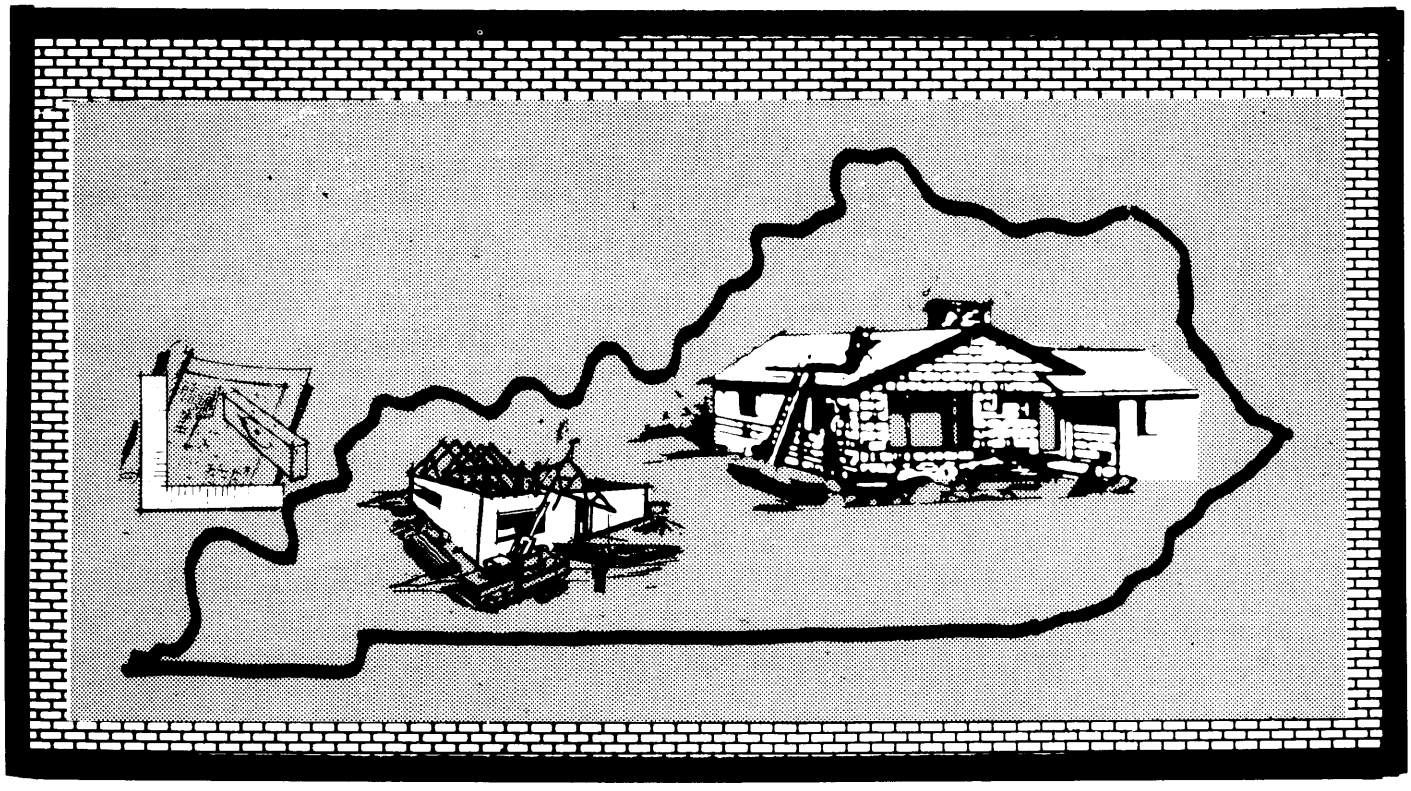
REGULATION OF THE BUILDING INDUSTRY IN KENTUCKY



RESEARCH REPORT NO. 147

LEGISLATIVE RESEARCH COMMISSION
FRANKFORT, KENTUCKY

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REGULATION OF THE BUILDING INDUSTRY IN KENTUCKY

Prepared by
Don Stosberg

Research Report No. 147

Legislative Research Commission
Frankfort, Kentucky
November, 1977

This report has been prepared by the Legislative Research Commission and paid for from state funds.

FOREWORD

House Resolution 58 of the 1976 General Assembly directed the Legislation Research Commission to undertake a study of the regulation of the building industry in Kentucky in order to provide for more efficient and effective regulation of the industry.

The report provides historical and conceptual background essential to an understanding of this complex issue. Additionally, present Kentucky statutes, statutes in other states, attitudes of interest groups, and various administrative problems are examined. Finally, some legislative alternatives are presented for consideration.

This research document was prepared by Don Stosberg under the direction of Dr. Jim Peyton and the Subcommittee on Facilities and Services of the Interim Committee on Cities chaired by Representative C. M. Hancock. The interviews and library research upon which this report is based were completed prior to the Beverly Hills Fire in May, 1977. Credit is given to the state fire marshal, other state and local officials, and numerous persons interested in the building industry who cooperated in the compilation of information for this report. Editorial suggestions were offered by Jim Monsour and Bill Wiley of the LRC staff. This report was typed by Pat Royalty, edited by Linda Wood, with typesetting by Ann Cary, Doris Lutes, Nancy Taylor, Martha Solheim and Betty Updike.

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The Capitol
Frankfort, Kentucky
November, 1977

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SUMMARY OF FINDINGS

1. There is no uniformity of building codes in Kentucky. Conflicting requirements add unnecessarily to construction delays and thus increase costs.

2. Local building inspectors lack sufficient opportunities for training and upgrading in their profession.

3. The role of local building inspection departments in relationship to the state fire marshal's office is not sufficiently specified by state statute.

4. The only avenues for appeal of the state fire marshal's decisions are to the commissioner of insurance and to circuit court.

5. The state fire marshal's office has not been given organizational status in proportion to its duties and its budget when compared to customary state government organizational patterns.

6. Builders, architects, and contractors are generally dissatisfied with the National Building Code. Objective, independent evidence to support the arguments for and against the various model codes is scarce and inadequate to support either side.

I. ISSUES AND CONCEPTS

This study has been prepared in response to House Resolution 58 passed by the 1976 Kentucky General Assembly, which directed a study of the regulation of the building and housing industry in Kentucky

This report will clarify the issues and analyze the problems related to Kentucky building and housing industry regulation and will propose legislative solutions. No attempt will be made to analyze the merits of a particular code.

Definitions

Building, Housing and Fire Codes

A building code is a set of regulations designed to promote structural safety, fire safety, and healthy and sanitary conditions. It is directed at both new construction and the remodeling of existing structures.

A housing code is a set of regulations primarily used to maintain minimum standards of living in existing structures. For example, housing codes generally require such things as screens on windows and proper heating and plumbing facilities.

A fire code is a set of regulations designed to promote fire safety. There are often overlapping requirements between a fire code and a building code.

Performance Codes and Specification Codes

A performance code establishes minimum standards but allows the use of whatever materials and methods are necessary to achieve established objectives.

A specification code requires particular materials or methods of construction to be used in order to achieve established minimum standards.

In practice no code can be described as entirely either a performance or a specification code, although each code is usually oriented toward one approach or the other. The performance oriented code requires greater skill and expertise on the part of the enforcing agency because of the judgment involved in comparing various methods available to achieve established objectives.

Model Codes and Standards

A model code is a set of regulations or standards which can be adopted in whole or in part by any enforcing jurisdiction. These codes are developed by model code organizations composed of local building officials and other professionals with an interest in the building industry, such as architects, engineers and manufacturers.

A standard is a measure developed and promulgated by a nationally recognized organization for comparison of characteristics such as quality or strength. Examples of organizations which publish technical standards are the American National Standards Institute (ANSI), American Society for Testing and Material (ASTM), the National Fire Protection Association (NFPA) and Underwriters Laboratory (UL).

Conceptual Problem

There is a lack of clear distinction between a fire code and a building code. According to Richard Sanderson, a building code primarily applies when a building is under construction, and a fire code primarily applies after it is occupied. (Sanderson, p. 60) But, in practice, it is impossible to make a complete distinction. The reason is that fire prevention rules are difficult to enforce on a building originally constructed with little consideration for fire safety. The enforcement of the two types of codes must be closely coordinated.

Kentucky statutes do not recognize this distinction at all. KRS Chapter 227, from which the authority for the state fire marshal's office is derived, is a law directed at preventing fire and related hazards. The building code enforcement function, particularly in regard to structural safety, has thus evolved from the fire prevention function established by KRS Chapter 227. Historically, the fire marshal's office has filled a void caused by the lack of a distinct building code enforcement agency and has become the chief building standards enforcement agency in the state.

Fire prevention is a goal commonly accepted by the general public. However, disagreements repeatedly arise over the costs and benefits of particular safety features. As a rule, fire prevention is not the primary concern of a person who is preparing to construct a building. The owner or builder is usually more concerned about cost and about the features which affect the use he plans to make of a new building. Fire prevention is a very important consideration to the enforcing public agency, but the agency also must give some weight to other important public goals such as general structural safety, needs of the handicapped, energy conservation, and the cost of safety features in relation to overall cost and use of the building. These public goals are not always mutually compatible. For example, a wall constructed of wood is a better insulator, but is less fire safe than an equally thick masonry wall. A further example is that handicapped regulations generally strive for a barrier-free environment, but fire regulations generally strive to control spread of fire and smoke by establishing separations between wings and other building spaces. Such fire separation often requires heavy glass and steel doors, which could restrict the exit of handicapped persons.

The extent to which fire prevention should prevail over all other considerations is a judgment the enforcing agency must make. Some of the dissatisfaction with the fire marshal's office mentioned later in this report is apparently due to the judgment of some builders, contractors, architects, and engineers that cost considerations and other public concerns mentioned above are not given sufficient weight in the fire marshal's decisions. There must be a point of diminishing returns for some fire safety features, but where that point is has become a difficult matter requiring expert technical judgment and is not generally agreed upon. Generally, both state and local fire marshals lean toward greater safety and the builders lean toward lesser costs.

The National Perspective

The problems which Kentucky encounters in this matter are not unique, but the literature on the subject is scarce and out of date. One of the best studies available, Building Codes: A Program for Intergovernmental Reform, was prepared by the advisory Commission on Intergovernmental Relations in 1966. The report remains valuable because the problems it describes still exist, although Kentucky has made some improvements in its system since the study was published.

The report of the Advisory Commission on Intergovernmental Relations is primarily concerned with the fact that a variety of codes inhibited the development of a broad based building industry. The report also cited some common obstacles to code uniformity: the tendency of local officials to be cautious in adopting changes suggested by model codes, the tendency of local governments to protect specialized interests, and the lack of professionalism existing among code enforcement personnel. (Advisory Committee on Intergovernmental Relations, 1966, p. 8)

The report also points out that coordination is a problem where inspections are performed by different departments charged with enforcing the several codes, such as housing, fire zoning and building departments. This coordination problem is a major imperfection of the Kentucky system for enforcing building codes.

There are four major model codes in the United States. Three were developed by participatory model code organizations which have clearly defined procedures by which members can participate in the adoption of code requirements. The Code of Building Officials and Code Administrators International (BOCA), based in Chicago, has been adopted statewide in seven midwestern and eastern states. The Uniform Code published by International Conference of Building Officials, headquartered in Whittier, California, has been adopted statewide in seven western and midwestern states. The Uniform Code has been adopted in the past few years in the neighboring state of Indiana and is currently under consideration for adoption in Ohio. The Standard Code, published by the Southern Standard Building Code Congress, has been adopted statewide in only one southern state, Georgia, but it has been adopted by many localities throughout the South and Midwest.

