

**HOUSE USE ONLY**

**CHAIR:**

**WITH  / WITHOUT**



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2nd SESSION, 65th GENERAL ASSEMBLY  
Province of Prince Edward Island  
66 ELIZABETH II, 2017

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**BILL NO. 69**

**Building Codes Act**

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Honourable Robert J. Mitchell  
Minister of Communities, Land and Environment

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GOVERNMENT BILL

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MICHAEL D. FAGAN  
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# For House Use Only

Prince Edward Island  
Legislative Assembly

AMENDMENTS

**ASSEMBLY / SESSION / YEAR**

65th General / 2nd / 2017

BILL NUMBER: **69**

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TITLE: **BUILDING CODES ACT**

#	SECTION	AMENDMENT	DATE

NOTED:

CERTIFIED CORRECT:

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COMMITTEE CLERK

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CHAIRMAN, IN COMMITTEE

**Building Codes Act**

BE IT ENACTED by the Lieutenant Governor and the Legislative Assembly of the Province of Prince Edward Island as follows:

- |   |                               |
|---|-------------------------------|
| <b>1. In this Act,</b>  | Definitions                   |
| (a) “Appeal Board” means the Appeal Board whose members are designated or appointed under section 24;   | Appeal Board                  |
| (b) “architect” means a licensee of the Architects Association of Prince Edward Island;   | architect                     |
| (c) “authority having jurisdiction” means the Minister or a council of a municipality other than a municipality for which an agreement under subsection 4(3) is in effect, as the context requires;   | authority having jurisdiction |
| (d) “building” means a building as prescribed in the regulations;   | building                      |
| (e) “building inspector” means a building inspector licensed under section 9;   | building inspector            |
| (f) “building official” means a person appointed as a building official under subsection 8(2) or (3) and includes the Chief Building Official appointed under subsection 8(1);  | building official             |
| (g) “code” means a specified building code adopted in regulations made under subsection 32(1) and includes any changes or modifications made to the specified building code by the regulations;   | code                          |
| (h) “construction” means anything done for the purposes of erection, installation, extension or material alteration or repair of a building and includes the installation of a building unit fabricated or moved from elsewhere;  | construction                  |
| (i) “constructor” means a person who contracts with an owner to undertake or direct a project on behalf of the owner, and includes an owner who contracts with more than one person for the work on a project or personally undertakes or directs the work on a project or part of a project; | constructor                   |
| (j) “Council” means the Prince Edward Island Building Standards Council continued under section 6;  | Council                       |
| (k) “court” means the Supreme Court of Prince Edward Island;  | court                         |
| (l) “dangerous premises” means a building or other premises that meets the criteria set out in subsection 16(1);  | dangerous premises            |

demolition	(m) “demolition” means anything done for the purposes of the removal of a building or any material part of a building;
Fire Marshal	(n) “Fire Marshal” means the Fire Marshal appointed under the <i>Fire Prevention Act</i> R.S.P.E.I. 1988, Cap. F-11;
former Act	(o) “former Act” means the <i>Provincial Building Code Act</i> R.S.P.E.I. 1988, Cap. P-24;
Minister	(p) “Minister” means the Minister of Communities, Land and Environment;
occupant	(q) “occupant” means a tenant, lessee or other person in possession or occupancy of a building or premises;
owner	(r) “owner” means a person who holds title to real property and includes <ul style="list-style-type: none"> <li>(i) any person who has entered into an agreement to purchase the real property, and</li> <li>(ii) an executor, administrator, trustee, agent or other person managing the real property on behalf of the owner;</li> </ul>
permit	(s) “permit” means a valid and subsisting permit issued under this Act or the regulations in respect of construction or demolition or the occupancy or use of a building;
professional	(t) “professional” means a professional engineer or architect and includes a person or group of persons prescribed in the regulations;
professional engineer	(u) “professional engineer” means a member or licensee of the Association of Professional Engineers of Prince Edward Island.
Application	<b>2.</b> (1) Subject to subsection (2), this Act and the regulations apply to <ul style="list-style-type: none"> <li>(a) the design, construction, erection, placement, use and occupancy of new buildings;</li> <li>(b) the alteration, demolition, removal and relocation and changes to the use and occupancy of existing buildings; and</li> <li>(c) the work necessary to correct unsafe conditions in existing buildings.</li> </ul>
Exemption	(2) This Act and the regulations or a specified provision of either of them do not apply to any building or class of buildings prescribed in the regulations.
Conflict	<b>3.</b> Where a conflict or inconsistency exists between a provision of this Act or the regulations and another enactment, the provision of this Act or the regulations prevails to the extent of the conflict or inconsistency.
Administration and enforcement	<b>4.</b> (1) Subject to subsection (2), the Minister is responsible for the administration and enforcement of this Act and may, in writing,

- (a) designate persons to act on the Minister's behalf; and
- (b) delegate to any person any of the functions of the Minister under this Act.

(2) Subject to subsection (3), a council of a municipality shall be responsible for the administration and enforcement of this Act in the municipality.

Administration and enforcement in municipality

(3) A council of a municipality and the Minister may enter into an agreement providing for the administration and enforcement of this Act in the municipality by the Minister and, in that case, the Minister shall be responsible for the administration and enforcement of this Act in the municipality.

Agreement respecting enforcement

(4) The Minister may establish forms, other than those forms, if any, set out in the regulations or in a code adopted in the regulations, for the purposes of this Act.

Forms

**5.** (1) Subject to the *Freedom of Information and Protection of Privacy Act* R.S.P.E.I. 1988, Cap. F.-15.01, information respecting matters under this Act in the control of the Department under the administration of the Minister is accessible to the public.

Public information

(2) The Minister shall establish and maintain in accordance with the regulations a registry, accessible to the public, to contain

Registry of information

- (a) information about permits issued pursuant to this Act;
- (b) information respecting the compliance of holders of permits referred to in clause (a) with the requirements of this Act, the regulations and a code; and
- (c) any other information or documents considered appropriate by the Minister or prescribed by the regulations.

