

# Bill 112

(Chapter 23 Statutes of Ontario, 1993)

## **An Act to revise the Building Code Act**

**The Hon. E. Gigantes**  
Minister of Housing

1st Reading

May 28th, 1991

2nd Reading

June 24th, 1992

3rd Reading

October 19th, 1992

Royal Assent

November 5th, 1992

HER MAJESTY, by and with the advice and consent of the LEGISLATIVE ASSEMBLY OF THE PROVINCE OF ONTARIO, ENACTS AS FOLLOWS:

## 1. Definitions

1.--(1) In this Act,

"building" means,

(a) a structure occupying an area greater than ten square metres consisting of a wall, roof and floor or any of them or a structural system serving the function thereof including all plumbing, works, fixtures and service systems appurtenant thereto,

(b) a structure occupying an area of ten square metres or less that contains plumbing, including the plumbing appurtenant thereto,

(c) plumbing not located in a structure, or

(d) structures designated in the building code; ("batiment")

"building code" means regulations made under section 34; ("code du batiment")

"chief building official" means a chief building official appointed or constituted under section 3 or 4; ("chef du service du batiment")

"construct" means to do anything in the erection, installation, extension or material alteration or repair of a building and includes the installation of a building unit fabricated or moved from elsewhere and "construction" has a corresponding meaning- ("construire", "construction", "travaux de construction")

"demolish" means to do anything in the removal of a building or any material part thereof and "demolition" has a corresponding meaning; ("demolir", "demolition", "travaux de demolition")

"director" means the person appointed as director under section 2; ("directeur")

"inspector" means an inspector appointed under section 3, 4 or 32; ("inspecteur")

"Minister" means the Minister of Housing; ("ministre")

"municipality" means a city, town, village, township or improvement district; ("municipalite")

"plumbing" means a drainage system, a venting system and a water system or parts thereof; ("installation de plomberie")

"regulations" means regulations made under this Act. ("reglements")

(2) This Act does not apply to structures used directly in the extraction of ore from a mine .

## 2. Administration

2.--(1) The Minister is responsible for the administration of this Act.

(2) There shall be a director of the Ontario Buildings Branch who shall be appointed by the Lieutenant Governor in Council.

## 3. Enforcement

3.--(1) The council of each municipality is responsible for the enforcement of this Act in the municipality.

(2) The council of each municipality shall appoint a chief building official and such inspectors as are necessary for the enforcement of this Act in the areas in which the municipality has jurisdiction.

(3) The councils of two or more municipalities may enter into an agreement,

(a) providing for the joint enforcement of this Act within their respective municipalities;

(b) providing for the sharing of costs incurred in the enforcement of this Act within their respective municipalities; and

(c) providing for the appointment of a chief building official and inspectors.

(4) If an agreement under subsection (3) is in effect, the municipalities have joint jurisdiction in the area comprising the municipalities.

(5) The council of a county and of one or more municipalities in the county may enter into an agreement for the enforcement by the county of this Act in the municipalities and for charging the municipalities the whole or part of the cost of enforcement.

(6) If an agreement under subsection (5) is in effect, the county has jurisdiction for the enforcement of this Act in the municipalities that are parties to the agreement and shall appoint a chief building official and such inspectors as are necessary for

that purpose.

(7) The County of Oxford, The District Municipality of Muskoka and every regional municipality, except The Regional Municipality of Sudbury and The Regional Municipality of Haldimand-Norfolk, shall be deemed to be a county for the purposes of this Act.

(8) The clerk of the municipality or county shall issue a certificate of appointment bearing the clerk's signature or a facsimile of it to the chief building official and each inspector appointed by the municipality or county.

#### 4. Provincial Enforcement

4.--(1) Ontario is responsible for the enforcement of this Act in a territory without municipal organization.

(2) The council of a municipality and the Crown in right of Ontario represented by the Minister may enter into an agreement providing for the enforcement of this Act in the municipality by Ontario subject to such pavement in respect of costs as is set out in the agreement.

(3) If an agreement under subsection (2) is in effect, Ontario has jurisdiction for the enforcement of this Act in the municipality.

(4) Inspectors necessary for the enforcement of this Act in the areas in which Ontario has jurisdiction shall be appointed under the Public Service Act.

(5) The director is the chief building official for the areas in which Ontario has jurisdiction.

(6) The Deputy Minister of Housing shall issue a certificate of appointment bearing his or her signature or a facsimile of it to the director and each inspector appointed under subsection (4).

#### 5. Agreements

5.--(1) The council of a municipality adjacent to territory without municipal organization and the Crown in right of Ontario represented by the Minister may enter into an agreement providing for the enforcement of this Act by the municipality in such part of the territory without municipal organization and subject to such payment in respect of costs as is set out in the agreement.

(2) The municipality has jurisdiction for the enforcement of this Act in the area designated in the agreement.

## 6. Identification

6. The chief building official and inspectors shall carry their certificates of appointment when performing their duties and shall produce them for inspection upon request.

