

1 H.717

2 Introduced by Representative Campbell of St. Johnsbury

3 Referred to Committee on

4 Date:

5 Subject: Public safety; building energy; Residential Building Energy

6 Standards; Commercial Building Energy Standards; residential  
7 building code

8 Statement of purpose of bill as introduced: This bill proposes to change the  
9 name of the Division of Fire Safety to the Division of Fire and Building Safety  
10 and to transfer jurisdiction over the Residential and Commercial Building  
11 Energy Standards from the Department of Public Service to the Division of  
12 Fire and Building Safety. The bill also proposes to require the Division of Fire  
13 and Building Safety to adopt a residential building code that applies to public  
14 buildings that contain residential units.

15 An act relating to the Residential and Commercial Building Energy  
16 Standards and the adoption of a residential building code

17 It is hereby enacted by the General Assembly of the State of Vermont:

18 \* \* \* Residential and Commercial Building Energy Standards \* \* \*

1 Sec. 1. 20 V.S.A. chapter 173, subchapter 2 is amended to read:

## 2 Subchapter 2. Division of Fire and Building Safety

3       § 2728. DIRECTOR OF FIRE SAFETY

4 There shall be a Director of Fire and Building Safety, who shall be

5 responsible for the operation and supervision of the Fire and Building Safety

6 Division of the Department of Public Safety. The Director shall report directly

7 to the Commissioner and shall serve as a member of the Fire Service Training

8 Council. The Director shall be an exempt State employee and shall be

9 appointed by the Commissioner, with the approval of the Governor.

10 \* \* \*

11       § 2731. RULES; INSPECTIONS; VARIANCES

\* \* \*

13 (1) Energy standard certificates. Provision of a certificate as required by

<sup>14</sup> ~~30 V.S.A. § 51~~ section 2772 of this title (residential building energy standards)

or ~~53~~ section 2774 of this title (commercial building energy standards) shall be

16 a condition precedent to the issuance of a certificate of use or occupancy for a

17 public building under the rules adopted pursuant to this section

18 \* \* \*

19                   § 2734 PENALTIES

20 (a) A person who violates any provision of this subchapter or subchapter

2B of this chapter or any order or rule issued pursuant to this subchapter shall

1 be fined not more than \$10,000.00. The State's Attorney of the county in  
2 which the violation occurs shall prosecute the violation and may commence a  
3 proceeding in the Superior Court to compel compliance with the order or rule,  
4 and the court may make orders and decrees in relation to the proceeding by  
5 way of writ of injunction or otherwise.

6 \* \* \*

14 (d) Violation of any rule adopted under this subchapter or subchapter 2B of  
15 this chapter shall be prima facie evidence of negligence in any civil action for  
16 damage or injury that is the result of the violation.

17 \* \* \*

18       § 2736. MUNICIPAL ENFORCEMENT

19           (a)(1) The legislative body of a municipality may appoint one or more

20          trained and qualified officials and may establish procedures to enforce rules

21          and standards adopted under subsection 2731(a) of this title and sections 2772

(residential building energy standards) and 2774 (commercial building energy standards) of this title.

11                   (3) The Commissioner shall provide continuing review, consultation,  
12                   and assistance as may be necessary.

13                   (4) The assignment of responsibility may be revoked by the  
14                   Commissioner after notice and an opportunity for hearing if the Commissioner  
15                   determines that the training, qualifications, or procedures are insufficient.

16                   (5) The assignment of responsibility shall not affect the Commissioner's  
17                   authority under this subchapter.

\* \* \*

19 Sec. 2 REPEAL

<sup>20</sup> 30 V.S.A. chapter 2, subchapter 1 (building energy standards) is repealed.

1 Sec. 3. 20 V.S.A. chapter 173, subchapter 2B is added to read:

2 Subchapter 2B. Building Energy Standards

3 § 2771. DEFINITIONS

4 As used in this subchapter:

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

8 (2) “CBES” means the Commercial Building Energy Standards adopted  
9 pursuant to section 2774 of this subchapter.

10 (3) “Commercial buildings” means all buildings that are not residential  
11 buildings as defined in subdivision (6) of this section or farm structures as  
12 defined in 24 V.S.A. § 4413. With respect to a structure that is a mixed-use  
13 building that shares residential and commercial users:

14 (A) if the structure is three stories or fewer in height, the term  
15 “commercial building” includes all commercial uses within the structure and  
16 all common areas and facilities that serve both residential and commercial  
17 uses; and

18 (B) if the structure is four stories or more in height, the term  
19 “commercial building” includes all uses and areas within the structure.