(3) The registry shall be organized, kept and accessed in the manner and form that the Minister determines.

Organization of and access to registry

(4) For greater certainty, the Minister may make information referred to in subsection (1), and the registry established under subsection (2), available to the public electronically on-line, including through the Internet.

On-line option

#### Prince Edward Island Building Standards Council

**6.** (1) The Prince Edward Island Building Standards Council is hereby continued.

Council continued

(2) The Council consists of the following members appointed by the Lieutenant Governor in Council:

Membership

	<p>(a) a representative of the Association of Professional Engineers of the Province of Prince Edward Island;</p> <p>(b) a representative of the Construction Association of Prince Edward Island;</p> <p>(c) a representative of the Architects Association of Prince Edward Island;</p> <p>(d) a representative of the Federation of Prince Edward Island Municipalities;</p> <p>(e) a representative of the Prince Edward Island Council for People with Disabilities;</p> <p>(f) a representative of the Prince Edward Island chapter of the Canadian Home Builders Association;</p> <p>(g) not more than one additional member.</p>
Designation of chairperson, vice-chairperson	(3) The Lieutenant Governor in Council may designate one of the members of the Council named in clauses (2)(a) to (f) as chairperson and another as vice-chairperson of the Council.
Term of appointment	(4) Subject to subsection (5), the term of a member appointed to the Council under subsection (2) is three years.
Continuation of term	(5) The term of a member of the Council who was appointed prior to the coming into force of this section that has not expired on the coming into force of this section continues in accordance with the terms of that appointment until it expires or is terminated under this Act.
Reappointment	(6) Subject to subsection (7), a member of the Council may be reappointed.
Ineligibility	(7) A person who has served two consecutive terms as a member of the Council is not, during the twelve months following the completion of the person's second term, eligible for reappointment to the Council.
Advisor	(8) A representative from each of the Department of Communities, Land and Environment and the Department of Transportation, Infrastructure and Energy shall act in an advisory capacity to the Council.
Remuneration	(9) The Lieutenant Governor in Council may prescribe the remuneration to be paid to those members of the Council who are not employees of Government.
Duties and functions of Council	<p><b>7. (1) The Council shall</b></p> <p>(a) advise the Minister on matters concerning this Act and the regulations;</p> <p>(b) provide a liaison between the Minister and other persons or bodies interested in construction standards, as directed by the Minister; and</p>

(c) perform any duties or functions relating to building and construction standards assigned to it by the Minister.

(2) On or before February 1 in each year the Council shall make, Annual report  
prepare and present a report to the Minister setting out the activities of  
the Council during the preceding calendar year.

#### Building Officials and Inspectors

**8.** (1) The Minister may appoint a Chief Building Official who, for the Appointment of  
purpose of carrying out the provisions of this Act and the regulations, Chief Building  
shall perform the duties and may exercise the powers of a building Official  
official set out in this Act and the regulations.

(2) The Minister may appoint persons who are qualified in accordance Appointment of  
with the regulations as building officials. building officials

(3) A council of a municipality, other than a municipality in respect of Building officials for  
which an agreement under subsection 4(3) is in force, shall appoint one or municipal council  
more persons who are qualified in accordance with the regulations as  
building officials for the purposes of administering this Act and the  
regulations in the municipality.

(4) A building official shall possess the qualifications related to Qualifications  
education and experience specified in the regulations.

(5) A building official shall inspect only those classes or types of Limitation  
buildings or construction which he or she is qualified or authorized, in  
accordance with the regulations, to inspect.

(6) Each building official Identification  
(a) shall be issued identification by the authority by which he or she  
was appointed;  
(b) shall carry his or her identification at all times when engaged in  
any duty or function under this Act or the regulations; and  
(c) shall produce his or her identification to any person upon  
request.

**9.** (1) The Minister may issue a license to a person who is qualified in Licensing of  
accordance with the regulations as a building inspector. building inspectors

(2) A licensed building inspector shall Duties  
(a) subject to subsection (3), inspect buildings and premises at  
specified stages of construction or demolition in accordance with the  
regulations;  
(b) conduct reviews of plans submitted for the construction of  
buildings; and  
(c) report as required to the Chief Building Official.

Limitation	(3) A licensed building inspector shall inspect only those classes or types of buildings or construction which he or she is qualified or authorized, in accordance with the regulations, to inspect.
Employment	(4) A licensed building inspector may be employed by, or by the Minister on behalf of, a municipality.
Authority to inspect	(5) Sections 11, 12 and 13 apply to a licensed building inspector as if that person were a building official.
Delegated authority	(6) The Chief Building Official may delegate the authority of a building official under section 15 to a licensed building inspector, unless a term or condition of the building inspector's license would prevent him or her from acting under that section.
Application of sections	(7) Sections 16, 18, 20, 21, 22, 23, 24, 25 and 30 apply to a licensed building inspector to whom authority has been delegated under subsection (6) as if that person were a building official.
Terms and conditions	(8) The Minister may impose any terms and conditions the Minister considers appropriate on the license of a licensed building inspector.
Compliance with license, etc.	(9) A licensed building inspector shall comply with the requirements of this section, the regulations and any terms or conditions imposed on the license under subsection (8).
Identification	(10) Each licensed building inspector <ul style="list-style-type: none"> <li>(a) shall carry his or her license at all times when engaged in any duty or function under this Act or the regulations; and</li> <li>(b) shall produce his or her license to any person upon request.</li> </ul>
Insurance	(11) A licensed building inspector who is not an employee of government shall acquire and maintain professional liability insurance in accordance with the regulations.

#### Permits

Application for permit	<b>10.</b> (1) An owner, or a constructor on behalf of an owner, may apply for a permit by submitting the prescribed information on the form established by the Minister to the Chief Building Official or, in respect of a building or real property located in a municipality referred to in subsection 8(3), to the appropriate building official for the municipality.
Fee	(2) An application submitted under subsection (1) shall be accompanied by the prescribed fee.
Review of application	(3) The building official to whom an application is submitted under subsection (1) shall review the application and shall issue a permit for the



proposed construction, demolition or other work if the building official is satisfied that

- (a) based on the information provided with the application, the proposed construction, demolition or other work will comply with this Act and the regulations;
- (b) the accompanying documents, if any, required for the application contain the prescribed information;
- (c) the application is otherwise complete; and
- (d) the prescribed fee has been paid.

