

PAUL J. MORIARTY AND ASSOCIATES, INC.  
CONSTRUCTION CODE CONSULTANTS  
22 WASHINGTON STREET  
NORWELL, MASSACHUSETTS 02061

---

(781) 871-3200  
FAX (781) 871-3223

December 20, 2010

Brian Gale, Chairman  
Board of Building Regulations and Standards  
COMMONWEALTH OF MASSACHUSETTS  
One Ashburton Place - Room 1301  
Boston, Massachusetts 02108

Re: Public Hearing - December 14, 2010 - Code Change Proposals

Dear Sir:

As a former staff member of the State Building Code Commission (1973-1982), I would like to present for your Board's consideration several comments on a proposed code change presented at the December 14<sup>th</sup> Public Hearing:

- A. 2010-12-12: The 1 & 2 Family Stretch Sprinkler Code:
1. M.G.L. c. 143 §95 (a) requires that the Building Code contain uniform standards and requirements for construction (Exhibit "A"). Allowing municipalities to deviate from uniform standards and requirements will not be in the best interest of the Commonwealth.
  2. M.G.L. c. 143 §98 allows municipalities to petition BBRS to allow more restrictive standards than those contained in the Building Code (Exhibit "B"). This procedure has worked well in the past and allows BBRS to make an unemotional decision relative to such impositions as requiring a sprinkler system in all new 1 & 2 family dwellings. A reading of this section of the General Laws clearly shows that the Legislators in adopting M.G.L. c143 §98 (and chapter 802 of the acts of 1975), anticipated the need for a safety valve within the Building Code since often it is found that one size does not fit all.  
Allowing municipalities to adopt its own requirements which would require the sprinklering of new 1 & 2 family structures and would have presenters before the assemblage pleading in an emotional manner. This assembly of voters could care less because it will not have any effect on their existing homes, and such an effect will be borne by those who desire to live in the community, but have no voice since they are not residence. BBRS under M.G.L. c. 143 §98 upon the petition of a municipality would make a professional and unemotional decision based on the evidence presented before it.

3. Chapter 802 of the acts of 1972 contains many sections that are still the laws of the Commonwealth and are still required to be enforced, i.e.:
  - a) SECTION 75 as amended by chapter 541 of the acts of 1974 and as amended by chapter 144 of the acts of 1975, to wit:-

“All by-laws and ordinances of cities and towns or regulations promulgated by any state boards, commissions, agencies or departments or any special acts or any specific regulations promulgated by a local official under section twenty-eight of chapter one hundred and forty-eight of the General Laws in conflict with the state building code shall cease to be effective on January first nineteen hundred and seventy-five...” (Exhibit “C”)
  - b) SECTION 67 in the last sentence states the following:

“..Said code shall be binding and have the full force and effect of law on January first, nineteen hundred and seventy-five, in all cities and towns notwithstanding any special or general law to the contrary..” (Exhibit “D”)

It is again clear that the Legislators intended that there is to be one uniform building code for the Commonwealth, and there is no need to fragment this code since adequate provisions have been made in the law voiding conflicting laws in effect prior to January 1, 1975; providing a statement in the law which affirms there is to be one building code for the Commonwealth and has provided a means by which municipalities may petition BBRs when it feels more stringent standards are necessary for their community.

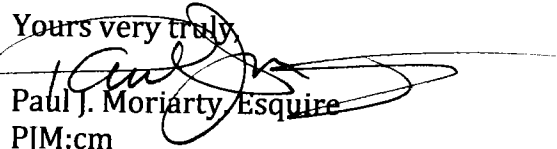
4. Several years ago BBRs created the One and Two Family Residential Sprinkler Committee in order to study recommendations and/or inhibitors, and to submit the same to BBRs for action. The Fire service had members on this Committee, a Committee whose members were very professional in their listening, commenting and deliberating. Recently the Committee issued its Report to BBRs. This Report noted several issues needing resolution, i.e.:
  - a) Disparate costs appear narrow to Water Purveyor charges. The Water Purveyors charges and method of charging and installation requirements are not uniform and need resolving whether by legislation or by their Regulations.
  - b) Costs of installing and maintaining a sprinkler system is not uniform throughout the Commonwealth's municipalities.
  - c) M.G.L. c. 148 §27A prohibits the shutting off of a sprinkler system unless a request is made to the local fire official and he/she grants

