

ASK THE LEAGUE

What do zoning administrators need to know about Act 89 and building efficiency standards?

In 2013 the state legislature passed Act 89, which addresses existing energy efficiency programs, including thermal efficiency of existing housing and commercial building stock. Act 89, in part, ties enforcement of the Building Efficiency Standards that were adopted in 2011 to municipal certificates of occupancy in those towns where they are required. As of July 1, 2013, any town that has already adopted bylaws that require a certificate of occupancy for residential or commercial construction under 24 V.S.A. Chapter 117 must obtain a certificate of compliance with the Residential Building Energy Standards (RBES) from the applicant prior to issuing certificates of occupancy. However, even in towns that do not issue certificates of occupancy, zoning administrators still must provide building energy standards material to applicants. Regardless of whether a town has amended its bylaws to be consistent with this state law, it must issue permits in accordance with it. If a town fails to do so, it faces possible legal action, either as an appeal to the Environmental Court or as a lawsuit instituted by the Vermont Attorney General.

When an applicant seeks a permit for a structure, the zoning administrator must provide the applicant with a copy of the applicable building energy standards of either a residential or commercial building, regardless of whether or not a town issues a certificate of occupancy. The administrative officer may provide a copy of the Department of Public Services' (DPS's) Vermont Residential Building Energy Code Book instead of the entire RBES. An electronic copy can be downloaded from the DPS website, http://publicservice.vermont.gov/topics/energy_efficiency/rbes. The administrative officer need not provide a copy of the standards if the structure is a sign or fence or the application certifies that the structure will not be heated or cooled.

After a project is completed and the applicant applies for a certificate of occupancy, the zoning administrator must confirm that an RBES certification of compliance has been recorded in the town land records. The zoning administrator must ensure the certification is recorded and indexed in the town records prior to issuing a certificate of occupancy. Provision of a certificate of compliance with the RBES is a condition precedent to issuance of all certificate of occupancies. Although a zoning administrator is not obligated to review the code certification for accuracy, if it is obviously incomplete or incorrect – such as not having a signature – it should be deemed noncompliant and a certificate of occupancy should not be approved. If certification is not issued by a licensed professional engineer, a licensed architect, or an accredited home energy rating organization, it must be issued by the builder. 30 V.S.A. Chapter 2.

Certain projects are exempt from complying with these requirements, the complete list of which can be found in 30 V.S.A. § 51(h):

- (1) buildings or additions whose peak energy use design rate for all purposes is less than 3.4 BTUs per hour, per square foot, or less than one watt per square foot of floor area;

- (2) homes subject to Title IV of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. §§ 5401-5426);
- (3) buildings or additions that are neither heated nor cooled; and
- (4) residential construction by an owner, if all of the following apply:
 - (A) The owner of the residential construction is the builder, as defined under 30 V.S.A. Chapter 2.
 - (B) The residential construction is used as a dwelling by the owner.
 - (C) The owner in fact directs the details of construction with regard to the installation of materials not in compliance with RBES.
 - (D) The owner discloses in writing to a prospective buyer, before entering into a binding purchase and sales agreement, with respect to the nature and extent of any noncompliance with RBES. Any statement or certificate given to a prospective buyer shall itemize how the home does not comply with RBES, and shall itemize which measures do not meet the RBES standards in effect at the time construction commenced. Any certificate given under this subsection shall be recorded in the land records where the property is located, and sent to the Department of Public Service, within 30 days following sale of the property by the owner.

If energy code compliance is not required for a project, such as one of those listed above in 30 V.S.A. § 51(h), it is best to ask applicants to provide a written statement that the code does not apply to their project and why. Amending permit applications and certificates of occupancy to include reference to the energy codes is a good way to remind everyone of the requirements of Act 89 and to document that the town has fulfilled its obligations.

The Energy Code Assistance Center, operated by Efficiency Vermont, is the central clearinghouse for information about the code. It provides printed materials and workshops and maintains a toll-free telephone number (855-887-0673). Municipal officials can call the ECAC at any time. Efficiency Vermont has also issued a "*Municipal Guide for Vermont Energy Codes and Above-Code Programs*," which explains how municipalities can raise awareness of the code. The guide can be downloaded at www.encyvermont.com/For-My-Business/Solutions-For/Municipal-State-Government/Overview.

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