## 7. By-laws, Regulations

7. The council of a municipality or of a county that has entered into an agreement under subsection 3 (5) may pass by-laws, and the Lieutenant Governor in Council may make regulations, applicable in the area in which the municipality, the county or Ontario, respectively, has jurisdiction for the enforcement of this Act,

(a) prescribing classes of permits under this Act, including permits in respect of any stage of construction or demolition;

(b) providing for applications for permits and requiring the applications to be accompanied by such plans, specifications, documents and other information as is prescribed;

(c) requiring the payment of fees on applications for and issuance of permits and prescribing the amounts thereof;

(d) providing for refunds of fees under such circumstances as are prescribed;

(e) prescribing the time within which notices required by the building code must be given to the chief building official or an inspector;

(f) prescribing forms respecting permits and applications for permits and providing for their use;

(g) enabling the chief building official to require that a set of plans of a building or any class of buildings as constructed be filed with the chief building official on completion of the construction under such conditions as may be prescribed in the building code;

(h) providing for the transfer of permits when land changes ownership;

(i) requiring the person to whom a permit is issued to erect and maintain fences to enclose the site of the construction or demolition within such areas of the municipality as may be prescribed;

(j) prescribing the height and description of the fences required under clause (i).

## 8. Building Permits



8.--(1) No person shall construct or demolish a building or cause a building to be constructed or demolished in a municipality unless a permit has been issued therefor by the chief building official.

(2) The chief building official shall issue a permit under subsection (1) unless,

(a) the proposed building, construction or demolition will contravene this Act or the building code or any other applicable law;

(b) the applicant is a builder or vendor as defined in the Ontario New Home Warranties Plan Act and is not registered under that Act;

(c) the application for it is incomplete; or

(d) any fees due are unpaid.

(3) Even though all requirements have not been met to obtain a permit under subsection (2), the chief building official may issue a conditional permit for any stage of construction if,

(a) compliance with by-laws passed under sections 34 and 38 of the Planning Act and with such other applicable law as may be set out in the building code has been achieved in respect of the proposed building or construction;

(b) the chief building official is of the opinion that unreasonable delays in the construction would occur if a conditional permit is not granted; and

(c) the applicant and such other persons as the chief building official determines agree in writing with the municipality, the county or the Crown in right of Ontario to,

(i) assume all risk in commencing the construction,

(ii) obtain all necessary approvals in the time set out in the agreement or, if none, as soon as practicable,

(iii) file plans and specifications of the complete building in the time set out in the agreement,

(iv) at the applicant's own expense, remove the building and restore the site in the manner specified in the agreement if approvals are not obtained or plans filed in the time set out in the agreement, and

(v) comply with such other conditions as the chief building official considers necessary, including the provision of security for compliance with subclause (iv).

(4) In considering whether a conditional permit should be granted, the chief building official shall, among other matters, have regard to the potential difficulty in restoring the site to its original state and use if required approvals are not obtained.

(5) Any agreement entered into under clause (3) (c) may be registered against the land to which it applies and the municipality, the county or the Province of Ontario, as the case may be, is entitled to enforce its provisions against the owner and, subject to the Registry Act and the Land Titles Act, any and all subsequent owners of the land.

(6) If the chief building official determines that a building has not been removed or a site restored as required by an agreement under clause (3) (c), the chief building official may cause the building to be removed and the site restored and for this purpose the chief building official, an inspector and their agents may enter upon the land and into the building governed by the agreement at any reasonable time without a warrant.

(7) If the building is in a municipality, the municipality shall have a lien on the land for the amount spent on the removal of the building and restoration of the site under subsection (6) and the amount shall be deemed to be municipal taxes and may be added by the clerk of the municipality to the collector's roll and collected in the same manner and with the same priorities as municipal taxes.

(8) If the building is in territory without municipal organization, the amount spent on the removal of the building and restoration of the site under subsection (6) shall be deemed to be taxes imposed under section 3 of the Provincial Land Tax Act for the purposes of sections 26 and 27 of that Act.

(9) Upon reasonable grounds the chief building official may, and upon the request of the Association of Professional Engineers of Ontario or the Ontario Association of Architects the chief building official shall, refer drawings, plans and specifications accompanying applications for permits to those associations for the purpose of determining if the Professional Engineers Act or the Architects Act is being contravened.

(10) Subject to section 25, the chief building official may revoke a permit issued under this Act,

(a) if it was issued on mistaken, false or incorrect information;

(b) if, after six months after its issuance, the construction or demolition in respect of which it was issued has not, in the opinion of the chief building official, been seriously commenced;

(c) if the construction or demolition of the building is, in the opinion of the chief building official, substantially suspended or discontinued for a period of more than

one year;

(d) if it was issued in error;

(e) if the holder requests in writing that it be revoked; or

(f) if a term of the agreement under clause (3) (c) has not been complied with .

(11) No person shall construct or demolish a building or cause a building to be constructed or demolished except in accordance with this Act and the building code.

(12) No person shall make a material change or cause a material change to be made to a plan, specification, document or other information on the basis of which a permit was issued without notifying, filing details with and obtaining the authorization of the chief building official.

(13) No person shall construct or demolish a building or cause a building to be constructed or demolished except in accordance with the plans, specifications, documents and any other information on the basis of which a permit was issued or any changes to them authorized by the chief building official.

