

Senator Charles McIlhinney Plans to Introduce Bill to Reform Pennsylvania's Building Code Adoption Process

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Pennsylvania State Senator Charles McIlhinney (R-10) circulated a memo on March 20, 2013 seeking co-sponsors on a bill to amend Pennsylvania's Construction Code Act (PCCA). McIlhinney's proposed bill is designed to address issues with the building code review process that emerged during the Review and Advisory Council's (RAC) review of the 2012 construction codes, and may be introduced as soon as this week.

Pennsylvania's construction codes are based on the model codes developed by the International Code Council (ICC), a nonprofit standard setting organization, which are updated every three years. The RAC, a 19 member, governor-appointed panel of construction industry professionals, reviews the new code provisions based on the impact on the health, safety and welfare of the public, the economic and financial impact, and technical feasibility. The RAC then makes a binding decision as to which codes provisions should be adopted. Code provisions must receive a two-thirds majority of the entire RAC membership to be adopted. If a provision is not recommended for adoption by the required two-thirds majority, the relevant provisions of the prior version of the code remains in effect.

This process was significantly changed in 2011, with the enactment of Act 1-2011 (Act 1). Prior to Act 1, new code provisions were automatically adopted unless the RAC voted to exclude them, and only a majority vote was required.

In the spring of 2011, the RAC began to evaluate the more than 900 changes to the 2009 codes. The RAC held three public hearings, and public comments were also submitted. Ultimately, however, the RAC was unable to review every change individually, as required by Act 1. Instead, the RAC voted on the 2012 codes as a whole. Adoption of the entirety of the 2012 codes did not get a two-thirds majority. Therefore, the RAC rejected all of the 2012 codes changes, and the 2009 codes remain in effect.

Many believe that the Act 1 process proved to be unworkable, and anticipate future code changes will be unable to garner the super-majority needed for adoption.

Senator McIlhinney's bill is designed to address the issues with the RAC process and to provide additional time and resources to allow the RAC to do its work more effectively. According to Senator McIlhinney's co-sponsorship memo the bill will:

1. Give the RAC and the Department of Labor and Industry an additional year beyond the current one year to review the proposed changes and adopt the regulation, which addresses the issue that there is a lack of time for meaningful debate of the many code changes.
2. Give the RAC members per diem and mileage expense reimbursement as the state does for numerous boards and commissions.

3. Reverse the current language by which the RAC makes decisions. Currently, two-thirds of RAC members must vote to adopt a code provision or it is automatically rejected. With hundreds of code changes, the vast majority of which are commonsense improvements in construction standards, the RAC has been criticized for not reviewing and voting on each one as they are now required to do. The proposed change will allow all proposed code changes to be adopted unless two-thirds of the RAC votes them out.

4. Add two members to the RAC with expertise in building energy efficiency. Although the RAC membership, as required in the Act, has expertise in many areas of construction, there is currently no provision in the Act for expertise in this field.

5. Direct the RAC to re-review the 2012 ICC code changes under this new procedure.

Legislation to amend the PCCA is always controversial, and the future of this bill is uncertain. Members of the construction, real estate and environmental communities in Pennsylvania should follow this proposed legislation, and may want to engage in advocacy efforts at this early stage.

To discuss any questions you may have regarding this Alert, or how it may apply to your particular circumstances, please contact a member of Cozen O'Connor's Energy, Environmental & Public Utilities Practice.