



ACTS AFFECTING THE BUILDING AND FIRE CODES AND THE BUILDING INDUSTRY

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NOTE TO READERS

This report provides highlights of new laws affecting the building and fire codes and the building industry enacted during the 2016 regular legislative session. We do not include vetoed acts, unless the legislature overrides the governor's veto.

Not all provisions of the acts are included here. Complete summaries of all 2016 public acts are available on OLR's website as they are completed:

<http://www.cga.ct.gov/olr/OLRPASums.asp>.

Readers are encouraged to obtain the full text of acts that interest them from the Connecticut State Library, House Clerk's Office, or General Assembly's website:

<http://www.cga.ct.gov/>.

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AUTHORITY OF DEPUTY FIRE MARSHALS AND FIRE INSPECTORS

A new law allows local fire marshals to delegate to deputy fire marshals or fire inspectors their authority to write citations for code violations, just as they may already delegate their authority to issue orders or permits.

By law, the state fire marshal and local fire marshals may issue citations, instead of remediation orders, for certain fire prevention code violations. A citation must be signed by the fire official and must include, among other things, the specific offense charged. A citation for a fire prevention code violation subjects the violator to a fine of up to \$250 ([CGS § 29-291c](#)). ([PA 16-157](#), effective July 1, 2016)

BUILDING AND FIRE CODE ADOPTION

A new law changes the process for adopting the state building, fire safety, and fire prevention codes which, under prior law, were adopted pursuant to the Uniform Administrative Procedure Act (UAPA) (i.e., the act that agencies must follow when performing certain administrative functions such as adopting regulations).

The new law maintains many of the UAPA's essential elements, including (1) a notice requirement for proposed codes, (2) a public comment period, and (3) the requirement for the Regulation Review Committee to review and approve the proposed codes. But

unlike the UAPA process, the new code adoption process does not require the attorney general to review the proposed codes for legal sufficiency. Also, the act allows the committee to waive its review, and if the committee fails to meet or act on a proposed code within prescribed deadlines, the code is deemed approved (see Attachment 1 for the complete summary). ([PA 16-215](#), effective upon passage)

CONCRETE FOUNDATIONS

A new law makes various changes related to residential and commercial concrete foundations. It requires:

1. additional documentation to obtain a certificate of occupancy for a new structure for which a concrete foundation was installed;
2. municipalities, at an owner's request, to reassess residential properties that have foundation problems;
3. the Department of Consumer Protection to investigate the cause or causes of concrete foundation failure; and
4. executive branch agencies to maintain records of failing residential concrete foundations as confidential for at least seven years (see Attachment 2 for the complete summary of this act).

([PA 16-45](#), effective upon passage and applicable to assessment dates beginning on or after that date, except the provision about certificates of occupancy is effective October 1, 2016.)

DEMOLITION PERMITS

A new law prohibits, in municipalities that impose a waiting period before granting a demolition permit for a building or structure, a permit applicant from taking any action toward demolition during that period. Prohibited actions include site remediation and asbestos abatement. The prohibition does not apply if the municipality's building official determines it would endanger public health.

By law, a municipal ordinance may impose a waiting period of up to 180 days for a demolition permit. The waiting period does not apply to permits for removing structures the Department of Transportation (DOT) acquires for transportation projects.

Violations of the demolition law, including the act's provisions, are punishable by a fine of up to \$500, up to a year in prison, or both ([CGS § 29-414](#)). ([PA 16-9](#), effective October 1, 2016)

NEW ACCESS SYMBOL FOR PERSONS WITH DISABILITIES

A new law requires the administrative services commissioner, by January 1, 2017, to promulgate a policy and adopt regulations designating

a new access symbol for people with disabilities. The new symbol replaces the international access symbol. It must (1) depict a logo with a dynamic character leaning forward with a sense of movement, be readily identifiable, and be simply designed with no secondary meaning and (2) provide for the equivalent facilitation and accessibility as the international access symbol.

