

STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

BUILDING CODES AND STANDARDS DIVISION

In the Matter of the Proposed
Adoption of Amendments to the
Minnesota State Building Code

STATEMENT OF NEED AND
REASONABLENESS

I. Introduction

The Commissioner of the Minnesota Department of Administration proposed to adopt amendments to chapter 1301 of the Minnesota State Building Code entitled Building Official Certification. In addition to substantive changes, reorganization and grammatical changes are proposed to improve clarity and to conform with current style requirements.

The Department began the present rule notification process on July 8, 1991 publishing a note in the State Register (16 S.R. 68) soliciting opinions and information from the public on the rules regarding the Minnesota State Building Code.

II. Statement of Agency's Statutory Authority

The commissioner's authority to adopt the rule amendments is set forth in Minnesota Statute 16B.04, subdivisions 1, 16B.61 subdivision 1, and 16B.65 subdivisions 3 and 7 which state:

Subd. 3. Certification. The commissioner shall:

- (1) prepare and conduct written and practical examinations to determine if a person is qualified pursuant to subdivision 2 to be a building official;
- (2) accept documentation of a successful completion of testing programs developed by nationally recognized testing agencies, as proof of qualification pursuant to subdivision 2; or
- (3) determine qualifications by both clauses (1) and (2).

Upon a determination of qualification under clause (1), or (2), or both of them, the commissioner shall issue a certificate to the building official stating that the official is certified. Each person applying for examination and certification pursuant to this section shall pay a fee of \$70. The commissioner or a designee may establish classes

of certification that will recognize the varying complexities of code enforcement in the municipalities within the state. Except as provided by subdivision 2, no person may act as a building official for a municipality unless the commissioner determines that the official is qualified. The commissioner shall provide educational programs designed to train and assist building officials in carrying out their responsibilities.

The department of employee relations may, at the request of the commissioner, provide statewide testing services.

Subd. 7. Continuing education. Subject to sections 16B.59 to 16B.73, the commissioner may by rule establish or approve continuing education programs for municipal building officials dealing with matters of building code administration, inspection, and enforcement.

Effective January 1, 1985, each person certified as a building official for the state must satisfactorily complete applicable educational programs established or approved by the commissioner every three calendar years to retain certification.

Each person certified as a state building official must submit in writing to the commissioner an application for renewal of certification within 60 days of the last day of the third calendar year following the last certificate issued. Each application for renewal must be accompanied by proof of satisfactory completion of minimum continuing education requirements and the certification renewal fee established by the commissioner.

For persons certified prior to January 1, 1985, the first three-year period commences January 1, 1985.

Under these statutes, the Building Codes and Standards Division has the necessary statutory authority to adopt the proposed rules.

III. Statement of Need

Currently there exists a shortage of building officials to both replace those who are retiring and to administer the code for those local governments who now desire to adopt the state building code. Minnesota rules governing building official certification were last modified effective July 16, 1990. The main purpose of the rules of July 16, 1990 was to base the prerequisites to certification as a building official on established, recognized standards of building code competency rather than the previous subjective guidelines. However, the current building official prerequisites are very narrow in scope. Many prospective applicants possess a wide range of qualifications which should be adequate to become a building official but they do not fit any of the current five prerequisites. Therefore, the means to demonstrate competency has been opened up through the proposed point system. The other

part of the problem is that over the past three and one-half years, the division has learned that very few individuals from greater Minnesota either possess or are able to obtain the required prerequisites and therefore, are unable to become certified. This has been traced in part to a lack of opportunity of those living beyond the limits of the metropolitan area where the prerequisites can be readily attained. The amendments proposed by the division are needed to ensure that persons possessing the necessary qualifications are available to become certified in order to administer both the Minnesota State Building Code and Facilities For The Handicapped.

IV. Statement of Reasonableness

Minnesota Statutes Chapter 14 requires the agency to make an affirmative presentation of facts establishing the reasonableness of the proposed rules. This means that the agency must set forth the reasons for its proposal, and the reasons must not be arbitrary or capricious. However, to the extent that need and reasonableness are separate, need has come to mean that a problem exists which requires administrative attention, and reasonableness means that the solution proposed by the department is appropriate. The reasonableness of the proposed rules is discussed below.

A. Reasonableness of the Rules as a Whole

The proposed rules are reasonable as the prerequisites for certified building official will be more achievable through a combination of education, training and experience. This should enable a greater number of persons that possess a variety of qualifications to apply for certification as a building official without sacrificing competency. Also with the introduction of two additional certification classes, more persons throughout greater Minnesota where training opportunities for potential building officials is limited, and/or where the predominate building type is residential and small commercial, should possess the necessary qualifications to become certified to administer the state building code or just the statutorily required provisions for the handicapped.

