



NEEP BEST PRACTICES:

COMPREHENSIVE STRUCTURE FOR THE STATE OF MAINE BUILDING AND FIRE SAFETY CODES

Northeast Energy Efficiency Partnerships (NEEP) is a non-profit organization promoting the efficient use of energy in homes, buildings and industry in the Northeast and Mid-Atlantic region through regionally coordinated programs and policies.

NEEP’s Building Energy Codes Project works to promote up-to-date building energy codes in the Northeast and Mid-Atlantic states that meet or exceed national model energy code requirements, and to attain full compliance with energy code through comprehensive training in code enforcement.

Adopted in June 2010, the Maine Uniform Building and Energy Code (MUBEC - summarized on pg. 5) adopts the 2009 edition of the International Energy Conservation Code (IECC) as the statewide energy code. By doing this, Maine joins all the Northeastern states which have adopted (or will adopt) this same model code by 2011. The building code includes requirements for residential one and two family dwellings and multi-family residential buildings not over three stories in height, as well as commercial buildings and multi-family residential buildings over three stories in height. However, Maine currently has limitations on its statewide building codes that result in conflicts and gaps in requirements that diminish the effectiveness and comprehensiveness of its building code regulations and their energy savings potential.

NEEP recommends the following comprehensive organization changes and best practices be taken into consideration by the Department of Public Safety (DPS) and its Technical Building and Energy Code Board (TBECB) regarding the Maine building and fire safety codes. Many of these recommendations would require revisions to existing state laws.

TECHNICAL BUILDING AND ENERGY CODES AND STANDARDS BOARD *(STAKEHOLDERS)

TBECB is currently comprised of two fire officials, two code officials, one LEED architect, one structural engineer, two builders, no agency representatives, one historic preservation member, one energy efficiency member, and one accessibility member, with the non-voting DPS Commissioner as Chair. A first step in eliminating the issue of unbalanced stakeholder involvement is by achieving support and input from all major stakeholders in the process for both fire safety and building code requirements.

NEEP’s recommendation is that the current TBECB be revised to be a more inclusive *Fire, Building and Energy Codes and Standards Stakeholder Board* that develops and adopts regulations, to be appointed by the DPS Commissioner with advice and consent of the Governor, with due consideration taken of nominations made from stakeholder representative bodies. Agency Commissioners and Licensing Boards would be responsible for appointing their representatives to the Board. A revised Board would minimally include the following 19 members:

Codes and Standards Board Members

DESIGN PROFESSIONALS (5)	<ul style="list-style-type: none"> • Architects - 2 (one w/sustainability experience) • Engineers - 3 (Structural/Electrical/Plumbing & HVAC)
CODE ENFORCEMENT (4)	<ul style="list-style-type: none"> • Fire Marshals - 2 • Building Officials - 2 (Tier 1 & Tier II municipalities)



TRADE LICENSING BOARDS (3)	<ul style="list-style-type: none"> • Plumbing - 1 • HVAC - 1 • Electrical - 1
STATE AGENCIES (3)	<ul style="list-style-type: none"> • DEEP - 1 • DEP - 1 • DHS - 1
CONSTRUCTION (2)	<ul style="list-style-type: none"> • Home Builder - 1 • General Contractor - 1
OTHER (2)	<ul style="list-style-type: none"> • Historic Preservation Advocate - 1 • Accessibility Advocate - 1

TBECB would then have a balance of stakeholder interests where all have a place, but none dominate.

DUTIES OF THE BOARD:

TBECB currently is responsible for review and adoption of building, residential, existing buildings, and energy conservation code. The trade boards are responsible for review and adoption of the plumbing and electrical codes; the Access Board is responsible for accessibility requirements.

It is important to note that there is no statewide mechanical code adopted or envisioned in the MUBEC legislation. There are a number of National Fire Protection Association (NFPA) standards that are adopted by the State Fire Marshal that cover some, but not all, of mechanical code issues.

