

Senate Executive Departments and Administration Committee

Kevin Condict 271-7875

SB 94, prohibiting municipal amendments to the state building code.

Hearing Date: January 29, 2025

Time Opened: 9:37 a.m.

Time Closed: 10:06 a.m.

Members of the Committee Present: Senators Pearl, McGough, Altschiller and Reardon

Members of the Committee Absent : Senator Gannon

Bill Analysis: This bill prohibits all local legislative bodies from adopting any new regulations that differ from the state building code.

Sponsors:

Sen. McConkey

Sen. Murphy

Sen. Innis

Who supports the bill: Sen. Mark McConkey (SD 3), Natch Greyes (BIA), Drew Cline (JBC), Matt Mayberry (NH Homebuilders), Alex Koutroubas, (AGC), Simon Berrio, Jesse Medeiros, Curtis Howland, and Sen. Keith Murphy (SD 16).

Who opposes the bill: Brodie Deshaies (NHMA), Gloria Norcross, Daniel Richardson, Lois Cote, Susan Richman, Karen Cohn, Oliver Matte, Hannah Willcutt, Alex Hawk, and Curtis Register.

Who is neutral on the bill: Philip Sherman (BCRB) and Sean Toomey (SFMO).

Summary of testimony presented:

Senator Mark McConkey, Senate District 3

- Senator McConkey introduced Senate Bill 94.
- Sen. McConkey said this bill is at the request of the New Hampshire Homebuilders. He said this is one of their top legislative priorities because the inconsistencies and jurisdictions of building code are lending themselves to confusion, misinterpretation, and additional cost to consumers.
- Sen. McConkey stated the New Hampshire has adopted and is operating under the 2018 energy code, the 2021 building code, and the 2023 electrical codes.

- Sen. McConkey explained that under the current RSA 674:51 towns may adopt codes beyond those adopted by the State provided that they seek and are granted approval by the Building Code Review Board (BCRB). The local town codes may go further than existing national codes and standards.
- Sen. McConkey said that in many New Hampshire towns the local code enforcement officer is often the local fire chief or their designee. He said that if this bill is adopted but towns are still able to enforce the codes then there will be consistent rules and codes across the state.
- Sen. McConkey said that if a town adopts a stringent code, it adds costs to both the builder and home buyer. He explained this also forces contractors to learn the new rules and codes, often to satisfy just one town enforcement officer. He said that time is valuable and that it is money for both the builder and constituent.
- Sen. McConkey said that an amendment to the bill is being drafted to continue to allow towns the ability to enforce the codes and adopt fees and schedules in order to function in the issuance and enforcement of permits and codes.
- Sen. McConkey explained that in the original drafting of this bill, the original authors were too aggressive and struck out a line that should have remained. He said that error is currently being corrected.
- Sen. McConkey said that adopting a “one state, one code” policy will streamline the learning, implementation, and enforcement of the building codes. He said that New Hampshire’s tradespeople deserve consistency and uniformity that transcends town lines. He said that constituents deserve to not be surprised by cost estimates that are higher from one town to the next because of regulations adopted beyond what the General Court has validated.

Matt Mayberry, New Hampshire Homebuilders Association

- Mr. Mayberry explained that the New Hampshire Homebuilders Association represents twenty-seven thousand people who work in the building trades. He stated that they strongly support this bill. He said this is their top legislative priority.
- Mr. Mayberry explained that currently municipalities can petition the BCRB to impose different building codes other than those adopted by the State through the legislative process. He said this is effectively bypassing the State’s authority.
- Mr. Mayberry stated that New Hampshire is one state and deserves one set of adopted building codes.
- Mr. Mayberry said that the Homebuilders support the amendment that was inadvertently deleted regarding the enforcement of codes and the schedule of fees.
- Mr. Mayberry explained that some municipalities have adopted the 2021 energy codes, which has added at least \$17 thousand in mandated costs per home. He said this inconsistency forces builders to navigate a patchwork of regulations, which has increased costs and delayed projects.

- Mr. Mayberry said that with the anticipated demand for the accessory dwelling units (ADUs) uniform codes would be critical. He said that contractors facing unpredictable code changes may avoid working in some towns altogether, which would exacerbate the current housing crisis.
- Mr. Mayberry stated that building codes exist for the safety and asset preservation, not for municipalities to advance personal agendas that raise costs, inflate rents, and drive-up mortgages.
- Mr. Mayberry said it is unfortunate that New Hampshire lacks an updated list of all the towns and the codes they operate under.
- Mr. Mayberry said that builders feel the impact immediately. He said standardized codes will create stability, predictability, and will lower cost. He said this will allow for faster housing development and a greater choice of housing for Granite Staters.
- Sen. Altschiller said she heard his message. She voiced concern that New Hampshire does not have “one state, one code” because the state has a deep history and commitment to local control. She said this would eliminate that. She asked how the State starts moving to a space of top-down control of codes.
 - o Mr. Mayberry stated that during this housing crisis everyone needs to be moving in the same direction. He said local adoption of codes goes against that direction. He said that some builders have told him they do not build in certain towns because they would have to learn their codes.
- Sen. Altschiller asked Mr. Mayberry if he had any examples of the towns who do not want this policy. She questioned if setting higher standards is not going in the same direction. She asked who would be opposed to higher standards.
 - o Mr. Mayberry said he is confident that Brody Deshaies from the Municipal Association would be able to describe those towns. He said that he knows builders who are refusing to build in certain towns. He said there is currently no standardized training. He explained that building officials can interpret the code differently, and that the Homebuilders are asking for standardization. He said they are currently relying on the interpretation of an inspector. He said they are focused on getting people into housing.
- Sen. Pearl asked if builders are willing to build to a higher standard than the code. He said there is concern about added cost and regulation of higher code standard.
 - o Mr. Mayberry said that there are several builders who are choosing to build to a higher standard. He reiterated that codes are set for asset preservation and the preservation of life.

