

2009 Legislative Update Summary

Bill Number: Senate Bill 79

Energy Provisions in the Building Code

What is the Bill About?

The goal of Senate Bill 79 is to increase the energy efficiency of buildings constructed or remodeled in the state. The bill does this in three ways:

- creating a Task Force on Energy Performance Scores
- requiring an increase in the energy efficiency of commercial and residential structures
- requiring the development of a “reach code.”

The measure requires the Governor to appoint 13 members to the Task Force and requires that they represent specific fields. The Task Force is expected to study and evaluate energy use in new and existing commercial and residential buildings. They will develop recommendations for a voluntary system of energy efficiency performance scoring for buildings. An energy performance score is similar to the miles per gallon rating for cars, but it measures the energy efficiency of buildings. The Task Force will make recommendations for developing the voluntary system in time for the State Department of Energy to adopt the recommendations by rule no later than July 1, 2010. The Task Force must also report to an interim committee of the 2010 legislature no later than Oct 1, 2010. That report may include recommendations for creating, through the legislative process, a mandatory performance scoring system for buildings.

Senate Bill 79 will have an effect on the energy efficiency of new buildings in Oregon, because it requires the Building Codes Division (BCD) to increase, in the building code, the energy efficiency requirements for commercial buildings by 15-25% and the efficiency of residential buildings by 10-15% by 2012. The BCD administrator will look to existing standards, if possible, to achieve the increase.

The bill also requires BCD, in consultation with the appropriate advisory boards, to adopt, amend, and administer a reach code separate from the state building code. The measure defines “reach code” as a set of statewide optional construction standards and methods that are economically and technically feasible. This reach code will be a voluntary building code containing stricter energy efficiency requirements than the statewide code. The bill requires a municipality administering and enforcing a building inspection program to recognize and accept the standard, method, installation, product, equipment, or device if a person applies it to the construction, reconstruction, alteration, or repair of a building in conformance with the reach code. It also requires that each time the state code is amended the administrator look at the provisions of the reach code to decide if the statewide mandatory code should increase to that level.

Bill Number: Senate Bill 102

Regulation of solid fuel burning devices

What is the Bill About?

Since 1991, Oregon has required that new woodstoves be certified to meet air pollution standards. In September 2006, the EPA tightened the fine-particulate standard based on new health studies. It is anticipated that the EPA will tighten standards again in the near future. Senate Bill 102 renames the "Residential Wood Heating Air Quality Improvement Fund" the "Residential Solid Fuel Heating Air Quality Improvement Fund" (Fund) and modifies certain aspects of it. It extends the requirements relating to emissions from woodstoves and air quality to solid fuel burning devices. The bill defines a "solid fuel burning device" as any device that burns wood, coal, or other nongaseous or non-liquid fuels but exempts certain fireplaces, heaters, and pellet stoves that meet minimum emission performance standards.

The bill also prohibits burning certain materials, like garbage, treated wood, paint, waste petroleum products and other material described in rules adopted by the Environmental Quality Commission (EQC), in solid fuel burning devices. It authorizes the EQC to adopt rules, and the Department of Environmental Quality (DEQ) to implement and enforce, a program to curtail residential solid fuel heating during periods of air stagnation if local government has not met its requirement under the federal Clean Air Act. The bill restricts the sale of devices not certified for sale as new under EPA or DEQ standards. In addition, the bill states that under the building code, installation of used devices except those currently certified for sale as new under the current EPA or DEQ standard, are prohibited. It also requires a property seller's disclosure statement to provide information on solid fuel burning devices.

Bill Number: Senate Bill 915

Penalties for Building Code Violations

What is the Bill About?

The Department of Consumer and Business Services - Building Codes Division (BCD), provides statewide building code development, training, general oversight and administration to jurisdictions in Oregon. BCD conducts building construction inspections and enforcement in jurisdictions where the local entities do not. After a 2003 statute changed, BCD required all building code enforcement jurisdictions to use standard, statewide-approved citation forms and filing procedures when issuing citations for violations. Jurisdictions developing an enforcement plan under this bill do not require BCD's approval, although it might require a change in their operating plan.

Senate bill 915 establishes procedures for local jurisdictions to follow when issuing monetary penalties for building code violations. The bill restricts a municipality's monetary penalties for violations of the state building code to civil penalties. Municipalities must provide notice to the individual or company before issuing a civil penalty for a violation of a building code provision. The notice must describe the alleged violation, including citation to the relevant code or ordinance (write it, cite it), and the amount of the proposed penalty. The notice must also state that the individual or company has the right to challenge the proposed penalty and inform them

of the method and the relevant timelines for challenging it.

The bill limits municipal civil penalties to those established in statute already (ORS 455.895): \$5,000 for a single violation or \$1,000 a day for a continuing violation. The bill does not restrict municipalities from assessing a “double permit” or investigation fee for failure to obtain a permit. The bill also does not restrict a municipality from seeking an injunction or other non-monetary penalties.

