

The Modernization Strategy

The Modernization Strategy is a provincial government initiative to make the building regulatory system—how building construction is regulated—more effective. The Modernization Strategy is proceeding under the leadership of the Office of Housing and Construction Standards.

The Strategy has focused on:

- Building Code application and enforcement
- Liability and risk

Over 150 people—owners, developers, designers, builders and trades, local governments, and consumers—have been involved in discussions on current problems in these areas and what a more effective system would look like .

The Office of Housing and Construction Standards is now consulting on the proposals that were developed based on these discussions, which:

- Clearly assign responsibilities and define processes for applying and enforcing the Building Code; and
- Provide new tools to support code-related decision making.

Consultation includes feedback on the Modernization Strategy website and events such as this meeting.

Building Code enforcement: the current system

The foundation for discussion on improving the current system is based on the understanding that compliance with the Building Code means safer buildings. Review of building design and construction by an independent third party is one way to improve code compliance.

The public expects buildings in British Columbia to be safe. The provincial government, local governments and industry all have an interest in achieving building safety.

The current building regulatory system in BC is discretionary. The provincial government *may* establish a building code and local governments *may* regulate buildings (this is commonly interpreted to include enforcement of the code). There are no explicit requirements or obligations. There is a longstanding history, however, of local government involvement in code enforcement.

What are the problems in the current system?

During discussions with stakeholders, we have heard that some things in the current system are working well. There are also problems, both in the construction sector and with code enforcement. Definitions of some of the terms below can be found in the glossary at the end of this document.

To date, the Office of Housing and Construction Standards has heard about:

- **Existing defects in buildings:** Building failures may be rare (buildings are not falling down), but even in the post-leaky condo era, we are seeing some buildings with significant defects.
 - Example: A condo building in Kelowna was found to be unsafe due to structural problems—inadequate foundation and load-bearing walls. Its 236 owners were advised to move out pending repairs. Repairs are still not completed, almost one year later.
 - Example: The City of Vancouver annually reviews 10 to 15 structural designs submitted to its building department. It has found errors that are often significant in every design checked.
- **Shortage of skilled labour:** During the current construction boom, industry is taking on more and more projects with no (or minimal) increase in the availability of skilled labour to do the work. Given the large number of projects, human resource constraints and time pressures, it is predictable that code compliance and quality of work will suffer.

Building defects can lead to more claims and increased liability exposure.

- **Lack of or limited code enforcement:** Many local governments do an effective job of enforcing the code. In some jurisdictions, however, plan review and building inspection have been cut back or discontinued, or were never established. Some rural areas have no regime for building regulation. As a result:
 - Example: Public buildings—schools, offices, ski resorts—are being built in some rural areas without a building permit or a building inspector ever walking on site.
 - Example: Public buildings are also being built in some urban areas without any inspections by a third party that is independent of the project.

- **Lack of consistency and predictability:** Plan review and inspection procedures can be very different from one jurisdiction to another. Jurisdictions can also differ in how much they focus on high-risk areas.
 - Example: In jurisdiction X, the building official may interpret a particular code provision prescribing rainscreen wall construction to mean that the work should be done in a particular way. In jurisdiction Y next door, the building official may interpret the same code provision to mean the work should be done in a very different way.
 - Example: More effort may go into plan review and site inspection for single-family houses, when large, complex buildings have more occupants and any defects create more safety risk.

Industry may avoid doing business in jurisdictions in which code enforcement is perceived to be inconsistent or inefficient.

- **Lack of coordination:** The activities of building officials, fire officials, safety officers and warranty company inspectors may be poorly coordinated.
 - Example: Occupancy permits are sometimes issued before required safety inspections are completed.

Inefficient use of staff time may lead to unnecessary costs.

Pressures on local governments: These problems may arise because of pressures related to:

- **Capacity**
 - Some local governments just do not have the staff and/or resources to enforce the code effectively, especially with respect to complex public buildings like hospitals
- **Liability**
 - Some local governments may withdraw from code enforcement to reduce their chances of being sued if claims are made for building defects

These problems impact both building safety and economic development.

