
Options for Change

CHAPTER 3

In previous chapters we documented the current organization of building code administration and identified weaknesses in how the code is administered. This chapter discusses how other states administer their building and fire codes and presents options for possible changes to code administration in Minnesota. Specifically, we addressed the following questions:

- **How do other states adopt, organize, and administer their codes?**
- **What are the organizational alternatives for administering the Minnesota building code?**

To answer our research questions, we first reviewed the literature on state building codes across the nation, including the 1998 *Directory of Building Codes and Regulations State Directory*, published by the National Conference of States on Building Codes and Standards, Inc. Based on information from this directory, we conducted phone interviews with building officials in 11 states that enforce a code similar to the Minnesota building code. Finally, we contacted 45 interest groups that represent various aspects of the building and design industry in Minnesota.

Overall, we found that Minnesota administers the state building code somewhat differently than most states. Minnesota has five agencies responsible for administering its building and fire codes while a majority of states have only one or two agencies responsible for these codes. In addition, Minnesota is organized by program, in that responsibility for the building code is divided by code provision. Many other states with only one or two code-administering agencies organize the administration of their state codes by function where, for example, one office is responsible for plan review for all code provisions. Finally, Minnesota does not currently have an accessible and effective state-level building code appeals mechanism short of the contested case procedure. Several other states have an intermediate structure, which is timely and effective for hearing appeals at the state level.

In this chapter we present several options that may help improve the administration of the state building code. We discuss the advantages and disadvantages of five alternatives, ranging from maintaining the status quo to centralizing all building and fire code activities in one agency. We recommend that the Legislature consider implementing some procedural changes that may help promote more consistent code enforcement and help code-administering agencies better coordinate their activities.

OTHER STATES

We examined how other states organize their building and fire codes.

To gather information on how other states administer their building code, we reviewed the 1998 *Directory of Building Codes and Regulations State Directory*.¹ This directory provides data on which code provisions each state enforces, in which buildings the code is applied, whether local jurisdictions are permitted to amend the state code, and whether state or local authorities enforce the code.

We contacted those states that base the majority of their building code on model codes, apply a majority of the code provisions to all buildings except possibly agricultural buildings, have local authorities responsible for at least some of the enforcement, and either do not permit any local amendments or only permit amendments that are more stringent than the state code. We contacted 11 of the 16 states that met these criteria: Arkansas, California, Connecticut, Kentucky, Michigan, Nevada, New Jersey, Rhode Island, Virginia, Washington, and West Virginia. We also spoke with agency staff in Iowa and Wisconsin.

Finally, we contacted 45 organizations that represent the primary interest groups of the building and design industry in Minnesota. We gathered their perceptions regarding the administration and effectiveness of the Minnesota state building code. We requested the names and addresses of interest groups from the six state agencies involved in administering the state building code and related codes: the departments of Administration, Public Safety, Health, Public Service, and Labor and Industry, and the State Board of Electricity.

Overview of Code Provisions

This chapter focuses primarily on six of the major code provisions that make up part of the Minnesota building code. As presented in Figure 3.1, we found that:

- **Many states, including Minnesota, have building codes that contain six core provisions: construction, electrical, fire protection, life safety, mechanical, and plumbing.**²

Specifically, Minnesota and 21 other states enforce these 6 types of provisions. Fourteen states enforce all but the life safety code provisions, while 14 states enforce some combination of these provisions. Of the 22 states that enforce all of these provisions, only 5, including Minnesota, apply them to all buildings except possibly agricultural structures.³

¹ National Conferences of States on Building Codes and Standards, Inc., *Directory of Building Codes and Regulations State Directory* (Herndon, Virginia: 1998).

² As noted in Chapters 1 and 2, there is no specific chapter for the fire protection and life safety provisions, instead they are scattered throughout the building code's construction code provisions and the state fire code.

³ National Conferences of States on Building Codes and Standards, Inc., *Directory*.

Figure 3.1: State Building and Fire Code Provisions Enacted in Each State

<u>Construction, Electrical, Fire Protection, Life Safety, Mechanical, and Plumbing</u>	<u>Construction, Electrical, Fire Protection, Mechanical, and Plumbing</u>	<u>Other Combinations</u>
Alabama	Alaska	Arizona
Arkansas	California	Colorado
Florida	Indiana	Connecticut
Georgia	Massachusetts	Delaware
Idaho	Michigan	Hawaii
Iowa	Montana	Illinois
Kansas	New Jersey	Louisiana
Kentucky	North Carolina	Maine
Maryland	Ohio	Missouri
MINNESOTA	Oregon	Nebraska
Mississippi	South Carolina	New Hampshire
Nevada	Virginia	Pennsylvania
New Mexico	Washington	Texas
New York	Wisconsin	Wyoming
North Dakota		
Oklahoma		
Rhode Island		
South Dakota		
Tennessee		
Utah		
Vermont		
West Virginia		

SOURCE: National Conferences of States on Building Codes and Standards, Inc., *Directory of Building Codes and Regulations State Directory* (Herndon, Virginia: 1998).

For each of these code provisions, states can adopt a model code developed by national groups, amend a model code, or develop their own homegrown code. As noted previously, Minnesota uses a model code for its electrical code provisions, amends model codes for its construction and mechanical code provisions, and enforces state-written plumbing code provisions. We found that:

- **Most states adopt model codes in some form, either as written or amended, as the technical basis for their state building code.**

That is, 41 states, including Minnesota, use a model code as the basis for their construction code provisions. As discussed in Chapter 1, many states have adopted the *Uniform Building Code* as the model code for their state building code. Similarly, 26 states, including Minnesota, have adopted the model *National Electrical Code* without amendments as their state electrical code. The only

noticeable exception to adopting model codes is state plumbing codes where nine states, including Minnesota, utilize state-written codes.⁴

Although states may amend model codes, they have different rules regarding local amendments of their building code:

- **Minnesota and seven other states do not permit local jurisdictions to amend any portion of their building code.**⁵

However, nine states, including Arkansas, Tennessee, and Washington, permit local jurisdictions to make more stringent amendments to all code provisions. Eleven states, including Maryland, South Dakota, and Wisconsin, permit amendments to some code provisions (most frequently the electrical provisions), but not others. Still others require state approval for amendments made to their building code. For example, California permits local jurisdictions to amend the state building code when they can provide topographical, geological, or climatic justification for the change.⁶

Organizational Structure

We found that states delegate administrative responsibility for their building and fire codes to a number of different agencies. Some states place all of the authority for these codes in one department, often their fire prevention, housing, or commerce agency. Several other states divide the authority for administering their building and fire codes between two state offices, typically a building codes division and a fire marshal's office. As illustrated in Figure 3.2, states may have 5 or more agencies responsible for their state building and fire codes; 28 states have only 1 or 2 agencies administering these codes. However:

- **Compared with other states, Minnesota is at the far end of the organizational spectrum with five agencies having responsibility for administering provisions of the building and fire codes.**⁷

As discussed in Chapter 2, Minnesota assigns the responsibility for its building and fire codes to five agencies by *program*: responsibility for the code is allocated by code provision. For example, the Minnesota Department of Health is responsible for developing and enforcing plumbing code provisions. Likewise, the State Board of Electricity is responsible for developing and enforcing the electrical code provisions. Several states, including Arkansas, North Dakota, and South Dakota, are also organized by program and have separate state agencies

Unlike Minnesota, most states have only one or two code-administering agencies.

⁴ *Ibid.*

⁵ *Ibid.* As discussed in Chapter 1, the Minnesota electrical code permits local jurisdictions to make more stringent amendments. The extent to which such amendments are made is unclear, as is the extent to which they conflict with the state building code.