permission. There are many homes that are unused for short periods of time and in order to save on fuel bills the owners shut and drain the water system for their home. Should permission be requested and denied and the sprinkler system remains active, the Code's energy requirements are then being tampered with. Should permission not be requested, or refused, and the home owner shuts and drains the water system, not only is he/she in violation of the law, but if a fire occurs, insurance companies may not cover a fire loss, especially if a discount was given because a sprinkler system was installed. Another point to ponder is will said home owner be aware of his need to request permission?

- d) Current Massachusetts Laws and Regulations appear to require that a Licensed Plumber **and** Licensed Pipe Fitter are to be involved in the installation of a sprinkler system whether it be for a high rise building or a single family home, thus adding to the cost of such a system.
- e) Current Massachusetts Laws and Regulations appear to require that a Licensed Architect, Engineer and/or Fire Protection Engineer design a sprinkler system for a high rise building and/or a single family home, thus adding to the cost of such a system.

None of the above issues are addressed in NFPA 13D. If not for Massachusetts Laws and Regulations, an NFPA 13D could be used in Massachusetts. Current Massachusetts requirements inhibit the adoption of NFPA 13D and the proposed One and Two Family Stretch Sprinkler Code. Should BBRs adopt the One and Two Family Stretch Sprinkler Code it may be giving the appearance of allowing Municipalities to violate various Massachusetts laws and/or Regulations.

Yours very truly,

  
Paul J. Moriarty, Esquire  
PJM:cm

Encls:

Cc: Harry Smith  
Richard Crowley  
Jack Dawley, President, BAGB  
Mark Kablack, Counsel, BAGB  
Robert Camaco, President of MA Federation of Building Officials  
Rick Wakum, President of MBCIA  
Michael Mendoza, President of SEMBOA  
Robert Berger, Metro West Building Officials

EXHIBIT "A"



**PART I** ADMINISTRATION OF THE GOVERNMENT  
(Chapters 1 through 182)

**TITLE XX** PUBLIC SAFETY AND GOOD ORDER

**CHAPTER 143** INSPECTION AND REGULATION OF, AND LICENSES FOR, BUILDINGS, ELEVATORS AND CINEMATOGRAPHS

**Section 95** General objectives

Section 95. The powers and duties of the board set forth in section ninety-four shall be exercised to effect the following general objectives:

(a) Uniform standards and requirements for construction and construction materials, compatible with accepted standards of engineering and fire prevention practices, energy conservation and public safety.

In the formulation of such standards and requirements, performance for the use intended shall be the test of acceptability, in accordance with accredited testing standards.

(b) Adoption of modern technical methods, devices and improvements which may reduce the cost of construction and maintenance over the life of the building without affecting the health, safety and security of the occupants or users of buildings.

(c) Elimination of restrictive, obsolete, conflicting and unnecessary building regulations and requirements which may increase the cost of construction and maintenance over the life of the building or retard unnecessarily the use of new materials, or which may provide unwarranted preferential treatment of types of classes of materials, products or methods of construction without affecting the health, safety, and security of the occupants or users of buildings.

EXHIBIT "B"

**PART I** ADMINISTRATION OF THE GOVERNMENT  
(Chapters 1 through 182)**TITLE XX** PUBLIC SAFETY AND GOOD ORDER**CHAPTER 143** INSPECTION AND REGULATION OF, AND LICENSES FOR, BUILDINGS, ELEVATORS AND CINEMATOGRAPHS**Section 98** Rules and regulations imposing more restrictive standards

Section 98. The board of selectmen in a town or the mayor in a city may recommend to the board the adoption of rules and regulations imposing more restrictive standards than those established by the state building code for construction, alteration, repair, demolition, and removal in such a city or town. If the board finds that more restrictive standards are reasonably necessary because of special conditions prevailing within such city or town and that such standards conform with accepted national and local engineering and fire prevention practices, with public safety and with the general purposes of a statewide building code, the board may, after notice to said board of selectmen or mayor, and after a public hearing, adopt rules and regulations, impose conditions in connection with the adoption thereof and terminate such rules and regulations at such time and in such manner as the board may deem necessary, desirable or proper.

