
CHAPTER 3

Statutory requirements send contradictory messages on local enforcement codes and inspector qualifications

When cities, towns, and counties take on local enforcement authority, they acquire authority to interpret and enforce life safety and electrical standards. The public's continued safety is a primary concern when DFPES delegates its authority; having qualified inspectors in local enforcement jurisdictions can affect the quality of code interpretation and enforcement.

State codes represent the minimum level of acceptable code.

W.S. 35-9-121(a) gives DFPES a limited oversight role in ensuring that local enforcement jurisdictions adopt adequate fire, building, and electrical safety standards. Some control exists at the time enforcement authority transfers to a local jurisdiction, when a municipality or county must demonstrate it meets minimum statutory standards and requirements. Thereafter, local enforcement jurisdictions must continue to enforce state-approved codes or more stringent standards. However, statute does not require certification for most local inspectors; only inspectors of state-owned or leased buildings must meet minimum qualifications. For most local inspectors, the Council *recommends* qualifications.

A recent Attorney General's opinion letter on requirements for local inspector certification provides an opportunity for the Council to review its role in setting standards for local jurisdictions. We recommend that the Council work with Department staff and others to define the minimally acceptable qualifications for local inspectors, and then determine if statutory changes are needed to support those qualifications.

Oversight responsibility ends with the transfer of authority

Local jurisdictions may apply for authority to interpret and enforce fire safety and electrical standards, or parts or combinations of those standards. They may also take on

responsibility for enforcing these codes in state-owned and leased buildings – if they also share plan review responsibilities for these buildings with the state (inspection and joint plan review). W.S. 35-9-121(b) gives the Fire Marshal and the Council on Fire Prevention and Electrical Safety a role in ensuring that local jurisdictions initially have the means to do the job.

DFPES must transfer authority if local jurisdictions meet standards.

State Fire Marshal The Department has authority over state-owned or leased buildings, including schools, unless a local entity applies for that authority. The Department must transfer authority to local jurisdictions that apply, subject to determination that local standards are equal to or more stringent than the state's. State-adopted codes represent the minimum acceptable level of protection from fire and electrical hazards. Local jurisdictions must also meet requirements in W.S.16-6-501 and 502 for building plan specifications and review.

The Council recommends inspector qualifications.

Council on Fire Prevention and Electrical Safety The Council-adopted codes current at any given time are the minimum standards local jurisdictions must meet or exceed. The Council is also responsible for recommending policies, practices, and safety standards, and for recommending minimum qualifications for inspectors in local enforcement jurisdictions. Local jurisdictions may create their own appeals boards; for those that do not, the Council serves as the appeals board. The Council also hears all local appeals pertaining to state-owned and leased buildings (W.S. 35-9-121(d),(e)).

Local jurisdictions not meeting standards must relinquish authority.

Municipalities and counties Local enforcement jurisdictions may adopt all or any combination of fire, building, electrical, or state building responsibilities. If a local entity takes on inspection and joint plan review authority for state-owned and leased buildings, local inspectors must be certified according to the provisions of W.S. 35-9-121(b)(i) through (iii) which require certification by specified international bodies; electrical inspectors must also possess a Wyoming master electrician license. Statute places the burden for maintaining eligibility on local jurisdictions: a jurisdiction with local enforcement authority that does not maintain the minimum state standards must notify the State Fire Marshal and relinquish its enforcement authority.

Many jurisdictions have local enforcement authority

As of October 2008, 24 municipalities and 6 counties had local enforcement authority for all or some combination of fire, building and electrical standards, and inspection and joint plan review of state-owned and leased buildings (see Appendix D). Most Wyoming residents live in these areas, including 86 percent of the state's incorporated municipality residents and 45 percent of rural residents.

Local jurisdictions may have more stringent enforcement.

