

## **Minnesota Department of Labor and Industry**

### **STATEMENT OF NEED AND REASONABLENESS**

#### **Proposed Amendment to Rules Governing the Administration of the Minnesota State Building Code, Minnesota Rules, Chapter 1300; Revisor's ID Number R-04508**

### **INTRODUCTION**

The Commissioner of the Department of Labor and Industry ("Commissioner") proposes to amend rules governing the administration of the Minnesota State Building Code, Minnesota Rules, Chapter 1300.

The Minnesota State Building Code consists of twenty-two separate chapters of Minnesota Rules.<sup>1</sup> Chapter 1300 incorporates the necessary administrative information from each administrative chapter found in the International Code Council ("ICC") model codes that are adopted by reference, with amendments, for use in Minnesota. This rule chapter also incorporates administrative requirements specific to Minnesota. Where specific administrative provisions are necessarily related to a specific rule chapter, the specific administrative provision will govern.

In consultation with the Construction Codes Advisory Council ("CCAC"), the Department of Labor and Industry ("Department") utilized a Technical Advisory Group ("TAG") to review existing rule Chapter 1300 and the 2018 ICC model building codes to propose reasonable and needed changes to the administrative provisions of the State Building Code, contained in that rule chapter. The TAG committee members were appointed by the CCAC to review and comment upon the 2018 ICC model codes and proposed changes to the Minnesota State Building Code. The proposed amendments in this rulemaking incorporate changes proposed by Chapter 1300 TAG members made to the administrative provisions in the 2018 ICC model codes that affect this chapter and other chapters of the Minnesota State Building Code.

### **ALTERNATIVE FORMAT**

Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make a request, contact Amanda Spuckler at the Department of Labor and Industry, 443 Lafayette Road N., St. Paul, MN 55155, phone: 651-284-5006, and fax: 651-284-5749.

### **STATUTORY AUTHORITY**

The Department's statutory authority to adopt the rules is stated in the following Minnesota Statutes:

---

<sup>1</sup> A complete list of the Chapters making up the Minnesota State Building Code can be found at Minnesota Rules, part 1300.0050 (2016).

**326B.02, Subdivision 5. General rulemaking authority.** The commissioner may, under the rulemaking provisions of chapter 14 and as otherwise provided by this chapter, adopt, amend, suspend, and repeal rules relating to the commissioner's responsibilities under this chapter, except for rules for which the rulemaking authority is expressly transferred to the Plumbing Board, the Board of Electricity, or the Board of High Pressure Piping Systems.

**326B.101 Policy and purpose.** The State Building Code governs the construction, reconstruction, alteration, and repair of buildings and other structures to which the code is applicable. The commissioner shall administer and amend a state code of building construction which will provide basic and uniform performance standards, establish reasonable safeguards for health, safety, welfare, comfort, and security of the residents of this state and provide for the use of modern methods, devices, materials, and techniques which will in part tend to lower construction costs. The construction of buildings should be permitted at the least possible cost consistent with recognized standards of health and safety.

**326B.106, Subdivision 1. Adoption of code.** Subject to sections 326B.101 to 326B.194, the commissioner shall by rule and in consultation with the Construction Codes Advisory Council establish a code of standards for the construction, reconstruction, alteration, and repair of buildings, governing matters of structural materials, design and construction, fire protection, health, sanitation, and safety, including design and construction standards regarding heat loss control, illumination, and climate control. The code must also include duties and responsibilities for code administration, including procedures for administrative action, penalties, and suspension and revocation of certification. The code must conform insofar as practicable to model building codes generally accepted and in use throughout the United States, including a code for building conservation. In the preparation of the code, consideration must be given to the existing statewide specialty codes presently in use in the state. Model codes with necessary modifications and statewide specialty codes may be adopted by reference. The code must be based on the application of scientific principles, approved tests, and professional judgment. To the extent possible, the code must be adopted in terms of desired results instead of the means of achieving those results, avoiding wherever possible the incorporation of specifications of particular methods or materials. To that end the code must encourage the use of new methods and new materials. Except as otherwise provided in sections 326B.101 to 326B.194, the commissioner shall administer and enforce the provisions of those sections.

Under these statutes, the Department has the necessary statutory authority to adopt the proposed rules.

## CONSULTATION WITH THE CONSTRUCTION CODES ADVISORY COUNCIL

Minnesota Statutes, section 326B.106, subdivision 1(a), requires the Commissioner to consult with the Construction Codes Advisory Council (“CCAC”) in connection with the adoption of rules, codes, and standards relating to building construction. Minnesota Statutes, section 326B.07, subdivision 1, sets forth the requirements for membership of the CCAC.<sup>2</sup> Minnesota Statutes, section 326B.07, subdivision 2, directs the CCAC to review code changes and provide recommendations to the Commissioner on proposed changes to the rule chapters that comprise the Minnesota State Building Code.