⁶ *Ibid.* and Mr. Stan Nishimura, California Building Standards Commission, interview by author, Telephone conversation, Sacramento, California, September 14, 1998.

⁷ The departments of Administration, Health, and Public Service and the State Board of Electricity have responsibility for administering the state building code. The Department of Public Safety is responsible for administering the state fire code.

Figure 3.2: Number of Departments Administering the Building and Fire Codes in Each State

<u>One Department</u>	<u>Two Departments</u>	<u>Three Departments</u>	<u>Four Departments</u>	<u>Five or More Departments</u>
Colorado	Florida	Alabama	Arizona	California
Connecticut	Georgia	Alaska	Arkansas	Maine
Indiana	Idaho	Delaware	Hawaii	Maryland
Iowa	Louisiana	Illinois	Massachusetts	MINNESOTA
Kentucky	Montana	Kansas	Mississippi	New Hampshire
Michigan	New Mexico	Missouri	Nebraska	
New Jersey	Oklahoma	Pennsylvania	Nevada	
New York	Oregon	South Dakota	North Dakota	
North Carolina	Rhode Island	Texas		
Ohio	South Carolina			
Vermont	Tennessee			
Virginia	Utah			
West Virginia	Washington			
Wisconsin				
Wyoming				

SOURCE: National Conferences of States on Building Codes and Standards, Inc., *Directory of Building Codes and Regulations State Directory* (Herndon, Virginia: 1998).

responsible for the electrical, fire, and plumbing provisions of their building code.⁸ Michigan, which has only one state agency responsible for administering its building code, is also organized by program. Within the Michigan Department of Consumer and Industry Services, Bureau of Construction Codes, are the building, electrical, elevator and boiler, mechanical, and plumbing divisions. Each division is responsible for administering its respective code provisions, including code development, plan review, and enforcement.⁹

In contrast, we found that several states with only one or two code-administering agencies organize internally by *function* rather than program. Wisconsin provides the best example of this type of organizational structure. The Wisconsin Division of Safety and Buildings, located within the Department of Commerce, is divided into three bureaus: plan review, inspection and field operations, and program development, including code development and budgeting. Each bureau is responsible for its designated function for all code provisions. For example, the plan review bureau reviews building plans to ensure that they comply with the construction, electrical, fire, mechanical, and plumbing code provisions.

Wisconsin found that organizing by function improved its administration of the building code in many ways. First, and most importantly, one division is responsible for developing the entire code. Centralizing code development helps

⁸ National Conference of States on Building Codes and Standards, Inc., *Directory*.

⁹ Mr. Irvin J. Poke, Chief, Building Division, Michigan Department of Consumer and Industry Services, Bureau of Construction Codes, interview by author, Telephone conversation, Okemos, Michigan, August 19, 1998.

ensure that code provisions are consistent with one another and do not contain conflicting requirements. Second, this structure reduces duplication of tasks. Plans are reviewed once with respect to all code requirements, thus ensuring that builders receive complete information regarding all requirements for their project. Similarly, inspections are done with respect to all codes, ensuring that builders do not receive mixed messages regarding the compliance of their building.

Finally, organizing by function enables the divisions to easily share information and procedures. Wisconsin has identified “best practice” procedures to be used for each function across all code provisions. For example, Wisconsin has standardized procedures for code development, plan review, enforcement, and licensing, thus ensuring that clients receive consistent and effective service.¹⁰

Code Enforcement

As illustrated in Figure 3.3, we learned that states delegate building code enforcement authority in several different ways. States may retain all enforcement authority at the state level; they may delegate all enforcement authority to local jurisdictions; they may have state and local officials share enforcement responsibilities; or they may divide enforcement authority based on specific code provisions or building types. However:

- **Many states have both state and local officials enforce all provisions of their building code.¹¹**

Minnesota and 14 other states have both state and local officials enforce all provisions of their building code. Seven states have only state officials enforcing the code. Ten other states use only local officials and 10 more assign enforcement authority by code provision. For example, Maryland has only local officials enforce its construction code provisions, only state officials enforce its mechanical code provisions (which only apply to state-owned, leased, operated, or controlled buildings), and state or local officials enforce its electrical and plumbing provisions. Similarly, South Dakota has only state officials enforce its construction and mechanical code provisions (which only apply to specific buildings) and state or local officials enforce its electrical and plumbing code provisions. Most states that have only state officials enforcing the code, such as Alabama, Colorado, and Missouri, narrowly apply their building code only to state-owned facilities and other specified buildings.¹²

There are several different ways for states to share code enforcement authority between state and local officials. As discussed in Chapter 2, the Minnesota Department of Administration is responsible for enforcing the code in certain

States delegate building code enforcement authority differently.

¹⁰ Mr. Randy Baldwin, Director, Bureau of Integrated Services, Wisconsin Department of Commerce, Safety and Buildings Division, interview by author, Telephone conversation, Madison, Wisconsin, August 14, 1998.

¹¹ National Conference of States on Building Codes and Standards, Inc., *Directory*.

¹² *Ibid.*

Minnesota uses state and local officials to enforce the building code.

Figure 3.3: Enforcement of Construction, Electrical, Mechanical, and Plumbing Code Provisions in Each State

<u>State Enforcement</u>	<u>Local Enforcement</u>	<u>State and Local Enforcement</u>	<u>Enforcement Varies by Provision</u>	<u>Other</u>
Alabama	Connecticut	California	Alaska	Arizona
Colorado	Florida	Indiana	Arkansas	Delaware
Kansas	Georgia	Iowa	Idaho	Hawaii
Mississippi	Louisiana	Kentucky	Maryland	Illinois
Missouri	Massachusetts	Michigan	Nevada	Maine
Oklahoma	New York	MINNESOTA	New Hampshire	Nebraska
South Carolina	North Dakota	Montana	South Dakota	Pennsylvania
	Rhode Island	New Jersey	Tennessee	Texas
	Utah	New Mexico	Washington	
	Virginia	North Carolina	West Virginia	
		Ohio		
		Oregon		
		Vermont		
		Wisconsin		
		Wyoming		

SOURCE: National Conferences of States on Building Codes and Standards, Inc., *Directory of Building Codes and Regulations State Directory* (Herndon, Virginia: 1998).

public buildings; local building officials are responsible for enforcing the code in all other buildings in code-adopting jurisdictions.¹³ In Wisconsin, where the construction and mechanical code provisions only apply to specific buildings, all code enforcement authority ultimately rests with the state. However, the Wisconsin Inspection and Field Operations Bureau can delegate enforcement authority to local officials who have demonstrated the ability to conduct plan reviews and inspections. In Michigan, the Bureau of Construction Codes is the primary code enforcing agency. However, local jurisdictions can exempt themselves from state enforcement by adopting a code other than the state code or by enforcing the state construction code themselves.¹⁴

In contrast, Virginia has only local officials enforcing the state building code. Local jurisdictions in Virginia are required by law to have a building code department and enforce the building code. Some smaller jurisdictions have joined together to share these code enforcement responsibilities.¹⁵

¹³ Some local building officials in Minnesota also accept responsibility for enforcing the code in certain public buildings.

¹⁴ Baldwin, Telephone conversation, August 14, 1998; and Poke, Telephone conversation, August 19, 1998.

¹⁵ Mr. Norman Crumpton, Associate Director, Virginia Department of Housing and Community Development, Division of Building and Fire Regulation, interview by author, Telephone conversation, Richmond, Virginia, August 19, 1998.

