

SENATE BILL NO. 404

INTRODUCED BY J. TREBAS

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LOCAL GOVERNMENT LAWS RELATED TO FIRE DEPARTMENTS; CLARIFYING THAT A FIRE DEPARTMENT MAY NOT ISSUE OR CHANGE A BUILDING PERMIT; CLARIFYING THAT A FIRE DEPARTMENT MAY ONLY ACT IN AN ADVISORY ROLE FOR THE ISSUANCE OF A BUILDING PERMIT; AND AMENDING SECTIONS 7-3-1345, 7-3-4466, 7-4-4110, 7-33-2001, 7-33-4104, AND 50-60-106, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 7-3-1345, MCA, is amended to read:

**"7-3-1345. Fire department.** (1) The fire department of the municipality is in the charge of a director, who ~~shall be~~ is the chief thereof of the department and who shall manage and control the department in the manner prescribed by the ordinances of the municipality.

(2) The fire department of the municipality may not issue, change, or revoke a building permit, and may only act in an advisory role for the examination, approval, or disapproval of plans and specifications, or the issuance and revocation of building permits.

~~(2)(3)~~ (a) Notwithstanding any other provision of law, the adoption of a consolidated county municipal government ~~shall have~~ has no effect on the existence, rights, or duties of any voluntary fire department or fire district created and legally in existence pursuant to the provisions of parts 21 and 23 of chapter 33.

(b) Nothing in this part or part 12 ~~shall~~ may be construed to prohibit the creation of voluntary fire departments or fire districts pursuant to the provisions of parts 21 and 23 of chapter 33 within consolidated county municipalities.

(c) Voluntary fire departments or fire districts within consolidated county municipalities may only be organized, created, supported, financed, dissolved, and managed and their boundaries may only be changed pursuant to the provisions of parts 21 and 23 of chapter 33. These organizations may enter mutual aid agreements as provided by 7-33-2108."

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2           **Section 2.** Section 7-3-4466, MCA, is amended to read:

3           **"7-3-4466. Fire department.** (1) The fire chief ~~shall have~~has exclusive control of the stationing and  
4 transfer of all firefighters and other officers and employees constituting the fire force, under ~~such rules as~~  
5 prescribed by the director of public safety ~~may prescribe~~. The fire force ~~shall be~~is composed of a chief and  
6 ~~such other officers, firefighters, and employees as the city manager may from time to time determine~~  
7 determines. In case of riot, conflagration, or emergency, the director of public safety may appoint additional  
8 firefighters and other officers for temporary service, who need not be in the classified service.

9           (2) The fire chief may not issue, change, or revoke a building permit, and may only act in an  
10 advisory role for the examination, approval, or disapproval of plans and specifications, or the issuance and  
11 revocation of building permits.

12           ~~(2)(3)~~ (3) The provisions of part 41 of chapter 33 and chapter 18 of Title 19 ~~shall~~are in all respects ~~be~~  
13 applicable to and govern fire departments of all cities and towns operating under the commission-manager plan  
14 of government."

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16           **Section 3.** Section 7-4-4110, MCA, is amended to read:

17           **"7-4-4110. Duties of officers not otherwise provided for.** (1) The city or town council has power to  
18 prescribe the duties of all officers of the city or town, subject to the limitations mentioned in this code.

19           (2) ~~The~~Except as provided in subsection (3), the duties of the street commissioner, chief of the fire  
20 department, city surveyor, and other city officers not provided in this code may be prescribed by ordinance.

21           (3) A city or town council may not enact an ordinance allowing the chief of the fire department to  
22 issue, change, or revoke a building permit. The chief of the fire department may only act in an advisory role for  
23 the examination, approval, or disapproval of plans and specifications, or the issuance and revocation of building  
24 permits.

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26           **Section 4.** Section 7-33-2001, MCA, is amended to read:

27           **"7-33-2001. Fire chief -- powers and duties.** (1) A fire chief of a governmental fire agency organized  
28 under this chapter must be considered the highest ranking officer in the agency and is responsible for the

1 operation of the agency, including but not limited to:

2 (a) development and implementation of agency programs and procedures;

3 (b) performance of agency personnel;

4 (c) preventing outbreak of fires;

5 (d) minimizing danger to persons and damage to property caused by fires; and

6 (e) providing and managing emergency services that are established by the agency and that are

7 consistent with national standards. These services may include but are not limited to:

8 (i) fire suppression;

9 (ii) medical aid;

10 (iii) hazardous materials response;

11 (iv) ambulance service; and

12 (v) extrication from vehicles.