20 (4) “Director” means the Director of the Division of Fire and Building  
21 Safety.

1                   (5) “IECC” means the International Energy Conservation Code of the  
2                   International Code Council.

3                   (6) “Residential buildings” means two-family dwellings and multi-  
4                   family housing three stories or fewer in height.

5                   (A) With respect to a structure that is three stories or fewer in height  
6                   and is a mixed-use building that shares residential and commercial users, the  
7                   term “residential building” includes the living spaces in the structure and the  
8                   nonliving spaces in the structure that serve only the residential users such as  
9                   common hallways, laundry facilities, residential management offices,  
10                  community rooms, storage rooms, and foyers.

11                  (B) “Residential buildings” does not include hunting camps.

12                  (7) “Residential construction” means new construction of residential  
13                  buildings, and the construction of additions, alterations, renovations, or repairs  
14                  to an existing residential building.

15                  (8) “Stretch code” means a building energy code for residential  
16                  buildings that achieves greater energy savings than the RBES and is adopted in  
17                  accordance with subsection 2772(c) of this section.

1        § 2772. RESIDENTIAL BUILDING ENERGY STANDARDS; STRETCH

2            CODE

3        (a) Adoption of Residential Building Energy Standards (RBES). The  
4        Director shall adopt RBES as provided pursuant to this section, and residential  
5        construction shall be in compliance with the RBES adopted by the Director.

6        (b) Revision and interpretation of RBES. The Director shall amend and  
7        update the RBES by means of administrative rules adopted in accordance with  
8        3 V.S.A. chapter 25. The Director shall endeavor to update and revise the  
9        RBES promptly after the issuance of updated standards for residential  
10        construction under the IECC. The Department of Public Service shall provide  
11        technical assistance and expert advice to the Director in the interpretation of  
12        the RBES and in the formulation of specific proposals for amending the RBES.  
13        Prior to final adoption of each required revision of the RBES, the Director  
14        shall convene an advisory committee to include one or more mortgage lenders;  
15        builders; building designers; individuals with expertise in building science;  
16        utility representatives; architects; civil, mechanical, and electrical engineers;  
17        environmental organizations; consumer advocates; energy efficiency experts;  
18        the Attorney General or designee; and other persons with experience and  
19        expertise that the Director and Commissioner deem to be appropriate, such as  
20        consumer advocates and energy conservation experts. The advisory committee

1 may provide the Director with additional recommendations for the revision of  
2 the RBES.

3 (1) Any amendments to the RBES shall be:

4 (A) consistent with duly adopted State energy policy, as specified in  
5 30 V.S.A. § 202a, and consistent with duly adopted State housing policy;  
6 (B) evaluated relative to their technical applicability and reliability;

7 and

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

9 (2) Each time the RBES are amended by the Director, the amended  
10 RBES shall become effective upon a date specified in the adopted rule, which  
11 shall not be less than three months after the date of adoption. Persons  
12 commencing residential construction before the effective date of the amended  
13 RBES shall have the option of complying with the applicable provisions of the  
14 earlier or the amended RBES. After the effective date of the original or the  
15 amended RBES, any person commencing residential construction shall comply  
16 with the most recent version of the RBES.

17 (3) The RBES shall include standards for:

18 (A) ventilation;  
19 (B) sealed combustion or induced or forced draft combustion  
20 equipment when exhaust-only ventilation systems are installed; and

1                   (C) adequate replacement air ducted directly to the combustion area  
2                   of wood and pellet stoves and fireplaces.

3                   (4)(A)(i) The Division of Fire and Building Safety, in consultation with  
4                   the Department of Public Service, shall develop and disseminate criteria that  
5                   builders may use in lieu of any computer software, calculations and trade-off  
6                   worksheets, or systems analysis to comply with the Code. An example  
7                   package that complies with the Code shall be included in the rules and updated  
8                   as appropriate.

9                   (ii) The Division of Fire and Building Safety, in consultation with  
10                   the Department of Public Service, may, as determined to be appropriate by the  
11                   Director of Fire and Building Safety, develop and disseminate information and  
12                   guidance regarding compliance with the performance and Energy Rating Index  
13                   approaches to compliance with the IECC.

14                   (B) To provide for flexibility, additional packages that are equivalent  
15                   to the example package developed pursuant to subdivision (4)(A)(i) of this  
16                   subsection (b) and that satisfy the performance approach shall be developed  
17                   and disseminated by the Division of Fire and Building Safety in consultation  
18                   with Department of Public Service. Each time the RBES are amended by the  
19                   Director, the Division of Fire and Building Safety shall, in consultation with  
20                   the Department of Public Service, develop modified compliance packages that

1 will become available to the public by the date that the amendment becomes  
2 effective.