The National Building Code, published by American Insurance Association, has been adopted statewide in only Vermont and Kentucky; but it, too, has been adopted by many localities throughout the country. The National Code, which was the first code published in the United States, is not a participatory code. The American Insurance Association does solicit the opinion of experts, but the process by which the final code is written is vague. (See letters from G. M. Watson - Appendix E)

Issues

1. Uniform Code for Kentucky or Multiple Codes. The diverse code situation in Kentucky is described in Chapter IV of this report. The chief complaints of individuals subject to regulation relate to the diversity of the codes with which they have to comply. There is also confusion about which regulations are applicable in particular jurisdictions. Many groups and indi-

viduals favor a uniform code as a way to reduce such confusion. Interested parties, such as builders, contractors, architects and engineers, who were interviewed during the preparation of this report stated almost unanimously that there is a need for a uniform state code. The disagreement arises over which model code should be chosen.

2. One Agency or Multiple Agencies. Builders are required to submit plans to two or more state agencies on many types of buildings as well as to two or more local agencies. Legislation introduced in the 1976 General Assembly proposed a unified state building agency as a means to streamline the review process.

3. Local Agencies or State Agencies. The relationship between local enforcement agencies and state agencies is not specifically established by statute. In practice the working relationships among fire departments, local building inspectors and the state fire marshal is informally established.

4. National Code or Other Codes. Controversy on this issue has been alive for more than two years. Criticisms have been made against the National Code that it is inflexible, infrequently updated, does not allow for participation in revisions, and is more property oriented than life safety oriented. The 1976 version of the National Code which is now in effect in Kentucky has not been in effect long enough to determine how much criticism it will receive. Most of the criticism stems from the 1967 code, which previously has been updated an average of once in nine years, whereas the other codes have been updated annually.

No literature from any objective source analyzes the relative strengths and weaknesses of the various codes. To perform such an analysis would require a highly skilled technically trained staff. The only aspects of this continuing controversy toward which this study addresses itself are the structure of the model code organizations and the method by which their codes are amended.

5. Quality of Enforcement. Some builders and property owners feel that building code enforcement is uneven and sometimes arbitrary, especially in medium-sized and small towns. Some builders and property owners allege that there seems to be less strict enforcement of codes statewide on those types of buildings which are not reviewed by the state fire marshal's office. In addition, the expertise of local building inspectors varies greatly.

Committee Perspectives

The issues outlined above have been vigorously debated in Kentucky during at least the last two years. Evidence of this debate is found in the proceedings of the Housing Subcommittee of the Interim Committee on Cities and in the Governor's Advisory Committee on the Standards of Safety.

During the 1974-75 interim, the Committee on Cities, through its Housing Subcommittee, did considerable work on the problem of regulating the building industry. The subcommittee held 11 meetings during that period. A portion or all of seven of these meetings was devoted to some aspect of the enforcement of building codes.

The bulk of the committee's time was spent considering appropriate legislation. The committee prefiled BR 85, later introduced as HB 30, which proposed the creation of a Department of Buildings, Housing and Construction and mandated a uniform statewide building code. The bill did not pass but did generate considerable interest and eventually resulted in this Legislative Research Commission study.

Concurrently, Governor Wendell Ford created in December, 1974, by executive order the Advisory Committee on the Standards of Safety. In that executive order the structure and duties of the committee were specified, but the members were not named until August, 1975, when Governor Julian Carroll made the appointments. The nine member committee represented homebuilders, general contractors, architects, code administrators, Kentucky Municipal League, Insurance Services Office of Kentucky, engineers, General Assembly, and the State Fire Marshal.

The Advisory Committee has held six meetings since August, 1975. At the conclusion of this series of meetings, it recommended that the state adopt the BOCA code. Subsequently, the Commissioner of Insurance decided not to accept their recommendation and filed with the Administrative Regulations Review Subcommittee a regulation to require use of the 1976 edition of the National Building Code. The proposed regulations were given final approval for filing by the Administrative Regulations Subcommittee on April 6, 1977.

A meeting-by-meeting summary of the activities and proceedings of both the Housing Subcommittee and Advisory Committee are included in the appendix.

II. PRESENT KENTUCKY STATUTES

The principal regulatory laws affecting the building industry are found in KRS Chapter 227, entitled Fire Prevention and Protection. Statutory provisions in other chapters which affect segments of the building industry include elevator inspection, Chapter 336, Department of Labor; plumbing, Chapter 318, plumbers and plumbing; boiler safety, Chapter 236, boiler safety; fiscal court laws, KRS 67.390 to 67.420; duties of fire chiefs in 2nd class cities, KRS 95.500; and cities, KRS 82.080 and 84.240.

Fire Prevention and Protection

The key provisions of KRS Chapter 227 include the following:

1. The commissioner of insurance enforces all laws pertaining to the reduction of fire losses. As part of his duties, he enforces regulations pertaining to "the design, construction, and maintenance of property which has a direct bearing on safety of life and property." (KRS 227.220) He also regulates explosives, hazardous materials, and the installation of fire protection systems.

2. The commissioner may investigate, conduct inspections, make rules, provide technical advice, assist public institutions, conduct educational campaigns, hold hearings, and generally exercise the powers of an enforcement agency.

3. Any of the duties of the commissioner may be delegated, and in practice most of the fire prevention related duties are delegated to the fire marshal's office.

4. The Department of Insurance has jurisdiction over all property in the state in the enforcement of fire safety law.

5. The commissioner has formal legal power to conduct public hearings and subpoena witnesses. The public hearings may be held for any purpose authorized under the statute.

6. Arson investigation duties are still included in KRS Chapter 227, but this function has been transferred to the Bureau of State Police.

7. KRS 227.300 requires the commissioner to promulgate "reasonable rules and regulations based upon good engineering practice and principles as embodied in recognized standards of fire prevention and protection," or "standards of safety." The authority to publish a building code is derived from this provision. For many years the fire marshal published the handbook, Kentucky Standards of Safety. More recently, the regulations, are published in the Administrative Register. These regulations currently adopt by reference the National Building Code and other nationally published standards.

8. The authority of local fire departments to inspect property and remove fire hazards is specified.

9. Other items not directly related to fire prevention placed in the fire marshal's jurisdiction by this chapter are unvented gas heaters, facilities for physically handicapped, mobile homes and recreational vehicles, and boiler safety.

Unvented Gas Heaters

Unvented gas heaters must be installed in accordance with the provisions of the standards of safety established by the commissioner pursuant to KRS 227.300. First and second class cities may prohibit use of such heaters.

Facilities for Physically Handicapped

The state fire marshal is required by KRS 227.305 to issue regulations relating to the minimum requirements for facilities for physically handicapped persons in public buildings. This law was passed in 1974.

Mobile Homes and Recreational Vehicles

As the mobile home and recreational vehicles law (KRS 227.550) was originally passed in 1974, enforcement was under the supervision of one board, the Mobile Home Certification and Licensure Board. Two years later the board was divided into two separate boards, the Mobile Home Certification and Licensure Board and the Recreational Vehicle Certification and Licensure Board. Currently, both boards operate under similar statutory provisions; and staff assistance is provided by the state fire marshal's office. The compositions of the boards are as follows:

Mobile Home Board	Recreational Vehicle Board
State Fire Marshal (Chairman)	State Fire Marshal (Chairman)
Secretary of Transportation*	Secretary of Transportation*
Commissioner, Bureau for Health Services*	Commissioner, Bureau for Health Services*
Mobile Home Dealer	Recreational Vehicle Dealer
Mobile Home Dealer	Recreational Vehicle Dealer
Mobile Home Dealer	Manufacturer of Recreational Vehicles
3 citizens with no interest in business	3 citizens with no interest in business

* or designee

Two basic types of approval are required for both mobile homes and recreational vehicles before they can be sold in the state; the manufacturers must have a certificate of acceptability, and the individual home must have a seal of approval. Mobile home or recreational vehicle dealers are required to be licensed under this act, and the statute specifies grounds for denial of a license.

Boiler Safety

The boiler safety laws are codified in KRS Chapter 236 and administered by the state fire marshal's office. The law creates a seven member Board of Boiler Rules, composed as follows:

Commissioner of Insurance (Chairman)
Practical steam operating engineer
Boiler manufacturers' representative
Boiler insurance company representative
Boiler makers' representative
Welder or metallurgist
Welder union representative

The primary duty of the board is to advise the commissioner on standards for boilers. However, since there are frequent references in the statute to the American Society of Mechanical Engineers boiler piping code, it is unclear how much discretion the board actually has. No other duties for the board are listed.

The Department of Insurance appoints boiler inspectors who must have five years experience and take a written examination. Insurance companies may appoint special boiler inspectors commissioned by the state under the same standards for state hired inspectors. Inspections are acceptable if performed either by a state inspector or by a private inspector commissioned by the state. Private company inspectors must file their reports with the state.

Authority of Local Fire Departments

KRS Chapter 227 also contains some provisions regarding local fire departments. Fires of suspicious origin must be reported to the Department of Insurance by local deputy fire marshals, despite the fact that the department is no longer responsible for arson. Apparently, this is a statutory inconsistency which developed when the responsibility for arson was transferred.

Local fire departments are authorized to inspect any property in the state to determine the cause of fire or to take steps to prevent fire loss. Likewise, in an apparent redundancy, KRS 95.500 provides that a fire chief in second class cities or urban county governments may enter for the purpose of examination any building that, in his opinion, is in danger from fire. However, occupied, private dwellings may be inspected only after a fire has occurred or when there is suspicion of unsafe conditions. Local fire chiefs may order a fire hazard removed and may even have property repaired and charge the owner.

Regulation of Electricians

The laws concerning the regulation of electricians, KRS 227.450 - 227.492, are included in the KRS Chapter 227, but are under the administrative authority of the Public Service Commission.

Cities and Counties

KRS 67.380 and the sections following, some of which appear to be redundant, give the counties the authority to adopt and enforce regulations governing the construction and remodeling of buildings. A county attorney may institute civil action against any person who refuses to comply with any county order.

KRS 82.080 gives all cities the power and authority to adopt building, plumbing, electrical and other codes by reference. In addition, KRS 84.240 requires all second class cities to provide for safe construction and repair and to make inspections of all buildings.

None of these statutes describing local powers make any reference to coordinating with Chapter 227. Likewise, Chapter 227 does not make any reference to the duties of local jurisdictions. This lack of statutory integration appears to be a major reason for the lack of formal links between state and local agencies.

III. HISTORY OF FIRE MARSHAL'S OFFICE

The duties and administrative structure of the fire marshal's office have evolved from laws passed more than 70 years ago. The state fire marshal's office was first established by the legislature in 1906. (Kentucky Acts, Chapter 95, p. 377) At the time the fire marshal's office was placed under the commissioner of insurance and charged only with the duty to investigate the cause, origin, and circumstances of fires. Although subsequently the duties of the office were expanded, today the phrase, cause, origin, and circumstances, remains an integral part of the law.

The commissioner was given quasi-judicial power to hold examining court in connection with investigative duties. Additionally, the fire marshal's salary was set at $2400 a year, and expenses of the office were to be defrayed by the fire insurance companies doing business in the state.

In 1920 two noteworthy developments occurred. First, the concept of preventive activities on the part of the fire marshal was introduced. He was now charged with enforcing laws related to the prevention of fires, the manufacture and use of combustibles and explosives, and the installation of fire alarm systems. Second, he was given power to make inspections, write regulations, promote fire prevention education in schools, and to require fire drills in schools at least once a month. The office of the fire marshal was transferred to the Auditor of Public Accounts in the same year. It remained under the jurisdiction of the auditor for 14 years, until it was returned to the Department of Insurance in 1934.