13 (2) In development of agency regulations, programs, and procedures, the fire chief is subject to  
14 applicable laws and ordinances.

15 (3) The fire chief serves under the direction of the trustees, if trustees have been designated to  
16 manage the fire agency under the provisions of this chapter. If the governing body retains management, then  
17 the fire chief serves under the direction of the governing body.

18 (4) The fire chief shall develop organizational and operational procedures and shall implement  
19 those procedures by issuing written administrative regulations and operational guidelines.

20 (5) In the event of a fire or other emergency involving the protection of life or property, the fire chief  
21 has the authority to direct any operation necessary to extinguish or control the fire or perform a rescue in  
22 coordination with other authorities having jurisdiction.

23 (6) The fire chief may investigate suspected or reported fires, gas leaks, or other hazardous  
24 conditions and may take any action necessary to protect public health and safety and protect property or  
25 mitigate damage to property in the exercise of the chief's duties.

26 (7) In the exercise of the authority provided in subsections (5) and (6), the fire chief may:

27 (a) enter any property;

28 (b) prohibit any person, vehicle, or thing from approaching the scene;

1 (c) remove or cause to be removed from the scene of the fire or other emergency any person,  
2 vehicle, or thing that the chief determines may interfere with the operations of the agency.

3 (8) (a) Subject to 50-3-102(1)(c), the fire chief may investigate the cause, origin, and  
4 circumstances of every fire that occurs in the chief's jurisdiction that involves the loss of life, injury to a person,  
5 destruction of property, or damage to property.

6 (b) Subject to 50-3-102(1)(c), as part of the investigation, the fire chief may take immediate charge  
7 of all physical evidence relating to the cause of the fire and may pursue the investigation to its conclusion.

8 (c) The fire chief may investigate the cause, origin, and circumstances of unauthorized releases of  
9 hazardous materials.

10 (9) (a) The fire chief may establish and maintain a program applicable to every community in the  
11 chief's jurisdiction that provides for:

12 (i) regular examination of fire hazards; and

13 (ii) regular inspection of commercial property, after the property has been approved for occupancy  
14 by a certified city, county, or town building code jurisdiction or the department of labor and industry's bureau of  
15 building and measurement standards, with particular emphasis on occupancies identified as high risk to life and  
16 property.

17 (b) The fire chief may establish a formal fire inspection program as authorized by the department  
18 of justice under 50-61-102.

19 (10) The fire chief shall report all fires to the department of justice and shall use the national fire  
20 incident reporting system or other reporting method approved by the department of justice's fire prevention and  
21 investigation section.

22 (11) The fire chief is responsible for establishing and maintaining a training program for the agency  
23 and may use existing federal, regional, state, and local training resources. The agency's program must include  
24 training in all areas of emergency response in which the agency provides services.

25 (12) The fire chief may not issue, change, or revoke a building permit, and may only act in an  
26 advisory role for the examination, approval, or disapproval of plans and specifications, or the issuance and  
27 revocation of building permits.

28 ~~(12)~~(13) For the purposes of this section, "governmental fire agency" does not include municipal fire

1 departments."

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3 **Section 5.** Section 7-33-4104, MCA, is amended to read:

4 **"7-33-4104. Duties of chief and assistant chief of fire department.** (1) The chief of the fire  
5 department has sole command and control over all persons connected with the fire department of the city or  
6 town and has full power and authority over its organization, government, and discipline. The chief may establish  
7 disciplinary rules that the chief considers advisable, subject to the approval of the city or town council. The chief  
8 has charge of and is responsible for the engines and other apparatus and the property of the town or city  
9 furnished to the fire department and shall see that they are at all times ready for use in the extinguishing of  
10 fires.

11 (2) The assistant chief of the fire department shall aid the chief in the work of the department and  
12 in the chief's absence shall perform the chief's duties.

13 (3) The chief of the fire department may not issue, change, or revoke a building permit, and may  
14 only act in an advisory role for the examination, approval, or disapproval of plans and specifications, or the  
15 issuance and revocation of building permits."

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17 **Section 6.** Section 50-60-106, MCA, is amended to read:

18 **"50-60-106. Powers and duties of counties, cities, and towns.** (1) (a) As allowed by Title 50,  
19 chapter 60, part 3, the examination, approval, or disapproval of plans and specifications, the issuance and  
20 revocation of building permits, licenses, certificates, and similar documents, the inspection of buildings, and the  
21 administration and enforcement of building regulations within the limits of a city or town are the responsibility of  
22 the city or town. The examination, approval, or disapproval of plans and specifications, the issuance and  
23 revocation of building permits, licenses, certificates, and similar documents, the inspection of buildings, and the  
24 administration and enforcement of building regulations within the portion of a county that is covered by a county  
25 building code enforcement program are the responsibility of the county.