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

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

13 (d) Role of RBES and stretch code in Act 250. Substantial and reliable  
14 evidence of compliance with the RBES and, when adopted, the stretch code  
15 established and updated under this section shall serve as a presumption of  
16 compliance with 10 V.S.A. § 6086(a)(9)(F), except no presumption shall be  
17 created insofar as compliance with 10 V.S.A. § 6086(a)(9)(F) involves the role  
18 of electric resistance space heating. In attempting to rebut a presumption of  
19 compliance created under this subsection, a challenge may only focus on the  
20 question of whether or not there will be compliance with the RBES and stretch  
21 code established and updated under this section. A presumption under this

1       subsection shall not be overcome by evidence that the RBES and stretch code  
2       adopted and updated under this section fail to comply with 10 V.S.A.  
3       § 6086(a)(9)(F).

4       (e) Certification.

5        (1) Issuance; recording.

6        (A)(i) A certification may be issued by a builder, a licensed  
7       professional engineer, a licensed architect, or an accredited home energy rating  
8       organization.

9        (ii) The Director shall develop and make available to the public a  
10       certificate that lists key features of the RBES. Any person certifying shall use  
11       this certificate or one substantially like it to certify compliance with the RBES.

12       (iii) Certification shall be issued by completing and signing a  
13       certificate and permanently affixing it to the outside of the heating or cooling  
14       equipment, to the electrical service panel located inside the building, or in a  
15       visible location in the vicinity of one of these three areas.

16       (iv) The certificate shall certify that residential construction meets  
17       the RBES.

18       (v) The person certifying under this subsection (e) shall provide a  
19       copy of each certificate to the Division of Fire and Building Safety.

20       (B) A builder may contract with a licensed professional engineer, a  
21       licensed architect, or an accredited home energy rating organization to issue

1 certification and to indemnify the builder from any liability to the owner of the  
2 residential construction caused by noncompliance with the RBES.

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

5 (A) issuance by the Division of Fire and Building Safety or a  
6 municipal official acting under section 2736 of this chapter of any final  
7 occupancy permit required by the rules of the Commissioner of Public Safety  
8 for use or occupancy of residential construction; and

9 (B) issuance by a municipality of a certificate of occupancy if the  
10 municipality requires such a certificate under 24 V.S.A. chapter 117.

11 (f) Action for damages.

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

17 (A) costs incidental to increased energy consumption; and

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

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

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

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

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

12                   (2) homes subject to Title VI of the National Manufactured Housing  
13                   Construction and Safety Standards Act of 1974 (42 U.S.C. §§ 5401–5426);

14                   (3) buildings or additions that are neither heated nor cooled; and  
15                   (4) residential construction by an owner, if all of the following apply:

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

18                   (B) The residential construction is used as a dwelling by the owner.  
19                   (C) The owner in fact directs the details of construction with regard  
20                   to the installation of materials not in compliance with the RBES.

1                   (D) The owner discloses in writing to a prospective buyer, before  
2                   entering into a binding purchase and sales agreement, the nature and extent of  
3                   any noncompliance with the RBES. Any statement or certificate given to a  
4                   prospective buyer shall itemize how the home does not comply with the RBES  
5                   and shall itemize which measures do not meet the RBES in effect at the time  
6                   construction commenced. Any certificate given under this subsection (g) shall  
7                   be sent to the Division of Fire and Building Safety within 30 days following  
8                   sale of the property by the owner.

9                   (h) Title validity not affected. A defect in marketable title shall not be  
10                   created by a failure to issue certification or a certificate, as required under  
11                   subsection (e) or subdivision (g)(4) of this section, by a failure under either  
12                   subsection to affix or provide a certificate, or by a failure to provide a copy of  
13                   a certificate to the Division of Fire and Building Safety.

14                   § 2773. HOME ENERGY RATING ORGANIZATION ACCREDITATION

15                   (a) The Department of Public Service shall carry out an accreditation  
16                   process for home energy rating organizations, in consultation with the Division  
17                   of Fire and Building Safety and representatives of interested parties, including  
18                   builders, building designers, building science experts, mortgage lenders, real  
19                   estate licensees, home appraisers, utilities, nonutility fuel suppliers, the  
20                   Vermont Housing Finance Agency, and contractors who provide home energy  
21                   rating services. As part of the accreditation process, the Department of Public

1       Service shall consider any national home energy rating system guidelines and  
2       shall determine whether each provider of home energy ratings in the State of  
3       Vermont complies with the accreditation criteria adopted pursuant to this  
4       section.