(4) A building official may revoke a permit issued under this Act

Revocation of permit

- (a) if it was issued based on mistaken, false or incorrect information;
- (b) if, within 2 years after the date of its issuance, the construction or demolition in respect of which it was issued has not, in the opinion of the building official, been substantially commenced;
- (c) if the construction or demolition in respect of which the permit was issued has been, in the opinion of the building official, substantially suspended or discontinued for a period of more than 12 months;
- (d) if it was issued in error; or
- (e) if the holder of the permit requests in writing that it be revoked.

(5) The owner or a person acting on behalf of the owner shall post a permit or a copy of the permit in a prominent place on the property or premises in respect of which the permit was issued.

Posting of permit

**11. No person shall**

Prohibition

- (a) commence construction or order the construction of a building;
- (b) demolish or order the demolition of a building; or
- (c) change the use of a building,

unless

- (d) a permit for the work has been issued by a building official; and
- (e) the proposed work conforms to
  - (i) the requirements of this Act and the regulations, and
  - (ii) the terms and conditions of the permit.

#### Inspections

**12. (1)** For the purpose of ensuring compliance with this Act and the regulations, a permit or an order, a building official may, at any reasonable time,

Inspection

- (a) enter and inspect any building in an area in which the building official has authority to conduct inspections;
- (b) require documents or objects relevant to the inspection to be produced for inspection or for the purpose of obtaining copies or extracts of them;

- (c) conduct tests, make inquiries and take samples, measurements, photographs, or video recordings as the building official considers necessary; and
- (d) perform any other duties relating to inspections prescribed by the regulations.

Accompanying person	(2) A building official may be accompanied by any person who has special or expert knowledge of any matter for the purpose of assisting the building official to carry out an inspection.
Removal of documents	(3) For the purposes of conducting an inspection, a building official may remove documents respecting the building or real property and may make copies or extracts from them or any part of them.
Receipt	(4) A building official shall provide a receipt for any documents removed under subsection (3) to the person who provided the documents.
Return of documents	(5) A document removed under subsection (3) shall be returned within 14 business days from the time when the documents were removed.
Copy admissible in evidence	(6) A copy or extract of any document removed for the purposes of inspection and certified by a building official is admissible in evidence in any proceeding or prosecution as proof, in the absence of evidence to the contrary, of the original, without proof of the appointment, authority or signature of the person purporting to have certified the copy or extract.
Right of entry	<b>13.</b> (1) Every owner or occupant shall allow a building official to enter any building, premises or work site at any reasonable time for the purposes of administering and enforcing this Act and the regulations.
Prohibition	(2) No person shall impede, obstruct or interfere with, or attempt to impede, obstruct or interfere with, a building official who is carrying out or attempting to carry out an inspection under section 11.
Refusal of consent	(3) A refusal of consent to enter a room or place that is used as a dwelling is not and shall not be construed to be impeding, obstructing or interfering with a building official for the purposes of subsection (2).
Not a representation, etc.	(4) An inspection by a building official is not and shall not be construed to be a representation, guarantee, warranty or confirmation by the authority having jurisdiction of the quality or standard of construction of the building or that the building has been constructed in accordance with this Act and the regulations.
Notice to inspect	<b>14.</b> (1) An owner, or a constructor on behalf of the owner, shall notify a building official in accordance with the regulations or a bylaw referred to in subsection (2) that construction work is ready for inspection at each stage of construction prescribed in the regulations.

(2) Where a bylaw of a municipality, other than a municipality for which an agreement under subsection 4(3) is in effect, provides for additional inspections at specified stages of construction and requires notice to be provided to the municipality at those specified stages of construction, an owner or constructor referred to in subsection (1) shall also comply with the requirements of the bylaw.

Additional inspections

(3) On receipt of the notice referred to in subsection (1) or (2), a building official shall carry out the required inspection within the period of time prescribed in the regulations or the bylaw, as the case may be.

Timing of inspection

### Orders

**15.** (1) Where a building official is of the opinion that any provision of this Act or the regulations is being contravened, the building official may issue to the owner or constructor of the building an order in writing requiring compliance with the contravened provision.

Order of building official

(2) An order issued under subsection (1) shall specify that it shall be carried out immediately or before the expiry of a specified period.

Expiry

(3) Where an order issued under subsection (1) specifies

(a) that it be carried out immediately, all work on the building or the part of it specified in the order, other than the work necessary to carry out the order, shall stop until the order is complied with to the satisfaction of a building official; and

(b) the period within which it is to be carried out, and it is not carried out within that period, all work on the project or the part of it specified in the order, other than the work necessary to carry out the order, shall stop until the order is complied with to the satisfaction of a building official.

Effect of order

(4) A building official may issue an order to an owner or a constructor prohibiting the covering or enclosing of construction work pending an inspection.

Order not to cover construction work

(5) A building official may, for the purposes of inspection, issue an order to the owner or constructor that construction work be uncovered if

(a) the construction work was covered or enclosed contrary to an order issued under subsection (4);

(b) a notice to inspect under section 13 was not received;

(c) a notice to inspect under section 13 was received, but the owner or constructor ordered or allowed the construction work to be covered or enclosed before the prescribed period of time had elapsed;

(d) the construction work was carried out without a valid building permit issued under this Act; or

Order to uncover construction work

(e) the building official has reasonable grounds to believe that the construction work does not comply with this Act and the regulations.

Compliance order (6) Where construction or demolition has been undertaken in contravention of this Act or the regulations, a building official may issue a compliance order to the owner or constructor requiring

- (a) the cessation of the construction or demolition;
- (b) the alteration of the construction or demolition so as to remove or remedy the contravention; or
- (c) the doing of anything to make the building or real property safe.