As required by statute, the Department consulted with the CCAC in connection with these proposed rules. In consultation with the CCAC, the Department utilized a Technical Advisory Group (“TAG”) to review the existing rule chapter and the 2018 ICC model codes and to comment and propose reasonable and needed changes to Chapter 1300. The Chapter 1300 TAG committee members were appointed by the CCAC and consisted of representatives from the Builders Association of Minnesota, the Builders Association of the Twin Cities-Housing First, the Association of Minnesota Building Officials, the League of Minnesota Cities, and department staff.<sup>3</sup> Upon completion of their review, a report detailing their evaluation of the 2018 ICC model codes and recommended changes to existing Chapter 1300 was submitted to the CCAC and reviewed by that council at a public meeting on June 21, 2018.<sup>4</sup> The council’s comments and recommendations concerning changes to Chapter 1300 were then forwarded to the Commissioner for her consideration in proposing the underlying rule amendments in this rulemaking.

## REGULATORY ANALYSIS

Minnesota Statutes, section 14.131, sets out eight factors for a regulatory analysis that must be included in the SONAR. Paragraphs (1) through (8) below quote these factors and then gives the Department’s response.

### **(1) a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule**

The classes of affected persons who probably will be affected by the proposed rules include building contractors, designers, engineers, certified building officials and their municipal building departments, material manufacturers, building owners, and the public.

Those that will probably bear the costs of the proposed rule, if any, include certified building officials and their municipal building departments.

---

<sup>2</sup> A complete list of the members of the Construction Codes Advisory Council is attached hereto as Exhibit A.

<sup>3</sup> A complete list of the Chapter 1300 TAG participants is attached hereto as Exhibit B.

<sup>4</sup> A Report detailing all TAG reviews of the 2018 ICC model codes, along with comments from the public and the CCAC, may be found at: <https://www.dli.mn.gov/sites/default/files/pdf/report062618.pdf> (2018 International Codes Review).

Those that will likely benefit from the proposed rule include building contractors, designers, engineers, material manufacturers, certified building officials and their municipal building departments, building owners, and the public.

**(2) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues**

The probable costs to the Department for the implementation and enforcement of the proposed rule include costs to copy and distribute the rule to agency staff.

The probable costs to any other agency for the implementation and enforcement include copy costs of the rule for building officials and other entities involved with enforcement of the State Building Code, and any educational expenses necessary for training on the proposed rule.

There is no anticipated effect on state revenues as a result of the implementation and enforcement of the proposed rule.

**(3) a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule**

There are no less costly or intrusive methods for achieving the purpose of the proposed rule. The adoption of this rule will provide uniform administration and enforcement of construction standards under the State Building Code. The uniform administration and enforcement of this code will result in more predictable code application and enforcement, which will tend to lower costs by reducing the need for review by local and state review boards and other entities responsible for code interpretation and review.

**(4) a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule**

Pursuant to Minnesota Statutes, section 326B.106, subdivision 1, the commissioner must establish a code of standards that "must conform insofar as practicable to model building codes generally accepted and in use throughout the United States, including a code for building conservation. In preparation of the code, consideration must be given to the existing statewide specialty codes in use in the state. Model codes with necessary modifications and statewide specialty codes may be adopted by reference."

Chapter 1300 is the administrative chapter that is used to administer and enforce the State Building Code. Several rule chapters that make up the State Building Code incorporate the 2018 ICC model building codes. The administrative provisions for the model codes are located in chapter one of each of those codes, however, the Department's analysis revealed that not all of the administrative provisions from model code to model code are uniform or consistent with one another. To reconcile this issue, the first chapters of the model codes are amended out of those codes in rule amendments and replaced with Minnesota Rules, Chapter 1300, in order to provide uniform administrative provisions for every chapter of the Minnesota State Building Code. The Department believes this method is the best way to achieve uniform, consistent, and fair

administration and enforcement of the entire State Building Code. Therefore, other alternative methods for achieving the purpose of the proposed rule were rejected.

**(5) the probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals**

This rule chapter provides regulations to code users about how to administer and enforce the Minnesota State Building Code. Actual code requirements referenced in this chapter are located in specific chapters of the Minnesota State Building Code. Because the administrative chapter does not provide specific code requirements, there are no compliance costs as they relate to any code requirements.

There may be negligible costs to a municipal building department associated with a need for building officials to implement additional procedures, such as an additional inspection, or to revise certain documents, such as a permit. However, most of the procedures and documentation are currently in place, so the changes would likely be limited to revisions of current practices and would not create a need for new procedures or documents.