## 9. Equivalents

9. The chief building official may, subject to such conditions as may be set out in the building code, allow the use of materials, systems and building designs that are not authorized in the building code if, in his or her opinion, the proposed materials, systems and building designs will provide the level of performance required by the building code.

## 10. Change of Use

10.--(1) Even though no construction is proposed, no person shall change the use of a building or part of a building which would result in an increase in hazard as determined under the building code unless a permit has been issued by the chief building official.

(2) The chief building official shall issue a permit under subsection (1), unless,

(a) the building if used as proposed would result in a contravention of this Act or the building code or any other applicable law;

(b) the application for it is incomplete; or

(c) any fees due are unpaid.

## 11. Conditions

11. Except as authorized by the building code, no person shall occupy or use or permit to be occupied or used any building or part thereof newly erected or installed unless,

(a) notice of the date of completion of the building or part has been given to the chief building official;

(b) an inspection has been made pursuant to the notice or ten days have elapsed since the later of the service of the notice and the date of completion; and

(c) any order made by an inspector under section 12 has been complied with.

## 12. Inspection

12.--(1) An inspector may enter upon land and into buildings at any reasonable time without a warrant for the purpose of inspecting the building or site in respect of which a permit is issued or an application for a permit is made.

(2) An inspector who finds a contravention of this Act or the building code may make an order directing compliance with this Act or the building code and may require the order to be carried out immediately or within such time as is specified in the order.

(3) The order shall be served on the person whom the inspector believes is contravening this Act or the building code.

(4) The order shall contain sufficient information to specify the nature of the contravention and its location.

(5) The inspector may post a copy of the order on the site of the construction or demolition .

## 13. Order not to cover

13.--(1) An inspector may make an order prohibiting the covering or enclosing of any part of a building pending inspection.

(2) The order shall be served on the person to whom the permit is issued, if any, and on such other persons affected thereby as the inspector determines.

(3) The inspector may post a copy of the order on the site of the construction.

(4) An inspection shall be made within a reasonable time after the person to whom the order is made has given notice that the part of the building is ready for inspection.

(5) Section 27 does not apply to a notice under subsection (4).

(6) A chief building official who has reason to believe that part of a building that is covered or enclosed has not been constructed in compliance with this Act or the building code may order the persons responsible for the construction to uncover the part at their own expense for the purpose of an inspection if,

(a) the part was covered or enclosed contrary to an order made under subsection (1);

(b) the notice was not given in the time prescribed by by-law or regulation made under clause 7 (e);

(c) a reasonable time was not allowed after the notice was given for an inspection to be carried out; or

(d) the part has been constructed without a permit being issued.

#### 14. Stop Work Order

14.--(1) If an order made under section 12 or 13 is not complied with within the time specified in it, or where no time is specified, within a reasonable time, the chief building official may order that all or any part of the construction or demolition cease.

(2) The order shall be served on such persons affected thereby as the chief building official determines and a copy shall be posted on the site of the construction or demolition.

(3) The order is effective from the time it is posted under subsection (2).

(4) If an order to cease construction or demolition is made, no person shall perform any act in the construction or demolition of the building in respect of which the order is made other than work necessary to carry out the order made under section 12 or 13.

#### 15. Inspection of Unsafe Building

15.--(1) An inspector may enter upon land and into buildings at any reasonable time without a warrant for the purpose of inspecting a building to determine,

(a) whether the building is unsafe; or

(b) whether an order made under subsection (3) has been complied with.

(2) A building is unsafe if the building is,

(a) structurally inadequate or faulty for the purpose for which it is used; or

(b) in a condition that could be hazardous to the health or safety of persons in the normal use of the building persons outside the building or persons whose access to the building has not been reasonably prevented.

(3) An inspector who finds that a building is unsafe may make an order setting out the reasons why the building is unsafe and the remedial steps necessary to render the building safe and may require the order to be carried out within the time specified in the order.

(4) The order shall be served on the owner and each person apparently in possession of the building and such other persons affected thereby as the chief building official determines and a copy of the order may be posted on the site of the building.

(5) If an order of an inspector under subsection (3) is not complied with within the time specified in it, or where no time is specified, within a reasonable time, the chief building official,

(a) may by order prohibit the use or occupancy of the building; and

(b) may cause the building to be renovated, repaired or demolished to remove the unsafe condition.

(6) For the purpose of clause (5) (b), the chief building official, an inspector and their agents may enter upon land and into buildings at any reasonable time without a warrant.

(7) The order under clause (5) (a) shall be served on the owner and each person apparently in possession of the building and such other persons affected thereby as the chief building official determines and a copy shall be posted on the site of the building.

(8) The order under clause (5) (a) is effective from the time it is posted.

(9) If the building is in a municipality, the municipality shall have a lien on the land for the amount spent on the renovation, repair or demolition under clause (5) (b) and the amount shall be deemed to be municipal taxes and may be added by the clerk of the municipality to the collector's roll and collected in the same manner and with the same priorities as municipal taxes.

(10) If the building is in territory without municipal organization, the amount spent on the renovation, repair or demolition under clause (5) (b) shall be deemed to be taxes imposed under section 3 of the Provincial Land Tax Act for the purposes of sections 26 and 27 of that Act.

