

## Making the case for a complete, open state plumbing code adoption

**Bad policy.** Without notifying Minnesota's building stakeholders, the Minnesota State Plumbing Board adopted the Uniform Plumbing Code five years ago. It only held the rulemaking last year and prevented any comparison of both model plumbing codes.

Minnesota has long needed to adopt a model plumbing code to replace its outdated home-grown state plumbing code. The Minnesota Legislature in 2008 gave the Minnesota State Plumbing Board (MSPB) the capability to adopt a model code. After two subcommittee meetings to discuss its options, the MSPB was supposed to start evaluating both the Uniform Plumbing Code and the International Plumbing Code.

But that's not what happened on April 19, 2011. The MSPB allowed only a 10-minute review of the IPC and the UPC. That's the equivalent of an "elevator pitch" on a major core construction code that affects all other construction codes. It was a once in a lifetime, major policy decision. And without notifying stakeholders like you, the MSPB voted to exclude the IPC from any sober consideration.

**Bad process.** State law encourages stakeholders to be part of the discussion of adopting a new code by requiring notification before adoption occurs. Not after the decision is made.

Since April 2011, the MSPB made no effort to allow a side-by-side review of the IPC with the UPC. That's despite the fact that the UPC is not nationally correlated with Minnesota's other building codes: **The International Building Code, International Residential Code, International Mechanical Code, International Fuel Gas Code, and International Existing Building Code.**

The **International Plumbing Code** is correlated with Minnesota's other core building codes. The I-Codes are correlated as one single code for easier and less costly use by building designers, architects, building owners and managers, construction contractors, plan reviewers and inspectors.

More importantly, the IPC is the performance-based plumbing code. This allows for more flexibility in design which can produce savings in construction and maintenance. The UPC, according to its promoters, is the prescriptive-based plumbing code. It removes flexibility to buildings, reducing opportunities to lower labor hours, materials and fixtures, while locking in a higher cost of installation and maintenance.

If the IPC is correlated with Minnesota's other core building codes and if the IPC allows for lower costs of installation and maintenance, why did the MSPB refuse to consider it? Why weren't we, the stakeholders of this public policy, notified and consulted in making such a far-reaching decision? The UPC is a competitor to the IPC. Both codes have a record of being safe. True. But why wasn't it allowed to compete in an open and public process of code adoption?

**Bad governance.** The difference between IPC and UPC goes back to who has the final say on what becomes public policy.

All codes developed and updated by the International Code Council are the product of a voting process called the *governmental consensus process*. Code officials who carry out public policy by state and local governments make up the voting membership of ICC. The ICC process obtains the input of these public

servants along with the advice and input of industry and other vested stakeholders. But in the final vote on all ICC building codes, the only ones allowed to vote on their model codes are the code officials.

A plumbing code is public policy, not an installation guide for plumbers. Plumbing codes are used by all stakeholders along with the other ICC building codes.

The UPC, developed and updated by the International Association of Plumbing & Mechanical Officials (IAPMO), does not use the governmental consensus process. IAPMO's leadership rejects it for the development of its model public policy. Instead, industry and vested interests vote along with plumbing code officials to create its *prescriptive-based model code*. It's an industry code.

The kicker is the Minnesota State Plumbing Board. It's an authoritative board made up largely of people in the plumbing installation business. It is not an advisory board. It was given the power to not only evaluate both model plumbing codes, but also to adopt one of them through the legal state code adoption and rulemaking process. (Its members are appointed for two years by the Governor, but not even the Governor can remove a member without cause and going through a hearing process.)

**The net effect:** An industry-based public policy board has the power to write the laws all stakeholders must live by. Without adequate warning, it chose the industry-based plumbing code, locking in higher costs of installation. It chose to ignore the competitor model code. It chose to ignore the consideration of stakeholders who, frankly, don't agree the industry code makes the best public policy.

### **Bad precedent. The MSPB spent four years to force its industry model code into law.**

The International Code Council, building code officials and many stakeholders in Minnesota's built environment are seeking a legal solution to the MSPB's over-reach of forcing the UPC into law.

The MSPB made the decision in a vote taken in April 2011. But it only started the rulemaking process to complete the decision within the last 18 months. In fact, stakeholders were only notified officially in the spring of 2015 that the MSPB's adoption decision would impact them. But that decision was made five years ago.

More than 50 large and small businesses, associations and code officials objected and requested the MSPB's actions be reversed. They sought a hearing before an Administrative Law Judge as the first step. The judge, an employee of the administration, kept his scope narrowed to the rulemaking process of the last year. His decision didn't reverse the MSPB's action.

BOMA and an alliance of many other business associations will continue to oppose the actions of the MSPB in forcing the adoption of the UPC. The UPC adoption is not in the public interest and sets a bad precedent for how government should function.