Requirements (7) A compliance order issued under subsection (6) shall specify the work required and state the time within which the owner or constructor is required to comply with the order.

Prohibition (8) Subject to the regulations, no person shall

- (a) allow the initial occupancy of a building or part of it; or
- (b) change the occupancy of a building or part of it,

unless a building official has issued a statement that the building or part of it, as the case may be, is ready for occupancy.

Dangerous premises **16.** (1) A building or real property constitutes a dangerous premises if the building or real property

- (a) poses an actual or potential risk of fire;
- (b) poses an actual or potential danger to the safety of persons or the safety of property;
- (c) has undergone unapproved building modifications; or
- (d) is structurally unsound.

Order respecting dangerous premises (2) Where a building official is satisfied that a building or real property constitutes a dangerous premises, the building official may issue an order to the owner to have the building repaired or demolished, or take any other action that the building official considers necessary in order to terminate the danger.

*Idem* (3) Where a building official is satisfied that the condition of a building or real property referred to in subsection (1) poses a significant danger that requires immediate action, the building official may issue an order requiring that the work necessary to terminate the danger be carried out immediately.

Order not subject to review or appeal (4) An order issued pursuant to subsection (3) is not subject to review by the Chief Building Official under section 24 and may not be appealed under section 25.

More stringent bylaw (5) A council of a municipality, other than a municipality in respect of which an agreement under subsection 4(3) is in force, may pass a bylaw

that establishes more stringent standards respecting dangerous premises in the municipality than those set out in subsection (1).

**17.** (1) A person to whom an order under section 15 or 16 is issued shall comply with the order. Requirement to comply

(2) An order issued by a building official shall be served on the owner and on any other person named in the order. Service of order

**18.** (1) An order of a building official shall Content of order

- (a) be in writing;
- (b) be signed by the building official;
- (c) state the location of the building or real property or part of the building or real property in respect of which the order is issued;
- (d) state the action required to be taken and the reasons for it;
- (e) state the time period within which the action shall be completed; and
- (f) if the order is one which may be reviewed under section 24, state the period during which the order may be reviewed and the process for requesting a review.

(2) While an order issued by a building official under this Act is in effect, no person shall perform any construction or demolition on the building or real property or the part of the building or real property in respect of which the order was issued except Effect of order

- (a) the work that is necessary to carry out the requirements of the order; and
- (b) work that is related to or associated with the work referred to in clause (a) and that is also required to make the building or real property safe.

(3) The costs of carrying out the work specified in an order of a building official under this Act are the responsibility of the owner of the building or real property in respect of which the order was issued. Costs of carrying out order

**19.** (1) An authority having jurisdiction may request a report from an architect, an engineer, a building official or the Fire Marshal for the purposes of evaluating the condition of a building that is suspected of being dangerous or structurally unsound. Report required for demolition work

(2) Except in the case of an emergency, or where an order has been issued under subsection 16(3), a person acting on behalf of an authority having jurisdiction shall not proceed with demolition work unless the authority has received a report referred to in subsection (1) from an architect, an engineer, a building official or the Fire Marshal confirming that the building is dangerous or structurally unsound and that demolition is required. *Idem*

Standing of report	(3) Where the report referred to in subsection (2) confirms that the building is dangerous or structurally unsound, it is, in the absence of evidence to the contrary, proof that the building is dangerous or structurally unsound and that demolition is required.
Costs	(4) Any costs associated with the provision of the report referred to in subsection (2) are the responsibility of the owner of the building that is the subject of the report.
Tenants of building affected by order	<b>20.</b> Every tenant or occupant of a building or part of a building in respect of which an order has been made by a building official or the court shall, at all reasonable times, permit the owner and the employees of the owner to enter and re-enter the tenant's or occupier's area of the building for the purpose of carrying out the actions specified in the order.

#### Enforcement of Orders

Enforcement of orders	<b>21.</b> (1) Where a person contravenes or fails to comply with an order issued under section 15 or subsection 16(2), the authority having jurisdiction whose building official issued the order may, at the expense of the owner, carry out the actions specified in the order.
Cost is a debt	(2) The cost of carrying out the actions specified in the order of a building official under section 14 or subsection 15(2) is a debt due to the authority having jurisdiction.
Order for costs	(3) After taking remedial action under subsection (1) the authority having jurisdiction may issue an order for the costs of the remedial action against the person to whom the original order of the building official was given.
Filed order has effect as judgment	(4) An order for cost of remediation under subsection (3) may be filed with the Registrar of the Court of Appeal and the Supreme Court at any time 30 days after it is issued and, when so filed, the order is of the same force and effect as if it were a judgment.
Prohibition	(5) Notwithstanding any other Act, no person shall refuse entry to, obstruct or interfere with a building official or a person acting on behalf of the authority having jurisdiction who enters or attempts to enter the building or real property to which the order relates for the purposes of this section.
Enforcement of emergency order	<b>22.</b> (1) Before or after an order under subsection 16(3) is served, the authority having jurisdiction may, at the expense of the owner, carry out the actions specified in the order to terminate the danger giving rise to the emergency.

(2) The cost of carrying out the actions specified in an order under subsection 16(3) is a debt due to the authority having jurisdiction.

Cost is a debt

(3) After taking remedial action under subsection (1) the authority having jurisdiction may issue an order for the cost of the remedial action against the person to whom the original order of the building official was given.

Order for costs

(4) An order for cost of remediation under subsection (3) may be filed with the Registrar of the Court of Appeal and the Supreme Court at any time 30 days after it is issued and, when so filed, the order is of the same force and effect as if it were a judgment.

Filed order has effect as judgment

(5) Notwithstanding any other Act, no person shall refuse entry to, obstruct or interfere with a building official or a person acting on behalf of the authority having jurisdiction who enters or attempts to enter the building or real property to which the order relates for the purposes of this section.

Prohibition

(6) If the order under subsection 16(3) was not served before the specified actions were taken to terminate the danger, the building official who issued the order shall serve a copy of the order as soon as possible after the actions have been taken, together with a statement by the building official describing the actions taken by the authority having jurisdiction and the details of the amounts expended in taking those actions.