## 16. Entry to Dwellings

16.--(1) Despite sections 8, 12 and 15, an inspector shall not enter or remain in any room or place actually being used as a dwelling unless,

(a) the consent of the occupier or a warrant issued under this Act is obtained;

(b) the delay necessary to obtain a warrant or the consent of the occupier would result in an immediate danger to the health or safety of any person;

(c) the entry is necessary to terminate a danger under subsection 17 (3); or

(d) the requirements of subsection (2) are met and the entry is necessary either to remove a building or restore a site under subsection 8 (6) or to remove an unsafe condition under clause 15 (5) (b)

(2) Within a reasonable time before entering the room or place for a purpose described in clause (1) (d), the inspector shall serve the occupier with notice of his or her intention to enter it.

## 17. Emergency Order

17.--(1) If upon inspection of a building an inspector is satisfied that the building poses an immediate danger to the health or safety of any person, the chief building official may make an order containing particulars of the dangerous conditions and requiring remedial repairs or other work to be carried out immediately to terminate the danger.

(2) The order shall be served on the owner and each person apparently in possession of the building and such other persons affected thereby as the chief building official determines and a copy shall be posted on the site of the building.

(3) After making an order under subsection (1), the chief building official may, either before or after the order is served, take any measures necessary to terminate the danger and, for this purpose, the chief building official, an inspector and their agents may at any time enter upon the land and into the building in respect of which the order was made without a warrant.

(4) Despite subsection 31 (2), the Crown, a municipal corporation, a county corporation or a board of health or a person acting on behalf of any of them is not liable to compensate the owner, occupant or any other person by reason of anything done by or on behalf of the chief building official or an inspector in the reasonable exercise of his or her powers under subsection (3).

(5) If the order was not served before measures were taken to terminate the danger, the chief building official shall serve copies of the order in accordance with subsection (2) as soon as practicable after the measures have been taken and each copy of the order shall have attached to it a statement by the chief building official describing the measures taken and providing details of the amount spent in taking the measures.

(6) If the order was served before the measures were taken, the chief building official shall serve a copy of the statement mentioned in subsection (5) in accordance with subsection (2) as soon as practicable after the measures have been taken.

(7) As soon as practicable after subsections (5) and (6) have been complied with, the chief building official shall apply to a judge of the Ontario Court (General Division) for an order confirming the order made under subsection (1) and the judge shall hold a hearing for that purpose.

(8) The judge in disposing of an application under subsection (7) shall,

(a) confirm, modify or rescind the order; and

(b) determine whether the amount spent on measures to terminate the danger may be recovered in whole, in part or not at all.

(9) The disposition under subsection (8) is final.

(10) If the building is in a municipality, the amount determined by the judge to be recoverable shall be a lien on the land and shall be deemed to be municipal taxes and may be added by the clerk of the municipality to the collector's roll and collected in the same manner and with the same priorities as municipal taxes.

(11) If the building is in territory without municipal organization, the amount determined by the judge to be recoverable shall be deemed to be taxes imposed under section 3 of the Provincial Land Tax Act for the purposes of sections 26 and 27 of that Act.

## 18. Powers of Inspectors

18.--(1) For the purposes of an inspection under this Act, an inspector may,

(a) require the production for inspection of documents or things, including drawings or specifications, that may be relevant to the building or any part thereof;

(b) inspect and remove documents or things relevant to the building or part thereof for the purpose of making copies or extracts;

(c) require information from any person concerning a matter related to a building or part thereof;



(d) be accompanied by a person who has special or expert knowledge in relation to a building or part thereof;

(e) alone or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purposes of the inspection; and

(f) order any person responsible for the construction to take and supply at that person's expense such tests and samples as are specified in the order.

(2) The inspector shall divide the sample taken under clause (1) (e) into two parts and deliver one part to the person from whom the sample is taken, if the person so requests at the time the sample is taken and provides the necessary facilities.

(3) If an inspector takes a sample under clause (1) (e) and has not divided the sample into two parts, a copy of any report on the sample shall be given to the person from whom the sample was taken.

(4) An inspector shall provide a receipt for any document or thing removed under clause (1) (b) and shall promptly return them after the copies or extracts are made.  
(5) Copies of or extracts from documents and things removed under this section and certified as being true copies of or extracts from the originals by the person who made them are admissible in evidence to the same extent as and have the same evidentiary value as the originals.

## 19. Obstruction

19.--(1) No person shall hinder or obstruct, or attempt to hinder or obstruct, a chief building official or inspector in the exercise of a power or the performance of a duty under this Act.

(2) A refusal of consent to enter or remain in a place actually used as a dwelling is not hindering or obstructing within the meaning of subsection (1) unless the inspector is acting under a warrant issued under this Act or in the circumstances described in clauses 16 (1) (b), (e) or (d).

(3) Every person shall assist any entry, inspection, examination, testing or inquiry by an inspector or chief building official in the exercise of a power or performance of a duty under this Act.

(4) No person shall neglect or refuse,

(a) to produce any documents, drawings, specifications or things required by an inspector under clause 18 (1) (a) or (e); or

(b) to provide any information required under clause 18 (1) (c).

