

VERMONT STATUTES RE BUILDING ENERGY STANDARDS,
WITH APPLICABILITY PROVISIONS BOLDED

for Building Energy Disclosure Working Group 9/19/11
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1. RESIDENTIAL

§ 266. RESIDENTIAL BUILDING ENERGY STANDARDS

(a) Definitions. For purposes of this subchapter, the following definitions apply:

(1) "Builder" means the general contractor or other person in charge of construction, who has the power to direct others with respect to the details to be observed in construction.

(2) "Residential buildings" means one family dwellings, two family dwellings, and multi-family housing three stories or less in height. "Residential buildings" shall not include hunting camps.

(3) "Residential construction" means new construction of residential buildings, and the construction of additions, alterations, renovations, or repairs to an existing residential building.

(4) "IECC" means the International Energy Conservation Code of the International Code Council.

(b) Adoption of Residential Building Energy Standards (RBES). Residential construction shall be in compliance with the standards adopted by the commissioner of public service in accordance with subsection (c) of this section.

(c) Revision and interpretation of energy standards. The commissioner of public service shall amend and update the RBES, by means of administrative rules adopted in accordance with chapter 25 of Title 3. No later than January 1, 2011, the commissioner shall complete rulemaking to amend the energy standards to ensure that, to comply with the standards, residential construction must be designed and constructed in a manner that complies with the 2009 edition of the IECC. These amendments shall be effective three months after final adoption and shall apply to construction commenced on and after the date they become effective. After January 1, 2011, the commissioner shall ensure that appropriate revisions are made promptly after the issuance of updated standards for residential construction under the IECC. The department of public service shall provide technical assistance and expert advice to the commissioner in the interpretation of the RBES and in the formulation of specific proposals for amending the RBES. Prior to final adoption of each required revision of the RBES, the department of public service shall convene an advisory committee to include one or more mortgage lenders, builders, building designers, utility representatives, and other persons with experience and expertise, such as consumer advocates and energy conservation experts. The advisory committee may provide the commissioner with additional recommendations for revision of the RBES.

(1) Any amendments to the RBES shall be:

(A) Consistent with duly adopted state energy policy, as specified in 30 V.S.A. § 202a, and consistent with duly adopted state housing policy.

(B) Evaluated relative to their technical applicability and reliability.

(C) Cost-effective and affordable from the consumer's perspective.

(2) Except for the amendments required by this subsection to be adopted by January 1, 2011, each time the RBES are amended by the commissioner, the amended RBES shall become effective upon a date specified in the adopted rule, a date that shall not be less than three months after the date of adoption. Except for the amendments required by this subsection to be adopted by January 1, 2011, persons commencing residential construction before the effective date of the amended RBES shall have the option of complying with the applicable provisions of the earlier or the amended RBES. After the effective date of the original or the amended RBES, any person commencing residential construction shall comply with the most recent version of the RBES.

(3) In the first cycle of revision of the RBES, the commissioner shall establish standards for ventilation and shall consider revisions including:

(A) A requirement for sealed combustion, induced or forced draft combustion equipment when exhaust-only ventilation systems are installed.

(B) A requirement for adequate replacement air ducted directly to the combustion area of wood and pellet stoves and fireplaces.

(4)(A) As the Model Energy Code is primarily a performance-based code, the department of public service shall develop and disseminate criteria that builders may use in lieu of any computer software, calculations and trade-off worksheets, or systems analysis to comply with the code. An example package which complies with the code shall be included in the rules and updated as appropriate.

(B) To provide for flexibility, additional packages which are equivalent to the example package under chapter 9 of the Model Energy Code and which satisfy the performance approach shall be developed by July 1, 1997 and disseminated by the department of public service. Each time the RBES are amended by the commissioner, the department of public service shall develop modified compliance packages which will become available to the public by the date that the amendment becomes effective.

(5) A home energy rating conducted at the time of construction by a Vermont-accredited home energy rating organization shall be an acceptable means of demonstrating compliance if the rating indicates energy performance equivalent to the RBES.

(6) The advisory committee convened under this subsection, in preparing for the RBES update required on or about January 1, 1999, shall advise the commissioner of public service with respect to the coordination of the RBES amendments with existing and proposed demand side management programs offered in the state.

(d) Role of RBES in Act 250. Substantial and reliable evidence of compliance with RBES established and updated as required under this section shall serve as a presumption of compliance with 10 V.S.A. § 6086(a)(9)(F), except no presumption shall be created insofar as compliance with subdivision (a)(9)(F) involves the role of electric resistance space heating. In attempting to rebut a presumption of compliance created under this subsection, a challenge may only focus on the question of whether or not there will be compliance with the RBES established and updated as required under this subsection. A presumption under this subsection may not be overcome by evidence that the RBES

adopted and updated as required under this section fail to comply with 10 V.S.A. § 6086(a)(9)(F).