NEEP recommends that a revised Board would be capable of, and responsible for, adoption of all codes related to the safety, health, energy and accessibility in and related to building construction and renovation. These responsibilities include, but are not limited to, the following:

- Review, revise, adopt all building and fire safety regulations jointly with advice and consent of State Fire Marshal (SFM) and State Building Official (SBO) for their respective regulations (codes);
- Serve as administrative appeal body (*de novo*) for appeals from the respective decisions of local code enforcement and the Offices of SFM/SBO;
- Appoint a Training Council with advice and consent of DPS Commissioner; and
- Recommend legislative changes through the DPS Commissioner; with rules it adopts for all these functions.

BEST PRACTICE: All code regulations shall be subject to approval by the State Legislative, through a recommended Regulatory Review Committee, before they may be adopted and implemented. The DPS Commissioner shall be separately responsible for adoption of the Fire Code. Appeals, heard de novo by the Board, shall be appealable to the courts, but shall have Findings of Fact and Conclusions at Law to support all decisions. This allows the courts to rule on procedures and actions of the Board taken to further appeal, without ruling on the technical merits of code requirements.



STATE FIRE MARSHAL AND STATE BUILDING OFFICIAL

Currently MUBEC has a Technical Director position responsible for reviews and recommendations of building, energy, residential and existing buildings regulations to TBECB for adoption, and is a non-voting member of TBECB. The State Fire Marshal has traditionally been responsible for plan reviews of new commercial construction, additions and some renovations, primarily from the focus of fire and life safety. No legislative direction is given for how this might change with the addition of the mandatory MUBEC regulations.

NEEP recommends that a State Fire Marshal and a State Building Official shall each be appointed by the DPS Commissioner, with the advice and consent of the Governor, to head the Office of State Fire Marshal and Office of State Building Official, respectively. Neither is recommended as a Board member, but as co-equal entities alongside the Board with an equal voice in adoption of regulations (an effective veto power). They shall adopt jointly with the Codes and Standards Board their respective regulations. Additional responsibilities of a State Fire Marshal and a State Building Official shall include the following:

- Perform all administration of their respective Offices, including: interpretations, modifications, waivers and emergency updates to their respective codes; (the SBO shall only issue modifications and waivers of accessibility requirements jointly with the Accessibility Board Director);
- Manage the staffing and resources needs and workloads of their respective offices;
- Provide secretariat services for the functions of the Board and Training Council;
- Consult with the Training Council on certification and criteria qualification requirements for licensed individuals, and their continuing education requirements to maintain certification;
- Review construction plan documents, inspect state-owned construction and issue certificates of compliance/use and occupancy as determined by law;

***BEST PRACTICE:** Two co-equal Offices under a single agency provide a comprehensive, unified set of Fire Safety and Building codes that are administered separately but in close collaboration; and that can provide integrated training and a more comprehensive knowledge base for maintaining high levels of expertise in applying similar code requirements across both disciplines with consistent interpretations, modifications and appeals.*

TRAINING COUNCIL

Maine's current Training Council is comprised of five non-stakeholder designated members, and is managed by a Training Coordinator, who works with the Maine State Planning Office in the certification and training of code enforcement officials in the following disciplines: building, energy, coastal wetlands and environment, and zoning. Development of criteria for certification and continuing education is now solicited from licensees and users; Maine's continuing education mandate extends only to certificate holders.

NEEP recommends that Training Council duties and responsibilities be extended as to include review, revision and adoption of requirements for the certification and training of all code enforcement officials and their subordinates. This includes requirements for maintaining certification through continuing education where not otherwise provided in law; including but not limited to the following: levels of competency, testing, minimum skills and experience, decertification criteria, acceptance criteria for outside training credits, and coordination with trade licensing boards for cross-applicability of training. The SFM and SBO shall provide staff support for the functions of the Training Council; and the Training Council should include at a minimum the following 9 members:



Training Council Members

DESIGN PROFESSIONALS (2)	<ul style="list-style-type: none"> Architects - 1 Engineers - 1
CODE ENFORCEMENT (3)	<ul style="list-style-type: none"> Accessibility - 1 Fire Marshals - 1 Building Officials - 1
CONSTRUCTION (2)	<ul style="list-style-type: none"> Home Builder - 1 General Contractor - 1
TRADE LICENSING BOARDS (2)	<ul style="list-style-type: none"> Plumbing & HVAC - 1 Electrical - 1