5       (b) Once the Department of Public Service carries out an accreditation  
6       process pursuant to subsection (a) of this section, no organization shall provide  
7       home energy rating services in the State unless the organization has been  
8       accredited by the Department.

9       (c) The Department shall consult with the organizations described in  
10       subsection (a) of this section to facilitate a public information program to  
11       inform homeowners, renters, sellers, and others regarding the accreditation  
12       process and of the statewide home energy rating organizations accredited by  
13       the Department.

14       § 2774. COMMERCIAL BUILDING ENERGY STANDARDS

15       (a) Adoption of Commercial Building Energy Standards (CBES). The  
16       Director shall adopt Commercial Building Energy Standards to ensure that  
17       commercial building construction is designed and constructed in a manner that  
18       complies with the most recent edition of ANSI/ASHRAE/IESNA standard  
19       90.1 or of the IECC, whichever provides the greatest level of energy savings,  
20       that is in effect on the date the CBES are adopted.

1        (b) Revision and interpretation of energy standards. The Director shall  
2        endeavor to amend and update the CBES by means of administrative rules  
3        adopted in accordance with 3 V.S.A. chapter 25 promptly after the issuance of  
4        updated standards for commercial construction under the IECC or ANSI/  
5        ASHRAE/IESNA standard 90.1, whichever provides the greatest level of  
6        energy savings. Prior to final adoption of each required revision of the CBES,  
7        the Director shall convene an advisory committee to include the Commissioner  
8        of Public Service or designee; one or more mortgage lenders; builders;  
9        building designers; individuals with expertise in building science; utility  
10        representatives; architects; civil, mechanical, and electrical engineers;  
11        environmental organizations; consumer advocates; energy efficiency experts;  
12        the Attorney General or designee; and other persons with experience and  
13        expertise that the Director and Commissioner deem to be appropriate, such as  
14        consumer advocates and energy conservation experts. The advisory committee  
15        may provide the Director with additional recommendations for the revision of  
16        the CBES, including the frequency of the updates.

17        (1) Any amendments to the CBES shall be:  
18            (A) consistent with duly adopted State energy policy, as specified in  
19            30 V.S.A. § 202a; and  
20            (B) evaluated relative to their technical applicability and reliability.

1                   (2) Each time the CBES are amended by the Director, the amended  
2                   CBES shall become effective upon a date specified in the adopted rule, which  
3                   shall not be less than three months after the date of adoption. Persons  
4                   submitting an application for any local permit authorizing commercial  
5                   construction or an application for construction plan approval by the Division of  
6                   Fire and Building Safety pursuant to this chapter before the effective date of  
7                   the amended CBES shall have the option of complying with the applicable  
8                   provisions of the earlier or the amended CBES. After the effective date of the  
9                   amended CBES, any person submitting an application for commercial  
10                   construction in an area subject to the CBES shall comply with the most recent  
11                   version of the CBES.

12                   (3) The Director may adopt rules interpreting and implementing the  
13                   CBES.

14                   (4) The Director may grant written variances or exemptions from the  
15                   CBES or rules adopted under this section where strict compliance would entail  
16                   practical difficulty or unnecessary hardship, or is otherwise found unwarranted,  
17                   provided that:

18                   (A) any such variance or exemption shall be consistent with State  
19                   energy policy, as specified in 30 V.S.A. § 202a;

20                   (B) any petitioner for such a variance or exemption can demonstrate  
21                   that the methods, means, or practices proposed to be taken in lieu of

1 compliance with the rule or rules provide, in the opinion of the Director, equal  
2 energy efficiency to that attained by compliance with the rule or rules;

3       (C) a copy of any such variance or exemption shall be recorded by  
4       the petitioner in the land records of the city or town in which the building is  
5       located; and

6       (D) a record of each variance or exemption shall be maintained by  
7       the Director, together with the certifications received by the Director.

8       (c) Requirement for compliance. Commercial building construction with  
9       respect to which any local building permit application or application for  
10       construction plan approval by the Division of Fire and Building Safety  
11       pursuant to this chapter has been submitted shall be designed and constructed  
12       in substantial compliance with the CBES adopted by the Director pursuant to  
13       this section.

14       (d) Certification requirement.

15       (1)(A) The design of commercial buildings shall be certified by the  
16       primary designer as compliant with the CBES in accordance with this  
17       subsection (d), except as compliance is excused by a variance or exemption  
18       issued under subdivision (b)(4) of this section.

