



## Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

September 30, 2003

TO: Members  
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Senate Bill 168 and Assembly Bill 347: Enforcement of the One- and Two-Family Dwelling Code in Municipalities with a Population of 2,500 or Less

Senate Bill 168 and Assembly Bill 347 would require a city, village or town with a population of 2,500 or less to enforce the one- and two-family dwelling code or contract with the Department of Commerce for the necessary building inspection services. SB 168 was introduced on May 14, 2003, and was referred to the Senate Committee on Economic Development, Job Creation and Housing. On August 14, 2003, the Senate Committee recommended adoption of Senate Substitute Amendment 1 to SB 168 by a vote of 5-0, and recommended the bill for passage as amended, also by a vote of 5-0. SB 168 was referred to the Joint Committee on Finance on September 23, 2003. AB 347 was introduced on May 20, 2003, and was referred to the Assembly Committee on Housing. On August 28, 2003, The Assembly Committee recommended adoption of Assembly Substitute Amendment 1 to AB 347 by a vote of 5-0, and recommended the bill for passage as amended, also by a vote of 5-0. On September 18, 2003, AB 347 was referred to the Joint Committee on Finance. SSA 1 to SB 168 and ASA 1 to AB 347 are identical.

### **CURRENT LAW**

The Department of Commerce is responsible for administering a one- and two-family dwelling code that includes statewide construction standards and inspection procedures. With certain exceptions, a city, village, town, or county is required to provide for the enforcement of the one- and two-family dwelling code, or may contract with Commerce to provide building inspection services under the dwelling code. Prior to 1999 Act 9, cities, villages, and towns with a population of 2,500 or less were exempt from the code. 1999 Act 9 established a requirement that cities, villages, and towns with a population of 2,500 or less are required to administer the one- and two-family dwelling code, unless: (a) the municipality adopts a resolution requesting the county to

enforce the code or an ordinance that meets the requirements of the dwelling code; or (2) adopts a resolution exempting itself from enforcement of the code, including provision of building inspection by Commerce.

In any small municipality that does not administer the code, request the county to administer the code, or exempt itself from enforcement of the code, Commerce is required to enforce the dwelling code, or an ordinance that meets the requirements of the code, in the municipality, and to provide inspection services in the municipality. Commerce provides inspection services by contracting with private inspection agencies in municipalities with populations of more than 2,500, and issues credentials to private agencies to provide inspection services in municipalities with populations of 2,500 or less. In municipalities with populations of 2,500 or less, the cost of the inspection is covered through fees charged by the private inspection agency to the building permit applicant. The building permit applicant can choose from among the approximately 46 credentialed private agencies to arrange for a building inspection. Commerce officials estimate that the cost of a building inspection ranges from \$300 to \$500. Commerce's costs of administering the statewide one- and two-family dwelling code are covered through a \$25 building permit seal fee submitted by municipalities that exercise jurisdiction of the code and private inspection agencies that provide inspection services for Commerce in other small municipalities. The municipality or private inspection agency typically passes along the cost of the \$25 building permit seal to the building permit applicant.

Currently, 754 municipalities exercise jurisdiction over one-and two-family dwelling construction, including 301 municipalities with populations of more than 2,500 and 453 municipalities with populations of 2,500 or less. In addition, Commerce provides inspection services related to the one- and two-family dwelling code in 167 municipalities. Two of them have populations of more than 2,500 and 165 have populations of 2,500 or less. Commerce estimates that statewide, approximately 16,000 dwellings are inspected annually.

There are 1,524 municipalities with populations of 2,500 or less, 618 have administration of the code (453 exercise jurisdiction directly and 165 have service provided by private inspection agencies that have been issued credentials by Commerce to administer the code), and 906 have adopted a resolution to exempt the municipality from enforcement of the code.

## **SUMMARY OF THE SUBSTITUTE AMENDMENTS**

SSA 1 to SB 168 and ASA 1 to AB 347 would repeal the authority of a city, village or town with a population of 2,500 or less to exempt itself from enforcement of the one- and two-family dwelling code. The substitute amendments would retain the authority of these municipalities to request the county to enforce the dwelling code, or an ordinance meeting the requirements of the code. The substitute amendments would require that if the municipality does not enforce the code or request the county to enforce the code, Commerce would be required to enforce the dwelling code in the municipality. The substitute amendments delete the provision that Commerce could

administer an ordinance that meets the requirements of the code, instead of enforcing the actual dwelling code in the municipality. The provisions would be effective on the effective date of the bill. As a result of enactment of the bill, in the 906 municipalities that, under current law, exempt themselves from administration and enforcement of the one- and two-family dwelling code, the code would be enforced either by the municipality, the county (at the request of the municipality), or Commerce (through inspections by private inspection agencies credentialed by Commerce).