Service following specified actions

(7) If the order under subsection 16(3) was served before the specified actions were taken to terminate the danger, the building official who issued the order shall serve, as soon as possible after the specified actions have been taken, a copy of the statement referred to in subsection (6), in the same manner as the order was served.

Service of statement

**23.** (1) Despite any other remedy or penalty imposed under this Act, if an order made by a building official, a decision of the Appeal Board or any provision of this Act or the regulations is contravened, an authority having jurisdiction may, on notice to the owner of the building or real property to which the order, decision or contravention relates, apply to the court

Proceedings to prohibit continuation or repetition of contravention

- (a) for an order prohibiting the continuation or repetition of the contravention;
- (b) for an order directing the removal or destruction of any building or part of a building in respect of which the contravention continues, and stating that on failure to comply with the order the authority may, at the expense of the owner, remove or destroy the building or part of the building; and

(c) for any other order required to enforce the order, decision or provision in respect of which the application was made and as to costs and the recovery of the expense of the removal or destruction as the court considers fit.

Enforcement of order

(2) The court may grant an order under subsection (1) and the order may be enforced in the same manner as any other order or judgment of the court.

#### Review and Appeals

Request for review of decision or order

**24.** (1) A person who is aggrieved by a decision of a building official under section 10 or an order issued by a building official under section 14 or subsection 16(2) may request a review of the decision or order by the Chief Building Official by submitting a request for review in the form approved by the Minister to the Chief Building Official within 10 days after receipt of the decision or order.

Review by Chief Building Official

(2) On receipt of a request for review under subsection (1), the Chief Building Official shall

- (a) review the decision or order of the building official;
- (b) make recommendations with respect to the decision or order of the building official; and
- (c) provide the recommendations referred to in clause (b), including the reasons for them, to the building official and the person who requested the review.

Response by building official

(3) The building official whose decision or order is the subject of a review under this section shall, within a reasonable time after receipt of the recommendations of the Chief Building Official, confirm or vary the decision or order and give notice of the confirmation or variation to the person who requested the review.

Appeal of decision or order

(4) Where the decision or order referred to in subsection (1) was issued or made by the Chief Building Official, a person aggrieved by the order or decision may appeal the order or decision to the Appeal Board in accordance with section 25.

Appeal to Appeal Board

**25.** (1) A person may appeal a decision or order of a building official that was confirmed or varied under subsection 24(3), or a decision or order referred to in subsection 24(4), by serving a notice of appeal in the form approved by the Minister within 30 days of receipt of the decision or order on the chairperson of the Council.

Members of Appeal Board

(2) The Appeal Board is constituted as follows:

- (a) from the Council,



- (i) the representative of the Association of Professional Engineers of the Province of Prince Edward Island,
  - (ii) the representative of the Construction Association of Prince Edward Island,
  - (iii) the representative of the Architects Association of Prince Edward Island; and
  - (b) one person appointed by the Minister.
- (3) The members of the Appeal Board *Idem*
- (a) shall designate a chairperson from among their number;
  - (b) may determine the rules for their proceedings; and
  - (c) are not bound by strict rules of evidence or the provisions of the *Evidence Act* R.S.P.E.I. 1988, Cap. E-11.
- (4) On receipt of a notice of appeal, the chairperson of the Council shall forward the notice to the chairperson of the Appeal Board for consideration. Notice of appeal
- (5) The Appeal Board shall consider the matter and, within 30 days, Consideration by Appeal Board
- (a) may by order confirm, revoke or vary the order or decision appealed from; and
  - (b) shall provide notice of its decision and the reasons for it to the person who filed the appeal and to the building official.
- (6) An appeal filed under subsection (1) does not operate as a stay of an order of a building official except as the chairperson of the Appeal Board or the chair person of the Council directs. Appeal not a stay
- (7) The decision of the Appeal Board under subsection (5) is final and binding and shall not be appealed. Decision final

#### Municipal Bylaws

- 26.** (1) A council of a municipality, other than a municipality for which an agreement under subsection 4(3) is in effect, may, respecting the matters set out in subsection (3), make bylaws that are Authority of municipal council
- (a) not inconsistent with this Act and the regulations; and
  - (b) where the bylaws impose a standard that varies from a standard set out in this Act or the regulations, not less stringent than the standard set out in the Act or the regulations.
- (2) A council of a municipality, other than a municipality for which an agreement under subsection 4(3) is in effect, may by bylaw declare a part or a provision of a code adopted under this Act in force in the municipality, notwithstanding that the part or provision is not in force in an area of the province where the Minister is the authority having jurisdiction. Enforcement in municipality

Bylaw-making  
powers

- (3) A council of a municipality, other than a municipality for which an agreement under subsection 4(3) is in effect, may, by bylaw,
- (a) prescribe the stages of construction for which an inspection is required for different classes of buildings in addition to those set out in the regulations;
  - (b) prescribe standards for construction and demolition work in the municipality
    - (i) that relate to matters not provided for in a code adopted under this Act, or
    - (ii) that are more stringent than the technical requirements set out in the code;
  - (c) prescribe fees for services provided in accordance with this Act and the regulations;
  - (d) prescribe the responsibilities and obligations of the municipality with respect to construction or demolition work in addition to the responsibilities and obligations set out in this Act; and
  - (e) prescribe the responsibilities and obligations of owners, constructors, subcontractors and professionals to the municipality with respect to construction or demolition work in the municipality addition to the responsibilities and obligations set out in this Act.

#### Offences and Penalties

Offence and penalty

- 27.** (1) An individual who contravenes a provision of this Act or the regulations is guilty of an offence punishable on summary conviction and is liable
- (a) to a fine of not less than \$500 and not more than \$10,000; or
  - (b) to a term of imprisonment of not more than 12 months,
- or to both a fine and imprisonment.

Continuing offence

- (2) Where an offence by an individual continues after a conviction under subsection (1), each day or part of a day on which the offence continues constitutes a separate offence for which the minimum fine is \$500 multiplied by the number of days during which the offence continues.