There may be minor revenue lost by municipal building departments depending on their current valuation of permit fees for electric substation facilities and investigation fees. However, municipal building departments should not lose any revenue if their permit and investigation fees charged in the past were already fair and commensurate with the inspection and investigation services they provide as required by Minn. Rule, part 1300.0160, subpart 2 (2016) (“Fees established by the municipality must be...fair, reasonable, and proportionate to the actual cost of the service for which the fee is imposed.”).

**(6) the probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals**

The Department anticipates that the probable costs and consequences of not adopting the proposed rule include confusion with the application and enforcement of an older administrative code when a newer code is available and in use throughout the industry. The family of ICC Codes is designed to work together as they reference each other within the body of each individual model code provision, and as noted in the "Introduction" section above, the administrative provisions of each model code is typically found in Chapter 1 of those codes. The Department intends to adopt several of the 2018 ICC codes at the same time. Therefore, if this proposed rule were not adopted, it could create confusion in other rule chapters that adopt and incorporate the 2018 ICC model codes. Another consequence of not adopting the proposed rule would be required use of older materials and methods because the Department currently administers and enforces the 2012 versions of the ICC model codes. Older methods may prove to be less efficient and older materials will be more difficult to obtain. Therefore, failure to update Chapter 1300's administrative provisions by not adopting the proposed rule would have a negative impact on the administration, application and enforcement of Minnesota's State Building Code.

**(7) an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference**

There are no applicable federal regulations that address administration of state building codes.

**(8) an assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule. . . . ‘[C]umulative effect’ means the impact that results from incremental impact of the proposed rule in addition to other rules, regardless of what state or federal agency has adopted the other rules. Cumulative effects can result from individually minor but collectively significant rules adopted over a period of time.**

The Minnesota State Building Code is a single set of coordinated building construction regulations that apply throughout the state of Minnesota. There are no other building codes that can be used or enforced in this state. When the Department adopts the individual rules that make up the State Building Code, it works with other state agencies that may also have an effect on certain buildings to ensure that the requirements that are parallel or that cover the same building type are not cumulative.

For example, portions of Minnesota Rules, chapter 1305, Adoption of the International Building Code, regulate the planning and construction of care facilities in Minnesota. The Department utilized a Technical Advisory Group to review the 2018 ICC model International Building Code. The committee members included technical expertise from other state agency personnel to ensure the rule would coordinate with any other state regulations that may be affected by the rule.

The adoption cycle for both the ICC model codes and the Minnesota State Building Code occurs every six years so they are current and reflect the most recent changes that occur federally and with other state agencies. For example, the federal Department of Energy implements federal requirements for energy in construction by working through the model code process. By adopting and incorporating international model codes into the Minnesota State Building Code by reference, the cumulative effect is greatly reduced or eliminated. Department staff also monitor any regulatory changes that occur federally and on a state level. The Department also has staff that monitor code changes being proposed to the model building codes at the national level to ensure that the Minnesota State Building Code will not conflict with other building code regulations.

## **PERFORMANCE-BASED RULES**

Minnesota Statutes, section 326B.106, subdivision 1, authorizes the Department to establish by rule a code of standards for construction. This statute requires the code to "conform insofar as practicable to model building codes generally accepted and in use throughout the United States." At the same time, this statute mandates that, "to the extent possible, the code must be adopted in terms of desired results instead of the means of achieving those results, avoiding wherever possible the incorporation of specifications of particular methods or

materials." The Minnesota State Building Code establishes minimum regulations for building systems using prescriptive and performance-based provisions, with emphasis on performance. This rule chapter not only defines the composition of the State Building Code, but it also provides direction for its administration and enforcement, utilizing the philosophy established in this statute.

## **ADDITIONAL NOTICE**

This Additional Notice Plan was reviewed by the Office of Administrative Hearings and approved in an Order dated June 27, 2019 by Administrative Law Judge Jessica A. Palmer-Denig.

Our Notice Plan also includes giving notice required by statute. We will mail or email the Notice of Intent to Adopt Rules/Dual Notice, which will contain an easily readable and understandable description of the nature and effect of the proposed rule, to everyone who has registered to be on the Department's rulemaking mailing list under Minnesota Statutes, section 14.14, subdivision 1a. We will also give notice to the Legislature as required by Minnesota Statutes, section 14.116.

The Department will mail the Notice of Intent to Adopt Rules/Dual Notice to the following interested parties:

1. All certified building officials involved in code administration. This list includes all municipal building officials responsible for administration of the Minnesota State Building Code
2. Builders Association of Minnesota
3. Association of Builders and Contractors
4. Builders Association of the Twin Cities-Housing First
5. Association of Minnesota Building Officials
6. Minnesota State Fire Marshal's Office
7. Minnesota State Fire Chief's Association
8. Association of Minnesota Counties
9. League of Minnesota Cities
10. American Institute of Architects - Minnesota
11. Minnesota Society of Professional Engineers
12. Building Owners and Managers Association

Our Notice Plan did not include notifying the Commissioner of Agriculture because the rules do not affect farming operations pursuant to Minnesota Statutes, section 14.111.