## 20. Prohibition

20. No person shall remove the copy of any order posted under this Act unless authorized by an inspector or obstruct the visibility of an order.

## 21 Warrant for Entry and Search

21.--(1) A provincial judge or justice of the peace may at any time issue a warrant in the prescribed form authorizing a person named in the warrant to enter and search a building, receptacle or place if the provincial judge or justice of the peace is satisfied by information on oath that there is reasonable ground to believe that,

(a) an offence under this Act has been committed; and

(b) the entry into and search of the building, receptacle or place will afford evidence relevant to the commission of the offence.

(2) In a search warrant, the provincial judge or justice of the peace may authorize the person named in the warrant to seize anything that there is reasonable ground to believe will afford evidence relevant to the commission of the offence.

(3) Anyone who seizes something under a search warrant shall,

(a) give a receipt for the thing seized to the person from whom it was seized; and

(b) bring the thing seized before the provincial judge or justice of the peace issuing the warrant or another provincial judge or justice to be dealt with according to law.

(4) A search warrant shall state the date on which it expires, which date shall be not later than fifteen days after the warrant is issued.

(5) A search warrant may be executed only between 6 a.m. and 9 p.m. unless it provides otherwise.

(6) Sections 159 and 160 of the Provincial Offences Act apply with necessary modifications in respect of any thing seized under this section.

## 22. Review

22.--(1) The chief building official may review and amend or rescind an order made by an inspector.

(2) A chief building official may exercise any of the powers or perform any of the duties of an inspector.

## 23. Building Code Commission

23.--(1) The Building Code Commission is continued under the name Building Code Commission in English and Commission du code du bâtiment in French and shall be composed of those persons appointed by the Lieutenant Governor in Council.

(2) The Lieutenant Governor in Council may designate one of the members as chair and one or more of the members as vice chair.

(3) No member of the Commission shall be in the public service of Ontario or an employee of a municipality.

(4) The members of the Commission shall receive such remuneration and expenses as the Lieutenant Governor in Council may determine.

(5) Three members of the Commission constitute a quorum.

## 24. Disputes

24.--(1) If there is a dispute between an applicant for a permit or holder of a permit or a person to whom an order is given and the chief building official or an inspector, any party to the dispute may apply to the Building Code Commission for the resolution of any issue involving,

(a) the interpretation of the technical requirements of the building code; or  
(b) the sufficiency of compliance with the technical requirements of the building code .

(2) The Building Code Commission shall hold a hearing and shall notify the parties to the dispute of the hearing.

(3) The Building Code Commission shall by order determine the dispute and for such purposes may substitute its opinion for that of the inspector or chief building official.

(4) The decision of the Building Code Commission is final.

(5) Members of the Building Code Commission holding a hearing shall not,

(a) take part before the hearing in any investigation or consideration of the subject-matter of the hearing; or

(b) communicate directly or indirectly in relation to the subject-matter of the hearing with any person unless all parties are given notice and allowed to participate.

(6) Despite subsection (5), members of the Building Code Commission may seek

independent legal or technical advice but the nature of the advice shall be made known to the parties in order that they may make submissions.

(7) The findings of fact at a hearing shall be based exclusively on evidence admissible or matters that may be noticed under sections 15 and 16 of the Statutory Powers Procedure Act.

(8) Members of the Building Code Commission shall not participate in a decision of the Commission pursuant to a hearing unless they were present throughout the hearing.

(9) Except with the consent of the parties, no decision of the Building Code Commission shall be given unless all members present throughout the hearing participate in the decision.

(10) Documents and things put in evidence at the hearing shall, upon the request of the person who produced them, be released by the Building Code Commission to that person within a reasonable time after the matter in issue has been finally determined.

## 25. Appeal

25.--(1) Any person who considers themselves aggrieved by an order or decision made by an inspector or chief building official under this Act or the regulations, except a decision not to issue a conditional permit under subsection 8 (3), may, within twenty days after the order or decision is made, appeal the order or decision to a judge of the Ontario Court (General Division).

(2) A judge to whom an appeal is made may, upon such conditions as the judge considers appropriate, extend the time for making the appeal before or after the time set out in subsection (1), if the judge is satisfied that there is reasonable grounds for the appeal and for applying for the extension.

(3) If an appeal is made under this section in respect of a matter in which a question is pending before the Building Code Commission, the proceeding before the Commission is terminated.

(4) If an appeal is made under this section, the judge shall hold a hearing and may rescind or affirm the order or decision of the inspector or chief building official or take such action as the judge considers the inspector or chief building official ought to take in accordance with this Act and the regulations and, for such purpose, may substitute his or her opinion for that of the inspector or chief building official.

(5) A judge may refer a question respecting the interpretation of the technical requirements of the building code or the sufficiency of compliance with the technical requirements of the building code to the Building Code Commission for a hearing

and report to the judge.

(6) The procedure on the reference shall be the same as on an application under section 24.

(7) Upon application without notice, a judge may order that the order or decision appealed from be not stayed pending the appeal but shall take effect immediately on such terms as are just if, in his or her opinion, such action is necessary for public safety and would not make the appeal meaningless.