Impacts on building safety: There is a longstanding history of local government involvement in code enforcement that is generally positively viewed by the construction industry. Many stakeholders in the construction industry, as well as building officials, believe that loss of review by an independent third party means that mistakes that impact building safety can go undetected.

Impacts on economic development: Industry stakeholders have told us that while local government's role in code enforcement is valued, inconsistency in *how* individual local governments enforce the code creates uncertainty, slows building projects down and can increase construction costs, making it harder to do business. More consistency in this area can help support the economic development that construction brings to local governments.

What are we proposing?

Code enforcement throughout the province, which includes both review of building design and construction to assess code compliance and steps taken to correct non-compliance, by a third party independent of the building project.

The independent third party may be a local government, the BC Safety Authority (BCSA) or (once legislatively enabled) a certified private-sector agency.

Review of code compliance takes place through plan review and inspection of buildings under construction, with an emphasis on high-risk areas (more on this below).

Local governments will continue to have the choice whether to enforce the code. In jurisdictions that choose to enforce, new tools will be available to support enforcement, including:

- Access to authoritative responses from the Province of British Columbia to questions on the meaning of code provisions
- A program modelled on the Certified Professional program¹ that local governments can use to get assistance with some aspects of enforcement
- Detailed guidance for applying code requirements to existing buildings

¹ The "Certified Professional" program is an alternate building permit approval stream in which a specially trained design professional provides liaison between the local government and the building project, assuming some oversight functions. This process is currently in place in the City of Vancouver, and is well received by industry.

- New processes to assist local governments in the evaluation of new, non-standard ways of meeting code requirements

In jurisdictions in which the local government chooses not to enforce the code, another third party, such as the BCSA or a private-sector agency, will step in and do so.

Emphasis of code enforcement will be on high-risk areas. High-risk means that non-compliance could have a major negative impact on building safety. High-risk areas could include:

- Automatic sprinkler systems and fire exits in complex buildings
- Structural design of complex buildings
- Rainscreen wall systems

A multi-stakeholder group, including local government administrators and building officials, will be established to help determine the areas of high risk and the details of how code enforcement throughout the province will be implemented.

Local governments that issue building and occupancy permits will continue these activities.

Benefits to local governments

The proposal for code enforcement throughout the province is expected to:

- Clearly define who is doing what
- Give local governments access to code-related expertise and assistance with code application and enforcement
- Make more efficient use of limited staff and resources
- Enable all local governments, including those that do not choose to enforce the code, to attend to building safety

Safety and economic benefits

The proposal is expected to:

- Increase code compliance and reduce safety risk
- Achieve more consistent safety outcomes across British Columbia
- Help remove unnecessary barriers to economic development

How would this proposal be implemented?

There are two possible approaches to implementation:

- Local governments can choose whether or not to enforce the code. If a local government chooses not to enforce, the provincial government arranges for another third party (e.g., the BCSCA) to enforce.

OR

- Local governments are responsible for code enforcement and can delegate responsibility (and liability) to a provincially approved third party.

For local governments that enforce the code, a model bylaw could be developed for adoption. (This would be similar to the existing concurrent authority for buildings under the *Community Charter*). The bylaw could include defined high-risk areas and a range of possible enforcement options (e.g., the Certified Professionals program).

What about costs?

Local government fees for building and occupancy permits may need to be examined if another third party enforces the code.

For example, if a local government chooses not to enforce and the provincial government arranges for another third party to enforce within that jurisdiction, permit fees may need to be reduced to accommodate the fees the other third party charges industry for plan review and inspections.

If a local government itself delegates responsibility for code enforcement to another third party, the local government will need to pay that third party. In this case, permit fees could also need adjustment.

Liability and risk

The Modernization Strategy consulted on proposals to address liability—mandatory liability insurance and warranties or post-construction bonding for industrial, commercial and institutional buildings—with a broad range of stakeholders. The consensus was that the disadvantages outweighed the possible benefits of these proposals.

Liability and risk (continued)

The provincial government may reduce the ultimate limitation period (ULP) from 30 years to 10 years. A consultation on this proposal ended on April 23. If approved, this proposal will help to ease the pressure that liability creates in the system. The provincial government is not reviewing joint and several liability at this time.