26 (b) A fire department may not issue, change, or revoke a building permit in a city, town, or county,  
27 and may only act in an advisory role to a city, town, or county for the examination, approval, or disapproval of  
28 plans and specifications, or the issuance and revocation of building permits.

1 (2) Each county, city, or town certified under 50-60-302 shall, within its jurisdictional area:

2 (a) examine, approve, or disapprove plans and specifications for the construction of any building,  
3 the construction of which is pursuant or purports to be pursuant to the applicable provisions of the state building  
4 code or county, city, or town building code, and direct the inspection of the buildings during and in the course of  
5 construction;

6 (b) require that construction of buildings be in accordance with the applicable provisions of the  
7 state building code or county, city, or town building code, subject to the powers of variance or modification  
8 granted to the department;

9 (c) make available to building contractors at a price that is commensurate with reproduction costs  
10 a checklist devised by the department pursuant to 50-60-118 for single-family dwellings and provide to  
11 contractors who attach a completed checklist to the plans submitted for examination the relevant building permit  
12 or notice of plan disapproval within 10 working days of the contractor's submission;

13 (d) during and in the course of construction, order in writing the remedying of any condition found  
14 to exist in, on, or about any building that is being constructed in violation of the state building code or county,  
15 city, or town building code. Orders may be served upon the owner or the owner's authorized agent personally or  
16 by sending by certified mail a copy of the order to the owner or the owner's authorized agent at the address set  
17 forth in the application for permission for the construction of the building. A county, city, or town certified  
18 pursuant to 50-60-302, by action of its building official, may grant in writing time as may be reasonably  
19 necessary for achieving compliance with the order. For the purposes of subsection (2)(a) and this subsection  
20 (2)(d), the phrase "during and in the course of construction" refers to the construction of a building until all  
21 necessary building permits have been obtained and all work authorized by those permits has been fully  
22 approved by the building official having jurisdiction.

23 (e) issue certificates of occupancy as provided in 50-60-107;

24 (f) issue permits, licenses, and other required documents in connection with the construction of a  
25 building;

26 (g) ensure that all construction-related fees or charges imposed and collected by the county, city,  
27 or town are necessary, reasonable, and uniform and are:

28 (i) except as provided in subsection (2)(g)(iii), used only for building code enforcement, which

1 consists of those necessary and reasonable costs directly and specifically identifiable for the enforcement of  
2 building codes, plus indirect costs charged on the same basis as other local government proprietary funds not  
3 paying administrative charges as direct charges. If indirect costs are waived for any local government  
4 proprietary fund, they must also be waived for the program established in this section. Indirect charges are  
5 limited to the charges that are allowed under federal cost accounting principles that are applicable to a local  
6 government.

7 (ii) reduced if the amount of the fees or charges accumulates above the amount needed to enforce  
8 building codes for 12 months. The excess must be placed in a reserve account and may be used only for  
9 building code enforcement. Collection and expenditure of fees and charges must be fully documented.

10 (iii) allocated and remitted to the department, in an amount not to exceed 0.5% of the building fees  
11 or charges collected, for the building codes education program established in 50-60-116.

12 (3) Each county, city, or town with a building code enforcement program that has been certified  
13 under 50-60-302 may, within the area of its jurisdiction:

14 (a) make, amend, and repeal rules for the administration and enforcement of the provisions of this  
15 section and for the collection of fees and charges related to construction; and

16 (b) prohibit the commencement of construction until a permit has been issued by the building code  
17 enforcement authority having jurisdiction after a showing of compliance with the requirements of the applicable  
18 provisions of the state building code or county, city, or town building code or other county, city, or town  
19 ordinance or resolution that pertains to the proposed construction. A county, city, or town subject to this  
20 subsection (3) may, as part of its building code or by town ordinance or resolution, adopt voluntary energy  
21 conservation standards for new construction for the purpose of providing incentives to encourage voluntary  
22 energy conservation. The incentive-based energy conservation standards adopted may exceed any applicable  
23 energy conservation standards contained in the state building code. New construction is not required to meet  
24 local standards that exceed state energy conservation standards unless the building contractor elects to receive  
25 a local incentive.

26 (4) Each county, city, or town with a building code enforcement program that has been certified  
27 under 50-60-302 may perform inspections of buildings that are outside its jurisdictional limits, subject to the  
28 following conditions:

