



MASSACHUSETTS ASSOCIATION OF REALTORS



December 7, 2015

Commissioner Matthew Carlin  
Department of Public Safety  
One Ashburton Place -- Room 1301  
Boston, MA 02108

**Re: Real Estate Industry Opposition to Stretch Energy Code**

Dear Commissioner Carlin:

As the Board of Building Regulations & Standards (BBRS) prepares to move the draft 9<sup>th</sup> edition of the statewide building code through the Executive Order 562 process, the Massachusetts Association of Realtors, the Greater Boston Real Estate Board, NAIOP Massachusetts – The Commercial Real Estate Development Association, and the Home Builders and Remodelers Association of Massachusetts would like to address some confusion that may exist around the Stretch Energy Code and once again urge the Baker Administration and the BBRS not to advance the Stretch Energy Code language.

The Stretch Energy Code was adopted in May 2009 in spite of strong opposition from the business community. Since then, it has caused enormous confusion among building inspectors and developers. Due to this and several other reasons, a new version of the Stretch Energy Code has never been adopted. In fact, at the close of the Patrick Administration late last year, the BBRS voted not to advance a new draft of the Stretch Energy Code as part of the draft 9<sup>th</sup> edition. However, in April 2015, under the Baker Administration, this decision was reversed.

The Stretch Energy Code undermines the uniformity of the State Building Code through the creation of a patchwork of local option building codes. The statewide building code was created in 1975 to avoid such a patchwork. Beyond the confusion created for building inspectors and developers, a new Stretch Energy Code that goes beyond one of the most energy efficient codes in the nation would add substantial costs that could affect the viability of projects throughout Massachusetts. Maintaining a Stretch Energy Code will both hinder economic development and create a costly and unattainable goal for certain projects in some communities.

This would appear to be in direct conflict with Section 3 of Executive Order 562, which states the following:

*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 latest version of the International Energy Conservation Code (IECC) should serve as the only energy code in Massachusetts. We believe that to amend the Stretch Energy Code at this time is both unnecessary and unwise for the following reasons:

▪ **No Statutory Requirement for a Stretch Code**

There appears to be significant confusion around whether or not there is a statutory requirement to adopt the Stretch Energy Code. Quite simply, **no statutory requirement exists**. While the Green Communities Act modified M.G.L. c. 143, § 94 (o) to require the energy provisions of the State Building Code to be updated within one year of any revision to the International Energy Conservation Code, 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.**

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.

Interestingly, unlike the current Stretch Energy Code, which applies to residential properties of all sizes *and* to 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.

▪ **Massachusetts Is Already the Most Energy Efficient State in the Nation**

For five years in a row, Massachusetts has been named by the American Council for an Energy-Efficient Economy (ACEEE) as the most energy efficient state in the nation. ACEEE has stated that Massachusetts had the most aggressive energy efficiency targets in the nation, citing the Green Communities Act as central to the Commonwealth’s ranking. Massachusetts will be only the fourth state in the nation to adopt the IECC 2015 statewide. Since the Green Communities Act does not reference the creation of a Stretch Energy Code, but it does require the adoption of the latest IECC, the Commonwealth’s position as a national leader in energy efficiency will be ensured even without a Stretch Code. While energy efficiency is a laudable goal, consideration of the substantial costs and potential negative economic impact of the Stretch Energy Code is equally important. The requirement under the Green Communities Act that the Commonwealth must adopt the latest version of the IECC puts Massachusetts among the most energy efficient states in the nation. Anything beyond that is overly burdensome and creates a significant competitive disadvantage for Massachusetts.

▪ **Cost of Stretch Code Must be Considered**

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.*

The proposed Stretch Energy Code will be 10% more energy efficient than the new IECC 2015 that will be adopted in non-stretch code communities as part of the 9<sup>th</sup> edition. Since IECC 2015 will be a jump in energy efficiency over the current statewide energy code (IECC 2012), the new Stretch Energy Code would represent a significant percentage increase in energy efficiency requirements for projects in stretch code communities. There is absolutely no question such a change would increase the cost of the construction and maintenance of projects. These costs would appear to be in direct conflict with the statute. Furthermore, in most projects throughout Massachusetts, rents would not cover the increased costs associated with such a significant jump in energy efficiency requirements. Energy efficiency should not take priority over jobs and economic development.

▪ **Automatic Adoption of New Stretch Code In Conflict with Existing Bylaws**

According to DOER, the changes to the Stretch Code would take effect automatically in stretch code communities without any vote by the community (City Council or Town Meeting). **Many Stretch code communities had no idea they would be subject to an automatic upgrade every three years if they adopted the Stretch Code.** They were told they would be on a “level playing field” with the rest of the state once the IECC 2012 was adopted (this can be seen by reviewing the local bylaws that created the Stretch Code). Clearly, this is not the case. In August 2013, DOER issued a sample bylaw for **new** Stretch Code communities to use that states this new requirement. However, since this was issued four years after the Stretch Code was initially adopted, the majority of Stretch Code communities would not have this requirement in their bylaws. Therefore, the patchwork would be even worse. Would Stretch Code communities keep the “old” Stretch Code, adopt the new one or adopt the statewide code? Again, this illustrates the need for one code for all communities.

The real estate industry continues to support a uniform statewide building code. We believe a new Stretch Energy Code will hinder economic development. We urge the Baker Administration and the BBRS to eliminate the Stretch Energy Code once and for all and acknowledge the latest version of the IECC as the only energy code in Massachusetts.

Please contact us if you need any additional information on this very important matter.

Respectfully,

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**NAIOP Massachusetts**

Robert N. Authier, CAE, RCE, EPro  
Executive Vice-President and  
Chief Executive Officer  
**Massachusetts Association of Realtors**

Elizabeth Kovach  
President  
**Home Builders and  
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Gregory Vasil  
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cc: Jay Ash, Secretary, Executive Office of Housing & Economic Development  
Matthew Beaton, Secretary, Executive Office of Energy and Environmental Affairs  
Jennifer Queally, Undersecretary of Law Enforcement, Executive Office of Public Safety & Security  
Rachel Madden, Undersecretary, Executive Office of Administration & Finance  
Tim Wilkerson, Regulatory Ombudsman & Director of Economic Policy, Executive Office of Housing & Economic Development  
Felix I. Zemel, Technical Director, Department of Public Safety  
Richard Crowley, Chair, Board of Building Regulations & Standards