## **CONSULTATION WITH MMB ON LOCAL GOVERNMENT IMPACT**

As required by Minnesota Statutes, section 14.131, the Department consulted with the Commissioner of Minnesota Management and Budget ("MMB") concerning the fiscal impact and benefits the proposed rules may have on units of local government. This was done on May 03, 2019, by providing MMB with copies of the Governor's Office Proposed Rule and SONAR Form, the proposed rules, and the near-final SONAR for review and comment. On May 31, 2019, the Department received a memorandum dated that same day from MMB Executive

Budget Officer Laurena Schlottach-Ratcliff which provided comments and conclusions concerning local government impact consistent with those noted by the Department in the cost impact sections of the Regulatory Analysis section above and the Department's determination of small city and small business compliance costs below.<sup>5</sup>

## **DETERMINATION ABOUT RULES REQUIRING LOCAL IMPLEMENTATION**

As required by Minnesota Statutes, section 14.128, subdivision 1, the Department has considered whether these proposed rules require a local government to adopt or amend any ordinance or other regulation in order to comply with these rules. Pursuant to Minnesota Statutes, section 14.128, the Department has determined that a local government will not be required to adopt or amend an ordinance or other regulation to comply with these proposed rules. The State Building Code is the standard that applies statewide. Minnesota Statutes, section 326B.121, subdivision 1, mandates compliance with the State Building Code whether or not a local government adopts or amends an ordinance. As a result, an ordinance or other regulation is not required for compliance. If a city wishes that its ordinances accurately reflect legal requirements in a situation in which the State Building Code has superseded the ordinances, then the city may want to amend or update its ordinances.

## **COST OF COMPLYING FOR SMALL BUSINESS OR CITY**

### **Agency Determination of Cost**

As required by Minnesota Statutes, section 14.127, the Department has considered whether the cost of complying with the proposed rules in the first year after the rules take effect will exceed \$25,000 for any small business or small city. The Department does not anticipate the cost of complying with the proposed rules in the first year after the rules take effect will exceed \$25,000 for any small business or small city.

Minnesota Statutes, section 14.127, subdivision 1, defines a "small city" as "any one statutory or home rule charter city that has less than ten full-time employees." Most small cities do not have an ordinance that adopts the State Building Code and cities outside a metropolitan county with a population of less than 2,500 may repeal their ordinance adopting the State Building Code.<sup>6</sup> Cities that have not by ordinance adopted the State Building Code, or have repealed their ordinance adopting the State Building Code, may not administer or enforce the Code within their jurisdictions. As result, small cities that do not have enforcement power over the State Building Code will not be affected by changes to the administrative chapter of the State Building Code as its requirements only address enforcement of the Code by municipal building departments and building officials that have the power and authority to enforce the same.

It is possible that the proposed amendments to part 1300.0120, subpart 4, item A (14) (Electric Substation Facilities Exempt from Permit) may have economic impact on small cities that have adopted and enforce the State Building Code. However, the Chapter 1300 TAG

---

<sup>5</sup> A copy of MMB's local government impact analysis is attached hereto as Exhibit C.

<sup>6</sup> See [Minnesota Statutes, section 326B.121, subdivision 2 \(2018\)](#)

<sup>7</sup> See [Minnesota Rules, part 1300.0160, subpart 2 \(2015\) \(Fees Commensurate with Service\)](#).



committee and the Department have determined that the amendments are not likely to result in an increase in costs or loss of revenue exceeding \$25,000 for any small city or small business.

The proposed amendment to part 1300.0120, subpart 4, item A (Work Exempt from Permit- Electric Substation Facilities) may result in the loss of revenue in the form of permit fees for some small cities that adopt the State Building Code and enforce it. The changes to this rule part exempts electric substation facilities, including the fencing, enclosure and foundations of the facility, from permit requirements and the fees charged by the municipal building department to obtain a permit.