## **FISCAL EFFECT**

Commerce officials indicate that the fiscal estimate submitted for SB 168 and AB 347 assumes inclusion of the changes made in the substitute amendments. The original bills would have required municipalities with a population of 2,500 or less that do not provide or contract for inspection services, to contract with Commerce to provide the services. The substitute amendments would require Commerce to provide the services, but would not require the municipalities to contract with Commerce.

Currently, 73% of the municipalities with population of 2,500 or less that provide for administration of the code administer it directly. Commerce anticipates that, under the substitute amendments, the Department would be responsible for providing inspection service and code enforcement in the 906 municipalities that, under current law, exempted themselves from administration and enforcement of the one- and two-family dwelling code, and that none of the 906 municipalities would choose to administer the code directly. Commerce would issue credentials to private inspection agencies to provide inspection services in the 906 municipalities, as it currently does in 165 small municipalities. The building permit applicant would pay the inspection agency for the inspection and building permit, including a \$25 building permit seal fee that the private agency would pay to Commerce.

The Department estimates that approximately 7,000 dwellings would be inspected annually in addition to the 16,000 inspected under current law. This would result in additional revenue to Commerce of approximately \$175,000 annually (\$25 building permit seal fee for each of 7,000 dwellings). The revenue would be deposited in the Commerce Safety and Buildings Division general operations program revenue (PR) appropriation. Other revenues deposited in the appropriation are provided from several plan review and inspection fees related to construction such as commercial buildings, multi-family and manufactured dwellings, one- and two-family dwellings, plumbing, private sewage systems, electrical and heating systems, and elevators.

Commerce estimates that it would need \$137,300 PR and 2.0 PR positions annually to administer the provisions of the substitute amendment. The Department's costs would include: (a) processing permit applications and issuing building permit seals to municipalities that administer the program and private agencies that provide inspections; (b) providing technical consultation regarding the one- and two-family dwelling code, including telephone consultation with municipalities, home owners, home builders and inspection agencies, field work in municipalities,

and education of affected parties about the code; and (c) administering contracts if Commerce contracts with private inspection agencies to provide inspections in municipalities. Commerce requests 2.0 positions, including 1.5 building inspectors (1.0 for technical consultation and 0.5 for contract administration) and 0.5 program assistant for processing of building permit seal applications. The requested funds also include \$18,300 for supplies costs of \$9,150 per position in payment of departmental administrative overhead costs. While a question could be raised about whether Commerce consultation activities would decline if some of the 906 municipalities affected by the bill would administer the code directly instead of having Commerce work with credentialed inspection agencies to administer it, Commerce officials indicate that the amount of technical consultation by Commerce would be similar whether the code is administered by the municipality or by private credentialed inspection agencies.

Commerce officials have recently indicated that the costs of administering contracts with private agencies (\$37,000 PR and 0.5 building inspector) relate more to the provisions of the original bills, (that would require municipalities with populations of 2,500 or less to contract with Commerce if they do not provide inspection services or request the county to do so), than to the substitute amendments (that would allow Commerce to provide inspection services by issuing credentials to private agencies and would not require municipalities to contract with the Department). Commerce officials indicate that while Department contracts with private agencies could increase under the substitute amendments, it is more likely that inspections would be provided by credentialed private inspection agencies.

In 2003 Act 33, the Safety and Buildings Division general operations appropriation was decreased by \$2,098,500 PR annually (a 12% reduction from base level expenditure authority) with 20.55 positions (out of 189.35 funded from the appropriation). In addition, \$2,098,500 is transferred in each of 2003-04 and 2004-05 from the safety and buildings appropriation account to the general fund. Commerce may submit an alternative plan to the Secretary of Administration for the allocation of the lapse amounts from this and other Commerce appropriations. All of the 20.55 deleted positions are vacant, and include 4.0 building inspector 2 positions. After deletion of the 4.0 building inspector positions, 17 PR building inspector positions remain to administer and provide for inspection under the commercial building code and one- and two-family dwelling code, and 1.0 federally-funded building inspector administers the manufactured home manufacturer program.

The substitute amendments do not appropriate any funding or provide additional position authority to Commerce. Thus, if the bills are not amended to provide resources, the Department would have to absorb any additional costs and workload into its base budget or request funding or positions in subsequent legislation or under a s. 16.505/515 request to the Joint Committee on Finance. If the bill would be amended to provide additional resources, 1.5 positions could be authorized (excluding the 0.5 building inspector for contract administration) and \$86,600 PR could be provided beginning in 2004-05 (excluding the supplies costs for administrative overhead). Funding of \$43,300 PR in 2003-04 would allow Commerce to hire staff in January, 2004, for the program.

Commerce is holding positions vacant in excess of the 20.55 deleted under Act 33, including a building inspector and program assistant, in order to reduce authorized expenditures to a level necessary to ensure the required lapse to the general fund can be made. If the bills are not amended to provide position authority, Commerce could use revenue received under the bill to fill currently vacant building inspector and program assistant positions to administer the provisions of the bill.

Prepared by: Kendra Bonderud