Corporate penalty

- (3) A corporation that contravenes a provision of this Act or the regulations is guilty of an offence punishable on summary conviction and is liable to a fine of not less than \$1,000 and not more than \$50,000.

Continuing offence

- (4) Where an offence by a corporation continues after a conviction under subsection (3), each day or part of a day on which the offence continues constitutes a separate offence for which the minimum fine is \$1,000 multiplied by the number of days during which the offence continues.

(5) Any fines resulting from an offence under this Act which took place within the boundaries of a municipality, other than a municipality in respect of which an agreement under subsection 4(3) is in effect, shall accrue to that municipality.

Fines payable to enforcing municipality

**28.** (1) Subject to subsection (2), a prosecution for an offence under this Act or the regulations shall be commenced within two years after

- (a) the date on which the offence is alleged to have been committed;
- or
- (b) the date on which the authority having jurisdiction becomes aware of the alleged offence,

whichever is later.

Limitation period

(2) When a request for review is made under section 24, the time period referred to in subsection (1) shall be extended by the elapsed time between

- (a) the date of the request for review; and
- (b) the date of the review, or, if an appeal is made to the Appeal Board, the date of the final disposition of the appeal.

Extension of time

**29.** (1) No person to whom an order is directed pursuant to this Act or the regulations is required to comply with the order until the order has been served on the person.

Compliance not required without service

(2) Any order issued pursuant to this Act or the regulations is deemed to be sufficiently served

- (a) when a copy is personally served on the person to whom it is directed;
- (b) if a copy is sent by facsimile or by other electronic means to the person to whom it is directed, when an acknowledgement of receipt is received;
- (c) five days after a copy is sent by mail addressed to the person to whom it is directed at the last known address for that person; or
- (d) in the case of a registered owner of real property, five days after a copy is sent by mail to the address for the registered owner shown on the last revised assessment roll.

Service of orders

(3) Where the person to be served is a corporation, service on a director, officer or recognized agent of the corporation in accordance with subsection (2) is deemed to be service on the corporation for the purposes of this Act.

Service on corporation

(4) Any order issued pursuant to this Act or the regulations shall be proof in the absence of evidence to the contrary in proceedings in any court not only that the order was legally made, but also that every administrative prerequisite necessary to enable the making of the order was done and satisfied, and no further proof than the mere production of

Order is proof of its legality

the original order or a copy of it certified by the authority having jurisdiction is necessary.

Evidentiary status of order

**30.** An order that has been served in accordance with section 29 and purports to be signed by a building official shall be

- (a) received in evidence by any court of competent jurisdiction or the Appeal Board without proof of the signature;
- (b) proof in the absence of evidence to the contrary of the facts stated in the order or demand; and
- (c) in a prosecution for a contravention of this Act or the regulations, proof in the absence of evidence to the contrary that the person named as owner in the order or demand is the owner.

Immunity

**31.** No action lies for damages or otherwise against any of the following persons or entities in relation to anything done or purported to be done in good faith, or in relation to anything omitted to be done in good faith, in the performance or intended performance of any duty or in the exercise or intended exercise of any power under this Act or the regulations by the person or entity:

- (a) the Government;
- (b) the Minister;
- (c) a building official;
- (d) a licensed building inspector;
- (e) the Chief Building Official;
- (f) a member or former member of a council of a municipality;
- (g) a member or former member of the Council or the Appeal Board;
- (h) any person who is acting under or has acted under the authority of this Act or the former Act or the instructions of a person or entity referred to in this section.

General regulations

**32.** (1) The Lieutenant Governor in Council may make regulations that establish or adopt by reference one or more building codes governing minimum standards for the design, construction and demolition of buildings and, without limiting the generality of the foregoing, may make regulations that

- (a) declare a specified edition of the National Building Code of Canada, the National Energy Code of Canada for Buildings or the National Plumbing Code for Canada to be in force, in whole or in part, as amended from time to time and with any amendments, revocations, modifications or exemptions specified in the regulations;
- (b) require compliance with a code established or adopted by the regulations;
- (c) provide for the manner in which applications for the issuance of a permit may be made and the content of the applications;
- (d) prohibit or restrict any occupation or use of any land or building;

- (e) prescribe fees, or a formula or method for the determination of fees, for the issuance of a permit and for inspections;
- (f) provide for the circumstances in which the fee paid for a permit may be refunded;
- (g) prescribe standards for construction, reconstruction and demolition that relate to matters not provided for in , or that are more stringent than, a code adopted pursuant to clause (a);
- (h) establish systems of classification with respect to the occupancy or use of a building or part of a building, and provide for an application process for permits to change the classification of a building or part of a building with respect to occupancy or use;
- (i) prescribe the responsibilities and obligations of owners, constructors, subcontractors and professionals with respect to construction, reconstruction or demolition work in addition to the responsibilities and obligations set out in this Act.

(2) A regulation made under subsection (1) may provide that it applies to the entire province or to any part of it, including any municipality. Application of regulations

(3) The Lieutenant Governor in Council may make regulations Regulations

- (a) prescribing professions for the purposes of clause 1(t);
- (b) respecting the information and documents to be made accessible to the public by means of the registry established under section 5;
- (c) prescribing additional duties of building officials;
- (d) prescribing the required qualifications for building officials and the different qualifications necessary to inspect different classes of buildings;
- (e) requiring building officials who are not employees of Government to hold professional liability insurance of a prescribed type and amount;
- (f) prescribing the required qualifications for building inspectors and the different qualifications necessary to inspect different classes of buildings;
- (g) requiring building inspectors to hold professional liability insurance of a prescribed type and amount;
- (h) prescribing fees, or a formula or method by which fees may be calculated, for services provided under this Act;
- (i) specifying the content of the notice, the manner in which the notice shall be given and the period within which the inspection shall be carried out after receipt of a notice to inspect for the purposes of section 16;
- (j) defining any word or expression used in but not defined in this Act for the purposes of this Act, the regulations or both;
- (k) respecting any matter that the Lieutenant Governor in Council considers necessary for the administration of this Act.

