

**DEPARTMENT OF THE CORPORATION COUNSEL**

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November 18, 2004

MEMO TO: Dain P. Kane, Chair  
Maui County Council

F R O M: Cindy Y. Young, Deputy Corporation Counsel

SUBJECT: COUNTY OF MAUI ENERGY PROGRAMS (MODEL ENERGY CODE)  
(PAF 04-200)

**INTRODUCTION**

This responds to your inquiry dated November 10, 2004 requesting a response to the following questions:

1. Would Bill No. 78's enactment be considered "the adoption of a uniform code"?

2. If so, would making Bill No. 78 available for use and examination by the public in the Office of the County Clerk prior to second reading satisfy the Charter amendment? How would the period for public use and examination be commenced for purposes of counting days?

Bill No. 78 (2004) is listed on the November 19, 2004 agenda of the Council for second and final reading.

We have been informed that three copies of the Hawaii Model Energy Code, Energy Efficiency Standard for Buildings, along with Bill No. 78, were filed with the Office of the County Clerk on November 8, 2004.

**CONCLUSION**

Based on the analysis below, we advise that: (1) the adoption of Bill No. 78 would be considered the adoption of a uniform code for purposes of Section 4-5(2), Revised Charter of the County of Maui (1983), as amended ("Charter"); (2) making Bill No. 78 available for use and examination by the public in the Office of the County Clerk prior to second and final reading without also making available three or more copies of the Hawaii Model Energy Code, Energy Efficiency Standard for Buildings, does not satisfy Section

Section 4-5(2) of the Charter; and (3) the period for public use and examination of a "uniform code" is commenced when three or more copies of the uniform code (in this case, the Hawaii Model Energy Code, Energy Efficiency Standard for Buildings), is filed with the Office of the County Clerk for public use and examination.

Copies of the Hawaii Model Energy Code, Energy Efficiency Standard for Buildings, have been on file with the Office of the County Clerk since only November 8, 2004. Therefore, the Charter requirement that such uniform code be on file for a period of at least sixty days prior to final passage of Bill No. 78 will not have been satisfied by the currently scheduled date of second and final reading. **Accordingly, we recommend that Bill No. 78 be tabled until the full sixty-day period has elapsed.**

#### **RELEVANT CHARTER AND STATUTORY PROVISIONS**

Section 4-5(2) of the Charter provides:

Prior to passage of a bill providing for the adoption of a uniform code not less than three copies of the uniform code shall be filed for use and examination by the public in the office of the county clerk at least sixty (60) days prior to passage thereof.

Section 46-19.5(a), Hawaii Revised Statutes, provides in relevant part:

Energy efficiency building standards based on the design requirements for improvements of energy utilization in buildings developed and approved by the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Incorporated (ASHRAE 90.1), shall be incorporated by each county into its building code by October 24, 1994.

#### **DISCUSSION**

1. The enactment of Bill No. 78 would be considered "the adoption of a uniform code".

The enactment of Bill No. 78 would constitute "the adoption of a uniform code" for purposes of Section 4-5(2) of the Charter, and, therefore, at least three copies of the Hawaii Model Energy Code, Energy Efficiency Standard for Buildings, must be "filed for use and examination by the public in the office of the county clerk at least sixty (60) days prior to passage thereof."

Nothing in the legislative history of Section 4-5(2) of the Charter clarifies what is meant by "uniform code." In general, uniform laws or acts are laws drafted with the intention that they will be adopted by all or most of the states.<sup>1</sup> Black's Law Dictionary (7th ed.). Model laws or acts are laws that are drafted and proposed as guideline legislation for states to borrow from or adapt to suit their individual needs. Black's Law Dictionary (7th ed.). The Hawaii Model Energy Code is legislation based on ASHRAE (American Society of Heating, Refrigerating and Air-Conditioning Engineers, Incorporated) standards and on California and other national standards sponsored by the U.S. Department of Energy.<sup>2</sup> Adoption of the Model Energy Code allows states to comply with the National Energy Policy Act of 1992 (EPACT), which requires states to adopt commercial energy codes at least as stringent as ASHRAE Standard 90.1.

