VERMONT **GENERAL ASSEMBLY**

The Vermont Statutes Online

The statutes were updated in November, 2018, and contain all actions of the 2018 legislative session.

Title 30 : Public Service

Chapter 002 : Building Energy

Subchapter 001 : Building Energy Standards

(Cite as: 30 V.S.A. § 51)

§ 51. Residential building energy standards; stretch code

(a) Definitions. In 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.

(A) With respect to a structure that is three stories or less in height and is a mixed-use building that shares residential and commercial users, the term "residential building" shall include the living spaces in the structure and the nonliving spaces in the structure that serve only the residential users such as common hallways, laundry facilities, residential management offices, community rooms, storage rooms, and foyers.

(B) "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.

(5) "Stretch code" means a building energy code for residential buildings that achieves greater energy savings than the RBES and is adopted in accordance with subsection (d) of this section.

(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 3 V.S.A. chapter 25. On or before 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. 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 section 202a of this title, and consistent with duly adopted State housing policy;

(B) evaluated relative to their technical applicability and reliability; and

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

(2) 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. 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; and

(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) Stretch code. The Commissioner may adopt a stretch code by rule. This stretch code shall meet the requirements of subdivision (c)(1) of this section. The stretch code shall be available for adoption by municipalities under 24 V.S.A. chapter 117 and, on final adoption by the Commissioner, shall apply in proceedings under 10 V.S.A. chapter 151 (Act 250) in accordance with subsection (e) of this section.

(e) Role of RBES and stretch code in Act 250. Substantial and reliable evidence of compliance with the RBES and, when adopted, the stretch code established and updated 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 and stretch code established and updated under this subsection. A presumption under this subsection may not be overcome by evidence that the RBES and stretch code adopted and updated under this section fail to comply with 10 V.S.A. § 6086(a)(9)(F).

(f) Certification.

(1) Issuance; recording. 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.

(2) Condition precedent. Provision of a certificate as required by subdivision (1) of this subsection shall be a condition precedent to:

(A) 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 residential construction commencing on or after July 1, 2013 that is also a public building as defined in 20 V.S.A. § 2730(a); and

(B) issuance by a municipality of a certificate of occupancy for residential construction commencing on or after July 1, 2013, if the municipality requires such a certificate under 24 V.S.A. chapter 117.

(g) 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.

(h) 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 (h) 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.

(i) 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 (f) or subdivision (h)(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. (Added 1997, No. 20, § 1; amended 2005, No. 208 (Adj. Sess.), § 7; 2007, No. 92 (Adj. Sess.), § 8; 2009, No. 45, § 11, eff. May 27, 2009; 2009, No. 159 (Adj. Sess.), § 18b, eff. June 4, 2010; 2011, No. 47, § 20t, eff. May 25, 2011; 2013, No. 89, §§ 6, 11; 2017, No. 74, § 121.)