## 26. Further Appeal

26.--(1) A party to the hearing before the judge of the Ontario Court (General Division) under section 25 may appeal from the decision to the Divisional Court.

(2) The Minister is entitled to be heard by counsel or otherwise, upon the argument of an appeal under this section.

(3) An appeal under this section may be made on any question that is not a question of fact alone and the court may,

(a) confirm or alter the decision of the judge;

(b) direct the inspector or chief building official to do any act he or she is authorized to do under this Act;

(c) refer the matter back to the judge for reconsideration; or

(d) substitute its opinion for that of the inspector or chief building official or the judge.

## 27. Service

27.--(1) A notice or order required by this Act to be served may be served personally or by registered mail sent to the last known address of the person to whom notice is to be given or to that person's agent for service.

(2) If a notice or order is served by registered mail, the service shall be deemed to have been made on the third day after the day of mailing unless the person to whom the notice or order is given or that person's agent for service establishes that, acting in good faith, through absence, accident, illness or other unintentional cause the notice was not received until a later date.

## 28. Building Materials Evaluation Commission

28.--(1) The Building Materials Evaluation Commission is continued under the name

Building Materials Evaluation Commission in English and Commission d'évaluation des matériaux de construction in French and shall be composed of those persons appointed by the Lieutenant Governor in Council.

(2) The Lieutenant Governor in Council may designate one of the members as chair and one of the members as vice-chair.

(3) The members of the Commission shall receive such remuneration and expenses as the Lieutenant Governor in Council may determine.

(4) The Building Materials Evaluation Commission may,

(a) conduct or cause to be conducted research into and the examination of materials, techniques and building design for construction;

(b) upon application therefor, authorize the use, subject to any conditions that may be set out, of any innovative material, system or building design in respect of any building or part thereof; and

(c) make recommendations to the Minister respecting changes in this Act or the building code.

(5) The use of any innovative material, system or building design in the manner approved by the Commission shall be deemed not to be a contravention of the building code.

## 29. Rulings

29.--(1) The Minister may make rulings approving the use of innovative materials, systems or building designs evaluated by a materials evaluation body designated in the building code.

(2) The Minister may by order delegate the power to make rulings to the director.

(3) A ruling is not a regulation within the meaning of the Regulations Act.

(4) Notice of a ruling shall be published at least once in The Ontario Gazette and made available, upon request, to members of the public.

(5) A ruling of the Minister entitles a person to use the approved material, system or building design in all of Ontario unless the ruling states otherwise.

(6) The use of an approved material, system or building design in the manner approved in the ruling shall be deemed not to be a contravention of the building code.

(7) In the event of a conflict between an authorization of the Building Materials Evaluation Commission and a ruling of the Minister, the ruling prevails.

(8) If a materials evaluation body designated in the building code has examined or has expressed its intention to examine an innovative material, system or building design, the Building Materials Evaluation Commission shall not exercise its power under subsection 28 (4) in respect of that material, system or building design.

### 30. Inquiry

30.--(1) If it appears to the Minister that there is or may be a failure in construction or demolition standards or in the enforcement of this Act or the building code, the Minister may designate a person to conduct an inquiry into the failure.

(2) The person conducting the inquiry has the powers of a commission under Part II of the Public Inquiries Act, which Part applies to the inquiry as if it were an inquiry under that Act.

### 31. Immunity from Action

31.--(1) No action or other proceeding for damages shall be instituted against the director, a member of the Building Code Commission or the Building Materials Evaluation Commission, or anyone acting under their authority, a person conducting an inquiry under section 30, a chief building official or an inspector for any act done in good faith in the execution or intended execution of any power or duty under this Act or the regulations or for any alleged neglect or default in the execution in good faith of that power or duty.

(2) Subsection (1) does not relieve the Crown, a municipal corporation, a county corporation or a board of health of liability in respect of a tort committed by their respective chief building official or inspectors to which they would otherwise be subject and the Crown, a municipal or county corporation or board of health is liable for any such tort as if subsection (1) were not enacted .

### 32. Liability

32.--(1) Despite any other provision of this Act, the council of a county and of one or more municipalities in the county may enter into an agreement for the enforcement by the county of the provisions of this Act and the building code related to plumbing in the municipalities and for charging the municipalities the whole or part of the cost.

(2) If an agreement under subsection (1) is in effect, the county council may by agreement delegate its powers under subsection (1) to a board of health having jurisdiction in the municipalities that are parties to the agreement.

(3) A municipality that is not a party to an agreement under subsection (1) may

enter into an agreement with the board of health having jurisdiction in the municipality for the enforcement of the provisions of this Act and the building code relating to plumbing.

(4) The county council or the board of health may appoint plumbing inspectors for the purpose of this section.

(5) A plumbing inspector appointed under this section or, if there is more than one inspector in the area of jurisdiction, the senior plumbing inspector has the same powers and duties in relation to plumbing as does the chief building official in respect of buildings other than the issuance of conditional permits.

(6) If plumbing inspectors have been appointed under this section, the chief building official and inspectors appointed under section 3 or 4 shall not exercise their powers under this Act in respect of plumbing.