Under the bill, a municipality must have an administrative method or other process for challenging the civil penalty. The process could involve challenging the assessed penalty before an individual, other than the building official, a department, or another body that is not a court of law. A municipality adopting or raising fees to cover the costs of providing notice and opportunity to challenge a penalty must follow the established notice requirements (ORS 455.210).

Bill Number: House Bill 2014
Construction taxes for schools

What is the Bill about?

House Bill 2014 changes existing law that allows school districts to assess a construction tax by clarifying the:

- 1) Process for collecting the tax when a tax is assessed by the school district
- 2) Types of facilities that are subject to the tax

Existing law provides that if a school district chooses to impose a construction tax it is optional for another local government entity to collect the tax on behalf of the school district. This bill establishes a consistent process for collecting a tax. It makes collection mandatory, specifying that the tax will be collected by the government entity that issues the structural permit. The bill adds the Department of Consumer and Business Services - Building Codes Division (BCD) to the list of government entities that must collect the tax for those jurisdictions where the division issues the structural permit. Collection of the tax is to be performed subject to an intergovernmental agreement between the school district and the collecting jurisdiction.

The bill increases the maximum administrative fee paid to the collecting agency from one percent (1%) to four percent (4%) of the tax revenue. The bill allows BCD to establish an administrative fee of 0.25% of the tax revenue, paid from the 4% administrative fee. The 0.25% administrative fee can only be collected for the 2009-2011 biennium and is for the purpose of programming the electronic permitting system (ePermitting) to allow for collection of the tax.

The bill also provides relief for certain non-profit facilities by prohibiting application of the tax to nonprofit long-term and residential care facilities and nonprofit continuing care retirement facilities. The bill takes effect on the 91st day after adjournment of the 75th Legislative Assembly.

Bill Number: House Bill 2080

Gray water for use outside structures

What is the Bill about?

Gray water has been defined in HB 2080 as waste water from domestic sources such as baths, showers, bathroom and kitchen sinks, and laundry facilities. To promote water conservation, the Oregon Building Codes Division recently approved the use of certain gray waters for flushing toilets and urinals as an alternate method in the state plumbing code. Under current law, the use of gray water for irrigation of lawns or gardens is prohibited. House Bill 2080 authorizes the Department of Environmental Quality (DEQ) to issue permits for the use of gray water for such purposes.

House Bill 2080 encourages appropriate reuse of gray water for beneficial uses. This bill's definition of gray water differs from the definition in the BCD statewide alternate methods by adding kitchen sinks to the list of sources of gray water. It excludes from the definition, toilet or garbage wastes, or waste water contaminated by soiled diapers.

The bill prohibits construction, installation or operation of a gray water reuse and disposal system, outside a building, without a permit from the DEQ. The bill also directs the Environmental Quality Commission (EQC) to adopt rules for gray water reuse and disposal system permits. It directs EQC to consider advisory committee recommendations, minimize the burden on property owners, and prescribes requirements for gray water systems helping to protect public health, safety and welfare; public water supplies; and waters of the state. This bill declares an emergency, making it effective July 1, 2009.

DEQ will be forming a gray water use advisory committee and EQC will adopt rules for gray water reuse and disposal system permits within the next two years. In the mean time remember, in Oregon, use of gray water outside a building structure is regulated by DEQ. Non-potable use of gray water within a structure is regulated under the state plumbing code. This means the statewide alternate methods (SAMs) on water conservation put in place by BCD are still available for use in both commercial and residential buildings.

Bill Number: House Bill 2134

Lead-Based Paint Activities

What is the Bill about?

Common renovation activities such as sanding, cutting and demolition can create hazardous lead dust and chips by disturbing lead-based paint, which can be harmful to adults and children. This bill transfers the responsibility for certifying firms and individuals performing lead based paint activities from the Construction Contractor's Board (CCB) to the Department of Human Services (DHS).

The bill authorizes the DHS to develop and approve training programs, to develop standards for accrediting lead based activity training providers, and to establish best practices for lead-based paint inspections, risk assessment and abatement services, and renovation activities. Under the bill DHS can enter private or public property at reasonable times, with the consent of the owner

to inspect, investigate, take samples, and for related activities. Restricts lead based paint activities to persons certified by DHS.

Individuals and firms cannot perform or offer to perform lead based paint activities or renovation unless they are certified or under the supervision of a certified individual. The bill adds a new CCB lead-based paint activities contractor license specifically for lead-based paint renovation contractors.

Bill Number: House Bill 2950

Construction Industry Energy Board

What is the Bill about?

The Department of Consumer and Business Services - Building Codes Division (BCD) is assisted by six boards appointed by the Governor and one board established by BCD. This bill merges two of the boards – the Manufactured Structures and Parks Advisory Board and the Residential Structures Board – into the Residential and Manufactured Structures Board, and establishes the Construction Industry Energy Board.

