does not routinely collect information on local building code enforcement.

In addition, the department does not routinely collect information about the activities of local building officials, such as workload and staffing, nor does it have information on the status of most buildings in code-adopting municipalities. More importantly, the Department of Administration does not have current and accessible data about how municipalities enforce the code in those public buildings where it has transferred enforcement responsibility. The department

¹⁹ *Minn. Stat.* §16B.62, subd. 2.

**Certain
equivalencies
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in one
municipality,
but not in
another.**

does not track how long it takes these municipalities to conduct plan reviews or inspections, nor does it have an accurate list of buildings that have been issued certificates of occupancy. The department also has no data to verify that all municipalities enforce the building code's accessibility provisions.

As discussed in Chapter 1, building officials have wide latitude to grant equivalencies to allow builders to achieve the state building code's goals in different ways. However, since equivalencies are granted by building officials and only apply to a specific project, the same option may not necessarily be available to builders elsewhere. That is, a builder may be granted an equivalency to a code requirement in one municipality, but may not receive the same equivalency in another.

Furthermore, the Department of Administration does not have the authority to require that local officials accept an equivalency or the department's code interpretations, regardless of whether other municipalities have accepted them. Local officials may go to the department with technical questions or for interpretations, but they need not do so. In an effort to share common equivalencies and code interpretations, the department, together with several building official organizations, participates on the Minnesota Uniformity Committee. This committee meets annually and publishes a list of code interpretations, although these are not binding on state or local building officials.

APPEALS

Because local building officials have considerable discretion in allowing equivalencies and interpreting the building code, it is important that builders and designers have the chance to have local decisions reviewed by an independent but qualified person or group. As we noted previously, the Department of Administration cannot simply override local officials' decisions nor can it mandate certain interpretations of the building code. We found that:

- **Opportunities to formally appeal local building officials' decisions at the state level are limited and have rarely been used.**

The *Uniform Building Code*, upon which the state building code is based, requires that all municipalities establish a local board of appeals. Board members must be knowledgeable about matters related to building construction and cannot be employees of the local municipality. However, it is not entirely clear whether this board is empowered to hear appeals that go beyond the specific provisions of the *Uniform Building Code* to include other state building code provisions, such as electrical, energy, and plumbing requirements.

Minnesota statutes provide that anyone that disagrees with the final decision of a municipality may appeal that decision to the Commissioner of Administration,

The building code does not have an intermediate appeals process like the fire code.

who must follow contested case procedures to hear the appeal.²⁰ The commissioner's decision may be appealed to the courts.

According to Department of Administration staff, a small percentage of municipalities that have adopted the state building code have established a local board of appeals. There have been no formal appeals to the Commissioner of Administration in the last several years. According to staff, builders are generally hesitant to file an appeal with the state because of the time involved to go through the process. Furthermore, it is not clear how often local boards of appeals are used. Although the state building code requires that local boards of appeals send a copy of their decisions to the Department of Administration, department staff indicated that they have received few such reports over the last several years.

In contrast, statutes require that the State Fire Marshal's office establish an intermediate mechanism at the state level for appealing local state fire code decisions. Like the state building code, the fire code requires that local municipalities have a local board of appeals. However, local decisions can be appealed to the State Fire Marshal's office which has the power to rescind local orders related to the fire code and issue binding decisions. The office uses a code advisory panel, chiefly comprised of office staff, to hear and rule on approximately 8 to 10 appeals each month. For example, a public school recently requested a variance to omit certain manual fire alarm pull stations because they contributed to frequent false alarms.²¹ The State Fire Marshal Code Advisory Panel allowed this variance to the code because the building was protected instead by smoke detectors and monitored fire alarm and automatic sprinkler systems.²² Decisions made by this advisory panel can be appealed to the Commissioner of Public Safety, who must then follow contested case procedures. Finally, decisions can be appealed one step further to the court system. According to Department of Public Safety staff, there have been no formal appeals to the commissioner in the last several years.

CONFLICT OF INTEREST

Concerns have been expressed about having the same state agency responsible for both building construction and building code development and enforcement. Some policy makers allege that the Department of Administration's Building Construction Division has pressured the department's Building Codes and Standards Division to relax its enforcement of building code provisions in state buildings to save money. We found that:

²⁰ Contested case procedures are outlined in *Minn. Stat.* §§14.57-62. This is a quasi-judicial process where an administrative law judge examines the local record, ensures that the process met due process requirements, seeks additional evidence if necessary, and distributes a copy of the written findings and decision to all parties. This process requires adherence to strict timeline and notification requirements.

²¹ Variances to the fire code are similar to equivalencies to the building code.

²² Minnesota Fire Marshal Code Advisory Panel, File #97-047-V, January 6, 1998.

- **Although having the Department of Administration responsible for both enforcing the building code and managing state building construction creates the potential for a conflict of interest, the Building Codes and Standards Division has taken steps to avoid problems.**

City officials enforce the building code in state-owned buildings in St. Paul.

Critics frequently cite the State Office Building remodeling project in the mid-1980s to illustrate possible conflicts of interest within the Department of Administration. In our view, this project suffered from a variety of problems including the department's failure to adequately scope the project before obtaining bids and an overly optimistic construction schedule. However, these problems were not the product of actions by the Building Codes and Standards Division resulting from undue influence. In fact, the St. Paul building official was responsible for both plan review and inspection for the State Office Building remodeling project. The Department of Administration has generally transferred the enforcement responsibility for state buildings to local municipalities as much as possible, especially the more costly state buildings. This is especially true in St. Paul, where the city building official handles code enforcement for those buildings in which the Department of Administration has jurisdiction, including those in the Capitol complex. We think that this practice is appropriate and, combined with good communication with the construction division, helps reduce or eliminate negative perceptions about possible conflicts. However, the potential for a conflict of interest clearly exists and the current organizational structure allows others to repeatedly raise it as an issue.

SUMMARY

Overall, we found that responsibility for developing and adopting the building code is divided among various state agencies. Complex lines of authority and poor coordination have often led to delays and frustration. We found that these problems have been especially characteristic of the relationship between the departments of Administration and Public Safety.

Likewise, state building code enforcement is complex. Several state agencies and many local municipalities share enforcement responsibilities, depending on the specific code provision, type of building, and its geographic location. Again, we found that poor coordination between the departments of Administration and Public Safety has caused problems which, although generally resolved, have created tension and ill will. In addition, the Department of Administration has little authority over local building officials and little information about local enforcement activities.