Beginning January 1, 2017, any references in the State Building Code to the international symbol of accessibility must be deemed to mean the new symbol established under the new law. And all buildings and structures constructed, substantially renovated, or expanded on or after that date must use the new symbol.

The new law similarly replaces the international access symbol with the new symbol for (1) special license plates and temporary windshield placards for individuals with disabilities or who are blind, or the parent or guardian of these individuals, and (2) parking space signs for such individuals replaced, repaired, or erected on and after January 1, 2017. In addition, the act replaces "handicapped" with "reserved" on the parking signs, which currently read "handicapped parking permit required," and "violators will be fined." ([PA 16-78](#), effective upon passage, except that the provisions concerning license plates, placards, and parking space signs are effective January 1, 2017.)

PUBLIC WORKS CONTRACT RETAINAGE AND ENFORCEMENT OF THE RIGHT TO PAYMENT ON A BOND

This act generally lowers the maximum retainage allowed in state contracts from 10% to 7.5%. (Retainage is the amount withheld from payments conditioned on substantial or final completion of work in accordance with a construction contract.) The act prohibits state agencies, except DOT, from withholding more than 7.5% from any periodic or final payment properly due to the general or prime contractor. It also prohibits the contractor from withholding from a subcontractor more than the amount the agency withheld.

The act requires the retainage amount to be reduced to 5% when the contract is 50% complete. The payment to the contractor or subcontractor must be made within 90 days after a contractor or subcontractor submits a complete application for payment to the awarding authority demonstrating the contract is 50% complete.

Existing law requires public works contracts valued at more than \$100,000 to require the general contractor to, among other things, furnish a payment bond from a surety company ([CGS § 49-41](#)). The act requires the surety company, if it fails to respond to a claim, to indemnify the claimant (e.g., subcontractor or supplier) for reasonable attorney's fees and costs incurred thereafter to recover any

amount found to be due or owed. By law, sureties must pay or deny claims within 90 days.

A surety's failure to respond does not constitute a waiver of defenses that the surety or the principal of the bond may have or acquire to the claim, except for undisputed amounts reached in a settlement ([PA 16-104](#), effective July 1, 2016).

SITING OF CERTAIN DOCKS AND STRUCTURES

This act prohibits the Department of Energy and Environmental Protection (DEEP) commissioner from issuing a certificate or permit to construct a dock or other structure in an area designated as inappropriate or unsuitable for a dock or structure in an approved and adopted harbor management plan (§ 9). By law, municipal harbor management commissions prepare such plans, which are reviewed and approved by DEEP and DOT and adopted by local ordinance ([PA 16-89](#), effective upon passage).

STATE MILITARY CONSTRUCTION PROJECTS

Under a new law, the Military Department may take control of and supervise more expensive building construction projects than authorized under prior law. Under existing law, the Department of Administrative Services (DAS) commissioner has control and supervision over most building construction projects undertaken on

behalf of most other state agencies, including those remodeling, altering, repairing, or enlarging facilities that cost over \$500,000, while most other state agencies have control and supervision of those under this threshold. The new law increases this threshold for the Military Department from \$500,000 to \$2 million.

The new law also eliminates a requirement that the Military Department receive DAS approval before beginning capital improvements. It requires the Military Department to comply with the state's competitive bidding requirements for projects that will cost more than \$500,000.

By law, the DAS commissioner may compile a list and enter into "on-call" contracts with architects, professional engineers, and construction administrators for certain building projects the Military Department operates and controls. The new law allows the adjutant general to perform these functions under the same conditions as the DAS commissioner. The projects must be part of a program that includes multiple projects involving the planning, design, construction, repair, improvement, or expansion of specified buildings, facilities, or site improvements. The work must (1) be of a repetitive nature, (2) share a common funding source that imposes particular requirements, or (3) be significantly

facilitated and completed using the same design professional or construction manager ([PA 16-110](#), effective upon passage).