Consistency of Code Interpretations

As discussed in Chapter 2, code requirements in Minnesota can be interpreted differently by building officials in different jurisdictions. A majority of the states that we spoke with also had problems with consistency of code interpretations. Although some states did not take an active role in promoting consistent interpretations, others had state-level programs or the statutory authority to encourage consistency.

For example, both Connecticut and Virginia, like Minnesota, emphasize educational and certification programs to promote consistency among local building officials and inspectors.¹⁶ New Jersey appears to have fewer problems with inconsistent enforcement than other states. New Jersey statutes give the state direct oversight of local enforcement officials and the power to discipline and remove officials that are not appropriately enforcing the code. Furthermore, the state has the authority to issue binding interpretations, which local officials must enforce, that help to quickly resolve problems when they arise.¹⁷

Appeals Process

Some states have more appeals processes than Minnesota.

We found that most of the states that we contacted have several mechanisms to handle appeals of building code decisions. As discussed in Chapter 2, the first step in an appeals process is usually to a local board of appeals. This board, comprised of qualified people, has the power to hear appeals of local decisions and issue binding rulings. Opportunities to appeal decisions made by these local boards vary by state. As discussed in Chapter 2, if builders want to appeal a decision made by a local board of appeals in Minnesota, their only option is to take it to the Commissioner of Administration as a contested case.

In contrast, Michigan has given state-level dispute resolution authority to the State Code Commission. This commission, comprised of representatives of various building code interest groups (plumbers, electricians, building officials, fire marshal representatives, home builders, contractors, and engineers, among others), is a 17-member panel that has the power to hear and resolve appeals regarding the state building code.

The first step of a state-level appeal in Michigan is to go before the “panel of three,” a panel comprised of three members of the State Code Commission. The three people are selected to achieve a balance of interests, generally a contractor, a building official, and an architect or engineer, and is dependent upon availability. The panel of three has the authority to issue a binding decision on an appeal. If the parties involved are still not satisfied with the result, they can appeal the

¹⁶ Mr. Christopher Laux, State Building Inspector, Connecticut Department of Public Safety, Division of Fire, Emergency, and Building Services, Office of the State Building Inspector, interview by author, Telephone conversation, Middletown, Connecticut, August 21, 1998; and Crumpton, Telephone conversation, August 19, 1998.

¹⁷ Mr. William Connolly, Director, New Jersey Department of Community Affairs, Division of Codes and Standards, interview by author, Telephone conversation, Trenton, New Jersey, August 28, 1998.

panel's decision to the entire commission. The State Code Commission will then hear and resolve the appeal. If the parties involved are not satisfied with the commission's decision, their only remaining option is to go to court.¹⁸

Kentucky has an appeals panel similar to Michigan's, comprised of five members of its Board of Housing.¹⁹ Connecticut also has a similar panel of three comprised of three members of its Codes and Standards Committee. Individuals in Connecticut who want to appeal a local decision must first go through their local board of appeals. If they are not satisfied with the local resolution, they may appeal the decision to the state building inspector who has the authority to make a binding decision. If the parties are still not satisfied, they may appeal to the panel of three, and then finally to superior court.²⁰

ALTERNATIVES FOR MINNESOTA

Building code administration in Minnesota is complex and fragmented.

As we discussed in Chapter 2, the current structure for administering the Minnesota building code is complex and fragmented. In addition, we found problems of poor coordination between some agencies as well as complex lines of authority for code promulgation and enforcement. We also found other minor problems including complications when adopting codes and inconsistencies among code provisions. These problems are not unique to Minnesota. In particular, there are problems nationally with coordination between building code and fire code agencies and officials. Various states have found different ways to resolve these problems including Memorandums of Understanding between the relevant agencies and giving one code official ultimate authority.²¹ The different philosophies of building and fire organizations have also had to be reconciled when developing national model codes.

In addition, there appears to be some discontent with the current code administration structure in Minnesota. Most interest group organizations we contacted indicated that there was room for improvement in the code adoption process. Furthermore, a number of organizations indicated that codes and code-administering agencies should be better coordinated to ensure code compatibility. Finally, as discussed in the previous section, Minnesota administers the state building and fire codes differently than most other states. Minnesota has five agencies responsible for administering these codes while a majority of states have only one or two. In addition, many of the states with only one or two code-administering agencies are organized internally by function rather than program, which helps to increase coordination of code provisions.

¹⁸ Poke, Telephone conversation, August 19, 1998.

¹⁹ Mr. Jack Rhody, Director, Division of Building Code Enforcement, Kentucky Department of Housing, Buildings, and Construction, interview by author, Telephone conversation, Frankfort, Kentucky, September 10, 1998.

²⁰ Laux, Telephone conversation, August 21, 1998.

²¹ State of Montana Legislative Audit Division, *Administration and Enforcement of State Building Codes in Montana* (Helena, Montana: 1997), 59; Connolly, Telephone conversation, August 28, 1998; and Crumpton, Telephone conversation, August 19, 1998.

Given these problems with current code administration, the Legislature could make several changes to current processes or to the organizational structure itself that might help make administering the building code more effective, timely, and coordinated. The remainder of this chapter presents a range of alternatives that could improve administration of the building code. As illustrated in Figure 3.4, possible alternatives range from making no changes and maintaining the status quo to completely centralizing all agencies that are responsible for administering provisions of the state building and fire codes. We discuss each of these five alternatives in the remainder of this chapter.

Status Quo

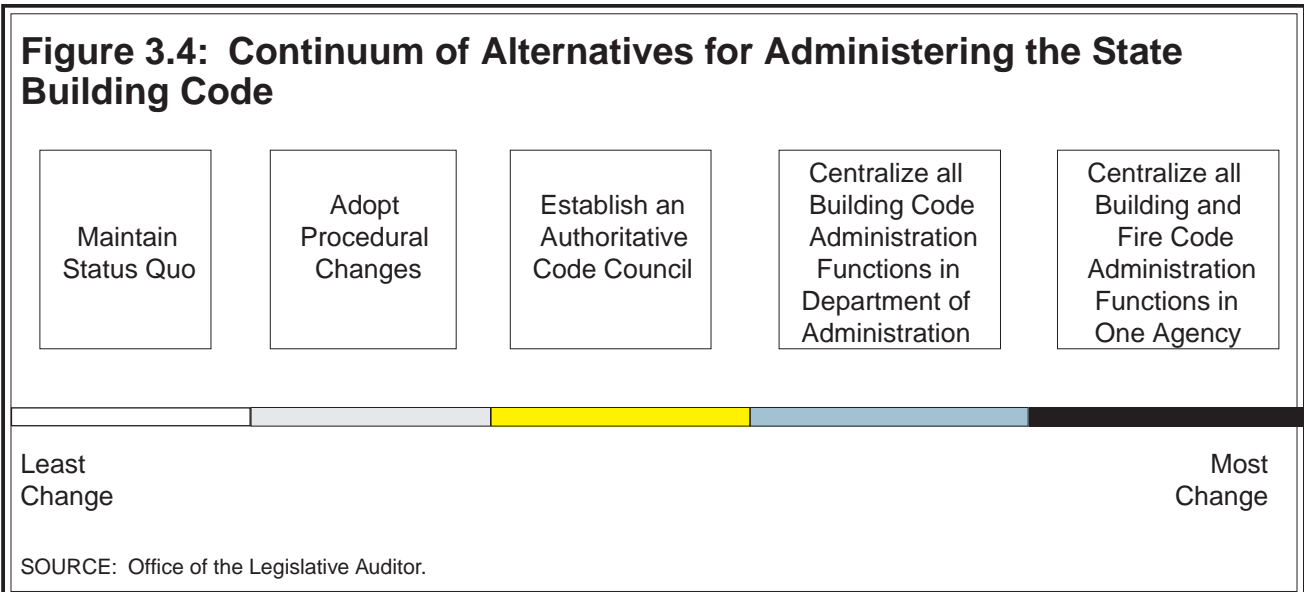
The Legislature could simply maintain the status quo or adopt some procedural changes.