### Transitional Provisions

Authorization continues	<b>33. (1)</b> An authorization issued by a council of a municipality to a person that is substantially equivalent to an appointment under subsection 8(3) of this Act and that is valid and in force on the coming into force of this Act continues in force for a period of 5 years from the date this Act comes into force, unless sooner cancelled or revoked by the municipality that issued it.
<i>Idem</i>	(2) Subject to subsection (3), a person referred to in subsection (1) shall, within the five-year period specified in that subsection, acquire the qualifications related to education and experience specified in the regulations in order to qualify as a building official under this Act.
Exception	(3) Notwithstanding the requirements of section 8 and the regulations, a person referred to in subsection (1) is not required to comply with subsection (2) if the person, on the coming into force of this Act, <ul style="list-style-type: none"> <li>(a) has been employed to inspect pursuant to and enforce Part 9 of the National Building Code of Canada for at least 6 years out of the past 8 years; or</li> <li>(b) has been employed to inspect pursuant to and enforce Part 3 of the National Building Code of Canada and the National Energy Code of Canada for Buildings for at least 8 years out of the past 10 years.</li> </ul>
Applicable code	(4) For the purposes of subsection (3), references to the National Building Code and the National Energy Code of Canada for Buildings include any previous edition of either of those codes, as applicable, that was in force during the person's employment.

### Consequential Amendments

<i>Environmental Protection Act</i>	<b>34. (1) The <i>Environmental Protection Act</i> R.S.P.E.I. 1988, Cap. E-9, is amended by this section.</b>  <b>(2) Clause 25(1)(f) of the Act is repealed.</b>
<i>Planning Act</i>	<b>35. (1) The <i>Planning Act</i> R.S.P.E.I. 1988, Cap. P-8, is amended by this section.</b>  <b>(2) Section 1 of Act is amended by the addition of the following after clause (e):</b>
development permit	(e.1) “development permit” means a permit issued for a development under the regulations or pursuant to a bylaw but does not include a building permit issued under the <i>Building Codes Act</i> ;  <b>(3) Section 8 of the Act is amended</b>

**(a) by the repeal of subclause (1)(f)(i);**

**(b) in clause (1)(g),**

- (i) by the deletion of the word “permits” wherever it occurs and the substitution of the words “development permits”, and**
- (ii) in subclause (g)(ii), by the addition of the words “or may expire” after the words “and revoked”;**

**(c) by the repeal of subclause (1)(k)(ii) and the substitution of the following:**

- (ii) requiring development permits for them;

**(d) in clause (1)(n),**

- (i) in subclause (i), by the deletion of the words “, maintenance, design and construction”, and**
- (ii) in subclause (iii), by the deletion of the words “permits for summer cottage construction” and the substitution of the words “development permits for summer cottage development”;** and

**(e) in clause (1)(o), by the deletion of the words “a subdivision approval, development permit or building permit” and the substitution of the words “a subdivision approval or development permit”.**

**(4) Subclause 28(1.1)(a)(i) of the Act is repealed and the following substituted:**

- (i) a development permit,
- (i.1) an occupancy permit, in relation to a matter under this Act or the regulations,

#### Repeal and Commencement

Repeal

**36.** The *Provincial Building Code Act* R.S.P.E.I.1988, Cap. P-24, is repealed.

**37.** This Act comes into force on a date that may be fixed by proclamation of the Lieutenant Governor in Council. Commencement

## EXPLANATORY NOTES

**SECTION 1** establishes definitions for the purposes of the Act.

**SECTION 2** clarifies the application of the Act and regulations and provides for exemptions to be specified in regulations.

**SECTION 3** provides that in the event of a conflict between a provision of the Act or regulations and another enactment, the provision of the Act or regulations prevails to the extent of the conflict or inconsistency.

**SECTION 4** provides that the Minister is responsible for the administration and enforcement of the Act, and also provides that a council of a municipality is responsible for the administration and enforcement of the Act in the municipality. A council may enter into an agreement with the Minister that provides for the administration and enforcement of the Act in the municipality by the Minister.

**SECTION 5** provides that information respecting matters under the Act that is in the control of the Minister's Department is accessible to the public, subject to the *Freedom of Information and Protection of Privacy Act*. In particular, information about permits and the compliance of permit holders will be made available to the public by means of a registry.

**SECTION 6** provides that the Prince Edward Island Building Standards Council is continued, and specifies its membership. Members are appointed by the Lieutenant Governor in Council for a three-year term, and may be reappointed, but may not serve more than two consecutive terms.

**SECTION 7** establishes the Council's duties and functions.

**SECTION 8** provides for the Minister to appoint a Chief Building Official and building officials, and for the council of a municipality, other than a municipality that has entered into an agreement under subsection 4(3), to appoint building officials for the municipality. The required qualifications for a person to be appointed as a building official will be set out in the regulations.

**SECTION 9** provides for the Minister to issue licenses to persons who are qualified, in accordance with the regulations, as building inspectors. The section also authorizes the Chief Building Official to delegate specified functions of a building official to a licensed building inspector,



and specifies which provisions of the Act apply to a licensed building inspector.

**SECTION 10** establishes the application process for a permit required for a matter under the Act, and authorizes building officials to review applications and issue permits, and to revoke permits, in the specified circumstances.

**SECTION 11** prohibits any person from engaging in construction or demolition or changing the use of a building unless a permit has been issued for the work.

**SECTION 12** authorizes building officials to conduct inspections in order to ensure compliance with the Act and regulations and a permit or order.

**SECTION 13** provides that every owner or occupant must allow a building official to enter any building, premises or work site at any reasonable time, and prohibits obstruction and interference with a building official who is carrying out an inspection. The right of entry does not include entry to a dwelling, and a refusal of consent to enter a dwelling is not obstruction or interference with a building official. The section also provides that an inspection is not a representation, guarantee, warranty or confirmation of the quality or standard of construction or that the building has been constructed in compliance with the Act and regulations.

**SECTION 14** requires an owner or a constructor on behalf of the owner to notify a building official in accordance with the regulations that construction work is ready for inspection at each stage prescribed in the regulations.