WORKERS' COMPENSATION INSURANCE AND SOLE PROPRIETORS

Before the state or municipalities enter into a contract to build or renovate a public works project, the law requires the parties to the contract to prove that they have complied with workers' compensation insurance and self-insurance requirements and do not owe payments to the Second Injury Fund (a fund that provides workers' compensation coverage to workers whose employers failed to do so). This new law exempts sole proprietors from this requirement if the sole proprietor is a party to the contract and:

1. does not use a subcontractor to perform the contract;
2. is not acting as a principal employer (i.e., does not have any employees);
3. has not opted into the workers' compensation system; and
4. has liability insurance instead of workers' compensation insurance.

([PA 16-73](#), effective October 1, 2016)

ATTACHMENT 1

PA 16-215: AN ACT CONCERNING THE DEPARTMENT OF ADMINISTRATIVE SERVICES' RECOMMENDATIONS REGARDING THE ADOPTION OF THE STATE BUILDING AND FIRE CODES

SUMMARY: This act changes the process for adopting the state building, fire safety, and fire prevention codes which, under prior law, were adopted pursuant to the Uniform Administrative Procedure Act (UAPA) (i.e., the act that agencies must follow when performing certain administrative functions such as adopting regulations). The act maintains many of the UAPA's essential elements, including (1) a notice requirement for proposed codes, (2) a public comment period, and (3) the requirement for the Regulation Review Committee to review and approve the proposed codes. But unlike the UAPA process, the new code adoption process does not require the attorney general to review the proposed codes for legal sufficiency. Also, the act allows the committee to waive its review, and if the committee fails to meet or act on a proposed code within prescribed deadlines, the code is deemed approved.

The act also makes technical and conforming changes.

EFFECTIVE DATE: Upon passage

By law, the regulation-adoption process is governed by the UAPA and generally includes the following major provisions:

1. 30 days notice of intent to adopt regulations (except for emergency regulations), a public comment period of at least 30 days, and a public hearing if one is requested by at least 15 people ([CGS § 4-168](#));
2. review of the proposed regulation by the attorney general for legal sufficiency (absence of conflict with state and federal laws and the Constitution and compliance with the UAPA's notice and hearing requirements) ([CGS § 4-169](#));
3. submission of the proposed regulation to the Regulation Review Committee for review and approval ([CGS § 4-170](#)); and
4. submission of the approved regulation to the secretary of the state for posting on the eRegulations System ([CGS § 4-172](#)).

BUILDING AND FIRE CODE ADOPTION

Prior law required all state building code amendments to be adopted under the UAPA ([CGS § 29-254\(a\)](#)), while specifying select fire safety and fire prevention code amendments to be so adopted. Fire code provisions that the law specifically required to be adopted under the UAPA included the following:

1. installation or use of fire extinguishers and fire extinguishing agents ([CGS § 29-313\(d\)](#));
2. installation of oil burners and related equipment and accessories ([CGS § 29-317\(a\)](#));
3. safe storage, use, transportation, and transmission by any mode and transmission by pipeline of flammable and combustible liquids ([CGS § 29-320](#));
4. installation of gas equipment and gas piping (which the act does not amend) ([CGS § 29-329\(a\)](#));
5. safe storage, use, transportation, and transmission of liquid petroleum gas (which the act does not amend) ([CGS § 29-331](#));
6. safe storage, transportation, and transmission by pipeline of hazardous chemicals ([CGS § 29-337](#));
7. appeals of fire safety code decisions (which the act does not amend) ([CGS § 29-309](#)); and
8. amendments pertaining to bed and breakfast establishments ([CGS § 29-256c](#)).