Brody Deshaies, New Hampshire Municipal Association

- Mr. Deshaies stated the New Hampshire Municipal Association (NHMA) opposes this bill.
- Mr. Deshaies said that last year’s SB 437 addressed many of these issues. He said this bill is a broad expansion of SB 437.

- Mr. Deshaies stated that the codes towns adopt cannot be less stringent.
- Mr. Deshaies said the NHMA supports having a state building code in statute, but SB 437 only took effect on July 1st. He said the Municipal Association was just able to get guidance out to municipalities. He said this bill is premature.
- Mr. Deshaies explained that under prior law, municipalities could adopt additional amendments to the state building code provided that their amendments were not less stringent than the State's code. He said that SB 437 amended that authority by allowing municipal adoption of additional amendments if they related to one article or section of the code. He said that it is not possible, after SB 437, for a town to adopt an entirely new code.
- Mr. Deshaies explained that locally adopted building code amendments must continue to be submitted to the BCRB for review and confirmation no later than ninety days before adoption in cities and no later than ten days after the conclusion of the final public hearing in towns.
- Mr. Deshaies said that SB 437 limits the BCRB's review to confirmation that the local amendment complies with RSA 674:51 or RSA 47:22 and verification with the State Fire Marshal that there is no conflict with the fire code. He said there is a lot of oversight on what amendments municipalities can adopt and how they can be adopted.
- Mr. Deshaies said that SB 437 created the requirement that local amendments be resubmitted for review.
- Mr. Deshaies said that there are times when a building code inspector or someone in the planning department wants to make an amendment to the building code, so it is easier for them and the builders to interpret. He said that, while rare, there are times when they find a mistake in the code, and it is their obligation to promote the safety and general welfare of their residents.
- Mr. Deshaies stated that municipalities cannot bypass State authority because they follow state laws, and that the State provides towns with the authorities they have.
- Mr. Deshaies asked for time to see the effects of last year's legislation before the State takes further action.
- Sen. Pearl asked if Mr. Deshaies feels there are any communities who have been pushing toward a higher energy code that are seeing barriers to entering those communities.
 - o Mr. Deshaies said he believes the planning departments are trying to do their best to meet the needs and expectations of their residents. He said the building code is primarily there to provide safety. He noted that there is a public hearing process to provide feedback. He reiterated the belief that SB 437 addressed many of the concerns that led to this bill.

Philip Sherman, Building Code Review Board

- Mr. Sherman said the BCRB has no position on the bill. He said if the bill moves forward then the BCRB would like to provide input.

- Mr. Sherman explained that this bill proposes to eliminate the current authorization for municipalities to amend the building code. He said if the bill moves forward, it is important to allow for certain administrative amendments related to statutory authority and to allow for the various ways that the code is implemented.
- Mr. Sherman said that this is a good time to move some of the building code-related sections now in the land use and city grant of power chapters into RSA 155-A, which is what is proposed in House Bill 244.
- Mr. Sherman proposed correcting conflicting terminology and an existing cross reference error within current statutes. He said that they have put together a proposed amendment, and that he would be happy to walk people through the amendment at an appropriate time.
- Sen. Pearl asked if that amendment is available for the Committee.
 - o Mr. Sherman said the amendment would effectively replace the bill, permit administrative amendments with some controls, and maintain the BCRB confirmation process for those administrative amendments but, for the most part, prohibit technical amendments. He said he believes that is what this bill is trying to do.
- Mr. Sherman agreed with the NHMA regarding SB 437. He said the impact of that bill is still playing out and that there needs to be discussions on how to meld that bill with this one. He said it is doable.
- Sen. Reardon asked the Committee if they are allowed to refer the bill to the Senate Subcommittee on Housing.
 - o Sen. Pearl said that he is not sure, but a request can be made. He said the Committee should see how their work on the bill goes.

Sean Toomey, State Fire Marshal

- Mr. Toomey noted that this bill includes the state fire code. He echoed the need for there to be language added to allow for administrative amendments.
- Mr. Toomey said there are some small operational items for the fire departments that he believes could be added that make sense for transparency.
- Mr. Toomey said he believes the State is on a good cycle of updating the codes every three years. He said that if the State can stay on a good cycle, then it will limit communities wanting to do their own thing.

Drew Cline, Josiah Bartlett Center

- Mr. Cline said over the years the JBC has been working on housing, the biggest complaint they have heard about is the inconsistency of building codes. He said this inconsistency keeps some developers out of certain communities.
- Mr. Cline said that going to a statewide code would be advantageous for homebuilding and commercial building in New Hampshire. He said that the State creates a floor that can only go up in terms of regulations. He said that

localities are adding regulations on and that is creating problems for building across the state.

- Mr. Cline said that the bill would have a positive effect on the creation of more housing and commercial development and would theoretically lower the cost.
- Sen. Altschiller asked what developers are saying they will not build in certain communities. She asked what communities they were referring to.
 - o Mr. Cline said that he was not interviewing them for publications, and that they were conversations at events. He said those people were not speaking for public comment. He said that Mr. Mayberry could probably provide names.

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Date Hearing Report completed: January 31, 2025