Although maintaining the status quo will not address the problems we have identified throughout this report, it requires the least amount of change. The current system may be flawed, but agency staff do their best to resolve problems and enforce the code. Furthermore, since we did not examine local enforcement of the building code, we do not know the extent to which the current code administration process has created problems for builders or local officials. We do know that the status quo has created problems with coordination among agencies, but the disputed issues have all, eventually, been resolved.

Procedural Changes

Procedural changes represent a departure from the status quo, but do not require any comprehensive structural changes. They are improvements that can be made to the processes used to administer the building code. Procedural changes have advantages in that they require little change to the current structure and they may help to resolve many of the coordination problems that we found among the code-administering agencies. On the other hand, procedural changes do not solve all of the problems discussed in Chapter 2, and they may require significantly more effort on the part of code-administering agencies than the status quo. We have identified five procedural changes that the Legislature may want to consider:

Figure 3.4: Continuum of Alternatives for Administering the State Building Code



1. Giving the Department of Administration rather than the Department of Public Service the authority to adopt the energy provisions of the building code.
2. Giving the Department of Administration the authority to require local building officials to accept building code equivalencies under certain conditions.
3. Establishing a building code appeals process similar to the fire code appeals process.
4. Requiring both building and fire officials to give written approval of certain equivalencies when first proposed, and all building permits and certificates of occupancy.
5. Requiring state building and fire officials to jointly approve the overlapping portions of each other’s proposed codes.

Each of these procedural changes is briefly discussed below.

Giving the Department of Administration the authority to adopt the energy provisions of the building code

Currently, the Department of Public Service is the only agency besides the Department of Administration with the responsibility for adopting provisions of the state building code. As discussed in Chapter 2, the lack of coordination between the departments of Public Service and Administration when developing the energy and mechanical code provisions has caused several problems between these two provisions and has delayed the ultimate adoption of both sets of provisions. To promote coordination between these two departments and to give the Department of Administration complete authority for adopting all provisions of the Minnesota building code:

- **The Legislature could give the Department of Administration rather than the Department of Public Service the authority to adopt the energy provisions of the building code.**

By giving the Department of Administration the authority to adopt the energy code provisions, the departments of Administration and Public Service would be required to coordinate their code promulgating activities at an earlier stage and reduce the possibility of code conflicts. This should help make it easier for building officials to enforce the code’s energy provisions. This change would not require any organizational restructuring, nor would it re-align any state agencies. Under this procedural change, the Department of Public Service, with its technical expertise, would still be responsible for developing the energy code provisions; only adoption authority would transfer to the Department of Administration. However, due to the overlap of the mechanical and energy code provisions, it would be important for the Department of Administration to be actively involved in developing the energy code provisions with the Department of Public Service. Likewise, it would be important for the Department of Administration to formally involve the Department of Public Service in developing the code’s mechanical

Code consistency would be improved if the Department of Administration adopted the energy provisions.

provisions. Since the departments of Administration and Public Service would be sharing responsibility for promulgating the energy provisions, they could resolve inconsistencies between the energy and other code provisions prior to adoption. With this procedural option, it is less likely that the two departments would have to re-open their rulemaking processes as they are currently doing. Also, this arrangement would be more consistent with how the plumbing and electrical provisions of the state building code are currently developed and adopted.

Requiring local officials to accept building code equivalencies

Often, builders and design professionals do not have the time or ability to formally appeal a local decision, yet they require some additional guidance from the state. In addition, as discussed in Chapter 2, equivalencies are local decisions that may not be available to everyone across the state. To provide a more accessible and timely route to code enforcement decisions, and a more uniform code across the state:

- **The Legislature could give the Department of Administration the authority to require local building officials to accept building code equivalencies under certain conditions.**

For example, the Department of Administration could require a local building official to accept a building code equivalency when:

- another municipality has accepted the equivalency, as long as it complies with the state building code;
- a state-level appeals board has approved the equivalency; or
- a model code organization has approved the equivalency.

In addition, the Department of Administration could determine if an accepted equivalency is appropriate and complies with the state building code. On the other hand, with this authority the department could not set precedent or require a local official to accept an equivalency that has not previously been approved. Similarly, with this authority the Department of Administration could not issue binding code interpretations. This procedural option would require little change to the infrastructure of the department, but would provide a degree of state-level assistance that does not formally exist under the current code administration system. Furthermore, it may enhance the department's supervisory authority over local officials. Several other states, including Connecticut, Iowa, and Rhode Island, give their state building official similar authority.²²

²² Laux, Telephone conversation, August 21, 1998; Mr. Roy Marshall, State Building Code Commissioner, Iowa Department of the State Fire Marshal, State Building Code Bureau, interview by author, Telephone conversation, Des Moines, Iowa, August 14, 1998; and Mr. Joseph Cirillo, Commissioner, Rhode Island State Building Commission, interview by author, Telephone conversation, Providence, Rhode Island, August 31, 1998.

This procedural option would help increase uniformity in code enforcement across the state. As mentioned in Chapter 2, the Department of Administration currently participates on the Minnesota Uniformity Committee which meets annually to approve and publish a list of code interpretations that are not binding on building officials. In contrast, this procedural option would enable the Department of Administration to have binding authority regarding these equivalencies and it would be available year round, not simply at an annual meeting as with the uniformity committee.

Establishing a building code appeals process

As discussed in Chapter 2, the State Fire Marshal Division currently has an accessible and intermediate state-level appeals mechanism that the Department of Administration’s Building Codes and Standards Division does not have. Therefore:

- **The Legislature could establish a building code appeals process similar to the fire code appeals process.**

This change would require appointing a state building code appeals board which has the authority to hear appeals of decisions made by the local boards of appeals as well as equivalency decisions made by the Department of Administration. The appeals board could have the authority to make binding decisions regarding appeals and interpretations. The appeals board could also have the authority to set precedent regarding acceptable code equivalencies and interpretations.

A more accessible appeals process could be created.

We suggest that the composition of this board, if created, should adhere to one of the following three models: (1) comprised entirely of industry representatives, (2) comprised entirely of staff from the agencies that administer the state building code, or (3) comprised of a combination of industry representatives and agency staff.

Finally, we suggest that, if the Legislature authorizes a building code appeals board, it should follow the models of Michigan, Kentucky, and Connecticut by permitting a subcommittee of the board to convene and hear appeals on a monthly (or more frequent) basis. As with Michigan and Connecticut, Minnesota could give a “panel of three,” selected from the entire appeals board, the authority to hear and resolve appeals. The three members could be selected on the basis of expertise relevant to the topic of the appeal or interpretation, availability, and willingness to serve. Parties that are not satisfied with the panel’s decision could appeal to the entire appeals board.

This procedural option would provide a more accessible state-level building code appeals system. Although there are currently few building code appeals in Minnesota, organizations we contacted indicated that this is often due to the time involved in appealing a local building official’s decision. A state-level appeals board that could meet and resolve issues more quickly may help to ensure that the building code is being interpreted and enforced consistently across the state. However, this procedural change would require appointing a board, with the appropriate expertise and support staff, that would be available to meet on a regular basis to hear and decide appeals.