Currently, a city may require a permit and charge a permit fee for the construction of electric substation facilities. Building permit fees are determined based on a valuation of the permitted construction work, including materials and labor, needed to build a structure and “must be fair, reasonable, and proportionate to the actual cost of the service,” specifically the inspection and permitting services provided by city building departments.<sup>7</sup> Some cities determine the permit fee based on the valuation of all work and materials necessary to construct an electric substation facility. This includes the equipment contained within the electric substation facility that is exempt from permit and inspection requirements.<sup>8</sup> A permit fee that includes a valuation of the equipment exempt from inspection requirements is excessive and not commensurate with the services provided by the municipal building department. Other cities charge the electric utility a permit fee based on the valuation of the work that the municipal building department is allowed to inspect, which is the fencing, enclosure, and the foundation of the electric substation facility. Based on permit fees charged state-wide since the last Code adoption cycle, the Department and the Chapter 1300 TAG have determined that municipal fees based on valuation of the fencing, enclosures, and foundations of electric substation facilities range anywhere from less than \$200 to upward of approximately \$7,000, which is considerably less than \$25,000.<sup>9</sup>

Following the effective date of the proposed rules, a small city cannot charge a permit fee for construction related to an electric substation facility. However, following the effective date of the proposed rules, a small city will no longer perform inspections of the foundations, enclosures and fencing of electric substation facilities or perform administrative tasks related to permitting and inspections and therefore will no longer require fees to cover the costs of those services. Cities that have incorrectly charged a permit fee based on a value of all work and materials necessary to construct an electric substation facility may lose revenue from permit fees charged for work and equipment they are not allowed to inspect. However, because a city may only charge a permit fee commensurate with the services provided and the city will no longer be providing services, the Chapter 1300 TAG members and the Department conclude that there should be no revenue loss for any city, regardless of whether or not it meets the definition of “small city” contained in Minnesota Statutes, section 14.127.

---

<sup>7</sup> See [Minnesota Rules, part 1300.0160, subpart 2 \(2015\) \(Fees Commensurate with Service\)](#).

<sup>8</sup> See [Minnesota Statutes, section 326B.36, subdivision 7 \(2018\)](#) and [Minnesota Rules, part 1300.0120, subpart 4, subitem D \(2015\) \(Work Exempt from Permit\)](#).

<sup>9</sup> The wide range in variation between municipal permit fees assessed for electric substation facilities in Minnesota is likely due to wide variations in size, complexity, and value of the electric substation project itself.

The proposed rule amendments also present negligible costs for small cities that have adopted and enforce the State Building Code. For example, the proposed amendment to part 1300.0110, subpart 13 (Alternative Materials, Design, and Methods of Construction and Equipment), requires the city to record in the records of the building department the reasons for rejecting a proposal to use alternative materials, design, or methods of construction and to provide a written explanation of the reasons for the rejection to the applicant, upon request. The storage of a record with the reasons for rejecting a proposal to use alternative materials, design, or methods of construction is a nominal cost to a small city, as is providing a written explanation to the applicant as to the reasons for the rejection. The costs of maintaining records with the reasons for rejecting a proposal to use alternative materials, design, or methods of construction and providing a written explanation to applicants would not exceed \$25,000 for any city, regardless of whether or not it meets the definition of “small city” contained in Minnesota Statutes, section 14.127. Additionally, all small cities that adopt and enforce the State Building Code would likely need to purchase new code books and attend training to learn about new code changes, but this cost would also not exceed \$25,000 for any small city.

Finally, the Chapter 1300 TAG and the Department have determined that the proposed rule amendments to Chapter 1300 would not result in any costs exceeding \$25,000 for any small business. Minnesota Statutes, section 14.127, subdivision 1, defines a “small business” as “any one business that has less than 50 full-time employees.” As noted in the Regulatory Analysis section above, the proposed amendments to Chapter 1300 provide regulations to Code users about how the Minnesota State Building Code will be administered and enforced by local and state governmental entities. Actual code requirements referenced in this chapter are located in the specific chapters of the State Building Code that regulate that trade or practice. Because the administrative chapter of the State Building Code does not provide actual code requirements for buildings or structures, there are no compliance costs as they relate to code requirements for small businesses. Indeed, the proposed rule amendments will benefit small businesses by eliminating permit and inspection fees for businesses that own or build electrical substation facilities and by ensuring that all municipal permit and inspection fees are proportional and commensurate with the level of service businesses receive from municipalities.

## **LIST OF WITNESSES**

If these rules go to a public hearing, the Department anticipates having the following witnesses testify in support of the need for and reasonableness of the rules:

1. Staff from the Construction Codes and Licensing Division of the Department of Labor and Industry, if necessary; and
2. Members of the 1300 TAG, if necessary.

## **RULE-BY-RULE ANALYSIS**

### **MINNESOTA RULES, CHAPTER 1300 STATE BUILDING CODE ADMINISTRATION**

#### **1300.0070 DEFINITIONS.**

**Subpart 11a. Electric substation.** This definition is added to describe an electric substation as an enclosure that has an assemblage of equipment through which electric energy is passed through for the purpose of switching or modifying the electric energy's characteristics. The definition specifies the electric substation, including the equipment contained within, are only accessible to employees of the electric utility or those authorized by the electric utility and are not accessible by the public. This definition is necessary because a new subitem proposed below exempts electric substation facilities from permit requirements. *See* Part 1300.0120, subpart 4, item A (14).