B. Reasonableness of Individual Rules

Part 1301.0200, Forms of Certification

Subpart 1, Certified Building Official

This new title is needed to more accurately identify the one responsible for building code administration as required in Minnesota Statute Section 16B.65 subdivision 1 by removing the terms "state" or "class II". The proposal is reasonable because although the designation changes, the authority of those

who were certified as either a state or class II does not.

Subpart a, Grandfathered Certification

This change is needed because these proposed rules eliminated the separate designation "Class II certification" and redefined it as "certified building official" This changes the reference accordingly.

Subpart 2, State Certification

This is repealed as the state certification is equivalent to the proposed "certified building official".

Subpart 3, Class I Certification

In addition to the changes needed to coordinate with that proposed in subpart 1, a revision is proposed to encourage holders of this classification to convert their certification to the new class established in subpart 5. The Class I building official has proved to have limited application as extremely few municipalities consist only of one and two family dwellings. The proposed rule is reasonable because it assists current holders of the Class I certification to convert to a classification that has a wider scope by including administration on smaller nonresidential buildings.

Subpart 4, Class II Certification

This is repealed as the Class II certification is equivalent to the proposed "Certified Building Official".

Subpart 5, Certified Building Official-limited

This is a new classification that is needed to address the need for more certified building officials. It is reasonable because the majority of buildings in many of the smaller jurisdictions in greater Minnesota are one and two family dwellings and exempt classes of buildings. The specific expertise required to administer the code in these areas would now be available where they otherwise would be unable to attract persons with the expertise required of a certified building official. Therefore, many of the smaller jurisdictions in greater Minnesota that have not adopted the code can now adopt and administer the state building code with respect to the majority of buildings encompassed within the jurisdiction.

Subpart 6, Accessibility Specialist

This classification is needed primarily for those communities in greater Minnesota that are required by Minnesota Statute 16B.72 to administer the provisions of Minnesota Rules Chapter 1340, Facilities for the Handicapped, but have not adopted the state building code and, therefore, do not need a certified building official. The rule is reasonable as it now enables local governments to readily obtain a certified person to fulfil their statutory obligation.

Part 1301.0300 Certification Prerequisites

This change is needed because under current rules, many otherwise qualified persons are unable to take the state building official exam. They possess a variety of qualifications none of which individually, fully satisfies one of the current four prerequisite categories but which can add up to equivalent expertise.

The proposed point system is reasonable as it provides greater flexibility in satisfying the prerequisites by recognizing a combination of qualifications that are equivalent to those possessed by an individual who satisfied one of the previous prerequisite categories.

It is necessary that a certified building official obtain a minimum of 100 points to reasonably ensure that a person possesses the necessary technical background to administer the entire state building code on all buildings. This is reasonable because 100 points generally corresponds to the current prerequisites for a Class II Building Official.

It is necessary that a certified building official-limited obtain a minimum of 30 points and attend the training course in order to administer the state building code on a majority of residential and smaller nonresidential buildings. This is reasonable as the training course is designed for the types of buildings governed by this certification class and provides the necessary information to prepare a person to administer the state building code.

It is necessary that an accessibility specialist attend the training course in order to obtain the skills necessary to administer the accessibility provisions of the state building code on all buildings. This is reasonable as the training course provides all the necessary information to prepare a person to administer the accessibility provisions.

A. Education

(1) One-hundred (100) points for the BI/BIT AAS degree is reasonable as the degree is one of the current recognized prerequisite

standards to become certified.

(2) Sixty (60) points for the BI/BIT Certificate is reasonable because it consists only of the technical course work portion of the ASS degree and yet represents 60 percent of a current recognized prerequisite standard to become certified.

(3) (a) Twenty (20) points for these four courses is reasonable because although they represent about 17 percent of the 60 point BI/BIT certificate, they are the most relevant and beneficial to becoming a certified building official.

(b) Four (4) points each per other BI/BIT courses is reasonable because each course represents four percent of the remaining 60 point BI/BIT certificate.

(4) One (1) point each per the specified type of post-secondary courses is reasonable because their content is typically not more than 25 percent as relevant to building code administration as the BI/BIT courses listed in subitem (3). A maximum accumulation of 30 points is reasonable because it approximates the number of courses required in subitem (5) for an associate's degree.

(5) Thirty (30) points for the appropriate associate's degree is reasonable because it represents about one-third of the background necessary in becoming a certified building official.

(6) Sixty (60) points for the appropriate bachelor's degree is reasonable because the length of the coursework is twice that of an associate's degree as in subitem (5) and represents about two-thirds of the background necessary in becoming a certified building official. As additional nonbuilding code specific post-secondary coursework does not provide additional substantive benefit in becoming a certified building official, it is reasonable that additional points not be claimed under subitems (4) or (5).

B. Certificates

(1) One-hundred (100) points for possessing the three parts of this certification by C.A.B.O. is reasonable because they are one of the currently recognized prerequisite standards to becoming certified. Thirty-five (35) points each for possessing the administration or technology segments is reasonable because they cover more relevant

subject matter to a certified building official than does the law portion.