The Legislature could require more coordination between building and fire officials.

Requiring written approval for certain equivalencies and all building permits and certificates of occupancy

As discussed in Chapters 1 and 2, although the building official is chiefly responsible for a building during the construction phase, the fire official is chiefly responsible for the building once it is occupied. Under the current code administration procedures, a building must undergo several inspections and satisfy interpretations of both the building and fire codes. In addition, the fire official is often not informed of equivalencies granted by the building official even when these decisions concern overlapping portions of the building and fire codes. This can lead to misunderstandings, unnecessary correction orders, and delays.

To simplify the process for builders and design professionals, both building and fire officials should be involved during the planning and construction phases to ensure that both codes are satisfied. To accomplish this:

- **The Legislature could require that the responsible building and fire officials arrive at an agreement and give their mutual written approval for all building permits and proposed equivalencies regarding the overlapping portions of their codes, as well as all certificates of occupancy.**

This change would require coordination between the two officials and would ensure that both the building and fire officials are involved throughout the code enforcement process. Just as the “Truth in Housing” law requires homeowners to disclose any problems with their house prior to selling it, this procedural option would require state and local building officials to disclose certain equivalencies proposed during plan review or inspections prior to issuing a certificate of occupancy. Any equivalencies regarding the overlapping portions of the building and fire codes would be communicated to fire officials as soon as they are proposed.

Building and fire officials would also be encouraged to come to a mutual agreement and give written approval for building permits in those areas that involve the overlapping portions of the two codes. Requiring the two code officials to coordinate and agree on overlapping code requirements early in the construction process should reduce the number of conflicts and differing interpretations that have caused problems in the past. Finally, if the building and fire officials have both given written approval for the building permits and certain proposed equivalencies, written approval of the certificate of occupancy should be no more than a formality.

To implement an approval process, the departments of Administration and Public Safety, as well as municipalities, would need to employ a timely and effective mechanism to communicate and respond to proposed equivalencies and building permits that involve the overlapping portions of the building and fire codes.

**Administrative
law judges
could help
resolve
disputes.**

Oregon uses a method that could work in Minnesota in which the deputy state fire marshals provide plan review input. The deputy state fire marshals are allowed up to 10 working days to provide input; extensions can be granted for more complicated projects.²³

In order for this joint written approval process to be feasible, there also needs to be a mechanism to resolve disagreements between the building and fire officials. We recommend that, if the building and fire officials are unable to resolve their differences within a reasonable amount of time, they must present their cases to a state administrative law judge who will mediate the conflict and help the officials come to a mutual agreement. If a compromise cannot be achieved, the administrative law judge should have the authority to render a binding decision. According to staff in the Office of Administrative Hearings, administrative law judges frequently resolve disputes state agencies or local municipalities may have. In addition, the costs of using an administrative law judge should be shared by both public agencies and not the developer, regardless of the outcome.

Similar to Oregon's process, we think that 10 working days should be sufficient for the building and fire officials to work together to come to a mutual agreement on the permits or proposed equivalencies. During this time, if the local officials are unable to resolve the conflicts between themselves, they could jointly meet with staff from the Department of Administration's Building Codes and Standards Division and the Department of Public Safety's State Fire Marshal Division to help them reach a solution. Staff from these state offices could form a "resolution panel" and work to help local building and fire officials resolve their conflicts. Regardless of whether local officials use the resolution panel, if the two officials are unable to come to an agreement after 10 working days, we think the process should be elevated to an administrative law judge with the authority to mediate, and ultimately resolve, the conflict.

Rhode Island uses a similar joint approval mechanism to coordinate activities between the building and fire code divisions. For example, the local fire official must sign off on all building permits and certificates of occupancy. Furthermore, the plan reviewer from the Fire Marshal's Office works out of the State Building Commission's office several days per week. Having this coordination between the two offices at the start of projects helps to alleviate problems down the road. Any conflicts between the two Rhode Island codes that are not resolved by the building and fire officials must be heard by both their State Fire Code Board of Appeals and their Building Code Standards Committee. If these two boards disagree, the builder must comply with the most restrictive requirements or appeal the decision to court.²⁴

Implementing this change would require some statutory clarification; there is currently some language regarding the responsibility and authority of the state building official to supervise the fire marshal inspecting buildings for compliance

²³ *Oregon Senate* (1995) S.B. no. 498.

²⁴ Cirillo, Telephone conversation, August 31, 1998.

with the fire code in certain public buildings.²⁵ This change would also require the building–fire relationship to be more of a partnership than currently exists. In addition, it is not clear how this change would affect local enforcement; joint written approval may represent increased costs to state or local government. However, some cities such as St. Paul currently have a high level of coordination between the city’s building and fire officials that appears to be effective. St. Paul fire officials usually accompany the building official on inspections and fire officials issue the certificates of occupancy, based on the recommendations of the local building official.

As fire officials inspect existing buildings, they often grant variances for fire code provisions that overlap with the building code. Variances are similar to equivalencies in that they allow building owners to comply with fire code requirements in diverse ways. Because both building and fire officials have responsibility for maintaining existing structures and ensuring that they comply with the building and fire codes, it might be reasonable to require that the responsible building and fire officials also mutually agree on all proposed variances regarding the overlapping portions of the two codes. Because our study focused on the building code and not the fire code, we did not examine the implications of such a requirement. Nevertheless, building and fire officials might want to work together to develop a joint approval system for variances that are related to the overlapping portions of the two codes.

Requiring joint written approval of the overlapping portions of codes

As discussed in Chapter 2, there have been conflicts between the state building and fire codes. These conflicts pose problems for builders who must comply with the building code to receive the certificate of occupancy, and then must also comply with the fire code on an ongoing basis. To ensure that the building and fire codes do not conflict with one another:

- **The Legislature could require that the departments of Administration and Public Safety approve the overlapping portions of each other’s codes before they take effect.**

That is, before the new fire code could be formally adopted, the State Building Official would approve those portions that overlap with the building code. Similarly, before the new building code could be adopted, the State Fire Marshal would approve those portions that overlap with the state fire code. The level of coordination embodied in this change would compel these departments to work more closely together and come to agreement on code requirements prior to formally adopting these codes.

As part of this procedural change, the departments of Administration and Public Safety could work to have the building and fire codes take effect at the same time. This would reduce conflicts between the two codes due to timing issues and referencing out-of-date materials. This change would also result in two codes that are complimentary and consistent with one another. Some interest groups also

²⁵ *Minn. Stat.* §16B.61, subd. 2.

Joint code development could help prevent future conflicts.

support joint development of the building and fire codes. The Minnesota State Fire Chiefs’ Association passed a resolution in 1997 stating that “...the Minnesota State Fire Chiefs’ Association believes that the Minnesota Uniform Fire Code and the Minnesota State Building Code should be adopted concurrently and be coordinated and consistent with each other.”²⁶ Likewise, some organizations representing Minnesota building officials passed similar resolutions.

This level of coordination on rules development between agencies is not unheard of in Minnesota state government. For example, according to Minnesota laws, the departments of Corrections and Human Services are supposed to “jointly adopt licensing and programming rules for the secure and nonsecure residential treatment facilities that they license and shall establish an advisory committee to develop these rules.”²⁷

However, jointly developing the overlapping portions of the building and fire codes, or even approving each other’s codes, would require significant effort on the part of the departments of Administration and Public Safety. Furthermore, it is possible that requiring joint code development or approval of the overlapping portions of the building and fire codes could delay code adoption. Without a structure in place to force agreement by both state building and fire officials, this procedural change could simply promote no additional code adoption. As with the previous procedural change, there would need to be a mechanism to resolve disagreements between the building and fire officials. We suggest that differences between the commissioners of Administration and Public Safety during code development be elevated to an administrative law judge with the authority to render a binding decision, or the Governor.