Notwithstanding the foregoing, a city or town which is not served by a municipal water system may, with the approval of the board, adopt rules and regulations with regard to fire protection systems which are more restrictive than those established by the state building code; provided, however, that if the board does not issue a written decision within forty-five days of receipt of such proposed rules and regulations then they shall be deemed to have been approved by the board.

THE COMMONWEALTH OF MASSACHUSETTS

In the Year One Thousand Nine Hundred and Seventy-five

AN ACT

PROVIDING THAT CERTAIN STATUTES, ORDINANCES AND BY-LAWS RELATIVE TO HISTORIC DISTRICTS, REGIONAL HISTORIC DISTRICTS AND ARCHITECTURALLY CONTROLLED DISTRICTS SHALL PREVAIL OVER THE STATE BUILDING CODE.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 802 of the acts of 1972 is hereby amended by striking out section 75, as amended by section 20 of chapter 541 of the acts of 1974, and inserting in place thereof the following section:-



Section 75. All by-laws and ordinances of cities and towns or regulations promulgated by any state boards, commissions, agencies or departments or any special acts or any specific regulations promulgated by a local official under section twenty-eight of chapter one hundred and forty-eight of the General Laws in conflict with the state building code shall cease to be effective on January first, nineteen hundred and seventy-five; provided, however, that in the event of a conflict between the provisions of the code and a statute, ordinance or by-law regulating any historic district, regional historic district or architecturally controlled district, provisions of any such statute, ordinance or by-law regulating exterior architectural features within such district shall prevail.

SECTION 2. The first paragraph of section 3A of chapter 143 of the General Laws, as most recently amended by section 12 of chapter 541 of the acts of 1974, is hereby amended by striking out the first sentence and inserting in place thereof the following two sentences:- Unless otherwise provided by the provisions of the state building code, the local inspector shall enforce the state building code as to any building or structure within the city or town from which he is appointed, including any building or structure owned by any authority established by the legislature but not owned by the commonwealth, and such state building code shall be the code for all buildings and structures within such city or town. In the event of a conflict between said code and a statute,

SECTION 67. Within one year from the date of qualification of all its members, the state building code commission shall hold public hearings for the purpose of adopting or promulgating a state building code. There shall be at least one such hearing in each of the counties of the commonwealth. Said commission shall give notice of such public hearings to the commissioner of public safety, the commissioner of community affairs, the board of selectmen in towns and the mayor in cities, each inspector of buildings or building commissioner and other such individuals or organizations, both within and without the commonwealth, as are concerned, in the opinion of said commission, with the promulgation of such code. Notice of each such public hearing shall be published in at least one newspaper of general circulation in each of the cities of Boston, Worcester, Springfield, Fall River, Lowell, Lynn and Pittsfield at least twenty-one days before the dates set for each such hearing.

After the conclusion of all such public hearings, but not later than July first, nineteen hundred and seventy-four, said commission shall adopt and promulgate a state building code by filing a certified original of said code, signed by at least two thirds of the members of said commission, with the secretary of the commonwealth, and by filing certified copies of said code with the clerks of the senate and the house of representatives. A copy of the code so adopted and promulgated shall be sent by said commission to each local and state inspector and to the boards of selectmen in towns and to the mayors in cities. Said code shall be binding and have the full force and effect of law on January first, nineteen hundred and seventy-five, in all cities and towns notwithstanding any special or general law to the contrary.

SECTION 68. The state building code commission, established by section one of this act, shall make a study of the effectiveness of the administration and enforcement of the state building code. Said commission shall include in said study its recommendations relative to the number of local inspectors that will be reasonably necessary to carry out the responsibility for the health, safety and welfare of the general public, and the salary ranges of said local inspectors, including inspectors, inspectors of buildings, and building commissioners, commensurate with their duties and responsibilities. Said commission shall report the results of said study to the governor and the general court on or before December fourth, nineteen hundred and seventy-six.

SECTION 69. Of the members first appointed to the state building code commission established under section seventeen of chapter twenty-three B of the General Laws, added by section one of this act, three shall be appointed for