Some local jurisdictions believe they are better able than the state to protect the public from fire and electrical hazards because they can adopt more standards and make them more stringent than the state's; also, they can apply those standards to all buildings under their jurisdiction, residences as well as public buildings. Reasons local authorities have given for applying for local enforcement authority include the ability to:

- inspect every building under their jurisdiction
- control the issuance of certificates of occupancy so only buildings that have been inspected will get one
- improve response time for inspections
- follow small jobs throughout the construction phase

Enforcement of standards is vital.

Safety is a primary consideration when local jurisdictions seek and the Department grants local enforcement authority. Fire and electrical hazards are a reality, and regardless of where they live, most state residents have occasion to visit, work, or recreate in buildings that are under either state or local jurisdiction. Proper enforcement of standards in all jurisdictions is critical to ensure the public's safety from fire and electrical hazard.

DFPES staff believe local jurisdictions may do a more thorough job than state inspectors can, in part because they cover a smaller area. While state inspectors are pressed to complete their top priorities, local jurisdictions often have more staff to carry out required inspections and follow up on problems. Delegating local enforcement authority also frees up DFPES inspectors to

concentrate on buildings in rural areas where local officials may lack the resources or expertise to adopt and enforce safety standards.

Confusion over the Department's role in monitoring local enforcement jurisdictions dates back 30 years

Statute first charged the State Fire Marshal in 1977 with delegating enforcement authority to local jurisdictions upon request. The language was unclear, and LSO's 1980 evaluation of DFPES noted "the department's inability to evaluate or monitor home rule enforcement," stating that the statute's vagueness on this matter might not serve the public interest. Several legislative changes followed, but they failed to clarify or resolve the question of state monitoring.

For state-owned buildings, Council recommendations become requirements.

Confusion over inspector qualifications developed in 1983, when the Legislature expanded local authority so municipalities and counties could conduct joint inspections and plan reviews with the state of state-owned and leased buildings. With this change, the Council's *recommendations* on local inspector qualifications became, according to statute, a *requirement* for those inspecting state-owned and leased buildings. For all other local inspectors, Council recommendations remained simply that. The State Fire Marshal at the time dealt with the issue procedurally, by continuing to notify local authorities of code changes and inspector requirements, and expecting compliance.

A recent Attorney General's opinion reverses past practice

In early 2008, DFPES requested and received an Attorney General's opinion on statutory requirements for local inspector qualifications. The opinion letter states that W.S. 35-9-121(b)(i) through (iii), setting local inspector qualifications, applies only to inspectors of state-owned and leased buildings. Since the majority of local enforcement jurisdictions have not taken on this particular responsibility, those qualifications are not required for their inspectors. However, the decision is of concern to the

Department's Electrical Safety Division: the widespread presence of electrical equipment is increasing the general risk of electrical hazards in people's lives, and thereby increasing the importance of proper inspections.

Views differ on how to balance standards and local autonomy.

We heard several views on the import of the Attorney General's opinion. One is that it will be an invitation to local entities to hire inspectors who may not be competent to accurately judge compliance with code. By this view, the opinion directly contradicts a long-held understanding of the Department's statutory charge and mission. A different view holds that the opinion correctly supports jurisdictions in their choice of how to do business.

Regardless of interpretation, we believe the 2008 Attorney General's opinion has critical implications for public safety. It is unclear whether the Council considers its current recommendations to be minimal requirements for local inspector qualifications, or simply a statement of industry preferences. We wonder how local jurisdictions can be expected to enforce state-approved or more stringent codes, as is required by statute, if their inspectors may be less-qualified than the state (through the Council) recommends.

Recommendation: The Council should initiate a process to define the minimum qualifications local inspectors must possess to ensure public safety.

As a first step, we believe the Council would benefit from bringing together Department staff and the Board for frank discussions. These parties need to reach accord on the realistic degree to which DFPES can or should oversee state standards and the quality of enforcement in local enforcement jurisdictions. As part of that effort, they need to come to agreement on the level of expertise local inspectors must possess to enforce compliance of local codes. Then, if there are discrepancies between policy and statutory authority, the Department, Council, and Board may need to work with the Legislature and perhaps request statutory changes to bring the two into alignment.