One Authoritative Code Council

A third option would create another level of government without substantially changing our current organizational arrangement:

- **The Legislature could establish an independent, authoritative council to help address problems related to administering the state building code.**

As shown in Figure 3.5, in addition to giving a council the authority to hear and resolve appeals as we previously discussed, the Legislature could authorize it to approve building code amendments and to coordinate the activities of the various state agencies that administer building code provisions and other related codes. Specifically, its duties could include any or all of the following: determining whether building code problems are interdepartmental in nature; coordinating interdepartmental activities regarding the building code and other related codes; approving proposed building code provisions; resolving conflicts among codes, agencies, and building officials; reviewing code-related legislative changes and

²⁶ Steve Zaccard, Code Committee Chair, Minnesota State Fire Chiefs’ Association, to Fire Chief Jerry Rosendahl, President Minnesota State Fire Chiefs’ Association, *Resolution*, May 17, 1997, Letter.

²⁷ *Minn. Laws* (1995), ch. 226, art. 3, sec. 60, subd. 1.

An authoritative code council could coordinate similar code activities among different agencies.

Figure 3.5: Possible Responsibilities for an Authoritative Building Code Council

- Resolving and hearing appeals;
- Determining whether building code problems are interdepartmental in nature;
- Coordinating interdepartmental activities regarding the building code and other related codes;
- Approving proposed building code provisions;
- Resolving conflicts among codes, agencies, and officials;
- Reviewing code-related legislative changes and reporting to the Governor on their merits; or
- Entering into agreements to enforce the building code.

SOURCE: Office of the Legislative Auditor.

reporting to the Governor on their merits; or entering into agreements to enforce the building code.

Several states use independent councils to assist with code development and enforcement. The California Building Standards Commission, an 11-member board appointed by the Governor, is responsible for: resolving conflict, duplication, and overlap in building standards; ensuring consistency in nomenclature and format in the code; and codifying and publishing all building standards of state agencies into one code. This commission also serves as the state-level appeals board.²⁸ However, to accomplish all of these tasks, the California commission has a full-time staff of eight people that are responsible for reviewing code changes submitted by other agencies. Furthermore, California has 17 agencies with some responsibility for code development; an outside coordinating body is almost a necessity to ensure that various code provisions are consistent with one another.²⁹

It should be noted that Minnesota already has a Construction Codes Advisory Council that was created by executive order in Spring 1996 to bring together industry, state, and local representatives to “discuss, debate and provide information on construction statutes, rules, standards, and licenses.”³⁰ Currently, the council is strictly advisory and has no authoritative responsibilities. However, in its *Calendar Year 1997 Progress Report*, the advisory council recommended

²⁸ California Building Standards Commission, “California Building Standards Commission,” undated, URL <http://www.bsc.ca.gov/bsc/>, (September, 1998).

²⁹ Nishimura, Telephone conversation, September 14, 1998.

³⁰ Executive Order 96-7 (St. Paul, May 1996). In 1998 the Legislature created the council in statute and changed its name from the Governor’s Construction Codes Advisory Council to the Construction Codes Advisory Council. *Minn. Laws* (1998), ch. 366, sec. 28.

that it be created in statute as an authoritative council with responsibility for resolving code conflicts, coordinating code development and adoption, and establishing agreements between regulatory parties.³¹

Having an authoritative council oversee code development or enforcement activities could have several advantages. For instance, a council could provide simpler lines of authority than currently exist because one representative group, rather than several agencies, would make the final decision over building code issues.³² In general, having an authoritative council would require less organizational change than centralizing building and fire code activities, which we discuss later in this chapter.

On the other hand, depending on the amount of authority and responsibility that the Legislature gives it, an authoritative council might need full-time staff. As we noted in Chapter 2, promulgating the state building code and ensuring that its provisions do not conflict with one another or with related codes require considerable time and effort. If the council were to be responsible for code promulgation, they would probably require more staff than if they simply heard and resolved appeals.

To some extent, the council's composition might depend on the scope of its authority and responsibilities. The Legislature could require that the council be comprised of industry representatives only, state agency staff only, or a combination of the two. As its responsibilities increase, so too will demands on the council's time. It might be difficult to find industry representatives who are willing and able to commit the necessary amount of time to fulfill the council's responsibilities. Also, some people think that promulgating rules that govern public activities--such as the state building code--is an inherent governmental function and should not be delegated to individuals who are not directly accountable to the public. On the other hand, the council's role concerning code promulgation could be limited to resolving conflicts among code provisions where industry representatives may have useful insight and experience.

Centralizing Building and Fire Code Activities Within Two State Agencies

The options outlined previously address only some of the weaknesses that we identified in how the state administers its building code. Other problems related to complex lines of authority might be better addressed with more structural changes in how building and fire code activities are organized at the state level. Therefore:

³¹ Governor's Construction Codes Advisory Council, *Calendar Year 1997 Progress Report* (St. Paul, January 15, 1998). The council is currently developing recommendations in several broad areas including healthy homes, procedures to adopt the building code, the feasibility of adopting a statewide building code, and local governments' use of building construction fees.

³² Building code issues can always be resolved through the courts.

All building code activities could be centralized in the Department of Administration.

- **The Legislature could centralize all building code activities within the Department of Administration and require greater coordination between the departments of Administration and Public Safety.**

This option would give the Department of Administration complete administrative authority over the state building code, including promulgating all building code provisions and enforcing them in some public buildings. It would move the responsibility to develop and adopt the building code's energy provisions from the Department of Public Service to the Department of Administration. Likewise, it would move responsibility for developing and enforcing the plumbing and electrical code provisions from the Department of Health and the State Board of Electricity respectively to the Department of Administration. At the same time, state fire code responsibilities would remain within the Department of Public Safety. Possible options to help ensure coordination between the departments of Administration and Public Safety could include incorporating the joint approvals discussed earlier.