**SECTION 15** authorizes a building official to issue orders to an owner or constructor of a building where a provision of the Act or regulations is being contravened. The order must be in writing and include the specified information.

**SECTION 16** authorizes a building official to issue an order to an owner of a dangerous building or property, requiring the owner to have the building repaired or demolished or to take another specified action to terminate the danger. The section also authorizes a council of a municipality, other than a municipality for which an agreement under subsection 4(3) is in effect, to pass a bylaw that establishes more stringent standards respecting dangerous premises in the municipality than those set out in the Act.

**SECTION 17** requires a person to whom an order of a building inspector under section 14 or 15 is directed to comply with the order.

**SECTION 18** specifies the required contents of an order of a building official. The section also clarifies the effect of an order and provides that the costs of carrying out the work specified in the order are the responsibility of the owner.

**SECTION 19** authorizes an authority having jurisdiction to request a report on the condition of a building that is suspected of being dangerous or structurally unsound from an architect, an engineer, a building official or the Fire Marshal, and prohibits any person acting for the authority from proceeding with demolition of the building until a report is received that confirms that demolition is required. The costs associated with the provision of the report are the responsibility of the owner of the building that is the subject of the report.

**SECTION 20** requires tenants and occupiers of a building in respect of which an order has been made by a building official to allow, at all reasonable times, the owner and employees of the owner to enter their areas in order to carry out the actions specified in the order.

**SECTION 21** provides that, where a person contravenes or fails to comply with an order of a building official issued under section 14 or subsection 15(2), the authority having jurisdiction may at the expense of the owner carry out the actions specified in the order. The costs of the remedial action are a debt due to the authority having jurisdiction, which may issue an order for the costs. The order for costs may be filed with the Registrar of the Court of Appeal and the Supreme Court, and is of the same force and effect as if it were a judgment.

**SECTION 22** provides that, either before or after an emergency order under subsection 15(3) is served on an owner, the authority having jurisdiction may at the expense of the owner carry out the actions specified in the order to terminate the danger. The costs of the remedial action are a debt due to the authority having jurisdiction, which may issue an order for the costs. The order for costs may be filed with the Registrar of the Court of Appeal and the Supreme Court, and is of the same force and effect as if it were a judgment. If the order was not served on the owner before the actions were taken, the order must be served by the building official as soon as possible afterward, together with a statement of the actions taken and the details of the amounts expended. If the order was served on the owner before the actions were taken, the building

official must serve the statement of the actions taken and the details of the amounts expended in the same manner on the owner.

**SECTION 23** provides that, in addition to any other remedy for a contravention of the Act or regulations, an order of a building official or a decision of the Appeal Board, an authority having jurisdiction may, on notice to the owner of the building or real property to which the contravention, order or decision relates, may apply to the court for an order as specified.

**SECTION 24** authorizes a person who is aggrieved by a decision or order of a building official to request a review of the decision or order by the Chief Building Official. After reviewing the decision or order, the Chief Building Official shall make recommendations to the building official who issued the order, and notify the person who requested the review accordingly. The building official is required to either confirm or vary the original order or decision and notify the person who requested the review of that result. If the decision or order to be reviewed was made or issued by the Chief Building Official, the person aggrieved by it is authorized to appeal it directly to the Appeal Board under section 24.

**SECTION 25** provides an appeal process for persons aggrieved by a decision made or an order issued under the Act. The Appeal Board consists of specified members of the Council and an additional member appointed by the Minister. The Appeal Board may confirm, revoke or vary the decision or order appealed from and shall notify the parties of its decision. The decision of the Appeal Board is not subject to appeal.

**SECTION 26** authorizes the council of a municipality, other than a municipality for which an agreement under subsection 4(3) is in effect, to make bylaws on specified matters that are not inconsistent with the Act and regulations and that impose a standard that is more stringent than is set out in the Act or regulations. The council may also declare a part or provision of a code adopted under the Act in force in the municipality even though that part or provision is not in force in an area of the province where the Minister is the authority having jurisdiction.

**SECTION 27** establishes the penalties applicable when an individual or a corporation contravenes a provision of the Act or regulations.

**SECTION 28** requires that a prosecution for an offence under the Act or regulations be commenced within two years of the occurrence or the time when the authority having jurisdiction became aware of it, whichever is later.

**SECTION 29** provides that a person to whom an order is directed is not required to comply with it until the order has been served on the person, and provides rules respecting the service of orders.

**SECTION 30** establishes the evidentiary status of an order that has been properly served in accordance with section 28.

**SECTION 31** provides protection from liability for the specified persons and entities for anything done or omitted to be done in good faith in the performance of a duty or exercise of a power under the Act and regulations.

**SECTION 32** authorizes the Lieutenant Governor in Council to make regulations for the purposes of the Act, as specified.

**SECTION 33** provides that an authorization given by a council of a municipality to a person that is substantially equivalent to an appointment as a building official under subsection 8(3) of the Act continues in force for a period of 5 years from the coming into force of the Act. During that five-year period, the person holding the authorization is required to become qualified as a building official under the Act, with exceptions for persons with specified experience.

**SECTIONS 34 and 35** make consequential amendments to the *Environmental Protection Act* and the *Planning Act*.

**SECTION 36** repeals the *Provincial Building Code Act*.

**SECTION 37** provides for the coming into force of the Act.

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**BILL NO. 69**

**Building Codes Act**

<i>STAGE:</i>	<i>DATE:</i>
<i>1st Reading:</i>	April 18, 2017
<i>2nd Reading:</i>	
<i>To Committee:</i>	
<i>Reported:</i>	
<i>3rd Reading and Pass:</i>	
<i>Assent:</i>	

SIGNATURES:

\_\_\_\_\_  
Honourable H. Frank Lewis, Lieutenant Governor

\_\_\_\_\_  
Honourable Francis (Buck) Watts, Speaker

\_\_\_\_\_  
Clerk

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Honourable Robert J. Mitchell  
Minister of Communities, Land and Environment

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GOVERNMENT BILL

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