



## **H.B. 386**

125th General Assembly  
(As Introduced)

**Reps. Kilbane, Williams, Olman, Martin, Hollister, S. Smith, Ujvagi, Hagan**

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### **BILL SUMMARY**

- Specifies that the State Building Code adopted by the Board of Building Standards is a statewide uniform building code that preempts local building regulations that establish higher standards than the state code or that deal with the same subject matter as the state code.
- Limits a municipal corporation's authority to adopt further and additional regulations to regulations that are not in conflict with the state code.
- Stipulates that the Ohio Board of Building Standards rules supercede any order, rule, or standard of various state agencies but also of counties, townships, and municipal corporations where the local regulations address the same subject matter as a State Board regulation.
- Specifies that the legislation is enacted in response to the Ohio Supreme Court's finding in *Middleburg Heights v. Ohio Board of Building Standards* (1992), 65 OS 3d 510.

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### **CONTENT AND OPERATION**

#### **Background**

The Ohio Building Standards Law, set forth in Chapters 3781. and 3791. of the Revised Code, authorizes the Board of Building Standards (BBS) to adopt rules that require places of resort, assembly, education, entertainment, lodging, dwelling, trade, manufacture, repair, storage, traffic, or occupancy used by the public to be constructed and maintained to ensure they are safe and sanitary for their intended use and occupancy. Pursuant to this authority, the BBS has adopted various rules that are compiled in the Ohio Building Code (OBC). The OBC prescribes minimum standards and allows the use of alternate fixtures, devices,

materials, systems, components, products, methods, or manner of construction if the alternative complies with the performance standards the BBS establishes.

In 1992, the Ohio Supreme Court invalidated the long standing assumption that the Ohio law prevised localities from adopting building standards that were stricter than the "minimums" contained in the OBC (*Middleburg Heights v. Ohio Board of Building Standards* (1992), 65 OS 3d 510). The Court held that the OBC is a minimum code and that local legislative bodies could establish local standards stricter than the minimums. The court commented that for it to find that the OBC also is a set of maximum standards, it would have to read into the statute language that did not exist, language that would grant "to the board exclusive regulatory authority over construction in this state" (*Middleburg Heights* at 514).

### **Uniform code**

The bill specifies that the Ohio Building Code is a statewide uniform code and eliminating from existing law all references in the Building Standards Law to the OBC being "minimum set of standards." (R.C. 3781.01, 3781.10, 3781.11, 3781.18, and 3703.01.) The bill states that it is the General Assembly's intent that the bill recognize the Court's holdings in *Middleburg Heights* and that it implement a statutory scheme consistent with the Court's holdings (by providing the language needed to create statewide uniform standards). The bill further identifies its provisions as being general laws created in the exercise of the state's police power arising out of matters of statewide concern, designed for the health, safety, and welfare of the construction design professionals and contractors, their employees, and the public. (Section 3.)

### **Limits on municipal authority**

Under existing law, a municipal corporation is not prevented from making "further and additional regulations not in conflict with such chapters [3781. and 3791.] or with the rules and regulations of the board of building standards." (R.C. 3781.01.) The bill modifies the authority of municipal corporations by limiting the "further and additional regulations" that they may adopt to those that are "upon subject matter that is not addressed by" the OBC, which is in addition to being "not in conflict" with the OBC as under continuing law. (R.C. 3781.01.)

The bill's specification that the provisions that create a uniform building code are general laws of the state (Section 3) would appear to limit the power of municipal corporations to adopt different and conflicting regulations under their home rule power under the Ohio Constitution because home rule power does not extend to provisions that are general laws of the state (Article XVIII, Ohio Constitution, §§ 3, 7, not in the bill).

**OBC supercedes rules of specified entities**

The bill adds municipal corporations to the continuing law that specifies that the board's rules supersede and govern if there is any conflict with any order, standard, or rule of the division of industrial compliance in the department of commerce, division of the fire marshal, the department of health, and of counties and townships (except that rules adopted by the Fire Marshal pursuant to Chapter 3743. prevail in case of a conflict). (R.C. 3781.11(B).) The bill expands on the situations in which its rules supercede by specifying that the OBC supercedes in any case where the orders, standards or rules *address the same subject matter* as the OBC, which is in addition to cases where the rules conflict with the OBC as under continuing law (with the exception of the Fire Marshal's rules adopted under Chapter 3743.). (R.C. 3781.11(B).)

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**HISTORY**

ACTION	DATE	JOURNAL ENTRY
Introduced	01-28-04	p. 1563

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