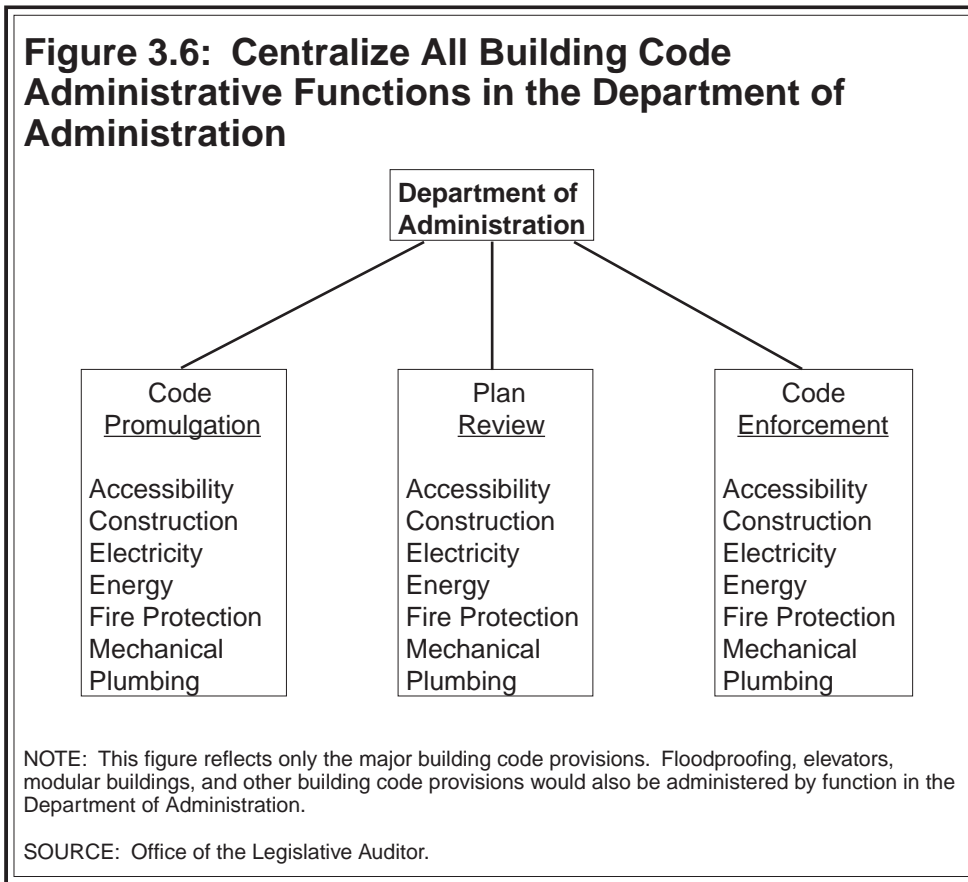
As we noted previously, Minnesota is one of only five states that have five or more agencies administering different aspects of their building and fire codes--28 states centralize responsibilities within one or two agencies. Most states that have two agencies administering these codes have that responsibility shared between their fire prevention and housing departments.

Rhode Island, which administers a state building code similar to Minnesota's, uses such an arrangement. Rhode Island's fire and building codes are administered by the State Fire Marshal and the State Building Commission. To help ensure that the two agencies work together, activities are coordinated. As mentioned previously, fire officials in Rhode Island must review plans and sign off on all building permits and certificates of occupancy. The plan reviewer from the Fire Marshal's Office actually works out of the State Building Commission's office two to three days a week. New Jersey also uses a similar approach where both building and fire officials must sign off on all certificates of occupancy.

As shown in Figure 3.6, if all building code activities were centralized within the Department of Administration, the department could organize itself by function rather than program. For example, the department's plan review staff could be responsible for ensuring that the public building plans that it reviews comply with all provisions of the building code, including construction, electrical, energy, fire protection, and plumbing. This type of arrangement provides more opportunities for ongoing coordination among staff with different program backgrounds but similar responsibilities. Several states that have one or two agencies that administer their building code, including Wisconsin, are organized internally by function.

Centralizing all building code activities within the Department of Administration, along with requiring that the departments of Administration and Public Safety give written approval of overlapping portions of each other's codes, related equivalencies, building permits, and certificates of occupancy, could help address some of the weaknesses that we noted in how the state building code is currently administered. It would simplify the lines of authority because fewer agencies would be responsible for similar building code activities. Also, centralizing

Figure 3.6: Centralize All Building Code Administrative Functions in the Department of Administration



Even with a single agency, coordination between building and fire officials would still be required.

building code activities would help improve internal coordination. For example, a centralized building code agency could develop uniform procedures that would make it easier for building officials and various inspectors to coordinate--or to at least be aware of--each other's activities.

Finally, this option would retain most of the "checks and balances" of our current administrative system that, while contentious at times, helps ensure that both building and fire officials balance the building code's various philosophies and goals: ensuring health and safety, providing uniformity, containing costs, and adhering to model codes. As we discussed earlier, fire and building professionals, both in Minnesota and nationally, emphasize different philosophies and priorities in code administration. Thus, there will always be some tension between fire and building officials that no amount of reorganization can completely address. The challenge is to help ensure that opportunities are available for both sides to express their professional opinions and reach agreement in a fair and inclusive manner. Although opportunities for disagreement between building and fire concerns would still exist, requiring greater coordination between the departments of Administration and Public Safety would result in the disagreeing parties addressing and hopefully resolving their mutual concerns much earlier in the process.

At the same time, centralizing all building code activities within the Department of Administration would have some drawbacks. As discussed in Chapter 2, most of the problems that we identified were the result of poor coordination between the departments of Administration and Public Safety. These problems might be best addressed not by structural changes, but by implementing the procedural options that we outlined earlier. We did not find the same degree of discord among the activities of the departments of Administration, Health, and Public Service and the State Board of Electricity. Moving the code-related activities of these agencies into the Department of Administration may be unnecessarily severe given the scope of the problem. Without compelling evidence that such a move would result in tangible benefits to the public, overcoming professional and agency resistance to changing “the way things have always been done” may not be worth the effort. In addition, moving all building code activities out of the departments of Health and Public Service and the State Board of Electricity might adversely affect other related programs that they manage. Finally, centralizing all building code activities within the Department of Administration does not address some policy makers’ concerns over having the same state agency responsible for both building construction and building code promulgation and enforcement and the resulting potential for a conflict of interest.

Centralizing Building and Fire Code Activities within One Agency

The fifth option for improving how the state administers the building code represents the most extensive change for state government. As shown in Figure 3.7:

- **The Legislature could centralize all building and fire code activities in one of three existing agencies--the departments of Administration, Public Safety, or Commerce--or it could create an entirely new agency.**

Some states centralize all building and fire code activities in a single agency.

This option goes beyond the previous alternative by requiring that one agency, instead of two, administers the state building and fire codes. As noted earlier, many states have just one agency administering these codes--usually their fire prevention, commerce, or housing agency. Complete centralization along with an internal organization driven by function rather than program, regardless of where these activities are located, would offer many advantages. It would provide a single line of authority because only one agency would be responsible for all

Figure 3.7: Options for Centralizing All Building and Fire Code Administrative Functions in One Agency

1. Department of Administration
2. Department of Public Safety
3. Department of Commerce
4. Create a New Agency

SOURCE: Office of the Legislative Auditor.

building and fire code activities. Likewise, having the same agency promulgate all provisions of the building and fire codes would simplify and possibly shorten the code development and adoption process. As with the previous option, organizing that agency internally by function would help maximize internal coordination among staff from different program areas. It would also help ensure that the fire code activities of the State Fire Marshal's four public school inspectors, nine fire safety inspectors, and seven health care inspectors are coordinated with building code inspection activities, thereby reducing the opportunity for duplication, miscommunication, or conflict.

Centralizing all building and fire codes in one agency would simplify lines of authority.

On the other hand, there are drawbacks to centralizing all building and fire code activities within one agency that may outweigh any benefits that might result. Our major concern is that this arrangement might reduce the current system of checks and balances that helps ensure that building and fire officials balance the building code's various philosophies and goals. Also, for reasons previously discussed, this option would be generally disruptive to all agencies involved, especially those that manage related programs and those that currently have good working relationships with one another.

Although centralizing all building and fire code activities within one agency might help rectify some of the weaknesses that we noted earlier, deciding in which organization to place such activities poses some problems. Overall, the various interest groups that we contacted did not express overwhelming support for moving building and fire code activities to any one agency. Below we present four possibilities and discuss the advantages and disadvantages of each.

Centralizing within the Department of Administration

The Legislature could centralize all building and fire code activities within the Department of Administration. This option would require moving the Department of Public Service's activities in promulgating the state's energy rules to the Department of Administration. The activities of the Department of Health and the State Board of Electricity related to developing and enforcing the building code's plumbing and electrical provisions respectively would likewise be moved to the Department of Administration. Finally, state fire code promulgation and enforcement activities would be moved to the Department of Administration.