(2) One-hundred (100) points for possessing both certificates by I.C.B.O. is reasonable because they are one of the currently recognized prerequisite standards to becoming certified. Sixty (60) points for possessing only the plans examiner certification is reasonable as it covers a greater range of relevant subject matter to a certified building official than does the building inspector certification exam by I.C.B.O.

(3) Forty (40) points for possessing a Minnesota Class I certification is reasonable because the knowledge demonstrated by obtaining a Class I certification generally equates to that demonstrated by possessing the building inspector certification as in subitem (2)(a).

(4) Fifty (50) points for possessing a Minnesota certified building official-limited certification is reasonable because of the 30 points already demonstrated as a prerequisite by part 1301.0300 and having had completed the required course and examination.

C. Experience

(1) Twenty (20) points per year of the listed type of municipal code experience is reasonable because this is consistent with one of the currently recognized prerequisite standards to becoming certified. A maximum accumulation of 80 points is reasonable because on-the-job building code experience with appropriate supervision provides a major part of the background necessary to become a certified building official.

(2) Ten (10) points per year of the listed type of design or construction experience is reasonable because this type of experience does not typically provide more than 50 percent as much relevant building code administration experience as the municipal building code experience listed in subitem (1). A maximum accumulation of 30 points is reasonable because this type of experience is dependent on additional specific training in building codes to adequately prepare to become a certified building official.

D. It is reasonable that points be assigned to other relevant education, certifications, and experience deemed by the State Building Inspector

to compare with items A to C because these items do not represent all the potential sources of applicable training to becoming a certified building official.

Part 1301.0400 Application for Certification

These changes are needed to clear up confusion that exists among applicants as to how payment is made, when an applicant is scheduled for examination, and who schedules the examination. The amendments are reasonable as they clarify that the payment made for certification is to be made to the state treasurer and that the department of employee relations schedules the applicant to take the examination.

Part 1301.0700 Authority: Purpose

This part is revised to include the new titles of building official-limited and accessibility specialist in the certification maintenance plan of the rule.

Part 1301.0900 Units of Instruction

This part adds the identity of the certification classes that require recertification. In accordance with Minnesota Statute 16B.65 subdivision 7, these subitems are needed to ensure individuals certified in the new categories, continue to inform themselves on current technologies. This is reasonable as building construction technology changes and these certified persons must keep up to date.

Items B and C. This is a reformatting of the existing requirements whereby the "Grandfathered" and "certified building official" are now identified individually.

Item D. As this class of certified building official may have a minimal amount of training and experience and often be located outside of the metropolitan area, it is necessary that they demonstrate their on-going training on a regular yearly basis for the first three year cycle. This is reasonable as they must achieve the same 24 units of instruction within three years as a certified building official.

Item E. It is necessary that an accessibility specialist obtain a minimum of one-half the units of instruction required of the building official certifications. This is reasonable as an accessibility specialist is not responsible for enforcement of the entire state building code. Six of the units to be related to building accessibility is needed because at least 50 percent of the duties of this persons will be specifically technical. The remaining six units may be in other areas of building code administration.

Part 1301.1000 Credit for Instruction

Subpart 1, item M, is needed to recognize those who are certified by the International Conference of Building Officials and receive credit by successfully completing a reexamination once every three years. One unit is reasonable as the exam is approximately one-fourth as long as the original examination in item J where four units are recognized.

Part 1301.1100 Requirements for Recertification

Subpart 1. This subpart contains a grammatical change to clarify its application to all persons certified according to this subpart. The reference to 60 days is deleted as it precludes persons from including units of instruction achieved within the last 60 days of their certification period.

Part 1301.1200 Removal from Office and Revocation of Certification

The change in this section is needed to make the statement gender neutral and to clarify that the rule applies to building officials certified according to this chapter.

V. Small Business Considerations

Minnesota Statute 14.115, subdivision 2 (1988) requires the department, when proposing rules which may affect small businesses, to consider the following methods for reducing the impact on small businesses:

- (a) the establishment of less stringent compliance or reporting requirements for small businesses;
- (b) the establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- (c) the consolidation or simplification of compliance or reporting requirements for small businesses;
- (d) the establishment of performance standards for small businesses to replace design or operational standards required in the rule; and
- (e) the exemption of small businesses from any or all requirements of the rule.

The division has evaluated the effect of the proposed rules on small businesses and determined there will be no effect as these rules do not affect small businesses directly. See Minnesota Statute 14.115 subdivision 7(2).

VI. Fiscal Impact

Minnesota Statutes, section 14.11, subdivision 1, does not apply because adoption of these rules will not result in additional spending by local public bodies in excess of \$100,000 per year for the first two years following adoption of the rules.

VII. Conclusion

Based on the foregoing the proposed amendments to Minnesota Rules Chapter 1301 are both needed and reasonable.

Dated: 2-2-94



Debra Rae Anderson, Commissioner
Department of Administration