

Letter Report

Multifamily Dwelling Code

May 2005



Legislative Audit Bureau

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STATE OF WISCONSIN

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Janice Mueller
State Auditor

May 26, 2005

Senator Carol A. Roessler and
Representative Suzanne Jeskewitz, Co-chairpersons
Joint Legislative Audit Committee
State Capitol
Madison, Wisconsin 53702

Dear Senator Roessler and Representative Jeskewitz:

As required by s. 13.94(1)(n), Wis. Stats., we have completed a review of the statewide design and construction standards that apply to multifamily dwellings, which are housing units that are typically two- or three-story, four- to eight-unit apartment buildings. These standards are administered by the Department of Commerce.

For approximately seven years, builders and local safety officials were required to comply with requirements of two separate building codes: the Multifamily Dwelling Code, which took effect in April 1995, and the existing Commercial Building Code. Because differences between the two codes created some confusion among builders, a single code covering multifamily and other commercial buildings was adopted in 2002. The 2002 Commercial Building Code is based on international standards and includes elements of Wisconsin's prior codes. Commerce staff and other interested parties believe the new combined code addresses many of the concerns that existed when multifamily construction had its own separate code. We note, however, that steps could be taken to improve the timeliness of plan reviews and compliance with refund requirements.

We appreciate the courtesy and cooperation extended to us by the Department of Commerce and members of the Multifamily Dwelling Council in completing this review.

Sincerely,

Janice Mueller
State Auditor

JM/DB/bm

Enclosure

MULTIFAMILY DWELLING CODE

The Multifamily Dwelling Code that took effect in April 1995 established uniform statewide standards for the design and construction of multifamily dwellings, which are defined as “an apartment building, rowhouse, town house, condominium or manufactured building ... that does not exceed 60 feet in height or 6 stories and that consists of 3 or more attached dwelling units” These standards are administered by the Division of Safety and Buildings in the Department of Commerce. The Multifamily Dwelling Code addressed many design and construction issues related to multifamily dwellings, such as the types of exits, steps, stairs, and ramps within dwelling units. However, for some major components, such as heating, ventilation, and air conditioning (HVAC), multifamily dwellings were required to comply with sections of the Wisconsin Commercial Building Code, which applied to other types of commercial building construction, such as office buildings, large apartment buildings, motels, and hotels.

Implementation of the Multifamily Dwelling code was contentious because some believed the existence of separate codes for multifamily dwellings and other commercial buildings would lead to confusion and reduced safety. After approximately seven years with two separate codes, Commerce adopted the International Code Council model group of building codes. The new Wisconsin Commercial Building Code, which took effect in July 2002, included several provisions of the former codes. The Commercial Building Code Council and the Multifamily Dwelling Code Council believed that for builders, safety officials, and others in the building industry, the new code would be more effective and practical than separate codes.

Section 13.94(1)(n), Wis. Stats., requires the Legislative Audit Bureau to provide periodic performance audits of the Division responsible for inspections of multifamily housing. In conducting this review, we assessed:

- the merger of the separate Multifamily Dwelling Code and the Commercial Building Code;
- the number of multifamily dwelling plans reviewed by the Division of Safety and Buildings, types of actions taken during this review, and the timeliness of plan review actions; and
- the amount of revenue collected from multifamily dwelling plan reviews.

We interviewed Commerce staff as well as the members of the Multifamily Dwelling Council, which represents builders, designers, fire services personnel, and municipalities. The Council advises Commerce on statewide uniform rules for the construction, operation, and maintenance of multifamily dwellings.

Code Implementation

Building standards in the code are enforced by Department of Commerce plan reviewers and inspectors. In addition, 150 municipalities have delegated authority to conduct both plan reviews and inspections, and 19 additional municipalities have authority to conduct only inspections. All plans for the construction of multifamily dwellings are reviewed, and all building sites are

inspected by either Commerce or municipal staff. Division of Safety and Buildings staff conduct activities for all types of commercial buildings, of which multifamily dwellings are a subset. The Division has approximately 54.0 full-time equivalent (FTE) authorized staff who are involved in various phases of the plan review and inspection process. For fiscal year (FY) 2004-05, the Division's budget was \$16.7 million. Our review focused on the way in which Commerce enforces code provisions for multifamily dwellings.

Data provided by Commerce show that 997 plans were reviewed by Safety and Buildings staff in FYs 2002-03 and 2003-04, the two-year period after enactment of the Commercial Building Code. These plans represented 2,174 buildings under construction or renovation. Commerce could not provide us with the exact number of multifamily dwelling inspections it conducted in this two-year period but noted that staff conduct an average of 2.5 inspections per building.