(e) A certification may be issued by a builder, a licensed professional engineer, a licensed architect or an accredited home energy rating organization. If certification is not issued by a licensed professional engineer, a licensed architect or an accredited home energy rating organization, it shall be issued by the builder. Any certification shall certify that residential construction meets the RBES. The department of public service will develop and make available to the public a certificate that lists key features of the RBES. Any person certifying shall use this certificate or one substantially like it to certify compliance with RBES. Certification shall be issued by completing and signing a certificate and permanently affixing it to the outside of the heating or cooling equipment, to the electrical service panel located inside the building, or in a visible location in the vicinity of one of these three areas. The certificate shall certify that the residential building has been constructed in compliance with the requirements of the RBES. The person certifying under this subsection shall provide a copy of each certificate to the department of public service and shall assure that a certificate is recorded and indexed in the town land records. A builder may contract with a licensed professional engineer, a licensed architect or an accredited home energy rating organization to issue certification and to indemnify the builder from any liability to the owner of the residential construction caused by noncompliance with the RBES.

(f) Action for damages.

(1) Except as otherwise provided in this subsection, a person aggrieved by noncompliance with this section may bring a civil action against a person who has the obligation of certifying compliance under subsection (e) of this section. This action may seek injunctive relief, damages, court costs, and attorney's fees. As used in this subdivision, "damages" means:

(A) costs incidental to increased energy consumption; and

(B) labor, materials, and other expenses associated with bringing the structure into compliance with RBES in effect on the date construction was commenced.

(2) A person's failure to affix the certification as required by this section shall not be an affirmative defense in such an action against the person.

(3) The rights and remedies created by this section shall not be construed to limit any rights and remedies otherwise provided by law.

(g) Applicability and exemptions. The construction of a residential addition to a building shall not create a requirement that the entire building comply with this subchapter. The following residential construction shall not be subject to the requirements of this subchapter:

(1) Buildings or additions whose peak energy use design rate for all purposes is less than 3.4 BTUs per hour, per square foot, or less than one watt per square foot of floor area.

(2) Homes subject to Title VI of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. §§ 5401-5426).

(3) Buildings or additions that are neither heated nor cooled.

(4) Residential construction by an owner, if all of the following apply:

(A) The owner of the residential construction is the builder, as defined under this section.

(B) The residential construction is used as a dwelling by the owner.

(C) The owner in fact directs the details of construction with regard to the installation of materials not in compliance with RBES.

(D) The owner discloses in writing to a prospective buyer, before entering into a binding purchase and sales agreement, with respect to the nature and extent of any noncompliance with RBES. Any statement or certificate given to a prospective buyer shall itemize how the home does not comply with RBES, and shall itemize which measures do not meet the RBES standards in effect at the time construction commenced. Any certificate given under this subsection shall be recorded in the land records where the property is located, and sent to the department of public service, within 30 days following sale of the property by the owner.

(h) Title validity not affected. A defect in marketable title shall not be created by a failure to issue certification or a certificate, as required under subsection (e) or subdivision (g)(4) of this section, or by a failure under that subsection to: affix a certificate; to provide a copy of a certificate to the department of public service; or to record and index a certificate in the town records.

2. COMMERCIAL

§ 268. COMMERCIAL BUILDING ENERGY STANDARDS

(a) Definitions. **For purposes of this subchapter, "commercial buildings" means all buildings that are not residential buildings as defined in subdivision 266(a)(2) of this title or farm structures as defined in 24 V.S.A. § 4413.**

(1) The following commercial buildings, or portions of those buildings, separated from the remainder of the building by thermal envelope assemblies complying with this section shall be exempt from the building thermal envelope provisions of the standards:

(A) Those that do not contain conditioned space.

(B) Those with a peak design rate of energy usage less than an amount specified in the commercial building energy standards (CBES) adopted under subsection (b) of this section.

(2) These standards shall not apply to equipment or portions of building energy systems that use energy primarily to provide for industrial or manufacturing processes.

(b) Adoption of commercial building energy standards. Commercial building construction with respect to which any local building permit application or application for construction plan approval by the commissioner of public safety pursuant to 20 V.S.A. chapter 173 has been submitted on or after January 1, 2007 shall be designed and constructed in substantial compliance with the standards contained in the 2005 Vermont Guidelines for Energy Efficient Commercial Construction, as those standards may be amended by administrative rule adopted by the commissioner of public service.