In practice, all three codes were adopted in accordance with the UAPA. The act removes the adoption of the codes from the UAPA. It establishes a new process for adopting the codes (including amendments) that maintains many of the UAPA elements, with specific involvement of the Codes and Standards Committee and the State Fire Prevention Code Advisory Committee. The former committee works with the state building inspector and state fire marshal to adopt and enforce the state building and fire codes ([CGS §§ 29-251 & 292](#)); the latter works with the state fire marshal to adopt and administer the fire prevention code ([CGS § 29-291a](#)).

BUILDING CODE ADOPTION PROCESS UNDER THE ACT

Action Steps Preceding Code Adoption

Under the act, before a proposed building code or amendment is adopted, the state building inspector must do the following:

1. post the proposed code, a statement of its purpose, a fiscal note associated with compliance, and a regulatory flexibility analysis on the Department of Administrative Services (DAS) website;
2. give notice electronically to the Public Safety and Security Committee;
3. notify anyone who asked for advance notice of proposed code adoption proceedings;
4. provide for a 45-day public comment period following the posting of the fiscal note, flexibility analysis, and statement of purpose; and
5. hold a public hearing on the proposed code between 20 and 35 days after posting the required information.

Public Comments and Code-Making Record

Under the act, after the public comment period closes, the state building inspector and the Codes and Standards Committee must respond to all written and oral comments received during the comment period and the public hearing. The response must include any change made to the proposed code, if applicable, and the rationale for the change. The state building inspector must post the responses on the DAS website not later than 30 days after the comment period closes.

The state building inspector and the Codes and Standards Committee must create and maintain a code-making record for each proposed code, submit the record electronically to the Public Safety and Regulation Review committees, and post it on the DAS website. The record must include the following:

1. the final wording of the proposed code in a format consistent with a nationally recognized model building code,
2. the required fiscal note and regulatory flexibility analysis; and
3. all written and oral comments received during the public comment period, and the responses to them.

Regulation Review Committee Deadlines for Action on Proposed Codes

The act gives the Regulation Review Committee up to 45 days from the date the record is submitted to the committee to convene a meeting to approve, disapprove, or reject without prejudice the proposed code, in whole or in part. If the proposed code is withdrawn, the state building inspector must resubmit it and the committee has up to 45 days from the resubmittal date to convene a meeting to approve, disapprove, or reject it without prejudice. If the committee notifies the state

building inspector in writing that it is waiving its right to convene a meeting or fails to act on a proposed or a resubmitted proposed code within the deadlines, it is deemed approved by the committee.

Committee Disapproval of Code

Under the act, if the committee disapproves a proposed code, in whole or in part, it must notify the state building inspector of its disapproval and the reasons for it. The state building inspector cannot take any action to implement a disapproved code. But he may submit a substantively new proposed code, provided the legislature may reverse the disapproval.

Committee Rejection of Code without Prejudice

If the committee rejects all or part of a proposed code without prejudice, the act requires it to notify the state building inspector of the reasons for the rejection. The state building inspector must resubmit the proposed code in a revised form to the committee not later than 30 days after the rejection. Each resubmission must include a summary of any revisions. The committee must review and take action on the resubmittal no later than 45 days after receiving it.

Enforceability of Code

The act provides that the State Building Code or any approved amendment takes effect and is enforceable once posted on the DAS website, except that (1) if a later date is required by statute or the code, the later date is the effective date, and (2) a code cannot take effect before the effective date of the public act requiring or permitting it.

The state building inspector must include a statement certifying that the electronic copy of the code is a true and accurate copy of the code approved or deemed approved in accordance with the act. The electronic copy of the code posted on the DAS web site is the official version for all purposes, including legal and administrative proceedings.

Code Validity

The act specifies that no provision of the state building code or any amendment adopted after the act's effective date is valid unless it substantially complies with the act. A proceeding to contest any provision on grounds of noncompliance must be commenced within two years from the code's effective date.

Public Access to the Code

The act requires the state building inspector to advise the public on how to obtain a copy of the code and any amendments to it.