19       (B)(i) If applicable law requires that the primary designer be a  
20       licensed professional engineer, licensed architect, or other licensed

1 professional, a member of a pertinent licensed profession shall issue this  
2 certification.

3 (ii) If one or more licensed professional engineers or licensed  
4 architects is involved in the design of the project, one of these licensees shall  
5 issue this certificate.

6 (iii) If a licensed professional engineer or a licensed architect is  
7 not involved in designing the project, the design shall be reviewed and certified  
8 by a licensed professional engineer or a licensed architect.

9 (C) Any certification shall be accompanied by an affidavit and shall  
10 certify that the commercial building was designed in substantial compliance  
11 with the requirements of the CBES and that, if applicable, the designer acted in  
12 accordance with the designer's professional duty of care in designing the  
13 building.

14 (D) The Director shall develop and make available to the public a  
15 certificate that lists key requirements of the CBES, sets forth certifying  
16 language in accordance with this subdivision (1), and requires disclosure of  
17 persons relied upon by the primary designer who have contracted to indemnify  
18 the primary designer for damages arising out of that reliance. Any person  
19 certifying under this subdivision (1) shall use this certificate or one  
20 substantially like it to satisfy these certification obligations.

1                   (E) Certification shall be issued by completing and signing a  
2                   certificate and permanently affixing it to the outside of the heating or cooling  
3                   equipment, to the electrical service panel located inside the building, or in a  
4                   visible location in the vicinity of one of these three areas.

5                   (i) In certifying under this subsection (d), the certifying person  
6                   may reasonably rely on one or more supporting affidavits received from other  
7                   persons who contributed to the design affirming that the portions of the design  
8                   produced by them were properly certifiable under this subsection (d).

9                   (ii) The certifying person may contract for indemnification from  
10                  those on which the person relies pursuant to this subdivision (1) against  
11                  damages arising out of that reliance. This indemnification shall not limit any  
12                  rights of action of an aggrieved party.

13                  (2)(A) The construction of a commercial building shall be certified as  
14                  compliant with the CBES in accordance with this subsection (d), except as  
15                  compliance is excused by a variance or exemption issued under subdivision  
16                  (b)(4) of this section.

17                  (B) This certification shall be issued by the general contractor,  
18                  construction manager, or other party having primary responsibility for  
19                  coordinating the construction of the subject building, or in the absence of such  
20                  a person, by an accredited energy rating organization approved by the Director.

1                   (C) Any certification shall be accompanied by an affidavit and shall  
2                   certify that the subject commercial building was constructed in accordance  
3                   with the ordinary standard of care applicable to the participating construction  
4                   trades and that the subject commercial building was constructed substantially  
5                   in accordance with the construction documents, including the plans and  
6                   specifications certified under subdivision (1) of this subsection (d) for that  
7                   building.

8                   (D) The Director shall develop and make available to the public a  
9                   certificate that sets forth certifying language in accordance with this  
10                   subdivision (2) and that requires disclosure of persons who have been relied  
11                   upon by the person with primary responsibility for coordinating the  
12                   construction of the building and who have contracted to indemnify that person  
13                   for damages arising out of that reliance. The person certifying under this  
14                   subdivision (2) shall use that certificate or one substantially like it to satisfy  
15                   these certification obligations.

16                   (E) Certification shall be issued by completing and signing a  
17                   certificate and permanently affixing it to the outside of the heating or cooling  
18                   equipment, to the electrical service panel located inside the building, or in a  
19                   visible location in the vicinity of one of these three areas.

20                   (F)(i) In certifying under this subdivision (2), the certifying person  
21                   may reasonably rely on one or more supporting affidavits received from

1       subcontractors or others engaged in the construction of the subject commercial  
2       building affirming that the portions of the building constructed by them were  
3       properly certifiable under this subdivision (2).

4           (ii) The certifying person may contract for indemnification from  
5       those on which the person relies pursuant to this subdivision (2) against  
6       damages arising out of that reliance. This indemnification shall not limit any  
7       rights of action of an aggrieved party.

8           (3) Any person certifying under this subsection shall provide a copy of  
9       the person's certificate and any accompanying affidavit to the Department of  
10       Public Service.

11           (4) Provision of a certificate as required by subdivision (1) of this  
12       subsection and of a certificate as required by subdivision (2) of this subsection  
13       shall be conditions precedent to:

14           (A) issuance by the Division of Fire and Building Safety, or a  
15       municipal official acting under section 2736 of this chapter, of any final  
16       occupancy permit required by the rules of the Commissioner of Public Safety  
17       for use or occupancy of a commercial building that is also a public building;  
18       and

19           (B) issuance by a municipality of a certificate of occupancy for  
20       commercial construction if the municipality requires such a certificate under  
21       24 V.S.A. chapter 117.