What are the next steps?

Consultation on the Modernization Strategy's proposals is taking place to the end of July 2007. Consultation will include feedback from individuals through the Modernization Strategy website at www.housing.gov.bc.ca/modernization and presentations to key groups, including LGMA and UBCM.

When the consultation period and further work on the proposal is complete, formal recommendations will be developed for submission to the Minister Responsible for Housing in fall 2007.

Building Safety: Proposals That Support Building Code Enforcement

Province-Wide Certified Professional Program

A province-wide program based on the City of Vancouver's Certified Professional (CP) program could serve as an optional tool to assist local governments in assessing whether building design and construction comply with the Building Code.

CPs are currently defined as professional architects (MAIBC) or Engineers (P.Eng) in good standing. They are hired by project owner/developers and review the way the code is applied in project design and through construction.

CPs fill a liaison role between the local government and the project. They allow local governments to carry out their oversight role without having to retain specialized staff. Or if demand is great, local governments can use CPs rather than hiring additional staff.

CPs are familiar with local permitting and regulatory processes and add value to local governments by creating conditions for quicker permit issuance, and in some cases, lower permit fees.

The program could be administered by the Association of Engineers and Geoscientists of BC (APEGBC) and the Architectural Institute of BC (AIBC) through a common registry. APEGBC and AIBC will determine the necessary educational requirements for a CP and arrange for the provision of courses, possibly through the Justice Institute. APEGBC, AIBC and the provincial government could also create a best practice manual for local governments outlining how best to utilize the program.

Consistent Interpretations of Code Provisions

Building Policy Branch Opinions

Opinions serve as tools for code interpretation and are useful for clarification of a straightforward code provision. A Branch technical staff member will be identified as the key contact for interpretation questions and requests.

If the issue is contentious, Branch staff will recommend that the request go to the Panel of Experts for response. If the issue is broadly applicable across BC, staff may recommend that the Branch issue a Bulletin.

Building Policy Branch Bulletins

Staff that are responsible for opinions will also be responsible for the creation of Branch bulletins. Bulletins are non-binding advice issued by the Branch to clarify

Building Safety: Proposals That Support Building Code Enforcement

code provisions (i.e., low-risk interpretations). Bulletins would be posted on the Branch's website.

Interpretations Panel of Experts

The Panel would benefit industry, owners and local governments by providing non-binding code interpretation, advice and opinions. Composed of 10 to 12 subject matter experts, the Panel would meet once or twice per month to review submissions brought forward by Branch staff.

The Panel would issue opinions on submissions, as well as recommendations to the Branch on binding interpretations or bulletins. Opinions would be posted on the Branch's website.

Binding, province-wide Interpretations

Binding interpretations would have province-wide application. The Minister responsible for the code is given the authority to determine the correct application of code provisions. Once determined, the interpretation would have the same force as the code provision itself.

Binding interpretations could be recommended by Branch staff, the Building Code Appeal Board, Building Policy Advisory Board and the Alternative Solutions/ Interpretations Panel of Experts.

Risk-Based Mechanism for Applying the Code to Existing Buildings

Building Code requirements are generally designed to apply to the construction of new buildings, but they must also be applied when existing buildings undergo a major renovation.

Each building official must exercise his or her own judgement in determining how to apply code requirements to existing buildings. This can create inconsistency across jurisdictions and uncertainty for building owners and the development community.

Development of a standard risk-based mechanism for applying the code to existing buildings (an "existing building code") will greatly simplify this task. A risk-based mechanism can reduce rehabilitation costs without compromising public safety, increasing investment in existing buildings and encourage building reuse. Reuse and upgrade of existing buildings supports heritage conservation and urban revitalization. It also reduces the need for new infrastructure and the environmental impacts of new development—"the greenest building is the one that's already built."

Building Safety: Proposals That Support Building Code Enforcement

Expansion of Scope and Application of Letters of Assurance

The Building Code requires building owners and design professionals (architects and engineers) to submit Letters of Assurance to local governments. The Letters provide assurance that complex buildings have been designed to comply with the code, and that they are built to that design.