The basic law which currently governs the state fire marshal's office was enacted in 1954. Some additions and minor modifications have been made, but fundamentally the law has not changed since 1954. Some key provisions of the 1954 act include the following:

1. Commissioner was given a broad range of powers to take action to prevent fire loss.

2. The Department of Insurance was given jurisdiction over all property in the state.

3. Subpoena power was given to the commissioner of insurance and the fire marshal.

4. Responsibility for administrating arson investigation was given to the fire marshal.

5. The commissioner of insurance was given authority to promulgate reasonable rules and regulations known as standards of safety.

6. A formal hearing was required before any change order could be issued.

7. A chief of a local fire department was authorized to order a remedy in regard to any unsafe property. Such an order could be appealed within ten days to the commissioner of insurance.

8. Property owners were required to take reasonable and adequate precautions against fire loss.

All these basic provisions remain in effect. KRS 227.330, which requires that a formal hearing be held before a change order is issued, has never been strictly construed by the Department of Insurance.

In 1962 a boiler safety requirement and a Board of Boiler Rules were put under the fire marshal's jurisdiction. In 1966 changes in two sections of KRS Chapter 227 strengthened the role of the state generally, and that of the fire marshal particularly. In KRS 227.230, which gives the commissioner authority to appoint fire marshals and deputies, the following sentence was added: "Other deputy fire marshals may be appointed from the members of the fire departments as the state fire marshal deems necessary." Previously only the commissioner had this statutory authority. This provision adds to the lack of clarity of the role of the local fire marshal in relation to the state. KRS 227.320 was also amended in 1966 to make it clear that localities must follow the standards of safety established by the commissioner of insurance as a minimum requirement. In 1966 the following sentence was removed from the statute: "KRS 227.200 to 227.400 shall not deprive the authorities of any county, city or other political subdivision of any power or jurisdiction over any property." The effect of this change apparently was to deprive localities of discretion in setting minimum standards.

In 1968 prohibitions on unvented gas heaters were passed, and enforcement was placed in the fire marshal's office.

The state fire marshal's arson investigative power was generally implied in the 1954 Act. In 1972 the law was made more specific and clear authority was established regarding an arson investigation unit. However, the reorganization act of 1974 transferred the arson unit to the Bureau of State Police, where it is currently administered.

In 1974 regulations governing facilities for handicapped persons were required to be incorporated in the standards of safety established by the commissioner pursuant to KRS 227.300. In that same year mobile home and recreational vehicle regulations were placed under the jurisdiction of the fire marshal's office.

In 1976 KRS 223.300 was amended to require the commissioner of insurance to allow day care center owners to participate in the drafting of the standards of safety as they apply to their facilities.

Budget History

As was mentioned above, insurance companies were assessed the cost of the office operations in the early days. From 1906 to 1951 the records in the executive budget are not detailed enough to isolate the amount spent on fire prevention. It is likely, however, that for most of those years the necessary budget was derived from these assessments on insurance companies. The governor's executive budget of 1954-56 shows an actual expenditure of $259,421 in FY 1951-52 and $264,218 in FY 1952-53 for the Fire Prevention and Rates Division.

In the 1954-1956 executive budget, $281,800 per year for each fiscal year of the biennium was appropriated. Since only a small percentage of the funds of the Department of Insurance came from the general fund at that time, it does appear that at least until the mid-1950s the fire prevention function was subsidized by insurance companies.

A chart showing the fire marshal's budget for the past six years is included in Table 1. The chart shows a rather dramatic increase for the funding for regulation of safety standards from FY 1973-1974 to FY 1974-1975. This can be partially explained by the addition of mobile homes and handicapped regulations to the duties of the office, but it also probably signifies an administration policy of greater support for the office. Statistics from the chart also indicate that state aid to fire departments and rescue squads has been increasing in recent years.

If the administration and support budget is allocated in the same proportion as are operating funds, 72% of the budget of the Department of Insurance for FY 1977-1978 is allocated to the fire marshal's office. Slightly over 10% of the department's budget is from agency receipts; little of these receipts come from the fire marshal's office, since the office does not charge for its services.

Furthermore, the fire marshal's office has a larger budget than any of the dozen agencies in the Public Protection Cabinet except the Department of Labor. In addition, its current budget, $2,692,700, is larger than the budget of the governor's office, lieutenant governor's office, secretary of state and the auditor combined. (Executive Budget, 1976-1978, p. XVII)

Employee Trends

An increase in employees has corresponded with the increase in budget. In July, 1972, the state fire marshal's office employed 34 persons. Currently, the office employs 106 people. The greatest increase occurred in 1974, when more emphasis was placed on enforcement and the number of employees more than doubled.

In a civil service system, the number of non-merit positions is one indicator of the number of policy-making positions. In the fire marshal's component of the insurance department, all but the fire marshal himself are covered by the merit system. The insurance component includes about 67 people, 11 of whom are in non-merit positions. This startling difference may possibly be justified by the different functions of the office.

Although the fire marshal's office is a component in a department with only division status, it has more employees than all the independent agencies in the public protection cabinet except the Department of Labor. This includes such agencies as Mines and Minerals, the Public Service Commission, Banking and Securities, and Alcoholic Beverage Control. The fire marshal's office also has more employees than 26 of the approximately 46 independent agencies in the executive branch.

Table 1

FIRE MARSHALL'S SIX YEAR BUDGET HISTORY

	72-73*	73-74*	74-75	75-76	76-77	77-78
Regulation of Safety Standards	$481,160	$505,760	$1,122,700	$1,178,300	$1,556,800	$1,649,900
Fire Department Aid	300,000	300,000	355,000	355,000	565,000	565,000
Rescue Squad Aid			50,000	100,000	150,000	200,000
Administration and Support	12,885	12,948	246,992	263,462	315,359	321,484
Total	$794,045	$818,708	$1,774,692	$1,896,762	$2,587,159	$2,736,384
Total for Insurance			2,825,200	2,987,900	3,626,400	3,822,400
Fire Marshall as % of Total Department			62.8	63.5	71.3	71.6
Estimated Agency Receipts			$ 255,000	$ 255,000	$ 393,000	$ 393,000

* Public Safety

Source: Executive Budget, Governor's Recommendation, 1972-1978.

IV. PRESENT REGULATORY SYSTEM

State

The present regulatory system is so complex that is extremely difficult to identify the various regulations to which a designer must conform, the inspections the building must pass, and the agencies which must review the building design prior to construction. There is so much variation from project to project and from community to community that there is no typical Kentucky situation. For example, at least two architects from different areas of the state reported that each time they have a set of plans ready they phone their most knowledgeable contact in the local agencies in order to ascertain which agencies need to review the particular set of plans and how many copies must go to each agency. Both architects reported that the list varies so much among different types of projects that they could not list the agencies from whom they must seek approval. The table below lists those state agencies which typically approve new construction plans.

TABLE 2

State Construction Approval Agencies

Agency	Type of Approval
State Fire Marshal Department of Insurance	All new construction Combustibles and explosives Boilers
Division of Plumbing, Department of Natural Resources	All plumbing, septic tanks
Division of Labor Standards, Department of Labor	Elevator construction
Bureau for Health Services, Department for Human Resources	Swimming pools Food service facilities Hospitals Frozen food lockers
Bureau of Administration and Finance, Department of Education	Schools
Executive Department for Finance and Administration	All state buildings

Source: Kentucky statutes and administrative regulations.

The procedure in the state fire marshal's office is that before the designer draws the plans, he makes an informal preliminary contact with the office to ascertain the general requirements for the type of building he is planning. The designer then completes the plans and submits them for approval. Construction may begin after he receives initial approval. During

construction, the office conducts two or three intermediate inspections, sometimes more, depending upon the type of building and other factors, such as public purpose and location. The office makes a final inspection and grants a certificate of occupancy when the project is complete.

The designer must submit additional plans for approval to the Division of Plumbing and to any other state agency from which approval is needed. The approvals from these agencies are entirely separate and are subject to the regulations and procedures of each agency.

Local

The procedure in local communities can vary either in the code or the enforcement structure and sometimes varies in both. Every location in Kentucky must conform to the National Code, so it remains the minimum standard. However, a number of cities have adopted a building code other than the National Code; and theoretically that code prevails in those instances where it is more stringent than the National Code. Louisville, Jefferson County, Lexington, Fayette County, and Nicholasville have adopted the BOCA code. Stringency is a matter of judgment and in a dispute conflict between code provisions, the judgment of the fire marshal prevails because KRS 227.270 gives him authority over all property in the state. The matter is further complicated by the fact that by tradition the fire marshal has delegated enforcement responsibilities in Louisville and Lexington to the building inspectors of those two cities. Despite the delegation of power, the fire marshal's office frequently intervenes in projects in those cities.

Seventeen Kentucky cities have adopted the Southern Standard Building Code. They are Calvert City, Dayton, Frankfort, Fulton, Jamestown, Liberty, Middlesboro, Mount Vernon, Owensboro, Pineville, Radcliff, Richmond, Russell Springs, Whitesburg, Wiliamsburg, Williamstown, and Winchester. Some of the cities are active members of the Southern Building Code Congress and some are not. The above list shows that there is no geographic concentration of the Southern users. As far as can be determined, there are no users of the Uniform Code in Kentucky. The remainder of the cities which have adopted building codes have adopted the National Building Code.

Approval for building plans from several local agencies is often required. The number varies from city to city; smaller cities usually require fewer approvals. Some of those agencies which frequently issue approval are the traffic engineer, water management, works department or engineering, fire chief or fire marshal, building inspector, health department, and the zoning inspector. Louisville requires approval from six agencies, Lexington requires four.

The state laws creating the offices of local building inspectors are not integrated with KRS Chapter 227. Thus, local code enforcement is subject to, and superseded by, the state law which gives the fire marshal authority over all property in the state. Inspectors of the fire marshal's office usually coordinate inspections with the local fire inspector rather than with the building inspector. Local building inspectors are sometimes notified in writing of actions of the fire marshal.

Building code enforcement varies greatly among cities in the state, but enforcement is many times weak and sometimes ineffective. The state does not regularly sponsor programs to train local building inspectors. The Department of Local Government is currently exploring ways to develop training programs to train building inspectors.

V. ATTITUDES OF INTERESTED GROUPS

The system for regulation of the Kentucky building industry as it now operates presents some problems. The fire marshal has stated that those regulated are dissatisfied because he does not compromise his standards. Those regulated state that they do not object to conforming to standards but they have difficulty interpreting the present code and in knowing what is required. They allege that the code is in some instances enforced in an uneven manner. Representatives of regulated groups have been interviewed; the interviews are summarized below.

Builders and Contractors

The builders, under the leadership of the Homebuilders Association of Kentucky, have for years been opposed to the National Building Code. Their reasons for opposition, which have been articulated in numerous policy statements, are summarized as follows:

1. National is a specification code.

2. National is not updated regularly.

3. National does not allow input from builders in code changes.

4. National offers no training programs and no interpretation service.

5. National is an arm of the insurance industry.

One additional requirement to which many builders object is the fire marshal's interpretation of the National Code requiring automatic sprinkler systems in most two and one-half story apartment buildings. The definition of basement is important in that particular interpretation because it is the basis for determining when a basement is considered a full story. This problem was remedied in April, 1977, when the fire marshal, appearing before the Administrative Regulations Subcommittee, amended his definition of basement to one which is more generally accepted by other code enforcement agencies.