(7) Subsection 3 (8) and section 7 apply with necessary modifications to a county council or a board of health that has assumed responsibility for plumbing under this section.

### 33. Transition, Plumbing

33.--(1) If, on the date this Act comes into force, a county was carrying out plumbing inspections under the Ontario Water Resources Act in the municipalities that form part of the county, the county shall enforce the provisions of this Act and the building code related to plumbing in all of the municipalities forming part of the county until the county council by by-law determines otherwise whereupon section 3 applies.

(2) Subsections 32 (4) to (7) apply with necessary modifications to a county that has assumed responsibility for plumbing under this section.

(3) For the purpose of this section, "county" includes any regional municipality that has been deemed to be a county by any general or special Act for the purposes of section 76 of the Ontario Water Resources Act, as it read before the coming into force of this Act.

### 34. Regulations

34.--(1) The Lieutenant Governor in Council may make regulations governing standards for the construction and demolition of buildings, including,

1. designating structures that are to be defined as buildings under subsection 1 (1);
2. prescribing the conditions under which "as constructed plans" may be required by a chief building official under clause 7 (g);



3. governing the manner of construction and types and quality of materials used therein;
4. setting out the applicable laws with which compliance must be achieved before a conditional permit may be issued under subsection 8 (3);
5. governing the design of buildings and the use to which they may be put;
6. establishing conditions under which the use of materials, systems and building designs that are not authorized in the building code may be allowed under section 9;
7. setting out rules and policies to be observed in the interpretation of the building code by any person exercising a power or discretion conferred under the Act or the building code;
8. determining an increase in hazard for the purposes of section 10;
9. adopting by reference, in whole or in part, with such changes as the Lieutenant Governor in Council considers necessary, any code or standard and requiring compliance with any code or standard that is so adopted;
10. requiring any part of the design, construction or demolition of a building to be under the general review of an architect as defined in the Architects Act or a professional engineer as defined in the Professional Engineers Act and that copies of reports arising from the general review be provided to the chief building official;
11. designating organizations to test prefabricated building units to the standards prescribed by the building code and providing for the placing of their label on units that conform to the standards;
12. requiring the approval of an inspector in respect of any method, matter or thing;
13. requiring the posting on buildings or sites of construction or demolition of such documents or information as is prescribed;
14. requiring such documents, information, records, drawings or specifications as are prescribed to be kept on the site of construction or demolition;
15. requiring notice to be given to the chief building official or an inspector respecting any matter in the course of construction or demolition;
16. requiring notice to be given to the chief building official respecting the change in prescribed classes of use made of a building;
17. requiring the chief building official to transmit to the director such returns or reports as are prescribed;

18. prescribing conditions under which a building or any part of a building may be occupied;
19. exempting any building or class thereof from compliance with this Act and the regulations or any provision thereof;
20. prescribing the form of a warrant and the form in which the information upon oath will be taken under section 21;
21. requiring the alteration of any part of an existing building where construction in relation to the building affects that part;
22. requiring the payment of fees in respect of applications to the Building Materials Evaluation Commission and prescribing the amounts thereof;
23. designating materials evaluation bodies for the purposes of section 29;
24. establishing criteria to be followed by the Minister in respect of a ruling under section 29;
25. prescribing procedures of the Building Code Commission and the Building Materials Evaluation Commission;
26. prescribing the persons to whom notice shall be given of the issuance of a permit, the time for giving the notice and the class of buildings for which notice is required;
27. defining, for the purposes of this Act and the building code, any word or expression not defined in this Act, and in so doing may define a word or expression differently for different provisions;
28. prescribing forms and providing for their use or requiring that forms provided by the Minister be used.

(2) The Lieutenant Governor in Council may make regulations to establish standards that existing buildings must meet even though no construction is proposed, including regulations,

- (a) prescribing any or all of the matters set out in subsection (1) as applicable to existing buildings;
- (b) establishing standards for maintenance, occupancy and repair; and
- (c) prescribing standards related to resource conservation and environmental protection.

(3) A regulation made under this section applies to buildings whether erected before or after the coming into force of this Act.

(4) Any regulation made under this section may be limited in its application territorially or to any class of building, construction or demolition.

(5) The purpose of the regulations made under this section is to establish standards for public health and safety, fire protection, structural sufficiency, accessibility, conservation and environmental integrity with respect to buildings.

### 35. Municipal By-laws

35.--(1) This Act and the building code supersede all municipal by-laws respecting the construction or demolition of buildings.

(2) In the event that this Act or the building code and a municipal by-law treat the same subject-matter in different ways in respect to standards for the use of a building described in section 10, this Act or the building code prevails and the by-law is inoperative to the extent that it differs from this Act or the building code.

### 36. Offences

36.--(1) A person is guilty of an offence if the person,

(a) knowingly furnishes false information in any application under this Act or in any statement or return required to be furnished under this Act or the regulations;  
(b) fails to comply with an order, direction or other requirement made under this Act; or

(c) contravenes this Act or the regulations  
or a by-law passed under this Act.

(2) Every director or officer of a corporation who knowingly concurs in the furnishing of false information, the failure to comply or the contravention under subsection (1) is guilty of an offence.