Letters of Assurance are useful tools for documenting accountability in building projects. In fact, they have proved so useful that some local governments have developed new Letters of Assurance that go beyond the scope of those defined in the Building Code, and have applied them in completely new circumstances. This has created uncertainty for building owners and the development community, and inconsistency across jurisdictions has increased.

A multi-stakeholder working group will be convened later this year to examine potential changes to the application and scope of Letters of Assurance that can be consistently applied province-wide. The intention, as with the original Letters, is to work together to find solutions that meet the needs of all parties—local governments and building officials, design professionals and the provincial government.

Consistent Processes for Code Compliance and Enforcement: Alternative Solutions

Process for third-party peer review of alternative solutions

This process could be initiated upon the request of either the local government or the proponent, and could be used to verify the completeness, suitability and technical basis of an alternative solution.

Peer review would allow local governments to regulate construction in their jurisdictions without having to maintain specialized capacity or knowledge on staff, and without having to hire additional staff. Local governments would review the qualifications of the proponent's and the local government's peer reviewer and select its own peer reviewer.

Incorporation of acceptable generic alternative solutions into the regulatory framework

Several alternative solutions have almost become standard practice in BC. The provincial government will host a website that describes non-contentious, generic solutions. These solutions will be included in the provincial and/or national code development stream.

Building Safety: Proposals That Support Building Code Enforcement

Retention of records

Alternative solutions that are accepted and implemented during construction could be recorded as a memo or note on title. Records of alternative solutions on title will enable future owners and occupants to be fully aware of the details of how a building was constructed. A process for records retention will be developed with local governments and the Land Title and Surveys Authority.

These proposals for alternative solutions help ensure that building regulations are up-to-date and responsive, and support innovative construction technologies.

Reduction of Ultimate Limitation Period

The Ministry of Attorney General is consulting on a proposal to reduce the Ultimate Limitation Period (ULP) from 30 to 10 years. This proposal, if approved, would help to ease the pressure that liability creates in the system. The provincial government is not reviewing joint and several liability at this time.

Accountability: the obligation for an individual or organization to verify that assigned responsibilities are being, and in due course have been, fully performed

Alternative solutions: alternative ways of meeting Building Code requirements

Authority: the power assigned or delegated to an individual or organization

Authority having jurisdiction: a government body responsible for the enforcement of a legislative requirement or the official or agency designated by that body to meet that responsibility

Building regulatory system: the entire universe of safety regulation development, application, compliance and enforcement for the built environment and its components; and the many participants in these activities

Code Enforcement: both the assessment of compliance and the steps taken to correct non-compliance

Competency: knowledge and skills required for adequate performance

Compliance: action conforming with the provisions of the Building Code or other applicable safety-related enactments

Governance: the exercise of statutory or de facto authority in the system for achieving safety in buildings. It includes mechanisms and processes through which different system participants—government, the private sector and consumers—communicate their interests, reconcile their differences, exercise their legal rights and meet their responsibilities

Letters of Assurance: documents submitted by registered professionals that provide assurance that complex buildings have been designed to comply with the code, and that they are built to that design

Liability: a responsibility with legal consequences

Monitoring: activity undertaken by local governments to ascertain that owners, registered professionals, and builders have fulfilled their responsibilities for code compliance

Oversight: review of a building's design and construction to assess its compliance with the Building Code

Principles: fundamental assumptions or ideals that guide the development and operation of an effective building safety regulatory system

Registered Professional: a person registered or licensed to practice either as an architect under the Architects Act, or as a Professional Engineer under the Engineers and Geoscientists Act

Responsibility: an obligation defined under legislation, a contract or employment assignment, or required as a professional or other duty of care

Risk: the possibility of problems and adverse consequences

Risk management: the combination of risk analysis, allocation, and control to optimize the likelihood of success. Effective risk assignment aligns responsibility for the consequences of a risk with the ability to manage the risk

Role: any required function that is definable in terms of responsibilities to be assigned for its performance

Ultimate Limitation Period: the maximum amount of time a person has to begin a civil lawsuit