ADOPTION OF THE FIRE SAFETY AND FIRE PREVENTION CODES

Under the act, the same procedures described above for the building code apply to the fire safety and fire prevention codes, except (1) the provisions that apply in the building code to the state building inspector apply in this case to the state fire marshal and (2) in the case of the fire prevention code, the provisions that apply in the building code to the Codes and Standards Committee apply in this case to the Fire Prevention Code Advisory Committee.

MISCELLANEOUS CHANGES

§ 4 – eRegulations System

By law, the secretary of the state may omit certain regulations from the regulations of state agencies posted on the eRegulations System. The act allows the secretary to exempt the fire and building codes and post a link to an electronic copy of these codes. It requires that copies of these codes be readily available for inspection in the principal office of DAS.

ATTACHMENT 2

PA 16-45: AN ACT CONCERNING CONCRETE FOUNDATIONS

SUMMARY: This act makes various changes related to residential and commercial concrete foundations. It requires:

1. additional documentation to obtain a certificate of occupancy for a new structure for which a concrete foundation was installed;
2. municipalities, at an owner's request, to reassess residential properties with foundation problems;
3. the Department of Consumer Protection (DCP) to investigate the cause or causes of concrete foundation failure; and
4. executive branch agencies to maintain records related to failing residential concrete foundations as confidential for at least seven years.

EFFECTIVE DATE: Upon passage and applicable to assessment dates beginning on or after that date, except the provision requiring a report to the legislature is effective July 1, 2016 and the provision about certificates of occupancy is effective October 1, 2016.

§ 1 — CERTIFICATES OF OCCUPANCY

The act requires an individual seeking a certificate of occupancy for a new residential or commercial building for which a concrete foundation was installed on or after October 1, 2016 to provide the local building official with documentation showing the names of the concrete supplier and installer. The local building official must keep copies of the documentation in his or her records for at least 50 years. Existing law, unchanged by the act, also requires a certificate applicant to show that the new building conforms to the State Building Code ([CGS § 29-265](#)).

§ 2 — PROPERTY REASSESSMENT

The act requires municipal assessors or their staff or designees to inspect and reassess residential properties with foundations made from defective concrete at the property owner's request. Residential property owners seeking to have their property reassessed must submit to the assessor a copy of a written evaluation, prepared by a state-licensed professional engineer, indicating that the property's foundation was made with defective concrete. The property must be inspected and its assessment adjusted within 90 days after the report's submission or the next assessment year, whichever is earlier. The adjusted assessment must reflect the property's current value. Property owners can appeal these adjusted assessments under the same procedures that apply to other assessment appeals.

Under the act, the new assessment is valid for five assessment years, regardless of the year in which the municipality's next revaluation is scheduled. However, a property owner who repairs or replaces the foundation during the five-year period must notify the assessor in writing within 30 days of doing so. Within 90 days of receiving notification or before the next assessment year, whichever is earlier, the property must be inspected and reassessed accordingly.

Existing law, unchanged by the act, also requires interim reassessments for new construction and when property damage requires complete demolition or reconstruction (CGS §§ [12-53a](#) and [-64a](#)).

§ 3 — REPORT ON CONCRETE FOUNDATION FAILURE

The act requires the DCP commissioner, after consulting with the attorney general, to report to the Planning and Development Committee on the potential cause or causes of failing concrete foundations. The commissioner must submit the report and post it on DCP's website by January 1, 2017.

§§ 4 & 5 — CONFIDENTIALITY OF RECORDS

The act requires executive branch agencies to keep documentation they receive or obtain related to owners' claims of faulty or failing residential concrete foundations confidential for at least seven years from the date of receipt. Agencies that had the documentation in their possession on May 25, 2016 (i.e., the act's effective date) must keep it confidential for seven years from that date (i.e., until May 25, 2023). Similarly, agency-prepared documents related to such documentation must be kept confidential for seven years from the date of receipt or May 25, 2016, whichever is later.

The act exempts these records from disclosure under the Freedom of Information Act.

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