



June 28, 2016

Mr. Richard P. Crowley, Chair  
Board of Building Regulations & Standards

**Re: Emergency Changes to 8<sup>th</sup> Edition of Building Code- 780 CMR, Chapter 13.00 Energy Efficiency; Chapter 51.00: Massachusetts Residential Code (Chapter 11 and Appendix U); Appendix 115.AA: Stretch Energy Code**

Dear Chairman Crowley and Board Members:

NAIOP Massachusetts, The Commercial Real Estate Development Association, appreciates the opportunity to provide feedback on the proposed changes to the energy provisions of the 8th edition of the building code. NAIOP represents the interests of more than 1600 members involved with the development, ownership, management, and financing of more than 175 million square feet of office, research & development, multifamily, industrial, mixed use, and retail space in the Commonwealth.

The following comments expand upon the testimony we provided at the public hearing on June 16.

NAIOP is strongly opposed to the following three provisions included in the draft changes to the existing energy code (8<sup>th</sup> edition):

- 1) the proposed stretch energy code, which would automatically take effect in existing stretch code communities without a vote by the city or town and would be approximately 15% more energy efficient than the *current base energy code*;
- 2) the commercial and residential solar rooftop readiness requirements - the commercial requirements restrict the use of 1,600 square feet or 50% of the roof area that is either flat or oriented between 110 degrees and 270 degrees of true north to ensure it is solar-ready and free from obstructions, including but not limited to, vents, chimneys, and roof-mounted equipment;
- 3) the electric vehicle readiness requirements, which require electrical and physical capacity to accommodate future simultaneous electric vehicle charging at a minimum of 4% of parking spaces and in no case less than one space.

As stated below, NAIOP is opposed to these draft provisions for the following reasons:

A.) Electric Vehicle & Solar Rooftop Requirements

- **The solar rooftop readiness and electric vehicle provisions of both the commercial and residential codes are in direct conflict with MGL c. 143 §95:**

*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.*

Clearly, these requirements give preferential treatment to electric vehicles and photovoltaic panels, increase the cost of construction of the building, and will have no impact on the health, safety or security of the occupants or users of the building.

- **The building code is not the appropriate way to encourage the growth of specific sectors of the economy.** Beyond the statutory conflict referenced above, it should be up to the developer or owner, not the Commonwealth, to determine the best way to achieve energy efficiency. Furthermore, while electric vehicles and solar panels may be popular now, there may be other technologies that surpass these in the coming years.
- **The solar rooftop language unfairly penalizes certain properties due only to their orientation to the sun (by mandating that a portion of the roof not be used for anything that could be considered obstructions).** HVAC requirements take up substantial rooftop space. For multistory buildings, rooftop space is at a premium, especially if there are restaurants in the building, further congesting available rooftop space. Restaurants require additional space for HVAC (kitchen exhaust fans, refrigerant condensers, separation spacing of 'dirty' exhaust, etc.). Gas piping typically crisscrosses roof areas to connect to this rooftop equipment. Also, stair towers elevated onto the roof and skylights would further limit available rooftop space. Mixed use developments which have retail on the ground level and other uses above (office, medical, other) typically complicate the use of rooftop

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areas, mainly due to separate HVAC systems, as well as other requirements. Telling property owners they could not install any of these things based solely on the property's orientation to the sun is deeply concerning and should not be adopted.

- **The BBRS does not have legal authority to require or regulate electric vehicle charging stations.** While the BBRS does have the authority to regulate buildings and structures, there is nothing in the statute that provides it with the authority granted in the draft language. Furthermore, since the EV charging stations would actually result in increased energy consumption at the building, it would appear to be in direct conflict with the building code statute.

**B.) Stretch Energy Code**

- **There is no statutory requirement to adopt a Stretch Energy Code.** The Green Communities Act modified M.G.L. c. 143, § 94 (o) as follows:

*(o) To adopt and fully integrate the latest International Energy Conservation Code as part of the state building code, together with any more stringent energy-efficiency provisions that the board, in consultation with the department of energy resources, concludes are warranted. The energy provisions of the state building code shall be updated within 1 year of any revision to the International Energy Conservation Code.*

Therefore, while the state is required to adopt the latest version of the IECC, it is not required to do anything beyond that. There is nothing in the Green Communities Act that requires an updating of the Stretch Energy Code. In fact, there is no mention of the Stretch Code in the statute.