**Subpart 19a. Public building.** The definition for “public building” is added to this chapter because the Commissioner, rather than a municipal building official, has the authority to administer and enforce the Minnesota State Building Code for all “public buildings and state-licensed facilities” located within the State of Minnesota. *See* Minnesota Statutes, section 326B.107, subdivision 1 (2018) (Administration by Commissioner). While “state licensed facilities” is defined in Subpart 26 of this rule part, the term “public building” is not defined. However, “public building” is defined in Minnesota Statutes, section 326B.103, subdivision 11 (2018). To ease understanding and better assist the user of this rule chapter, the definition of “public building” found in existing Minnesota law is now added to this definitional rule part. Providing easily accessible definitions for both “state licensed facilities” and “public building” in the same rule part is reasonable and will assist municipal building officials, design professionals, contractors, and the public in determining whether a particular building project will be reviewed, permitted, and inspected by the Commissioner or by a municipal building official.

### **1300.0110 DUTIES AND POWERS OF BUILDING OFFICIAL.**

**Subpart 13. Alternative materials, design, and methods of construction and equipment.** This subpart is amended to require the building official to record the reasons for the rejection of a proposal to use alternative materials, design, or methods of construction and provide a written explanation of the reasons for the rejection of the proposal to the applicant upon request. It is reasonable to require building officials to record the reasons for rejection of a proposal to use alternative materials, design, or methods of construction in the files of the municipal building department because of the existing requirement that building officials record the reasons for the approval of a proposal to use alternative materials, design, or methods of construction. By maintaining a written record of either the reasons for approval or the reasons for rejection, the municipal building department is able to present consistent reasoning when evaluating proposals similar to those the department has previously approved or rejected and will facilitate more uniform enforcement practices in the future. Additionally, providing the applicant with a written explanation of the reasons for rejection will assist the applicant in better understanding what alternative materials, designs, or methods of construction would be acceptable, in addition to creating a record for appeal if the applicant disagrees with the building official's determination. *See* Minnesota Rules, part 1300.0230 (2015) (Board of Appeals).

### **1300.0120 PERMITS.**

**Subpart 4, subitem A (1).** This subitem is amended to correct the numerical conversion contained in the current rule, as written. The current rule incorrectly converts 200 square feet as 60,960 square millimeters. The proposed rule fixes that error and correctly converts 200 square

feet into 18.58 square meter units. The conversion of square feet into square meters in the proposed rule is also needed and reasonable as it is now consistent with the conversion of customary units to the International System of Units in the model ICC codes.

**Subpart 4, subitem A (14).** This subitem is added to exempt electric substation facilities from the permit requirements of the State building Code.<sup>10</sup> The proposed exemption from the permit requirements for electric substation facilities includes foundations that support electrical equipment, foundations and enclosures affixed with an Interstate Industrialized Buildings Commission (“IIBC”) label that contain electrical equipment only, and fencing that encloses the substation facilities. Existing subitem D of this subpart already exempts from permit requirements the electrical equipment contained within electric substations because the electric substation equipment itself is exempt from inspection requirements under Minnesota Statutes, section 326B.36, subdivision 7. It is reasonable to exempt from permit requirements the facilities that contain these substations as well because of the nature of the facilities themselves and the inconsistent enforcement of electric substation facility permit requirements by municipal building departments throughout the state.

Electric substations and their facilities are owned, operated, and maintained by highly regulated electric utilities who have exclusive access and control over the facilities and their contents. Electric utilities are responsible for hiring designers, engineers, and contractors who ensure that the electric substation facilities and the equipment within them will be safely maintained and otherwise compliant with all requirements of the State Building Code. Electric substations are considered hazardous equipment enclosures and are not intended for human habitability or occupancy. Moreover, the equipment enclosure is considered an industrialized/modular building that is assembled in manufacturing facilities off the building site and have already been inspected by the Interstate Industrialized Buildings Commission before being placed in Minnesota. And as noted above, the electrical equipment located within the substation facilities enclosure is already exempt from inspection and permit requirements under existing Minnesota law. Therefore, exempting electric substation facilities from permit requirements as well is reasonable, efficient, cost effective, and has no negative impact on life or building safety.<sup>11</sup>

In addition to the unique nature of electric substation facilities themselves, the proposed rule is also reasonable and needed to address state-wide, inconsistent municipal permit enforcement over electric substation facilities. Some municipalities have required permits for electric substation facilities and other municipalities have not required electric utilities to obtain permits for the construction of electric substation facilities. Those municipalities that require a

---

<sup>9</sup> “Electric substation” is defined in proposed Minnesota Rules, part 1300.0070, subpart 11a, as “an enclosed assemblage of equipment, including switches, circuit breakers, buses, and transformers that are accessible only to employees of an electric utility or persons acting under the electric utility’s control or direction, through which electric energy is passed for the purpose of switching or modifying the electric energy’s characteristics to increase or decrease voltage or control frequency.”