Section 46-19.5(a), Hawaii Revised Statutes, requires counties to incorporate energy efficiency building standards into their respective building codes by October 24, 1994. According to the Preface of the Hawaii Model Energy Code, Energy Efficiency Standard for Buildings, the Hawaii Model Energy Code is a "proposed energy efficiency building code for the State of Hawaii ... designed to influence the design of new residential and nonresidential construction as well as major renovations."

As is the case with the adoption of other uniform acts and model codes,<sup>3</sup> the adoption of the Hawaii Model Energy Code is

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<sup>1</sup>There have been many uniform laws proposed by the National Conference of Commissioners on Uniform State Laws.

<sup>2</sup>Section 1.1, Hawaii Model Energy Code, Energy Efficiency Standard for Buildings provides:

The purposes of this Code are to:

- (1) Set minimum requirements for the energy-efficient design of new buildings so that they may be constructed, operated, and maintained in a manner that minimizes the use of energy without constraining the building function or the comfort or productivity of the occupants; and
- (2) Provide criteria for energy-efficient design and provide methods for determining compliance with these criteria.

<sup>3</sup>See, e.g., Chapter 16.26, Maui County Code, pertaining to the Uniform Building Code, Chapter 16.18A, pertaining to the

achieved through a bill (Bill No. 78) that incorporates the relevant code (Hawaii Model Energy Code) by reference. In other words, the Hawaii Model Energy Code is not set forth in its entirety within Bill No. 78 itself, but rather is adopted through a provision that refers to the Hawaii Model Energy Code.

Bill No. 78 provides in relevant part:

The "Hawaii Model Energy Code, Energy Efficiency Standard for Buildings, July 1993, Prepared for: Energy Division, Department of Business, Economic Development & Tourism, State of Hawaii, Prepared by: Eley Associates, 142 Minna Street, San Francisco, California 94105," is incorporated by reference and made a part hereof, subject to the amendments set forth in this chapter.

We believe the purpose of Section 4-5(2) of the Charter is to ensure that members of the public have access to a sufficient number of copies of the relevant uniform law or code being adopted so as to be able to be fully informed of the substance of the legislation. Without access to such official copies, the public would not be able to know the details of the proposed law or code given that bills like Bill No. 78 incorporate the proposed code by reference and not verbatim.

Therefore, Section 4-5(2) of the Charter requires that, prior to passage of Bill No. 78, not less than three copies of the Hawaii Model Energy Code, Energy Efficiency Standard for Buildings, be filed in the Office of the County Clerk for public use and examination at least sixty days prior to the passage of Bill No. 78.

2. Satisfying the Requirements of Charter Section 4-5(2)

Making Bill No. 78 available for use and examination by the public in the Office of the County Clerk but without making available the requisite number of copies of the Hawaii Model Energy Code for the full sixty-day period would not satisfy Section 4-5(2) of the Charter. Section 4-5(2) mandates that three or more copies of the Hawaii Model Energy Code, Energy Efficiency Standard for Buildings, be filed with the Office of the County Clerk at least sixty days prior to second and final reading of Bill No. 78.

The period for making the uniform code available for public use and examination as required by Section 4-5(2) of the Charter commences on the day the uniform code is filed with the Office of

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the County Clerk for said purpose. Although not expressly required by Section 4-5(2), we recommend that, in future, a transmittal accompany any uniform code filed pursuant to Section 4-5(2) to clearly denote the commencement of the sixty-day period.

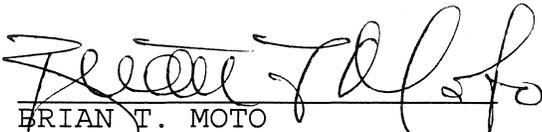
Should you have any further questions, please do not hesitate to contact this office.

cc: Roy Hiraga, County Clerk  
Gilbert Coloma-Agaran, Director  
Department of Public Works and Environmental Management  
Kal Kobayashi, Energy Extension Service

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APPROVED FOR TRANSMITTAL:

  
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Corporation Counsel