1        (e) Exemptions.

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

6            (A) those that do not contain conditioned space; and

7            (B) those with a peak design rate of energy usage less than an amount  
8        specified in the CBES adopted under subsection (a) of this section.

9        (2) The CBES adopted pursuant to this section shall not apply to  
10      equipment or portions of building energy systems that use energy primarily to  
11      provide for industrial or manufacturing processes.

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

13        (1) Except as otherwise provided in this subsection, a person aggrieved  
14      by another person's breach of the representations contained in a certification or  
15      supporting affidavit issued or received as provided under subsection (d) of this  
16      section, within 10 years after the earlier of completion of construction or  
17      occupancy of the affected commercial building or portion of that building, may  
18      bring a civil action in Superior Court against a person who has an obligation of  
19      certifying compliance under subsection (d) of this section alleging breach of  
20      the representations contained in that person's certification. This action may  
21      seek injunctive relief, damages arising from the aggrieved party's reliance on

1       the accuracy of those representations, court costs, and reasonable attorney's  
2       fees in an amount to be determined by the court. For purposes of this  
3       subdivision, "damages" includes costs incidental to increased energy  
4       consumption.

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

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

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

11           (5) It shall be a defense to an action under this subsection that either at  
12       the time of completion or at any time thereafter, the commercial building or  
13       portion of building covered by a certificate under subsection (d) of this section,  
14       as actually constructed, met or exceeded the overall performance standards  
15       established in the CBES in effect on the date construction was commenced.

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

1        (h) Title validity not affected. A defect in marketable title shall not be  
2        created by a failure to record a variance or exemption pursuant to subdivision  
3        (b)(4) of this section, by a failure to issue certification or a certificate, as  
4        required under subsection (d) of this section, or by a failure under that  
5        subsection to affix a certificate or provide a copy of a certificate to the  
6        Department of Public Service.

7        § 2775. COMPLIANCE PLAN

8        (a) The Director shall:

9            (1) Adopt and regularly update a plan for ensuring compliance with the  
10        energy standards adopted under this subchapter in new and renovated  
11        residential and commercial building space. In preparing the plan and any  
12        updates to it, the Director shall:

13            (A) consider enforcement mechanisms for building energy codes that  
14        have been adopted in other jurisdictions; and

15            (B) solicit comments and recommendations from one or more  
16        mortgage lenders; builders; building designers; building scientists; architects;  
17        civil, mechanical, and electrical engineers; utility representatives;  
18        environmental organizations; consumer advocates; energy efficiency experts;  
19        the Attorney General; and other persons who are potentially affected or have  
20        relevant expertise.

1                   (2) Coordinate with the Office of Economic Opportunity, the Office of  
2                   Professional Regulation, the Department of Public Service, and any private  
3                   energy organizations, as the Director deems appropriate, to implement  
4                   trainings and services in support of building energy code certification and  
5                   building science education.

6                   (b) The Director may:

7                   (1) Establish a system for measuring the rate of compliance each year  
8                   with the energy standards adopted under this subchapter. If the Director  
9                   establishes such a system, the Director shall annually measure the rate of  
10                   compliance and publish that information on the website of the Division of Fire  
11                   and Building Safety.

12                   (2) Adopt administrative rules pursuant to 3 V.S.A. chapter 25 to  
13                   implement this subchapter.

14                   § 2776. PRIORITY HOUSING PROJECTS; STRETCH CODE  
15                   A priority housing project as defined in 10 V.S.A. § 6001 shall meet or  
16                   exceed the stretch codes established by the Director under this subchapter.

17                   Sec. 4. 26 V.S.A. § 5509 is amended to read:

18                   § 5509. REQUIREMENTS OF REGISTRANTS

19                   \* \* \*

## 1 (b) Writing.

5 \* \* \*

6                   (4) Any contract for the residential construction services of a person  
7                   registered under this chapter shall provide that the residential contractor is  
8                   required to comply with 20 V.S.A. § 2772 (residential building energy  
9                   standards) and 20 V.S.A. § 2774 (commercial building energy standards).

10 \* \* \*

## 11 SEC. 5. RESIDENTIAL BUILDING CONTRACTOR CONTRACT

12 TEMPLATES

13        The Office of Professional Regulation shall update any contract template  
14        the Office furnishes for residential building contracting to provide that the  
15        residential contractor is required to comply with 20 V.S.A. § 2772 (residential  
16        building energy standards) and 20 V.S.A. § 2774 (commercial building energy  
17        standards).