Aside from the overall advantages and disadvantages to greater centralization that we have already discussed, centralizing all building and fire code activities within the Department of Administration has the additional benefit of being the least disruptive to the general public because the department has always been the state's lead agency on the building code. On the other hand, placing all fire code activities within the Department of Administration may influence staff developing and enforcing the fire code to more strongly emphasize cost issues rather than life safety concerns. Also, this option does not address some policy makers' concerns about a potential conflict of interest in having the Department of Administration responsible for both constructing state buildings and enforcing the state building code.

Centralizing within the Department of Public Safety

Instead of centralizing all building and fire code activities within the Department of Administration, the Legislature could locate these activities within the Department of Public Safety. As noted previously, many other states house their building and fire code activities within their fire prevention agency. This option has some advantages. The Department of Public Safety's mission--"To protect people and property in Minnesota through prevention, regulation, enforcement, information, and service"--is closely aligned with the overall goals and activities involved in administering the state building code. In addition, centralizing building and fire responsibilities within the Department of Public Safety could provide more building continuity since the State Fire Marshal has the responsibility to enforce fire and life safety provisions throughout the life of a building once the certificate of occupancy has been issued. Also, moving building code responsibilities from the Department of Administration to the Department of Public Safety would remove the potential conflict of interest involved in having the same state agency responsible for building construction and administering the state building code.

On the other hand, centralizing all Minnesota building code activities within the Department of Public Safety would require that the departments of Health and Public Service and the State Board of Electricity establish new working relationships with the Department of Public Safety. As we discussed earlier, most of the major problems that we identified regarding code administration were related to poor coordination between the departments of Administration and Public Safety, and did not involve the departments of Health and Public Service and the State Board of Electricity. In addition, placing all building code activities in the Department of Public Safety may influence staff developing and enforcing the building code to more strongly emphasize life safety issues rather than cost concerns.

Centralizing within the Department of Commerce

A number of states house their building code activities within their commerce department. Furthermore, Minnesota's Department of Commerce currently contains some code-related activities, such as licensing residential building and remodeling contractors. This option may be attractive to some state policy makers because the department could be viewed as a philosophically "neutral" agency. Also, centralizing activities there would remove the potential conflict of interest that exists in having the Department of Administration responsible for both constructing state buildings and enforcing the state building code. On the other hand, since the Department of Commerce has not been involved in building and fire code activities recently, new working relationships would have to be established.

Centralizing within a New State Agency

Finally, the Legislature could create a new state agency for building and fire code activities. However, creating a new agency--again attractive because of its philosophically neutral stance and because it removes building code responsibilities from the agency responsible for constructing state buildings--would probably involve additional costs.

For reasons previously discussed, moving all fire and building code activities to a new state agency for building and fire code activities may involve more reorganization than is necessary. Some of the procedural options that we discussed earlier, such as joint approval of overlapping code provisions, equivalencies, building permits, and certificates of occupancy might achieve a large degree of coordination, without expanding state government bureaucracy.

We do not recommend major structural changes.

Recommendations

In our view, none of the five alternatives will completely alleviate all of the problems that we identified regarding how the building code is administered on the state level and how it relates to the state fire code. The building code is a complex collection of overlapping provisions that apply differently throughout the state, and we found that promulgating and enforcing those provisions are equally complex tasks.

One of the main reasons we were asked to study the state building code was that some policy makers were concerned about the departments of Administration and Public Safety developing, applying, or interpreting overlapping building and fire code provisions differently. Although some policy makers might favor centralizing all building and fire code activities within one or two agencies, we think that:

- **Major structural changes in the way the state administers the building and fire codes are not needed at this time.**

Building and fire officials bring different philosophies and priorities to code administration that no amount of reorganization can completely address. We think that our current organizational structure, although contentious at times, helps ensure that building and fire officials balance the building code's various philosophies and goals: ensuring health and safety, providing uniformity, containing costs, and adhering to model codes. At the same time, we think that some procedural changes are necessary to improve how Minnesota administers its building code, especially as it relates to the fire code. At a minimum, we recommend that:

- **The Legislature should require that the responsible building and fire officials arrive at an agreement and give their mutual written approval for all building permits and proposed equivalencies regarding the overlapping portions of their codes, as well as all certificates of occupancy.**

This would require coordination between building and fire officials and would ensure that both officials are involved throughout the code enforcement process. In addition, we recommend that:

- **The Legislature should require that the departments of Administration and Public Safety approve the overlapping portions of each other's codes before they take effect.**

The 1995 Legislature made a similar requirement of the departments of Corrections and Human Services regarding the adoption of licensing and programming rules for the residential treatment facilities that they both license.

Both these changes create a stronger building-fire partnership than currently exists and should help simplify the occupancy process for designers, builders, and building owners. Although opportunities for disagreement would still exist, these changes would require officials to address and resolve their differences much earlier in the process. At the same time, we recognize that building and fire officials might not always be able to reach agreement within a reasonable amount of time. We think that 10 working days should be sufficient for the building and fire officials to work together to come to a mutual agreement on the permits and proposed equivalencies. During this time, if the local officials are unable to resolve the conflicts between themselves, they could jointly meet with staff from the departments of Administration and Public Safety to help them reach a solution. Regardless of whether local officials jointly consult with these state agencies, if the two officials are unable to come to an agreement after 10 days, we suggest that they present their cases to a state administrative law judge who would mediate the conflict and help the officials come to a mutual agreement. If a compromise cannot be achieved, the administrative law judge should have the authority to render a binding decision. According to staff in the office of Administrative Hearings, administrative law judges frequently resolve disputes state agencies or local municipalities may have. Furthermore, the costs of using an administrative law judge should be shared by both public agencies and not the developer, regardless of the outcome.

Because we found fewer problems between the Department of Administration on the one hand and the departments of Health and Public Service and the State Board of Electricity on the other, we do not think that it is necessary to centralize all building code activities within the Department of Administration. However, we recommend that:

- **The Legislature should give the Department of Administration rather than the Department of Public Service the authority to adopt the energy provisions of the building code.**

This procedural change would help simplify the promulgation process and would be consistent with how the electrical and plumbing provisions of the state building code are currently developed and adopted. Also, this should help make it easier for building officials to enforce the code's energy provisions. At the same time, it is important for the Department of Administration to be actively involved in developing the energy code provisions with the Department of Public Service. Likewise, the Department of Administration should formally involve the

We recommend some procedural changes to ensure mutual agreement between building and fire officials.

Department of Public Service in developing the code's mechanical provisions. In addition, we would expect that the Department of Administration would seek the Department of Public Service's technical expertise during the adoption process when needed.

SUMMARY

After reviewing how other states adopt and enforce their state building code, it is clear that there is no single "right way" to administer Minnesota's building and fire codes. However, Minnesota is different than the rest of the country in some important ways. While a majority of states have only one or two agencies responsible for their building and fire codes, Minnesota has five. Furthermore, states with only one or two agencies administering these codes are often organized by function rather than program.

In addition to administering the building code differently than other states, there are several problems with Minnesota's current code administration process, including complex lines of authority and poor coordination among some agencies. In this chapter, we have presented five alternatives to how the state building code is currently administered--both procedural and structural--that might help resolve these problems.

In our view, none of the structural options is particularly compelling, and none will alleviate all of the current problems. For example, it is likely that the philosophical differences between building and fire officials will persist regardless of how the codes are administered. On the other hand, some of the procedural options that we recommended may help promote more consistent building code enforcement throughout the state and help code-administering agencies better coordinate their activities.