Trade licensing boards should not be in charge of licensing code enforcement agents; this should be a function of the agency that has jurisdiction over the regulations they enforce. These relationships are too subject to favoritism and control over the policing functions of the enforcers (real or perceived). This is particularly true where trade licensing is required to qualify for code enforcement certification, and training needs for code enforcement are somewhat different than training for trades. Therefore, it is NEEP's recommendation that the trade licensing boards have seats on both the Codes and Standards Board and the Training Council, acting as interested parties to both a single, comprehensive set of codes and training requirements that coincide in many respects.

FUNDING

Currently, Maine charges four dollars per permit for commercial and public buildings, but *not* for residential projects. This flat fee supports funding of training and certification needs under the Uniform Building Codes and Standards Fund, whether it is a renovation, twenty-five thousand square feet of office building, or a \$32 million dollar school requiring the review.

NEEP recommends revising this user fee as a small percentage of the construction value of all commercial *and* residential projects, determined by the direct and ancillary costs necessary to support training, as the Best Practice example below illustrates.

Training for certifications and continuing education needs to be supported by a general levy on the cost of building and fire safety permits and fees; these would be reserved in a special account utilized only for development, administration and implementation of certification and training activities, and staffing.

The best model for this is a general levy based on the value of the work involved, as this spreads the expense as a small percentage of the value of a permit. This enables it to be integrated directly with other administrative costs recovered by the building permit User Fee, commensurate with the cost of the work involved.

Flat fee or stepped fee structures fail the test of equitable distribution of the costs supported through surcharges. Calculation is simplified by using the value of all permits, including local municipal projects where customarily no permit or inspection fees are charged.



BEST PRACTICE: As an example, Connecticut maintains a training surcharge fee of 16 cents per \$1,000.00 of permit valuation that has been levied since 1996. It is collected and submitted quarterly by local jurisdictions. It is levied on public as well as private projects

The funds have proved adequate to support the certification and training needs of the state, including outreach education to design professionals, builders and trades. Connecticut has more than 400 fire and code officials and staff who are directly served through this arrangement.

MUBEC SUMMARY (for informational purposes)

Sec. 3.10 MRSA c. 1103, is enacted to read:

Chapter 1103 Maine Uniform Building and Energy Code

This bill accomplishes the following tasks.

1. It defines a uniform statewide building and energy code, known as the Maine Uniform Building and Energy Code (MUBEC), that will replace all building and energy codes adopted by state agencies and municipalities.
2. It establishes a Technical Building Codes and Standards Board at the Department of Public Safety that will amend, update and adopt the MUBEC.
3. The Board will also identify and resolve conflicts between the MUBEC and other building related codes, publish conflict resolutions on the web within 30 days, establish a process for considering amendments suggested by municipalities and citizens, and ensure that training and certification for municipal building inspectors is readily available, affordable and accessible.
4. The Board may appoint technical advisory groups to make recommendations on specific code issues.
5. It establishes a Division of Building Codes and Standards at the Department of Public Safety in the Office of the State Fire Marshal to provide administrative and technical support.
6. The Division will include a technical codes coordinator to provide technical support to the board, a training coordinator to establish a training program for building inspectors and an office specialist to provide administrative support for the Board and Division staff.
7. Enforcement of the MUBEC will be carried out by local building inspectors in municipalities of over 2000 residents, and these municipalities are considered the authority having jurisdiction on matters of local code enforcement.
8. Enforcement of the MUBEC in municipalities with less than 2000 residents is optional.
9. Funding for the Board, the Division, and training expenses for building inspectors will be provided from a surcharge to the state fire marshal's office for Fire and Life Safety codes and standards plan reviews for commercial and public buildings. All funding is to be deposited into a Department of Public Safety dedicated revenue fund called the Uniform Building Codes and Standards Fund.

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