Those building and contracting firms large enough to work in more than one community generally would prefer a statewide uniform code. Many would also prefer a centralized state building enforcement agency from which they could seek approval for building plans or construction.

Builders also sometimes object to what they think are unreasonable and costly requirements. One builder, for example, cited the case of a 10,000 square foot warehouse which had a total cost of $53,000, of which $10,000 was for an automatic sprinkler system.

Another commonly voiced objection is that even though plans have been approved, when on-site inspections are made during the construction stage, the inspectors request changes in items that are indicated on the original plans. Changes made at this later stage are more costly. The fire marshal, on the other hand, has stated that departure from the originally approved plans does not happen to any substantial degree.

Architects

Architects' concerns are similar to those of builders. As a design profession, architects are even more concerned about the lack of uniformity in codes. Though there are some exceptions, the great majority would prefer one of the participatory performance codes to the National Building Code. However, most expressed the need for a uniform code as greater than the need for a particular code. A commonly heard complaint is that there is presently uneven enforcement. Architects were generally not as concerned about cost as builders and contractors, but some did question the need for some of the safety features required. They also stated that sometimes changes are required in approved plans after construction has begun. Architects also pointed out that no member of their profession is presently employed in the state fire marshal's office.

Engineers

The branch of the engineering profession which most frequently has to deal with building codes is composed of mechanical engineers who design heating and air conditioning systems. Their concerns are similar to those of the architects. A representative of their professional organization expressed concern about the lack of professional engineers on the fire marshal' staff. The fire marshal, however, commented that the recently deceased assistant state marshal was a registered professional engineer. He also stated that he plans to hire three more professional engineers.

Firefighters

Men who fight fires have a commitment to fire prevention. (Wilson, p. 55) The concern expressed by all firemen is that the code not be made less safe. Almost all firefighters interviewed stated that the National Code is a safer, more stringent code. However, most stated that they are not familiar with BOCA or any of the other model codes besides the National Code. The Life Safety Code, which is one volume of thirteen volumes published by National Fire Protection Association, is the code which local firemen and fire marshals are most frequently involved in enforcing. The American Insurance Association attempts to make the National Code consistent with the Life Safety Code. This is one reason it is preferred by the firemen. However, the requirements of the two codes are not always totally consistent.

The more than 13,000 firemen in Kentucky vigorously opposed HB 30 during the 76 General Assembly and state they will oppose any form of it which may be introduced in the next session. Among other things, HB 30 would have required a uniform state code and would have reorganized the state fire marshal's office. Since most firemen believe that the fire marshal's office is doing a competent job, they are generally wary of any reorganization of his office. A few firefighters stated they are suspicious of the BOCA code because it is supported by builders.

Many firemen object to the fact that there was no representative of the fire service on the Governor's Advisory Committee on the Standards of Safety. The fire marshal informed the Administrative Regulations Subcommittee at its April 1977 meeting, at which the current regulations were approved, that he

would request the governor to appoint representatives of the fire service and other underrepresented groups to the committee.

One local fire marshal who was interviewed stated that safe, strong buildings are the most economical in the long run. He noted that well constructed buildings provide more stability for a neighborhood.

State Fire Marshal

On two occasions during the preparation of this report the state fire marshal was interviewed in depth. His office and the commissioner of insurance were repeatedly requested both orally and in writing to comment on earlier drafts of this report. Fire Marshal Southworth has commented orally but as of the time of publication no written comments have been received. A copy of the letter requesting his comments is included as Appendix H.

VI. LAWS AND TRENDS IN THE STATES

The trend in the states toward uniform statewide codes is comparatively recent. Of the approximately 26 states which have statewide building codes, 16 have adopted a statewide code since 1970. (National Bureau of Standards' figures) However, a few states such as Wisconsin and Ohio have their own codes dating to the early 1900s.

The state and national studies which have examined the building code issue have all produced similar findings. The Advisory Commission on Intergovernmental Relations report of 1966 recommended as follows that the states assume a stronger role in the enforcement of building codes:

> The Commission recommends that the States enact legislation authorizing and directing a State agency to prepare and promulgate a comprehensive model building code with a products approval procedure for permissive adoption by local political subdivisions. The State enabling legislation should specify that local jurisdiction may not alter the model code except on specific approval of the State agency and should establish an appellate body to hear appeals from decisions of adopting local jurisdictions on the application of the code. To the extent possible State model codes should adhere to nationally recognized models. The Commission urges the adoption of such a State model code by local governments.
>
> . . . . To encourage uniformity in building codes, the Commission further recommends that States consider legislation establishing a uniform policy of conditioning loans and grants to local governments upon conformance of aided projects to the State model code. (Advisory Commission on Intergovernmental Relations, 1966, p. 94)

The Commission, in commenting on this recommendation, noted that the traditional authority of municipalities over the enforcement of building regulations would not be disturbed. However, such a state code would make available to local government state resources for developing performance-type code provisions.

Findings of Selected State Studies

Wisconsin

In 1970 a Wisconsin Task Force on Building Codes issued the following recommendations:

1. Adopt a statewide building code for one and two family dwellings;

2. Provide for a state level product acceptance and product approval procedure;

3. Provide for a state-level updating system for building regulations;

4. Establish a uniform appeals procedure for variances and clarifications;

5. Provide for the administration of all state regulations concerning building construction by one agency; and

6. Establish a state certification and training program for personnel administering and enforcing building regulations at the local level. (Robbins, p. 1)

Rhode Island

Similarly, a 1971 Rhode Island Legislative Study Commission issued a report containing the following legislative recommendations:

1. Mandate a statewide performance type code to be enforced locally;

2. Adopt a code based on a national model code;

3. Provide for the licensing and training of building inspectors;

4. Establish for inter-local agreements for building inspection services; and

5. Establish for municipalities to appeal for exceptions to the state code. (Report, Rhode Island, p. 5)

Kansas

In January, 1976, a Kansas Advisory Committee on Statewide Building Codes recommended that the legislature adopt a statewide building code. In support of that recommendation, the committee submitted the following list of findings:

1. Conflicting requirements within and among local, state and federal jurisdictions foster overlaps, shortcomings and conflicts which add unnecessary costs to construction.

2. Builders, architects, engineers, developers, owners and lenders are faced with a baffling array of local barriers.

3. Procedures for the administration, enforcement, hearings and appeals differ throughout the state.

4. State agencies have expanded the scope and intensity of direct controls and often regulate many of the same things which are regulated locally but with varying requirements and administrative procedures; for example, regulations for hotels, hospitals, nursing and convalescent homes, school, mobile home and apartments. (Advisory Committee, p. 2.)

Tennessee

The findings and recommendations of a 1977 Tennessee study on building codes which was released just prior to the preparation of the final draft of this report are striking in their applicability to the Kentucky situation. Tennessee is similar to Kentucky in that the state fire marshal has a major role in code enforcement, but is dissimilar in that he apparently does not have the statutory preeminence of Kentucky's fire marshal. The Tennessee report recommends the adoption the Standard Code for the entire state and makes a number of recommendations designed to reduce inconsistencies and overlapping. Because of their value for comparison to the Kentucky situation. The 21 recommendations of that report are reprinted in the appendix of this report. For the same reason the recommendations of the Tennessee Building Industry are included.

Summary

The foregoing recommendations and findings of various states demonstrate the similarity of problems between the states. Portions of the findings and recommendations of Wisconsin, Rhode Island, Kansas, Tennessee and the National Advisory Commission could find ready application in Kentucky. Though the legislative studies of other uniform code states were not available, the actions of other legislatures to adopt statewide codes indicates that they, too, are arriving at findings similar to those proposed in the studies summarized above. The trend in these states is some indication that studies from diverse sources have arrived at similar results and that Kentucky would not be the first to adopt a statewide code.

Comparison of State and Model Laws

Virginia

In Virginia the statewide code is administered and promulgated by the state Board of Housing. This board has nine members appointed by the governor and confirmed by the General Assembly.

In adopting its code, the Virginia Board of Housing is required to have due regard for "generally accepted standards as recommended by nationally recognized organization." (Code of Virginia, 36-99) Where practical, the code must be written in performance terms. A public hearing is required before any code changes are adopted.

Enforcement of the code is the responsibility of the local building departments. Whenever there is no local building department, the local governing body is permitted to enter into an agreement with another county or municipality or a state agency approved by the State Board. where the construction cost of a project is less than $1,000, the inspection may be waived at the discretion of the inspecting authority.

The State Technical Review Board, which is separate from the Board of Housing, is the key element in the enforcement system of Virginia. This board has three basic responsibilities: it interprets the code, hears all appeals, and makes recommendations for changes in the code. This seven-member board

appointed by the governor includes an architect, engineer, residential builder, general contractor, building code official, local official, and citizen at large. Legislation is now being introduced to add a member of the fire service to this board. The board elects its own chairman, and members receive $35 a day when performing official duties. The board may employ subpoena powers if necessary. (Teague, p. 69).

New Jersey

Under New Jersey law, the Commissioner of Community Affairs adopts and promulgates a uniform construction code after consultation with the Code Advisory Board.

The Code Advisory Board consists of 13 members appointed by the commissioner of community affairs for staggered four-year terms. The representation includes an architect, a mechanical engineer, a structural engineer, a municipal building official, a member of the building industry, a public health official, a plumbing inspector, an electrical inspector, a fire prevention inspector, and four members of the general public, two of who must be experienced in representing consumers. An unusual feature of the New Jersey law is the concept of subcodes. The Uniform Code must be divided into subcodes, which may be adopted individually by the commissioner. The subcodes include a building code, a plumbing code, an electrical code, an energy code, a fire prevention code, a mobile home code, a mechanical code, and such other subcodes as necessary. In developing these subcodes, the Code Advisory Board appoints a committee for each subcode. Each such committee consists of one member of the Code Advisory Board, who serves as chairman, and four citizens who ar experienced and knowledgeable in matters related to the particular subcode. The subcode committees advise and assist the Code Advisory Board and serve at its pleasure.

The New Jersey law also provides for a construction board of appeals to be established in each county and those municipalities which desire one. Appeals may be made from these local boards to the state board.

The Commissioner of Community Affairs, after consultation with the Code Advisory Board, may designate for certain classes or types of occupancy the Department of community Affairs as the enforcing agency. This is similar to the present situation in Kentucky whereby certain classes of buildings are automatically reviewed by the state fire marshal's office.

New Jersey likewise authorizes the department to employ powers typical of any enforcement agency, such as the right of inspection, penalties, and hearing procedures.

As is apparent from a detailed summary of just two states -- Virginia and New Jersey -- there is a variety of possible ways of writing a statewide building code law. Since it would be impractical to further summarize the laws of the remaining 48 states, the Council of State Government Model Act and the common features of newly enacted state law are discussed in detail below to illustrate additional approaches to the statewide building code issue. Some notable features of the laws of selected states are also pointed out.

Council of State Governments Model Law

The Council of State Governments model law suggests a building code council composed of 12 persons appointed by the governor for four-year staggered terms. This council would be composed of a non-voting chief executive officer, a representative of the general public, an architect, a structural engineer, a mechanical engineer, an electrical engineer, a general contractor, a building trades member, a homebuilder, a local code enforcement official, a mobile home manufacturer, and a building manufacturer.

The council would adopt rules and regulations concerning the construction and inspection of all buildings. It would also make rules concerning permits, the occupancy of buildings, standards for materials, fees, classification of fire zones, and other matters. The council would be required to follow the standards of a nationally recognized organization and remain current with the state of the art. A code would be required to be written in performance terms to the extent possible.

The council also would be required to hold public hearings prior to the adoption of any code change, make a continued study of the operation of any code change, hear appeals, and decide upon the acceptability of new materials or techniques.