## 18 Sec. 6. RESIDENTIAL BUILDING CONTRACTOR; ENERGY

## 19 STANDARDS CERTIFICATION; TRADE SERVICES

20       (a) For each trade service compiled pursuant to subsection (b) of this  
21       section, the Office of Professional Regulation shall develop a certification as

1       that term is defined in 26 V.S.A. § 3101a recognizing proficiency in State  
2       building energy standards under 20 V.S.A. § 2772 (residential building energy  
3       standards) and 20 V.S.A. § 2774 (commercial building energy standards). If  
4       the Office determines that the qualifications attested to by the certification  
5       developed for a trade service are substantially similar to those required for the  
6       performance of another trade service in compliance with State building energy  
7       standards, the Office may employ the certification for each such trade service.

8       (b) The Office shall compile a list of trade services offered as residential  
9       construction work by persons registered under 26 V.S.A. chapter 106.

10      Sec. 7. PERMIT SYSTEM REDESIGN; ENERGY CODES

11      The Division of Fire Safety shall include in its permit data system redesign,  
12      currently in process, data fields for salient building energy code data, such as  
13      certificate tracking number, date filed, by whom, conditioned square footage,  
14      an industry-standard measure of airtightness, and energy use intensity or  
15      similar metric.

16      Sec. 8. RESIDENTIAL AND COMMERCIAL BUILDING ENERGY  
17                   STANDARDS; TRANSITION

18      The Residential Building Energy Standards adopted pursuant to 30 V.S.A.  
19      § 51 and the Commercial Building Energy Standards adopted pursuant to  
20      30 V.S.A. § 53 that are in effect on December 30, 2029, shall, on December  
21      31, 2029, become the Residential Building Energy Standards and the

1       Commercial Building Energy Standards of the Division of Fire and Building  
2       Safety until they are amended or repealed.

3       Sec. 9. INTEGRATION OF BUILDING AND ENERGY CODES; TASK  
4                   FORCE; REPORTS

5       (a) Creation. There is created the Building and Energy Codes Integration  
6       Task Force to ensure that the Division of Fire Safety, upon assuming  
7       jurisdiction over the Residential Building Energy Standards (RBES) and the  
8       Commercial Building Energy Standards (CBES), shall be able to administer  
9       Vermont's building codes and energy standards in an integrated and  
10       streamlined manner.

11       (b) Membership. The Task Force shall be composed of the following  
12       members:

13               (1) the Director of Fire Safety or designee;  
14               (2) the Director of the Office of Professional Regulation or designee;  
15               (3) the Commissioner of Public Service or designee;  
16               (4) the Commissioner of Labor or designee;  
17               (5) the Secretary of Natural Resources or designee;  
18               (6) the Managing Director of Efficiency Vermont or designee;  
19               (7) the Executive Director of the American Institute of Architects,  
20       Vermont chapter, or designee;

1                   (8) the President of the Associated General Contractors of Vermont or  
2                   designee;

3                   (9) the President of the Vermont Builders and Remodelers Association  
4                   or designee;

5                   (10) the President of the American Society of Heating, Refrigerating,  
6                   and Air Conditioning Engineers, Champlain Valley Chapter, or designee; and

7                   (11) the President of the ICC Building Safety Association of Vermont or  
8                   designee.

9                   (c) Powers and duties. The Task Force shall advise the Division of Fire  
10                   Safety and develop proposed measures to ensure that the Division of Fire  
11                   Safety, upon assuming jurisdiction over the RBES and CBES, shall be able to  
12                   administer Vermont's building codes and energy standards in an integrated and  
13                   streamlined manner, including the following:

14                   (1) develop a plan, schedule, and budget for the Division of Fire Safety  
15                   to establish the administrative framework necessary to assume jurisdiction over  
16                   the RBES and CBES on or before December 31, 2029, which shall:

17                   (A) identify specific steps that must be taken for the Division to  
18                   assume jurisdiction over the RBES and CBES;

19                   (B) include a plan and schedule for hiring and training staff needed to  
20                   administer the RBES and CBES;

1                   (C) identify information technology needs and a timeline for  
2                   acquisition; and

3                   (D) provide a detailed estimate of related costs for each State fiscal  
4                   year;

5                   (2) recommend potential revenue sources to support both the process of  
6                   transitioning the administration of the RBES and CBES to the Division of Fire  
7                   Safety and the ongoing administration of the RBES and CBES following the  
8                   transition;