(3) A person who is convicted of an offence is liable to a fine of not more than \$25,000 for a first offence and to a fine of not more than \$50,000 for a subsequent offence.

(4) If a corporation is convicted of an offence, the maximum penalty that may be imposed upon the corporation is \$50,000 for a first offence and \$100,000 for a subsequent offence and not as provided in subsection (3).

(5) For the purposes of subsections (3) and (4), an offence is a subsequent offence if there has been a previous conviction under this Act.

(6) Every person who fails to comply with an order made by a chief building official under subsection 14 (1) or clause 15 (5) (a) is guilty of an offence and on conviction, in addition to the penalties mentioned in subsections (3) and (4), is liable to a fine of not more than \$10,000 per day for every day the offence continues after the time given for complying with the order has expired.

(7) If this Act or the regulations are contravened and a conviction is entered, in addition to any other remedy and to any penalty imposed by this Act, the court in which the conviction is entered, and any court of competent jurisdiction thereafter, may make an order prohibiting the continuation or repetition of the offence by the person convicted.

(8) No proceeding under this section shall be commenced more than one year after the time when the subject-matter of the proceeding arose.

(9) If an offence under this section has been committed within a municipality, the proceeds of a fine imposed under this section shall be paid to the treasurer of that municipality, and section 2 of the Administration of Justice Act and section 4 of the Fines and Forfeitures Act do not apply in respect of the fine.

### 37. Proof of Order

37.--(1) In any prosecution for an offence under this Act, a copy of a direction or order purporting to have been made under this Act or the regulations and purporting to have been signed by the person authorized by this Act to make the direction or order is, in the absence of evidence to the contrary, proof of the direction or order without proof of the signature or authority.

(2) A statement as to any matter of record in an office of the chief building official purporting to be certified by the chief building official is, without proof of the office or signature of the chief building official, receivable in evidence as proof, in the absence of evidence to the contrary, of the facts stated therein in any civil proceeding or proceeding under the Provincial Offences Act.

### 38. Restraining Order

38.--(1) Where it appears to a chief building official that a person does not comply with this Act, the regulations or an order made under this Act, despite the imposition of any penalty in respect of the noncompliance and in addition to any other rights he or she may have, the chief building official may apply to a judge of the Ontario Court (General Division) for an order directing that person to comply with the provision.

(2) Upon the application under subsection (1), the judge may make the order or such other order as the judge thinks fit.

(3) An appeal lies to the Divisional Court from an order made under subsection (1).

#### 39. - 41. COMPLEMENTARY AMENDMENTS

39.--(1) The definitions of "sewage works" and "water works" in section 1 of the Ontario Water Resources Act are repealed and the following substituted:

"sewage works" means any works for the collection, transmission, treatment and disposal of sewage or any part of such works, but does not include plumbing to which the Building Code Act, 1992 applies; ("station d'epuration des eaux d'egout")

"water works" means any works for the collection, production, treatment, storage, supply and distribution of water, or any part of such works, but does not include plumbing to which the Building Code Act, 1992 applies. ("station de purification de l'eau")

(2) Section 2 of the Act is repealed and the following substituted:

2. The Minister of the Environment is responsible for the administration of this Act.

(3) Subsection 75 (3) of the Act is repealed.

(4) Subsection 75 (6) of the Act is repealed.

(5) Sections 76, 77, 78 and 79 of the Act are repealed.

(6) Subsection 94 (2) of the Act is repealed.

(7) Subsection 107 (4) of the Act is amended by striking out "75 (6) or" in the second line.

(8) Subsection 108 (3) of the Act is repealed.

(9) Clause 110 (a) of the Act is repealed and the following substituted:

(a) this Act.

(10) Despite the repeal of sections 76 to 79 of the Ontario Water Resources Act, (a) a permit issued under a by-law made under subsection 77 (1) of that Act is continued as a permit issued under subsection 8 (1) of this Act;

(b) a notice of non-compliance issued under the Plumbing Code made under that Act and a notice requiring conformance issued under section 78 of that Act are continued as orders issued under section 12 of this Act;

(c) an agreement made under section 76 of that Act is continued as an agreement made under section 32 of this Act.

40. Section 213 of the Municipal Act is repealed.

41. Subsection 97 (4) of the Regional Municipalities Act is repealed and the following substituted:

(4) Any costs incurred by the Regional Corporation under subsection 8 (6) or clause 15 (5) (b) of the Building Code Act, 1992 or determined by a judge to be recoverable under subsection 17 (8) of that Act may be charged to the area municipality in which the building is located and the area municipality shall collect the costs in the manner set out in subsections 8 (7), 15 (9) and 17 (10) of that Act and pay them to the Regional Corporation when collected.

42. Repeals

42.--(1) The Building Code Act is repealed.

(2) Despite the repeal of the Building Code Act,

(a) a permit issued under subsection 5 (1) of that Act is continued as a permit issued under subsection 8 (1) of this Act;

(b) an order made under that Act is continued as an order made under the corresponding provision of this Act;

(c) an agreement under section 3 of that Act is continued as an agreement under section 3 of this Act.

43. Commencement

43. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

44. Short Title

44. The short title of this Act is the Building Code Act, 1992.