This model law also specifies conditions and terms under which a local government would appeal for an exemption from the state code. In general, exemptions would be permitted only when the local code was in substantial conformity with the state code.

Under the model law local agencies would be responsible for enforcement of the state code. If they choose not to enforce the code, then the state agency would be responsible. Two or more local governments would be permitted to establish a joint local enforcement agency. The local enforcement agency would make all inspections and issue certificates of occupancy. Local agencies would be required to establish local appeals boards. The state boards would not entertain any appeals unless they had first been heard by the local appeals board. Zoning, setbacks, site development, and property line requirements would be entirely reserved to local government agencies.

The state administrative agency would be permitted to conduct education programs on the technical, legal, and administrative aspects of building code administration and enforcement. It also would be permitted to reimburse local officials for travel expenses incurred by attending such training programs.

In general, the model law provisions are liberally formulated to make every concession to local government possible without sacrificing basic uniformity. The model laws already passed, such as those in New Jersey and Virginia, appear to allow less discretion to the local government units than the model law suggests.

Notable Features of Selected States

Minnesota code enforcement law is similar to the Council of State Governments model law. One notable feature of the Minnesota law is that local building officials are certified by the state personnel system.

In Georgia the State Building Administrative Board is allowed to appoint such advisory committees as it deems necessary and important.

In Connecticut there is a six member Board of Materials Review in addition to the nine-member State Building Code Standards Committee. Neither of these important committees is appointed by the Connecticut governor. The Standards Committee members are appointed by the public works commissioner and the state fire marshal; the Board of Materials Review members are appointed by the commissioner of public works.

In Maryland, the adoption of the model state code is entirely optional for a municipality, but the city cannot modify the code without approval from the state administering agency.

In Florida local governments are given the option of adopting a number of acceptable model codes. The Florida State Board is one of the largest -- fifteen members including one representative from roofing, sheet metal, and air conditioning contractors. Farm buildings and construction sheds are exempted from coverage.

In Wisconsin, the building code is administered by the Department of Industry, Labor and Human Relations, a large consolidated agency which regulates a variety of items. Matters under the department's jurisdiction include industrial safety, human rights, lunchrooms, and electric fences.

Common Features

There are some common features found in most uniform state building code laws. Though the names vary considerably, a state level code standards committee or review board is common. This group of experts is usually appointed by the governor and is usually composed of about a dozen members. Representation usually includes members from building professions and public officials concerned about the building industry. A comparison of the structure of state boards can be found in Table 3.

The duties of these state boards frequently include adoption, promulgation and interpretation of a state code. Sometimes the board is only advisory and the actual final adoption is by an agency head such as a commissioner. As a rule, the other duties of the board include hearing appeals, reviewing materials and techniques for acceptability, directing research, and maintaining uniformity.

Some degree of local enforcement remains in all of the laws. Like Kentucky at present, a few states require that the plans for certain types of buildings go directly to the state agency.

The usual powers of any regulatory agency including subpoena powers, power to impose penalties and fines and to hire personnel are commonly found in state building code laws.

Those states which do not require regular training of code enforcement personnel usually have a permissive clause which suggests that the state agency should encourage training of enforcement personnel. In addition, some states require state certification of code enforcement personnel.

TABLE 3

A COMPARISON OF REPRESENTATION ON STATE BUILDING CODE BOARDS

New Jersey	Virginia	Indiana	Georgia	Connecticut	Florida	Council of State Governments
			Commissioner			Chief Exec. Officer
(2) General Public (2) Consumer Rep.	Citizen at Large	Public at Large				General Public
Architect	Architect	(2) Architects	Architect	(2) Architects	Architect	Architect
Mechanical Eng. Structural Eng.	Engineer	(2) Engineers	Engineer	Mechanical Eng. Structural Eng. Electrical Eng.	Structural Eng.	Mechanical Eng. Structural Eng. Electrical Eng.
	Gen. Contractor	Bldg. Contractor	Contractor		Gen. Contractor	Gen. Contractor
Builder		Homebuilder	Homebuilder	Builder	Homebuilder	Homebuilder
		Labor Official				Building Trades
City Bldg. Official	Code Official	Local Code Official		Code Official	(3) City Code Officials	Local Code Official
	Local Official		City Govt.			
		Building Manufacturer	Mobile Home Industry			Mobile Home Manufacturer
Health Official		Health Commissioner	Human Resources Department	Health Official		
Fire Inspector	State Fire Marshall				Fire Protection Eng.	
			Electrical Contractor		Electrical Contractor	Miscellaneous
Plumbing Insp.		Labor Dept.	Community Affairs Dept.		State Official	Building Manufacturer
Electrical Insp.			County Govt.		County Codes Official	
			Savings and Loan League		Mechanical Contractor	
					Plumbing Contractor	
					Roofing, Sheet Metal and Air Conditioning Contractor	
					Handicapped Rep.	

VII. IMPROVING KENTUCKY'S APPROACH-LEGISLATIVE ALTERNATIVES

The outline of suggested legislation contained in this chapter is intended to serve as a discussion framework around which a legislative proposal can be constructed. It could be adapted by modifying or omitting various components. The basic approach builds on the present situation in Kentucky rather than establishes a totally new system.

1. Require a uniform code throughout the state. Local exemptions could be granted under specified conditions by a state code standards committee. This requirement would implement the Advisory Commission on Intergovernmental Relations recommendations and in addition the concept is widely supported by many parties interviewed. The purpose for allowing exemptions would not be to permit future diversity, but would be to allow for greater stringency in some communities with particular problems and to allow for modifications in response to special physiographic conditions. It is anticipated that such exemptions would be granted only in rare instances.

2. Create a code standards committee to choose, interpret, and modify the state code. The legislature might want to specify that the code be performance oriented. The difficult political issue would be in the choice of representation on this board, since many interested groups would seek representation.

3. Reorganize the fire marshal's office and consolidate all building code enforcement functions. Give the consolidated agency sufficient independence to perform its statutory duties and grant it organizational status consistent with other state agencies of similar size and budget.

4. Transfer the administration of the laws of plumbing, elevator inspections, electricians and electrical inspectors to the consolidated agency. This change would reduce some of the inconvenience which builders and developers must now bear in seeking approval for their plans. The plumbing division could be transferred intact with little disruption or changes in the law. Elevator inspection and electrical regulation could be much more effectively administered by an agency experienced in construction and fire prevention matters.

5. Delegate inspection and enforcement responsibilities to local building inspection departments to the greatest extent possible. There are good reasons to retain the traditional practice of the local enforcement of building codes. Local inspectors are aware of peculiar conditions and circumstances in their communities. They also know which builders are likely to cut corners. In addition, having local, rather than state, inspectors is more convenient for the builder and less costly to the state. Such a system would enable cities to continue present practice; that is, large cities provide complete inspection service and very small cities defer to the state. Even the small cities should retain responsibility for small and residential buildings. However, unlike present practice, all delegation of state code enforcement authority should be formulized.

6. Sponsor annual training programs for building inspectors and fire inspectors. Place special emphasis on proper coordination between inspectors, particularly where potential for conflict exists. The fire marshal's office sponsors an annual fire school, part of which concerns code enforcement; but this school is rarely attended by building inspectors. The quality of code enforcement is directly related to the quality of the enforcing officials. More training is absolutely essential if the state adopts a model performance code. This recommendation is consistent with a recommendation of the National Commission on Fire Prevention and Control. (National Commission, p. 82)

7. Grant permissive authority to municipalities and counties to establish local appeals board. The code standards committee would hear appeals from a local appeals board or would hear appeals directly in those jurisdictions where no board exists. The local appeals boards exist in most major municipalities now. The difference would be in the opportunity for appeal to a state board. Such a state board could assist in maintaining uniformity of interpretation between municipalities. In addition, it would offer a more effective avenue of appeal for builders and other who feel they are receiving arbitrary decisions from inspectors.

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APPENDIX A

IN HOUSE

REGULAR SESSION 1976

HOUSE RESOLUTION NO. 58

MONDAY, FEBRUARY 23, 1976

Representative C. M. "Hank" Hancock introduced the following resolution which was ordered to be printed.

A RESOLUTION directing a study by the Legislative Research Commission of regulation of the building and housing industry in Kentucky.

WHEREAS, efficient and effective regulation of the building and housing industry in Kentucky is of great importance to providing for consumer safety and comfort, insuring quality construction, conserving energy, holding building and housing costs to a minimum consistent with safety and durability of construction, and insuring adequate levels of building and housing construction;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky:

1 Section 1. That the Legislative Research Commission
2 is directed to conduct, during the 1976-1978 interim and
3 through the Interim Committee on Cities, a study of regu-
4 lation of the building and housing industry in Kentucky,
5 and to recommend legislation, as necessary, providing for
6 more efficient and effective regulation of said industry
7 for consideration by the 1978 regular session of the Gen-
8 eral Assembly.
9 Section 2. Staff services to be utilized in
10 completing this study are estimated to cost $8,000.

1 These staff services shall be provided from the regular
2 Commission budget and are subject to the limitations and
3 other research responsibilities of the Commission.

APPENDIX B

Excerpts from Kentucky Revised Statutes

67.380 to 67.420

82.080

84.240

227.210 to 227.400

67.380 Authority of fiscal court to regulate construction, etc., of buildings. The fiscal court of any county shall have authority, by order or resolution, to adopt, and modify or amend from time to time, and to enforce, regulations governing the construction, reconstruction, remodeling, repair and maintenance of buildings, other than buildings for agricultural purposes located upon premises that are used solely for agricultural purposes.

67.390 Authority of fiscal court of county containing first-class city to regulate erection, construction, reconstruction, relocation, remodeling, alteration, repair and maintenance of buildings. The fiscal court of any county containing containing a city of the first class may, by order or resolution, and after a public hearing advertised by publication pursuant to KRS chapter 424, adopt, and modify, or amend from time to time, and enforce as hereinafter provided, reasonable regulations governing the erection, construction, reconstruction, relocation, remodeling, alteration, repair and maintenance of buildings located, or to be located, within the unincorporated areas of such county, and also within the corporate limits of any city in such county not having such regulations; except that buildings for agricultural purposes located upon premises that are used solely for agricultural purposes are exempt from such regulations.

67.400 County may adopt standards in effect in first-class city. If any city of the first class has in force and effect an ordinance governing the erection, construction, reconstruction, relocation, remodeling, alteration, repair and maintenance of buildings in such city, the fiscal court of such county may, by order or resolution, and after a public hearing advertised by publication pursuant to KRS chapter 424, adopt the provisions of such ordinance, or so much thereof as the fiscal court deem necessary, for the area of the county outside the corporate limits of such city.

67.410 Building inspector in county having first or second-class city -- Compensation -- Office expenses -- Building permits -- Fees -- Appeals. (1) The fiscal court of any such county containing a city of the first or second class may appoint a qualified and competent person to administer such regulations. His official title shall be "Building Inspector of .... County, Kentucky." His salary shall be fixed by the fiscal court, and paid out of the county levy. He shall have such deputies and assistants as the fiscal court deems necessary, and their salaries shall likewise be fixed by the fiscal court and paid out of the county levy. The fiscal court shall also pay out of county funds the necessary expenses of his office. The fiscal court may contract with individuals or corporations for the performance of technical or scientific services required for the proper enforcement and administration of its building regulations.

(2) No person shall build, erect, construct, reconstruct, remodel, relocate, alter or repair any building within the county without first obtaining a building permit from the building inspector.

(3) The fiscal court shall establish a system of reasonable fees to be charged every applicant for such permit.