A final action—which Commerce defines as approval, denial, or withdrawal—was noted in 906 of the 997 plans reviewed. As we also found in a 1997 review, the vast majority of plans were approved. During our current review period:

- 883 plans, or 88.6 percent, were approved;
- 14 plans, or 1.4 percent, were denied; and
- 9 plans, or 0.9 percent, were withdrawn by the submitter.

For the remaining 91 of the 997 plans reviewed in FYs 2002-03 and 2003-04, the last action noted varied. For example:

- 29 plans were submitted for a preliminary consultation with reviewers, with complete plans submitted at later dates;
- 11 plans were awaiting additional information from the submitter at the time we reviewed the data; and
- 10 plans were granted approval to begin work on the footings and foundation, with complete plans submitted at later dates.

In addition to reviewing plans for the structure of buildings, Commerce staff also review plans for HVAC systems, roof and floor trusses, and precast structural components. These plans may be submitted with the structural plan or separately, and a plan for these components may encompass one or more buildings. For example, if a builder is constructing five multifamily buildings and the HVAC system is the same for each building, the submitter may choose to submit one plan for review or five. Commerce data for FYs 2002-03 and 2003-04 show that plans for 617 HVAC systems, 136 trusses, and 6 precast components were reviewed.

Cost of Enforcement

In accordance with statutes, Commerce has established fees for multifamily dwelling plan reviews and inspections. Fees are based on the gross floor area of each building or area of renovation;

whether the plan is for the structure, the HVAC component, or both; and whether Commerce or a local inspector conducts the inspection. For an average-sized multifamily building, which has an area of 27,000 square feet, the fee for a plan review is \$1,100, with an additional fee of \$540 for the HVAC plan review. Our review of Commerce data shows that in FYs 2002-03 and 2003-04, an estimated \$237,000 in fees was collected.

Refunds for Delayed Plan Reviews

Under s. Comm 61.31(3)(a) and s. Comm 2.07(1), Wis. Adm. Code, Commerce is required to make a decision on a submitted building plan within 15 business days of receipt of the application and all information required to complete the review, and to refund 50 percent of fees paid when the 15-day limit is exceeded. In 1997, we found that 12.7 percent of plans had not been reviewed within the 15-day limit, and Commerce staff could not provide information on the number of refunds made to builders, although they believed refunds were rare. Our 1997 review included a recommendation for Commerce to improve compliance with plan-review timeliness requirements and to ensure that builders are aware of refund options.

As part of our current review, we examined 50 randomly chosen multifamily dwelling plans for compliance with the 15-day requirement. For four plans, or 8.0 percent of our sample, the review took more than 15 business days but refunds were not issued to submitters. Commerce staff indicate that their workload and appointment scheduling system may result in plans being reviewed more than 15 business days after receipt of all information. We also identified a total of \$6,450 in refunds authorized in FYs 2002-03 and 2003-04 for plans that were not included in our sample.

Recommendation

We again recommend the Department of Commerce implement monitoring procedures to ensure compliance with plan-review timeliness and refund requirements.

Future Considerations

As noted, implementation of the Multifamily Dwelling Code in 1995 was contentious because some believed the existence of separate codes for multifamily dwellings and other commercial buildings would lead to confusion and reduced safety. There may be similar discussions about the clarity and effectiveness of the new Commercial Building Code in the future. However, we identified several instances in which the new code appears to provide more consistency and safety in construction standards. For example, it requires an automatic sprinkler system for buildings with more than 16 dwelling units or more than two stories; in contrast, the former Multifamily Dwelling Code required automatic sprinkler systems only for new multifamily dwellings with more than 20 dwelling units or more than three stories.

In addition, unlike the former Multifamily Dwelling Code, the new code does not recognize an exterior rescue platform, such as a deck that may be located ten feet or more above ground level, as a means of egress from a dwelling. Some fire officials had argued that such decks would be

less safe than additional doors or stairways because their use could require firefighters to concentrate on rescuing individuals from platforms rather than fighting fires.

The new code also strengthens fire safety standards by requiring additional smoke detectors. While the former Multifamily Dwelling Code required installation of a smoke detector within each sleeping area of a dwelling unit or within six feet from the doorway of each sleeping area, the Commercial Building Code requires smoke detectors both in every sleeping area and within six feet of each sleeping area.

The original concerns that prompted our ongoing audits appear to have been addressed through implementation of the Commercial Building Code, which has reduced confusion and addressed many of the safety concerns raised in the past. Therefore, the Legislature may wish to consider repealing sections 13.94(1)(n) and 101.973(11), Wis. Stats., which require periodic performance audits by the Legislative Audit Bureau. Instead, any future concerns about administration of the inspection process could be directed to the Joint Legislative Audit Committee for consideration.