- **Adopting the latest version of the IECC statewide could fulfill the Green Communities requirement to minimize life cycle costs by utilizing energy efficiency.** The Green Communities Act (G.L. c. 25a, § 10 (c)) does require the following as a criterion for becoming a Green Community:

*(5) require all new residential construction over 3,000 square feet and all new commercial and industrial real estate construction to minimize, to the extent feasible, the life-cycle cost of the facility by utilizing energy efficiency, water conservation and other renewable or alternative energy technologies.*

It is only DOER's policy, not the statute, which suggests the use of a Stretch Code to meet such a requirement. However, the life cycle costs of buildings could be minimized by utilizing "energy efficiency, water conservation and other renewable or alternative energy technologies." This criterion could be fulfilled by communities if the Administration and the BBRS eliminate the Stretch Energy Code and clarify that the statewide requirement to adopt the latest version of the IECC fulfills criterion #5.

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- **The stretch energy code is unnecessary and fails the regulatory review standards established under Executive Order 562:**

*Section 3. In conducting such review, which shall be coordinated across all Agencies and participating governmental bodies, only those regulations which are mandated by law or essential to the health, safety, environment or welfare of the Commonwealth's residents shall be retained or modified. In order to find that a regulation meets this standard, the Agency must demonstrate, in its review, that:*

- a. there is a clearly identified need for governmental intervention that is best addressed by the Agency and not another Agency or governmental body;*
  - b. the costs of the regulation do not exceed the benefits that would result from the regulation;*
  - c. the regulation does not exceed federal requirements or duplicate local requirements;*
  - d. less restrictive and intrusive alternatives have been considered and found less desirable based on a sound evaluation of the alternatives;*
  - e. the regulation does not unduly and adversely affect Massachusetts citizens and customers of the Commonwealth, or the competitive environment in Massachusetts;*
  - f. the Agency has established a process and a schedule for measuring the effectiveness of the regulation; and*
  - g. the regulation is time-limited or provides for regular review.*
- **The stretch energy code undermines the statutory requirement that there be a uniform statewide building and energy code.** According to Chapter 143, §95 of the Massachusetts General Laws, the Board of Building Regulations and Standards was created to develop:
    - o *Uniform standards and requirements for construction and construction materials, compatible with accepted standards of engineering and fire prevention practices, energy conservation and public safety and to eliminate the use of restrictive, obsolete, conflicting and unnecessary building regulations and requirements which may increase the cost of construction and maintenance.*

Interestingly, unlike the current Stretch Energy Code, which applies to residential properties and commercial properties, the proposed new Stretch Energy Code would only apply to new commercial properties of a certain size and not to residential properties. This inconsistent approach is further evidence that the use of a Stretch Code is not statutorily mandated.

- **Existing law prevents individual communities from adopting their own energy or building codes, unless special conditions exist.** In response to testimony at the hearing that seemed to threaten that communities throughout the state would adopt their own energy codes if a new stretch energy code was not adopted, it should be noted that this would be prohibited under existing law.

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Specifically, Chapter 143, §98 states:

*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.*


Clearly, the Board does have the authority to impose more restrictive standards in communities that have **special conditions**. However, what special conditions exist for communities that wish to adopt their own stretch codes?

**C) Recommendation**

For these reasons, the EV and solar rooftop readiness language must be eliminated from the commercial and residential codes. In addition, the latest version of the International Energy Conservation Code (IECC) should serve as the only energy code in Massachusetts. When the Board votes in July on the emergency changes to the 8<sup>th</sup> edition of the energy code and when the 9<sup>th</sup> edition is voted on later this year, the stretch energy code should also be eliminated. The Green Communities Act guidance document issued by DOER should then be revised to reflect these changes.

Thank you for the opportunity to provide comments. Please contact me if additional information is needed.

Sincerely,



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NAIOP Massachusetts