(4) Any person aggrieved by any ruling, order, or decision of such building inspector may appeal to the circuit court and to the Court of Appeals.

67.420 Civil action to enforce building standards. In case any building or structure is or is proposed to be erected, constructed, reconstructed, relocated, remodeled, altered, repaired, maintained or used in violation of any reasonable regulations adopted pursuant to this act, the county attorney of such county, or any property owner or occupant who would be damaged by such violation, may in addition to other remedies provided by law, institute injunction, mandamus, abatement, or other appropriate action to prevent, enjoin, abate or remove such unlawful erection, construction, reconstruction, relocation, remodeling, alteration, repair, maintenance, or use.

82.080 Adoption of codes and revisions of ordinances by reference. The legislative bodies of cities of all classes shall have power and authority to adopt traffic, building, plumbing, electrical and other codes by reference and also revisions and codifications of ordinances without the necessity of publication of same, provided that notice of the meeting at which same are adopted has been given by publication pursuant to KRS chapter 424, and further that the code has been approved at such meeting of said city legislative body and has been made a part of the public records of the city by resolution or ordinance.

84.240 Building and vehicle inspection -- Smoke abatement. (1) The city, through its officers and agents, may:

(a) Enter into and examine, at all reasonable times, within the city limits, any building, premises or vehicle to ascertain its condition as to healthfulness, cleanliness and safety;

(b) Take down and remove any building, wall or superstructure, that is or may become dangerous, or require the owner to remove or put it in a secure and safe condition at his own expense;

(c) Compel the consumption of smoke, and make such regulations as are necessary to prevent it from becoming deleterious and offensive to health.

(2) The city, through its officers and agents, shall provide for the safe construction, inspection and repair of all private and public buildings in the city.

227.210 Delegation of commissioner's powers and duties. Any power, duty or function vested in the commissioner, by any provision of KRS 227.200 to 227.400 may be exercised, discharged, or performed by any deputy or assistant of the department acting in the commissioner's name and by his delegated authority.

227.220 Duties of commissioner relating to fire loss. (1) The commissioner shall enforce or aid in the enforcement of all laws, regulations and ordinances of the state and its political subdivisions relating to fire loss as herein defined:

(a) The prevention or reduction of loss by fire or by other hazard or risk insured by property or casualty insurance companies doing business in this state, except as to disability insurance and workmen's compensation, and shall enforce any other regulations or methods adopted for the prevention of loss from such hazards or risks in order to promote the safety of persons or property;

(b) The manufacture, transportation, storage, sale or use of combustibles, explosives and hazardous materials or equipment;

(c) The design, construction, and maintenance of property which has a direct bearing on safety to life and property;

(d) The construction, installation, maintenance or equipment of fire alarm systems, fire protection and extinguishing equipment, and fire escapes and other means of access to or exit from property;

(e) Arson and related offenses.

(2) The commissioner is authorized to:

(a) Investigate the cause, origin, and circumstances of fires and explosions for the purpose of detecting and suppressing arson and related offenses, or for the purpose of minimizing or preventing fire loss;

(b) Supervise and make periodic inspections of all property within the state, and assist cities having fire departments in making like periodic inspections of all property in such cities, except occupied private dwellings;

(c) Make and enforce reasonable rules and orders for the prevention of fire loss, and for the adoption, approval, and installation of such safety equipment as will minimize fire loss;

(d) Provide technical and engineering advice and assistance to state and local governmental agencies in relation to fire prevention or fire protection;

(e) Direct and assist owners of educational institutions, places of public assembly, institutional buildings, public buildings, factories, business buildings, or other places where persons congregate, in the instruction of fire prevention, and the holding of fire drills;

(f) Conduct fire prevention and educational campaigns;

(g) Conduct examinations into the cause, origin, or circumstances of fire losses;

(h) Hold such hearings as he may deem necessary or desirable as to any matter within the scope of KRS 227.200 to 227.400.

227.230 State fire marshal -- Deputies, assistants and employes. The commissioner shall appoint a state fire marshal and such deputy fire marshals, assistants and employes as are necessary to carry out the purposes of KRS 227.200 to 227.400. The state fire marshal, under the general direction of the commissioner, shall enforce and administer the provisions of KRS 227.200 to 227.400 and rules and regulations issued hereunder. The chief of each fire department and the sheriff of each county shall be deemed deputies when ordered by the commissioner to act as such for their respective cities and counties. Other deputy fire marshals may be appointed from the members of the fire department as the state fire marshal deems necessary.

227.240 City or county deputy fire marshal to investigate and report to department on fires. The deputy fire marshal shall immediately investigate the

origin and circumstances of a fire in his area and determine the cause of the fire so far as practicable. If it appears to the deputy that the fire is of suspicious origin he shall immediately notify the department.

227.250 Duty of insurers to report losses from fire, lightning or explosion. Every insurer authorized to transact business in this state shall report to the department, such loss or damage by fire, lightning, or explosion occurring to property insured by such insurer in this state, as may be, and in the manner prescribed by the commissioner. Provided, however, the commissioner may waive the reporting of such losses which are deemed unimportant because of the small amount involved to the end that a saving in time and expense will result.

227.260 Records of fire losses. From the reports made to him, the commissioner shall keep a record of fire losses occurring in this state and of facts concerning them. He shall make such compilations, investigations and statistical summaries as he deems proper, all of which shall be kept as permanent records in his office. All such records shall be public, except that the commissioner may, in his discretion, withhold from the public statements and testimony taken in an investigation or examination, correspondence relating to an investigation or examination, confidential reports of private persons and agents, and reports of investigations of fire losses.

227.270 Jurisdiction of department -- Right of entry for inspections and investigations. (1) The department shall have jurisdiction over all property in the state insofar as it is necessary for the administration and enforcement of all laws, ordinances, rules and regulations designed to protect the public from fire loss.

(2) The commissioner may at all reasonable hours of the day or night enter in or upon any property to make an inspection or investigation for the purpose of preventing fire loss or determining the origin of any fire, but this subsection shall apply to the interior of private, occupied dwellings only when a fire has occurred therein or when the officer has reason to believe that unsafe fire conditions exist in the building.

(3) No person shall obstruct, hinder or delay such an officer in the performance of his duty.

227.275 Arson investigators. (1) The commissioner may designate officers and employes of the division of fire prevention to investigate and enforce the provisions against arson and arson related offenses occurring within the state and such officers when duly authorized by the commissioner shall have the general powers of a peace officer for the enforcement of other offenses against the commonwealth.

(2) Each arson investigator so appointed shall, before entering upon the discharge of his various duties, take an oath before a person authorized to administer oaths to faithfully discharge his duties, and the oath shall be subscribed by the person taking it and filed in the records of the department.

(3) Each of said persons shall give such bond as the commissioner may designate and with such surety as required by the commissioner conditioned upon faithful performance of his duties.

227.280 Subpoenas and oaths -- Production of evidence -- Conduct of examinations -- Contempt. (1) The commissioner, the fire marshal or any deputy fire marshal may subpoena witnesses, administer oaths, require the production of books, papers, accounts, documents and other records or materials of an evidentiary nature and may examine witnesses in any investigation, hearing, action or proceeding authorized under KRS 227.200 to 227.400.

(2) Examinations may be public or private. Persons other than those required to be present may be excluded from the place where the examination or hearing is held, and witnesses may be kept separate and apart from each other and not allowed to communicate with each other until they have been examined.

(3) If any person fails to respond to a subpoena, or refuses to be sworn, or refuses to testify, or fails or refuses to produce any record or material called for, or fails or refuses to comply with a lawful order of the commissioner, the fire marshal or any deputy fire marshal or performs any contemptuous or contumacious act after being summoned to appear in connection with an investigation, hearing, action or proceeding authorized under KRS 227.200 to 227.400, the commissioner, the fire marshal or any deputy fire marshal, as the case may be, shall certify the facts to the circuit court of the county in which the offense was committed. That court shall have jurisdiction to hear, try and punish such persons as in other cases of contempt.

(4) The same fees shall be paid for the service of process, the taking of depositions and for the services of stenographers as is provided for like services in circuit court.

227.290 Commissioner to furnish data to commonwealth's attorney for criminal proceedings. If, after an investigation or examination, the commissioner believes that the evidence concerning a fire indicates that a crime has been committed he shall furnish all data of an evidentiary nature in his possession to the county attorney of the county in which the fire took place, or the commonwealth's attorney in that district, and request that such attorney institute such criminal proceeding as the evidence warrants.

227.300 Standards of safety -- Publication of guidelines. (1) The commissioner shall promulgate reasonable rules and regulations based upon good engineering practice and principles as embodied in recognized standards of fire prevention and protection, providing for a reasonable degree of safety for human life against the exigencies of fire and panic, and insuring as far as is practicable against fire loss. Such rules and regulations shall be known as the standards of safety.

(2) In making such rules and regulations the commissioner shall establish minimum fire prevention and protection requirements, including but not limited to requirements for design, construction, installation, operation, storage, handling, maintenance or use of the following: structural requirements for the various types of construction; building restrictions within congested districts; exit facilities from structures; fire alarm systems and fire extinguishing systems; fire emergency drills; requirements for buildings of public assembly; flue and chimney construction; heating devices; electrical wiring and equipment; air conditioning, ventilating and other duct systems; refrigeration systems; flammable liquids, oil and gas wells; garages, repair and service shops; application of flammable finishes, explosives, acetylene, liquefied petroleum gas and similar products; calcium carbide and acetylene

generators; dry cleaning and dyeing plants; flammable motion picture film; combustible fibres; airports and airport buildings; hazardous chemicals; rubbish; open flame devices; parking of vehicles; dust explosions; lightning protection; and other special fire hazards.

(3) For the purpose of integrating the need for safety from hazards of fire with the other safety needs of infants or preschool children under institutional care, the commissioner shall allow persons who own, manage or are employed by institutions which provide care or education for infants or preschool children to participate in drafting the standards of safety as they apply to such institutions. Such participation shall be by representation of professional associations relating to infant and preschool care, and by representation from other individuals licensed to provide infant and preschool care, on a committee chaired by the state fire marshal or his designate. Such participation shall occur prior to the publication of proposed regulations in the administrative register pursuant to KRS 13.085 and 13.096, but shall not limit any individual's right to use those procedures set forth in KRS Chapter 13 concerning comment on or protest of proposed regulations. All professional associations relating to infant and preschool care shall be notified by the commissioner when the drafting of standards of safety relating to such institutions is commenced and all such professional associations shall be regularly notified of the time and place of any meetings conducted by authorized employes of the department for the purpose of drafting such standards.

(4) The commissioner shall publish guidelines relating to the standards of safety as they apply to day care and preschool child care centers and nurseries, which shall indicate the items inspectors from the office of the state fire marshal will be looking for when they conduct inspections pursuant to the standards of safety. Such guidelines shall be made available to persons who own, operate or manage such centers or nurseries, and shall be designed to enable said persons to anticipate and comply with the requirements of the standards of safety.

227.305 Minimum requirements for facilities for physically handicapped in public buildings and public accommodations -- Regulations. (1) The state fire marshal shall issue regulations relating to the minimum requirements for facilities for physically handicapped persons in all public buildings and public accommodations to be constructed or remodeled after June 21, 1974. In doing so he shall adopt those standards known as the American National Standard Institute Specifications.

(2) After June 21, 1974, no building permit or other official authorization for construction or remodeling of a public building or public accommodation by any person is valid unless the plans and specifications are in compliance with the regulations issued by the state fire marshal pursuant to this section and KRS 227.200.