<sup>11</sup> It is important to note that the exemption from permit requirements for electric substation facilities does not otherwise exempt those facilities from other requirements of the State Building Code. *See* Minnesota Rules, part 1300.0120, subpart 4 (2015). Moreover, while electric substation facilities may be exempt from permit requirements, the facilities must also continue to comply with municipal land use and other ordinance requirements, including zoning and setback requirements. *See Id.*

permit for the construction of electric substation facilities often differ in how they determine the permit fee. Some municipalities determine the permit fee valuations based on the value of the materials and labor necessary to build the foundation and the fencing for the electric substation facility. Other municipalities determine the permit valuation based on the total cost of labor and materials needed to build the entire electric substation facility, including the electrical equipment within it. However, the electrical equipment that is enclosed in the electric substation facility is currently exempt from permit and inspection requirements, and should not be included in the permit valuation

The lack of uniform enforcement has resulted in confusion for electric utilities as to the permit requirements for electric substation facilities and the anticipated fees for those permits. Elimination of the permit requirements for both electric substations and their facilities clarifies requirements and allows electric utilities to more accurately project expenses for the construction of electric substation facilities. Exempting electric substation facilities from permit requirements is reasonable as it will lead to more consistent and uniform enforcement of permit requirements across municipalities within the state of Minnesota.

While municipalities will no longer receive permit fee revenue for the construction of electric substation facilities in their jurisdictions, they will not be expending resources performing inspections of those foundations, enclosures and fencing, nor will they be performing services and administrative tasks related to permitting and inspections. Electric utilities will no longer be required to pay permit fees by some municipalities and will no longer spend as much time and effort determining municipal permit requirements, which will in turn tend to lower costs for the electric utility to provide service to its customers.

**Subpart 4, subitem B (3).** This subitem is amended to correct the unintended omission of the word “not” in the existing rule so portable fuel cell appliances that are neither interconnected to the power grid, nor connected to a fixed piping system, are exempt from gas permit requirements. This is reasonable and consistent with the existing exemption from mechanical permit requirements for portable fuel cell appliances that are not connected to a fixed piping system and are not interconnected to a power grid located in subitem C (8) of this subpart.

#### **1300.0160 FEES.**

**Subpart 3, exception C.** This exception contained in subpart C is amended to reflect that the “Industrialized Building Commission” has changed its name to the “Interstate Industrialized Buildings Commission.” This change is reasonable and necessary in order to reflect the correct name of the regulatory entity and its acronym.

**Subpart 8, Work commencing before permit issuance.** This subpart is changed to clarify the existing requirement that the fee charged by a municipal building department for an investigation of construction work performed before a permit is issued must be commensurate with and proportionate to the cost of the investigation conducted by the municipality. The existing language allows an investigation fee to be charged by the municipality up to the amount of the permit fee assessed. However, in their application of this subpart, some municipal building departments routinely and arbitrarily charge an investigation fee equal to the amount of the permit fee without regard to the actual costs of the investigation conducted contrary to existing

Minnesota Rule, part 1300.0160, subpart 2 (Fees Commensurate with Service). It is common for the permit fee to well exceed the actual cost of a municipal building department's investigation of work that commenced before a permit was issued, resulting in an investigation fee that is punitive to the construction business rather than proportionate to the cost of the investigation.

A municipal building department that routinely charges an investigation fee that is not proportionate to and exceeds the efforts expended to investigate construction work that occurred before a permit was issued may lose revenue from incorrectly collected investigation fees. Conversely, a construction business that begins construction work before a permit is issued and is required to pay an investigative fee may have fewer costs. Clarification of this subpart is reasonable and necessary to ensure that the investigative fee is commensurate with and proportionate to the investigative service provided by the municipal building department, which will result in more uniform application of the rule.

### **EFFECTIVE DATE**

In accordance with Minnesota Statutes, section 326B.13, subdivision 8, the Commissioner has determined that it is necessary to establish March 31, 2020, or five business days after publication of the Notice of Adoption in the *State Register*, whichever is later, as the effective date of this proposed rule chapter. The Commissioner has found and determined that it is in the public's interest and necessary to protect public health and safety to have this proposed Code Chapter effective at the same time as other related proposed Minnesota State Building Code sections, which may result in an earlier effective date than provided for in Minnesota Statutes, section 326B.13, subdivision 8.