The bill abolishes the Manufactured Structures and Parks Advisory Board, transferring the duties, powers, and functions of the board to the Residential Structures Board, which in turn is given a new name. The duties of the new Residential and Manufactured Structures Board include advising on the administration of building codes governing low-rise residential dwellings and manufactured structures. Additionally, the bill adds two members to the newly renamed board; one representing manufacturers of manufactured dwellings, and one representing dealers of manufactured dwellings. The provisions consolidating the Manufactured Structures and Parks Advisory Board and the Residential Structures Board become effective January 1, 2010.

The bill also creates the Commercial Industry Energy Board (CIEB) to streamline the process of adopting energy efficiency and conservation standards into the state building code. The seven member board will be composed of two members each from the Electrical and Elevator Board, the Building Codes Structures Board, the Residential Structures Board, and a Department of Energy employee. The board will advise and provide recommendations to the Administrator of the Building Codes Division on energy efficiency and conservation standards across various specialty codes comprising the state building code. The Administrator determines whether to adopt the board recommended standards, by rule, for incorporation into the state building code. The provisions creating the CIEB become effective July 1, 2009.

Bill Number: House Bill 3367

Shielded Lighting Fixtures and Mercury Vapor Lighting

What is this Bill about?

House Bill 3367 promotes energy conservation and minimizes light pollution by requiring shielded lighting fixtures in certain situations. A shielded light fixture directs the light toward the intended object, using less energy to light the intended area and minimizing light pollution from

misdirected energy.

This bill prohibits the sale or installation of outdoor lighting fixtures that are mercury vapor lighting fixtures and makes exception for reinstallation of existing fixtures. The bill makes provisions related to mercury vapor lighting becoming operative 60 days after effective date of this act. It prohibits the use of state money to install or reinstall outdoor mercury vapor lighting fixtures.

A public electric utility that supplies customers with outdoor lighting fixtures must now provide customers the option of using a shielded lighting fixture. The bill also requires that public buildings constructed after January 1, 2010 use shielded lighting fixtures for outdoor lighting to the greatest extent practicable. This requirement will be in ORS 455.560 to 455.580. Local jurisdictions may enact ordinances or resolutions that meet or exceed state building code public building lighting standards, and may waive the requirements for any application where it is not practicable, or for historic or other reasons.

Bill Number: House Bill 3450

Carbon Monoxide Alarms

What is the Bill about?

House Bill 3450 requires multi-family dwellings with a carbon monoxide source to maintain a properly functioning carbon monoxide alarm that will provide carbon monoxide detection for all sleeping areas. A carbon monoxide alarm is defined as a device that will both detect carbon monoxide and emit an audible alert. The bill prohibits transferring title to single family dwellings or multi-family housing with a carbon monoxide source unless there are functioning carbon monoxide alarms to provide detection of carbon monoxide for the sleeping areas of the dwelling. The State Fire Marshal will adopt rules establishing standards for carbon monoxide alarms for existing housing.

The bill also regulates rental dwellings with a carbon monoxide source. Effective April 1, 2010, landlords may not enter into a rental agreement with a tenant for a dwelling unit that contains a carbon monoxide source that does not have one or more properly functioning alarms. It requires landlords of multi-family housing to maintain carbon monoxide alarms and provide written instructions on testing alarms. The bill will require a carbon monoxide alarm in all new construction, alteration, or repair of a Residential Group R structure (a non-institutional residential structure with sleeping areas). Alarms are required in new construction without regard to whether a carbon monoxide source is present. The building code requirement is effective for permitted construction after April 1, 2011

Bill Number: House Bill 3462

Building Inspectors Certification

What is the Bill About?

House Bill 3462 establishes a pilot program where the division can train and certify building inspectors to enforce portions of particular specialty codes or to deal with emerging technology.

It also requires periodic renewal of Building Official and Inspector certifications.

In general, inspectors must be certified to inspect all the provisions under the commercial code prior to inspecting a commercial structure. However, in many cases a small commercial structure, for example a bathroom in a Subway shop, is not significantly more complex than a residential structure. This bill authorizes the Department of Consumer and Business Services - Building Codes Division (BCD), to establish programs to train, qualify, and certify specialized building inspectors to enforce portions of the specialty codes. This will allow specialized inspectors to inspect some simple commercial installations without having to obtain a full commercial inspector certification.

The bill also requires periodic renewal of building inspector and building official certification. Previously these certifications did not expire. To increase accountability and ensure continuing education requirements are met, building inspectors and building officials will have to renew their certifications on a periodic basis, just like all other licensees.

The bill authorizes the division to adopt fees for participation in training programs, examinations, applications, and renewals. It establishes a sunset date of January 2nd, 2016 for the training program. The bill also establishes a certification expiration no later than January 2nd, 2018.