(c) Revision and interpretation of energy standards. No later than January 1, 2011, the commissioner shall complete rulemaking to amend the commercial building energy standards to ensure that commercial building construction must be designed and

constructed in a manner that complies with ANSI/ASHRAE/IESNA standard 90.1-2007 or the 2009 edition of the IECC, whichever provides the greatest level of energy savings. These amendments shall be effective three months after final adoption and shall apply to construction commenced on and after the date they become effective. At least every three years after January 1, 2011, the commissioner of public service shall amend and update the CBES by means of administrative rules adopted in accordance with 3 V.S.A. chapter 25. The commissioner shall ensure that appropriate revisions are made promptly after the issuance of updated standards for commercial construction under the IECC or ASHRAE/ANSI/IESNA standard 90.1, whichever provides the greatest level of energy savings. Prior to final adoption of each required revision of the CBES, the department of public service shall convene an advisory committee to include one or more mortgage lenders; builders; building designers; architects; civil, mechanical, and electrical engineers; utility representatives; and other persons with experience and expertise, such as consumer advocates and energy conservation experts. The advisory committee may provide the commissioner of public service with additional recommendations for revision of the CBES.

(1) Any amendments to the CBES shall be:

(A) Consistent with duly adopted state energy policy, as specified in 30 V.S.A. § 202a.

(B) Evaluated relative to their technical applicability and reliability.

(2) Except for the amendments required by this subsection to be adopted by January 1, 2011, each time the CBES are amended by the commissioner of public service, the amended CBES shall become effective upon a date specified in the adopted rule, a date that shall not be less than three months after the date of adoption. Except for the amendments required by this subsection to be adopted by January 1, 2011, persons submitting an application for any local permit authorizing commercial construction, or an application for construction plan approval by the commissioner of public safety pursuant to 20 V.S.A. chapter 173, before the effective date of the amended CBES shall have the option of complying with the applicable provisions of the earlier or the amended CBES. After the effective date of the original or the amended CBES, any person submitting such an application for commercial construction in an area subject to the CBES shall comply with the most recent version of the CBES.

(3) The advisory committee convened under this subsection, in preparing for the CBES updates, shall advise the department of public service with respect to the coordination of the CBES amendments with existing and proposed demand-side management programs offered in the state.

(4) The commissioner of public service is authorized to adopt rules interpreting and implementing the CBES.

(5) The commissioner of public service may grant written variances or exemptions from the CBES or rules adopted under this section where strict compliance would entail practical difficulty or unnecessary hardship, or is otherwise found unwarranted, provided that:

(A) Any such variance or exemption shall be consistent with state energy policy, as specified in 30 V.S.A. § 202a.

(B) Any petitioner for such a variance or exemption can demonstrate that the methods, means, or practices proposed to be taken in lieu of compliance with the rule or

rules provide, in the opinion of the commissioner, equal energy efficiency to that attained by compliance with the rule or rules.

(C) A copy of any such variance or exemption shall be recorded by the petitioner in the land records of the city or town in which the building is located.

(D) A record of each variance or exemption shall be maintained by the commissioner, together with the certifications received by the commissioner.

(d) Certification requirement.

(1) The design of commercial buildings shall be certified by the primary designer as compliant with CBES in accordance with this subsection, except as compliance is excused by a variance or exemption issued under subdivision (c)(5) of this section. If applicable law requires that the primary designer be a licensed professional engineer, licensed architect, or other licensed professional, a member of a pertinent licensed profession shall issue this certification. If one or more licensed professional engineers or licensed architects is involved in the design of the project, one of these licensees shall issue this certificate. If a licensed professional engineer or a licensed architect is not involved in designing the project, certification shall be issued by the builder. Any certification shall be accompanied by an affidavit and shall certify that the designer acted in accordance with the designer's professional duty of care in designing the building, and that the commercial building was designed in substantial compliance with the requirements of the CBES. The department of public service will develop and make available to the public a certificate that lists key requirements of the CBES, sets forth certifying language in accordance with this subdivision, and requires disclosure of persons relied upon by the primary designer who have contracted to indemnify the primary designer for damages arising out of that reliance. Any person certifying under this subdivision shall use this certificate or one substantially like it to satisfy these certification obligations. Certification shall be issued by completing and signing a certificate and permanently affixing it to the outside of the heating or cooling equipment, to the electrical service panel located inside the building, or in a visible location in the vicinity of one of these three areas. In certifying under this subsection, the certifying person may reasonably rely on one or more supporting affidavits received from other persons that contributed to the design affirming that the portions of the design produced by them were properly certifiable under this subsection. The certifying person may contract for indemnification from those on which the person relies pursuant to this subdivision (1) against damages arising out of that reliance. This indemnification shall not limit any rights of action of an aggrieved party.