Because other related and newly proposed Chapters of the Minnesota State Building Code are scheduled to have an effective date of March 31, 2020, it is necessary for Minnesota's proposed administrative provisions found in Chapter 1300 to become effective at the same time to alleviate any potential confusion, conflicts or misapplication of specific and interrelated Code requirements by industry members, code enforcement officials, and members of the public. A common effective date for all newly adopted State Building Code chapters is essential for life and building safety because many of these chapters reference one another and are designed to work together to provide the user with a complete, current, and conflict-free reference for building specifications and requirements. Therefore, coordination of the effective dates for all newly adopted amendments to the State Building Code, including the administrative provisions found in the underlying proposed rule, is necessary and reasonable.

### **CONCLUSION**

Based on the foregoing, the proposed rules are both needed and reasonable.

7/12/2019

\_\_\_\_\_  
Date



\_\_\_\_\_  
Nancy J. Leppink  
Commissioner of Labor and Industry

## EXHIBIT A

### Construction Codes Advisory Council Members

Scott McLellan, Department of Labor and Industry Commissioner's Designee/Chair

Jim Smith, Department of Public Safety Commissioner's Designee

Scott Novotny, Board of Electricity

Patrick Higgins, Certified Building Official

Ken Hinz, Commercial Building Industry

Thomas Erdman, Commercial Building Owners/Managers

Laura McCarthy, Fire Marshal

Todd Gray, Heating and Ventilation Industry

Gerhard Guth, Licensed Architect

Thomas Downs, Licensed Professional Engineer

Mike Paradise, Licensed Residential Building Industry

Jennifer DeJournett, CCAC/Local Units of Government

Mark Brunner, Manufactured Housing Industry

Dan McConnell, Minnesota Building and Construction Trades Council

## EXHIBIT B

### Chapter 1300 Technical Advisory Group Members

Scott McKown, Assistant Director/CCLD, TAG Lead- MN Department of Labor and Industry

Doug Nord, Supervisor of Regional and Code Administration Services/CCLD, TAG Co-Lead- MN Department of Labor and Industry

Tom Bakken, Association of Minnesota Building Officials

James Williamette, Association of Minnesota Building Officials

Mike Swanson, Builders Association of the Twin Cities-Housing First

Kurt Welker, Builders Association of Minnesota

Jennifer DeJournett, CCAC/Local Units of Government

Pamela Whitmore, League of Minnesota Cities



EXHIBIT C



## Office Memorandum

**Date:** May 31, 2019

**To:** Jeffrey F. Lebowski,  
General Counsel,  
Department of Labor and  
Industry

**From:** Laurena Schlottach-Ratcliff,  
Executive Budget Officer,  
Minnesota Management and  
Budget

**Subject:** M.S. 14.131 – Review of Proposed Amendments to the Rules Governing the Administration of State Building Codes, Minnesota Rules, Chapter 1300; Revisor’s ID Number RD4508

### Background

The Department of Labor and Industry (DLI) is proposing amendments to the rules relating to the Administration of State Building Codes, in Minnesota Rules, Chapter 1300. Pursuant to M.S. 14.131, the Commissioner of Minnesota Management and Budget has been asked to help evaluate the fiscal impacts and benefits these changes may have on local units of government.

As identified in the Statement of Need and Reasonableness (SONAR), pursuant to M.S. 326B.106, the Commissioner of DLI must review model building codes every six years for potential adoption, with amendments, for use in Minnesota beginning with the 2018 editions of the model codes. Based on the review of the International Code Council model codes the agency is proposing to amend Chapter 1300 in which the primary changes include exempting electric substation facilities from permit requirements and requiring municipal building departments to document and retain decisions of both approvals and rejections of requests to use alternate materials, methods and designs in construction.

## Evaluation

On behalf of the Commissioner of Minnesota Management and Budget, I have reviewed the proposed changes and the draft of the SONAR to explore the potential fiscal impact these changes may have on local governments.

The proposed rule is anticipated to impact building contractors, designers, engineers, certified building officials and their municipal building departments, material manufacturers, building owners and the public. For the proposed rule in which electric substation facilities are exempt from permit requirements, local governments should not have a net fiscal impact. While a municipality may typically collect fees for these permits, municipalities may only charge fees related to the underlying service, and because the underlying service will no longer be provided there should be no cost to local government. As it relates to the documentation and retention of both approvals and now rejections of requests to use alternate materials, methods and designs in construction, there will be a fiscal impact for this new work but the impact will vary across localities depending on the scope of procedures that will need to be updated and the documentation that will need to be maintained. Finally, municipalities that adopt and enforce State Building Codes will likely need to purchase new code books and/or attend trainings creating costs for localities.

In summary the proposed rule changes will have a fiscal impact on local

governments. cc: Angela Vogt, Executive Budget Coordinator,

Minnesota Management and Budget