227.310 Hearing on proposed standards of safety -- Notice. The commissioner shall conduct a hearing prior to the issuance of rules and regulations promulgated pursuant to KRS 227.300. At such hearing interested parties shall be given an opportunity to be heard in person or by counsel. The commissioner shall cause a notice of such hearing to be published pursuant to KRS chapter 424. No defect or inaccuracy in the notice or in its publication shall invalidate any such rules or regulations.

227.320 Local adoption of safety standards -- Minimum requirements. The authorities of any county, city or other political subdivision may adopt and enforce the standards of safety promulgated by the commissioner of public safety by its respective police force, and may enter upon private property to enforce required fire lane open space in parking lots containing space for ten (10) or more vehicles. Whenever the commissioner, by rules and regulations prescribes a standard of safety from fire loss, such rules and regulations shall establish a minimum requirement concerning the matters covered thereby and shall be so construed in relation to any local rules and regulations.

227.330 Powers of commissioner relating to fire hazards -- Hearings -- Appeals. (1) Whenever the commissioner finds that any property is not safe as to fire loss, under the terms and conditions of KRS 227.200 to 227.400 and under the regulations promulgated, or that the practices or methods of operation or processes employed or used in connection therewith do not afford adequate protection from loss, under KRS 227.200 to 227.400 or under such regulations, he shall order that additions, improvements or changes be made and such equipment be provided as will reasonably render the property safe.

(2) Before any such order is made a hearing shall be held in accordance with the provisions of KRS 304.2-320, 304.2-330, and 304.2-360.

(3) Appeals from any order or action of the commissioner under this section may be taken in the manner prescribed in KRS 304.2-370.

227.340 Notice of hearing when property owner unknown. Whenever the commissioner or other officer has reason to believe that a fire hazard should be corrected and he is unable to determine after a diligent search the owner of any property to be affected, he shall post notice of a hearing concerning such hazard in a conspicuous place on or near such property and shall publish such notice pursuant to KRS chapter 424 in the county in which the property is located. The hearing shall be held in accordance with KRS 227.330 at the time and place specified in the notice as if such notice had been served on the owner.

227.350 Records of orders, rules and regulations -- Admissibility and presumptions as evidence. The commissioner shall keep a permanent record of all orders, rules and regulations. Each such order, rule or regulation, shall be admissible in any prosecution for the violation of any of its provisions. Provisions of an order, rule or regulation shall be presumed to be lawful and to fix a reasonable and proper requirement and standard of safety from fire loss.

227.360 Procedure in case of noncompliance with commissioner's order. If any owner fails to comply with an order of the commissioner, or with an order as modified on appeal, the commissioner may cause the property to be repaired, or removed if repair is not feasible, or all fire hazard conditions remedied, at the expense of the owner. Such expense may be enforced against any property of such owner, and the commissioner and those employed by him to do the work or who furnish materials or equipment therefor, shall have a lien for such expense on the real estate property involved.

227.370 Inspection of property by fire chief or other department personnel -- Inspection and investigation reports. (1) The chief of the fire department of a city, or any officer or member of his department designated by

him for that purpose, is authorized to inspect all property for the purpose of ascertaining and causing to be corrected any conditions likely to cause fire loss, or determining the cause or origin of any fire loss, or discovering any violation of a law or ordinance relating to fire prevention and protection. This authority shall apply to the interior of occupied, private dwellings only when a fire loss has occurred therein or when the officer has reason to believe that unsafe conditions exist in the building. Inspections of property in the territory served by the fire department shall be made as often as practicable or as often as the city legislative body may direct.

(2) A written report of each inspection shall be made and kept on file in the office of the chief of the fire department. Reports of investigations of fire losses conducted by a fire department may, in the discretion of the chief of the fire department, be withheld from the public.

227.380 Fire chief may order fire hazard removed -- Appeal. (1) Whenever the chief of the fire department or any officer or member of his department designated by him for that purpose, finds any property which, for want of repairs, lack of sufficient fire escapes, age, dilapidated condition or any other cause, is especially liable to fire loss, or whenever an officer finds in any property, combustible or explosive matter or inflammable materials likely to result in fire loss, he shall order it to be remedied. The order shall forthwith be conformed to by the owner of the property.

(2) The owner may appeal to the commissioner within ten (10) days following receipt of the order. The commissioner shall, within twenty (20) days, review the order and file his decision. The order shall remain in full force until it is revoked or modified by the commissioner.

227.390 Officer may remedy fire hazard if owner fails to do so -- Expense. If any owner fails to comply with an order issued pursuant to KRS 227.380 or with an order as modified on appeal to the commissioner, the officer may cause the property to be repaired, or removed if repair is not feasible, and all fire hazard conditions remedied, at the expense of the owner. Such expense may be enforced against any property of such owners and the officer and those employed to do the work or who furnish materials or equipment therefor shall have a lien for such expense on the real estate or property involved.

227.400 Owner to keep property safe from fire -- Public and employes to be kept out of unsafe buildings. (1) No owner shall fail to furnish and use reasonable adequate protection and safeguards against fire loss, or fail to adopt and use processes and methods reasonably adequate to render such places safe from fire loss.

(2) No owner shall require or allow the public or any employe to go into or be in any property under his control which is not reasonably safe from the fire loss.

APPENDIX C

HOUSING SUBCOMMITTEE, INTERIM COMMITTEE ON CITIES

1974 - 75 Interim

Summary of Minutes

Under the chairmanship of Senator Georgia Powers, the Housing subcommittee members who served during the interim included Representative C. M. Hancock, Senator Joe Graves, Representative Clay Gay, Representative George Siemens, Jr., and Representative Ray Maynard. The subcommittee held 11 meetings during the interim. Seven of these meetings had all or a portion of the proceedings devoted to some aspect of the building code problem. The building code related matters from those meetings are summarized below.

December 19, 1974

In the third meeting of the interim held on December 19, 1974, the entire meeting was a discussion of the building code problem. The meeting was attended by numerous building officials, building interest groups, and model code organizations.

Mr. Connie Curls, secretary of the Code Administrators Association of Kentucky and an employee of the Lake Cumberland Area Development District, informed the subcommittee of an experimental regional code enforcement program being tested in his area and described how cities or counties can pool their resources to hire a building inspector.

Mr. Len Mills, representing Kentucky Homebuilders, expressed opposition to a federal code and indicated a preference for a "performance" rather than a "specification" code.

Mr. G. M. Watson, representing the American Insurance Association, publishers of the National Building Code, described the components and scope of that code which Kentucky had used for more than 25 years and said that he viewed the National Code as a performance code.

Mr. William Vasvary, representing the Southern Building Code Congress, explained the Standard Code, which is published by his organization. He informed the subcommittee that the Southern Congress has 1500 members in 21 states, its method for amending the code includes participation by members, and the code is re-issued every three or four years. He explained that the Standard Code provides plans checking, code interpretation, research, educational certification program, and telephone consultation without additional charge. He further noted that Georgia, South Carolina, North Carolina and Florida had adopted the Standard Code.

Mr. Richard Sanderson, representing the Building Officials and Code Administrators (BOCA) Conference, explained the BOCA program, which except for minor differences, offers services similar to those offered by Southern. Later, he showed a film and introduced Mr. Lee Cantor, a Virginia state building official who uses the BOCA code. Mr. Cantor commented that the total support system that BOCA offers is one reason Virginia chose it as the state code.

January 24, 1975

International Conference of Building Officials (ICBO) executive director, Mr. T. J. Carter, stated that the major difference among model codes is not the requirements of the code itself, but the type of service provided by the code organization and the procedure for revising the code.

Mr. Carter stated that ICBO is in all or part of 43 states. He also remarked that unlike some of the other codes, all requirements of the Uniform Code, including life safety, are included in one volume, which is updated every three years. Services provided by ICBO include plan checks, research, publications, and training opportunities.

Following this presentation, Mr. Dale Gatlin explained the structure of the building law in Indiana, a state which has recently adopted the ICBO code.

Mr. Michael Westfall, representative of National Forest Products Association, spoke in opposition to the National Code and in support of one of the three performance codes.

Other speakers at the meeting addressed the subject of housing finance.

February 6, 1975

Mr. E. A. Ragland, Virginia Office of Housing, reported that Virginia had adopted a Uniform State Code which had good acceptance by local governments. Mr. Ragland attributed the success partially to the fact that local governments were allowed to participate in code changes. Support among local jurisdictions was increased by allowing interlocal cooperation and offering training for local inspectors.

In Virginia the State Board of Housing is the policy making body which works in conjunction with a technical review board. All enforcement is done by local inspection departments. Codes personnel are not certified, but considerable training is available. The legislation itself does not specify which code is to be adopted, but merely mandates a code. Plans for large buildings are submitted to the model code agency for review.

Mr. Kern Church of North Carolina urged Kentucky to adopt a uniform statewide code. He also reported that North Carolina had a building code law going back to 1914 and as in Virginia local governments do most of the enforcement in the state. Further, he cautioned against allowing local amendments of a state code, explaining that local governments sometimes adopt regulations favoring local suppliers under the guise of adopting more stringent regulations.

Mr. Southworth, State Fire Marshal, described the responsibilities of his office. He said that the bulk of codes inspections was done by codes inspectors in the 479 fire departments. He commented that sometimes fire safety requirements go beyond building codes.

February 21, 1975

This subcommittee meeting dealt primarily with issues other than building codes, but the Chairman did note that he had received a letter from the Homebuilders Association of Kentucky expressing an official position in support of the BOCA code.

June 18, 1975

Mr. Len Mills presented the legislative proposals of the Kentucky Homebuilders Association. Included was proposal for a uniform state building code. Their proposal was modeled on the Virginia Board of Housing and would have mandated a performance type code. The homebuilders' plan also would have transferred the plumbing division to a new unified state housing agency.

Mr. Southworth commented that if a state code were adopted, local amendments should not be permitted.

July 26, 1975

The committee heard comments from two state officials about the proposals from the Homebuilders for a unified housing agency.

Warren Southworth, State Fire Marshal, expressed his opposition to a new unified house agency. He said he would like to see everything dealing with construction put under his agency. He stated that he had been "instructed to work toward this goal by Governor Ford, and the Governor Carroll had expressed a wish for this effort to continue."

Mr. Southworth also recommended that the state adopt the one and two family dwelling code. He commented that his office was about to take over enforcement in Louisville and Lexington because these two cities were not properly enforcing the minimum state standards.

Mr. Gene Perkins, Director of the Division of Plumbing, testified that there was a need for a state building code and said that the state should enforce such a code if the localities do not.

September 22, 1975

The purpose of this meeting was to consider Bills for Prefiling and as such, BR 85 was discussed at length.

Representative Hancock stated that in his travels around the state with the Committee on Cities he had found that there are many different building codes and varying levels of enforcement. He also stated that there are many consumer complaints about housing and that most local officials support a uniform state code. He also noted that a common complaint of builders and contractors is that they have to deal with two or three or more state agencies before their plans are approved.

BR 85 would have provided one uniform code promulgated by a board of Housing, Building and Construction, and would have centralized all state level plan reviews in the Department of Housing, Building and Construction. The department would essentially be a consolidation of existing agencies and thus would mean little additional cost to the taxpayers. Code enforcement would be supported by a fee system similar to the way the state plumbing program now is.

The code established in BR 85 covered all structures in the state except farm service buildings, and applied to every local government in the state. Local governments could cooperate for joint enforcement and appeal procedures

BR 85 was approved by the committee for pre-filing.