(2) The construction of a commercial building shall be certified as compliant with CBES in accordance with this subsection, except as compliance is excused by a variance or exemption issued under subdivision (c)(5) of this section. This certification shall be issued by the general contractor, construction manager, or other party having primary responsibility for coordinating the construction of the subject building, or in the absence of such a person, by the owner of the building. Any certification shall be accompanied by an affidavit and shall certify that the subject commercial building was constructed in accordance with the ordinary standard of care applicable to the participating construction trades, and that the subject commercial building was constructed substantially in accordance with the construction documents including the plans and specifications certified under subdivision (1) of this subsection for that building. The department of

public service will develop and make available to the public a certificate that sets forth certifying language in accordance with this subdivision, and that requires disclosure of persons who have been relied upon by the person with primary responsibility for coordinating the construction of the building and who have contracted to indemnify that person for damages arising out of that reliance. The person certifying under this subdivision shall use that certificate or one substantially like it to satisfy these certification obligations. Certification shall be issued by completing and signing a certificate and permanently affixing it to the outside of the heating or cooling equipment, to the electrical service panel located inside the building, or in a visible location in the vicinity of one of these three areas. In certifying under this subdivision, the certifying person may reasonably rely on one or more supporting affidavits received from subcontractors or others engaged in the construction of the subject commercial building affirming that the portions of the building constructed by them were properly certifiable under this subdivision. The certifying person may contract for indemnification from those on which the person relies pursuant to this subdivision (2) against damages arising out of that reliance. This indemnification shall not limit any rights of action of an aggrieved party.

(3) Any person certifying under this subsection shall provide a copy of the person's certificate and any accompanying affidavit to the department of public service.

(4) A certificate issued pursuant to subdivision (1) of this subsection and a certificate issued pursuant to subdivision (2) of this subsection shall be conditions precedent to issuance by the commissioner of public safety (or a municipal official acting under 20 V.S.A. § 2736) of any final occupancy permit required by the rules of the commissioner of public safety for use or occupancy of a commercial building that is also a public building as defined in 20 V.S.A. § 2730(a).

(e) Private right of action for damages against a certifier.

(1) Except as otherwise provided in this subsection, a person aggrieved by another person's breach of that other person's representations contained in a certification or supporting affidavit issued or received as provided under subsection (d) of this section, within 10 years after the earlier of completion of construction or occupancy of the affected commercial building or portion of that building, may bring a civil action in superior court against a person who has an obligation of certifying compliance under subsection (d) of this section alleging breach of the representations contained in that person's certification. This action may seek injunctive relief, damages arising from the aggrieved party's reliance on the accuracy of those representations, court costs, and reasonable attorneys' fees in an amount to be determined by the court. As used in this subdivision, "damages" includes costs incidental to increased energy consumption.

(2) A person's failure to affix the certification as required by this section shall not be an affirmative defense in such an action against the person.

(3) The rights and remedies created by this section shall not be construed to limit any rights and remedies otherwise provided by law.

(4) The right of action established in this subsection may not be waived by contract or other agreement.

(5) It shall be a defense to an action under this subsection that either at the time of completion or at any time thereafter, the commercial building or portion of building covered by a certificate under subsection (d) of this section, as actually constructed, met

or exceeded the overall performance standards established in the CBES in effect on the date construction was commenced.

(f) State or local enforcement. Any person who knowingly makes a false certification under subsection (d) of this section, or any party who fails to certify under subsection (d) of this section when required to do so, shall be subject to a civil penalty of not more than \$250.00 per day, up to \$10,000.00 for each year the violation continues.

(g) Title validity not affected. A defect in marketable title shall not be created by a failure to record a variance or exemption pursuant to subdivision (c)(5) of this section, by a failure to issue certification or a certificate, as required under subsection (d) of this section, or by a failure under that subsection to: affix a certificate or provide a copy of a certificate to the department of public service.

3. FARM STRUCTURE (exempted from commercial building definition above)

24 V.S.A. § 4413(d)(1) provides that:

For purposes of this section, "farm structure" means a building, enclosure, or fence for housing livestock, raising horticultural or agronomic plants, or carrying out other practices associated with accepted agricultural or farming practices, including a silo, as "farming" is defined in 10 V.S.A. § 6001(22), but excludes a dwelling for human habitation.

10 V.S.A. § 6001(22) provides that:

"Farming" means:

(A) the cultivation or other use of land for growing food, fiber, Christmas trees, maple sap, or horticultural and orchard crops; or

(B) the raising, feeding, or management of livestock, poultry, fish, or bees; or

(C) the operation of greenhouses; or

(D) the production of maple syrup; or

(E) the on-site storage, preparation and sale of agricultural products principally produced on the farm; or

(F) the on-site storage, preparation, production, and sale of fuel or power from agricultural products or wastes principally produced on the farm; or

(G) the raising, feeding, or management of four or more equines owned or boarded by the farmer, including training, showing, and providing instruction and lessons in riding, training, and the management of equines.