9                   (3) recommend the membership of a permanent advisory board to assist  
10                   the Division of Fire Safety with:

11                   (A) carrying out its duties with respect to the RBES and CBES;  
12                   (B) determining a schedule and process for regularly updating the  
13                   RBES and CBES;

14                   (C) identifying strategies for integrated and streamlined enforcement  
15                   of the RBES and CBES in conjunction with Vermont's other building codes;  
16                   and

17                   (D) identifying any legislative action necessary to facilitate the  
18                   integrated and streamlined enforcement of the RBES and CBES in conjunction  
19                   with Vermont's other building codes; and

1                   (4) examine:

2                   (A) the overlapping jurisdiction of the Division of Fire Safety and the  
3                   Office of Professional Regulation with respect to contractors and individuals  
4                   working in the construction trades; and

5                   (B) potential opportunities to simplify and streamline the regulation  
6                   of contractors and individuals working in the construction trades.

7                   (d) Assistance. The Task Force shall have the administrative, technical,  
8                   and legal assistance of Department of Public Safety and the Division of Fire  
9                   Safety.

10                  (e) Report. Annually, on or before November 1, the Task Force shall  
11                  submit a written report to the House Committees on Energy and Digital  
12                  Infrastructure and on Housing and General Affairs and to the Senate  
13                  Committees on Economic Development, Housing and General Affairs and on  
14                  Natural Resources and Energy with a summary of its work during the  
15                  preceding year and any recommendations for legislative action.

16                  (f) Meetings.

17                  (1) The Director of Fire Safety shall call the first meeting of the Task  
18                  Force to occur on or before November 1, 2026.

19                  (2) The Task Force shall meet at least once per calendar quarter.

20                  (3) The Task Force shall select a chair from among its members at the  
21                  first meeting.

1                   (4) A majority of the membership shall constitute a quorum.  
2                   (5) The Task Force shall cease to exist on January 1, 2030.  
3                   (g) Compensation and reimbursement. Members of the Task Force who  
4                   are not otherwise compensated for their attendance at meetings shall be entitled  
5                   to per diem compensation as permitted under 32 V.S.A. § 1010 for not more  
6                   than four meetings per year. These payments shall be made from monies  
7                   appropriated to the Division of Fire Safety.

8                   Sec. 10. CONFORMING REVISIONS

9                   When preparing the Vermont Statutes Annotated for publication, the Office  
10                   of Legislative Counsel shall make the following revisions throughout the  
11                   statutes as needed for consistency with Secs. 1, 2, and 3 of this act, provided  
12                   the revisions have no other effect on the meaning of the affected statutes:

13                   (1) replace “Division of Fire Safety” with “Division of Fire and  
14                   Building Safety”;  
15                   (2) replace “30 V.S.A. § 51” with “20 V.S.A. § 2772”;  
16                   (3) replace “30 V.S.A. § 53” with “20 V.S.A. § 2774”; and  
17                   (4) revisions that are substantially similar to those described in  
18                   subdivisions (1)–(3) of this section.

19                   \* \* \* Adoption of Residential Building Code \* \* \*

20                   Sec. 11. ADOPTION OF RESIDENTIAL BUILDING CODE;  
21                   APPROPRIATION; POSITION

8                   **(b)(1) The establishment of one permanent, exempt full-time residential**  
9                   **building code administrator in the Division of Fire Safety is authorized for**  
10                  **fiscal year 2027.**

11                   (2) It is the intent of the General Assembly that the residential building  
12                   code administrator position authorized pursuant to this subsection shall be  
13                   filled in time to commence work on or before January 1, 2027.

14                   (c) The amount of \$50,000.00 is appropriated from the General Fund to the  
15                   Division of Fire Safety in fiscal year 2027 for salary and benefits of the  
16                   residential building code administrator authorized pursuant to subsection (b) of  
17                   this section.

18 \* \* \* Effective Dates \* \* \*

## 19 Sec. 12. EFFECTIVE DATES

20        (a) This section and Secs. 4–7 (requirements and certifications related to  
21        RBES and CBES) shall take effect on passage.

1        (b) Secs. 1–3 (transfer of jurisdiction over RBES and CBES to Division of  
2        Fire and Building Safety), 8 (transition of RBES and CBES), and 10  
3        (conforming revisions) shall take effect on December 31, 2029.  
4        (c) Sec. 9 (Building and Energy Codes Integration Task Force) and Sec. 11  
5        (adoption of residential building code) shall take effect on July 1, 2026.