APPENDIX D

ADVISORY COMMITTEE ON NEW AND
EXISTING CONSTRUCTION FOR STANDARDS OF SAFETY

Summary of Minutes

In the first meeting, held December 30, 1975, Hugh Dillehay, an engineer from Lexington, was elected Chairman. At that time, State Fire Marshal Warren Southworth explained the procedure for amending the Administrative Regulations. The members agreed to obtain copies of three model codes for their review. They were the National, Uniform and BOCA codes. Without prior review, the Committee reached a consensus that the Southern Code should be eliminated from consideration.

At the second meeting, on January 14, 1976, a copy of the BOCA code was distributed to all members. The Committee discussed the possibility of making the Kentucky Standards of Safety mandatory and uniform statewide instead of minimum, but they were informed by Legislative Research Commission staff member Bill Wiley that this would require a legislative change. A committee member brought up HB 30 which was at the time being considered by the legislature. The committee decided to have an in-depth discussion of HB 30 at its next meeting.

At the third meeting on February 4, 1976, each committee member brought one or two guests representing groups interested in HB 30. Representative C. M. Hancock explained the intent of the proposed law. He pointed out that one major purpose of the Department of Buildings, Housing and Construction, which would have been created by that bill, was to provide a centralized agency where people could take their plans for review. The committee discussed at length the type of amendments which HB 30 needed to make it acceptable to various groups represented. Afterwards, the committee voted to endorse HB 30 with the amendments discussed. The exact amendments desired were not recorded in the minutes.

In the fourth meeting held on June 23, 1976, it was reported that HB 30 had not passed the 1976 session of the General Assembly. The benefits and means of enforcement of the one and two family dwelling code were discussed. Following this discussion, this paragraph appears in the minutes:

> Mr. Southworth stated that he would recommend to the committee that due to the fact that we are dealing with Federal Government monies that for the time being we should stay with the National Building Code. Mr. Hancock stated that the big complaint that he heard about the National Building Code was that there was no chance of revision. Mr. Southworth stated that we could not have the code changed every one or two years due to the fact that the contractors, engineers, and architects would be unable to follow a basic uniform code and if we did this the changes would have to go on a computed in order for the public to keep up with the code.

Two members of the committee said they would like to review the National Code before they make any final decision on a building code. The committee made two recommendations at this fourth meeting. They decided to recommend

the adoption of the 1976 edition of the National Fire Codes and the One and Two Family Dwelling Code.

At the fifth meeting, held on July 7, 1976, some committee members said they had received calls from organizations concerned which complained that they had not had time to review the codes. It was agreed that a public hearing would be held one morning in September and that the committee would meet in the after to choose a code. After a lengthly discussion regarding the invitation of a representative from each model organization, it was decided to make the decision without inviting representatives.

In the sixth meeting, held on September 8, 1976, after the public hearing was attended by approximately 70 people, the same day the committee voted to recommend the BOCA code without the plumbing section. The motion was unanimous excluding Mr. Southworth's abstention as an ex-officio member.

In a November 5, 1976, memo to James E. Gray, Secretary of Public Protection and Regulation, Warren Southworth recommended against adopting the committee's recommendation. The final page of his memo reads as follows:

> I have again had my staff to re-view our administrative regulations and spent considerable time to compare the four model codes. it is the opinion of this office and the fire service throughout the state that is charged with the responsibility of life safety that we would be downgrading our regulation if we adopted the BOCA code.
>
> In the best interest, and for the health, safety, and welfare for the citizens of the Commonwealth, it is my recommendation to upgrade the administrative rules and regulations by adopting the 1976 edition of the National Building Code.
>
> I reached the above decision after visiting and reviewing the fire prevention and fire protection programs in our adjoining states. I find that Kentucky is far ahead of any other state. It is also pleasing to find that other state Fire Marshals are visiting Kentucky and requesting copies of our programs to initiate in their states. Statistics will show that our program has less fire loss per capita than any other of the fifty states.
>
> I am firmly convinced by adopting the 1976 edition of the National Building Code and the sixteen volumes of the National Fire Codes that we can bring about the enforcement of a uniform code throughout the state that has long been the goal of this office and the wish of architects and engineers.

Though this proposed code was opposed by many builders, developers, and architects, it was approved for filing on April 6, 1977, by the Administrative Regulations Review Subcommittee of the Legislative Research Commission and thus is now in effect. Before approving it, the committee required the fire marshal to amend his definition of "basement," since he had used a definition different from that suggested in the Model Code.

APPENDIX E

SENATE MEMBERS

Pat M. McCuiston
Assistant President Pro Tem

Tom Garrett
Majority Floor Leader

Eugene P. Stuart
Minority Floor Leader

A. D. "Danny" Yocom
Majority Caucus Chairman

Walter A. Baker
Minority Caucus Chairman

Kelsey E. Friend
Majority Whip

Joe Graves
Minority Whip

LEGISLATIVE RESEARCH COMMISSION

State Capitol Frankfort, Kentucky 40601 502-564-3136

Joe Prather, Senate President Pro Tem
William G. Kenton, House Speaker
Chairmen

Vic Hellard, Jr.
Director

HOUSE MEMBERS

Lloyd Clapp
Speaker Pro Tem

Bobby H. Richardson
Majority Floor Leader

William Harold DeMarcus
Minority Floor Leader

William "Bill" Donnermeyer
Majority Caucus Chairman

Herman W. Rattliff
Minority Caucus Chairman

Dwight Wells
Majority Whip

Raymond Overstreet
Minority Whip

February 28, 1977

President,
American Insurance Association
Engineering and Safety Service
85 John Street
New York, New York 10038

Dear Sir:

I am conducting a study of the regulation of the building industry for the Kentucky Legislative Research Commission. Would you please answer the following questions for me in regard to the National Building Code:

1. What is the procedure for amending the code?

2. What body makes the final decision on any code amendment? How is this decision-making group structured and what type of representation does it have?

3. Does the Association regularly update the code? If so, when is the next planned edition after the 1976 edition?

4. Does the Association offer opportunities for training inspectors in the interpretation of the code?

5. Does the Association offer an interpretation service for users of the code such as builders and architects?

Thank you for your assistance in this matter.

Sincerely,

DS/pr
cc: Dr. Jim Peyton

Don Stosberg
Legislative Analyst

AMERICAN INSURANCE ASSOCIATION

85 John Street
New York, N.Y. 10038
(212) 433-4400

March 9, 1977

Mr. Don Stasberg
Legislative Analyst
Legislative Research Commission
State Capital
Frankfort, KY 40601

Dear Mr. Stasberg:

We have received your letter of February 28 requesting information regarding the National Building Code and the code services we provide.

Amendments to the Code are made whenever it is determined that provisions of a major section need to be revised. We determine priorities as to which sections need amending. A draft of the complete provised revised section is prepared and sent to interested parties for review and comment. A letter explaining the need for the change and an explanation of the changes accompanies the draft. After the comments are received they are evaluated by members of our staff. Depending on the nature of the comments, we may refer it to a fire protection committee or to the building code committee of our advisory engineering council, or discuss it with representatives of one or more professional or trade association, or discuss it with a representative of the committee that has developed a nationally recognized standard. When the revised provisions of the section are finalized, copies are made and notices sent to municipal and state officials informing them that a revised section is available. In addition, a news release is sent to publishers of architectural, structural and other technical magazines.

We accept proposed changes from anyone. We especially encourage enforcing officials to submit their ideas. When we receive a request from the manufacturer of a product, we encourage the request be submitted through their trade association. The provisions of some sections will need to be revised when a standard of another organization is revised.

In addition, our staff may determine a need for a revision before a proposal comes from an outside source. New provisions for some matters, such as for conservation of energy, will be handled as explained but the provisions probably will be first published as an appendix.

In regard to revisions, they will be published periodically, one set is being prepared for 1977. The exact date for the next edition of the Code has not been determined.

FREDERICK D. WATKINS, CHAIRMAN B. P. RUSSELL, VICE CHAIRMAN MYRON DuBAIN, VICE CHAIRMAN T. LAWRENCE JONES, PRESIDENT

At the present time, we do not have a program to train inspectors but we provide a complimentary service of providing suggested interpretations on matters pertaining to safety to life and fire protection and offer assistance on all matters regulated by the text. This service is provided only to enforcing officials. In Kentucky when a suggested interpretation is provided to a municipal building official, an information copy of the letter is sent to the Office of the State Fire Marshal.

In regard to your last question, we have found that furnishing interpretations to only enforcing officials is the best policy; it does not undermine the powers of the agency or official that is administering the Code. We believe that the administration and enforcement of the provisions of the Code should be done by the agency or municipality that has adopted the Code.

Should you have additional questions, please let us know.

Very truly yours,

G.M. Watson
Manager
Bldg. & Fire Prevention Div.

GMW/rjr

cc: Mr. Southworth

AMERICAN INSURANCE ASSOCIATION

85 John Street
New York, N.Y. 10038
(212) 433-4400

March 30, 1977

Mr. Don Stosberg
Legislative Research Commission
State Capitol
Frankfurt, KY 40601

Dear Mr. Stosberg:

It was a pleasure to discuss with you by telephone on March 23 some of the details regarding our method of making amendments to the National Building Code. We believe that the National Building Code should be judged on how the provisions, when properly administered, will help the citizens, commerce, and industry of a municipality or, in this case the State; not judged on details, such as representation and type of committees that assist in making decisions, concerning the preparation of the provisions.

Building regulations encompass three major fields; safety to life, structurally safe buildings, and fire protection features of buildings. A proper building code contains other provisions, such as the installation of mechanical and electrical systems.

The preparations of proper text can be accomplished without having large meetings, such as public hearings which are needed only at the time of adoption. The provisions of the National Building Code concerning safety to life are in conformance with the Life Safety Code, published by the National Fire Protection Association. For the provisions for a structurally safe building, there are the nationally recognized design standards, such as ANSI A58.1, Building Code Requirements for Minimum Design Loads in Buildings and Other Structures, and standards of nationally recognized Associations, such as the American Institute of Steel Construction, to use or to adopt by reference. The third field concerns the provisions for fire protection. We know that many of the enforcing officials around the nation have a good understanding of fire protection but the American Insurance Association through its staff and committees, continues as a leader in fire protection, as did the National Board of Fire Underwriters which, by way, was the first organization in America to devote its activities to fire protection and prevention. Therefore, the development and approval of fire protection provisions can be done by correspondence and conferences with fire protection engineers from within and from outside of the insurance industry. We also are in contact with enforcing officials and officers of the fire service for assistance.

FREDERICK D. WATKINS, CHAIRMAN B. P. RUSSELL, VICE CHAIRMAN MYRON DuBAIN, VICE CHAIRMAN T. LAWRENCE JONES, PRESIDENT

For the preparation of other provisions in a balanced building code there are standards of the American National Standards Institute, American Society for Testing and Materials, and the National Fire Protection Association. For example, we do not believe that a separate meeting or ballot is necessary to develop the provisions for Safeguards During Construction, Article XII, because standards of the American National Standards Institutes' Committee for Safety Standards in the Construction Industry were used. This A10 Committee has wide representation, including general contractors.

In regard to statements that the National Building Code is a "specification code", we believe that the only basis for this is our provisions for construction of fire walls. Section 800 has provisions for the construction of different types of fire walls that have the features to stop the spread of fire. Those that believe a specified fire resistance ratings is adequate performance criteria for fire walls should realize the fact that a test of a 10 foot by 10 foot sample wall does not measure the ability of a wall many times the size of test panel to stand up against fire exposure extending over more or less its entire area. When a wall is called upon to stop a fire, it must have stability against collapse or overturning far in excess of that presented by many types of walls which develop a 4-hour fire resistance rating by the standard ASTM E119 test.

Should you have additional questions, please feel free to contact us. The 1976 edition of the National Building Code should be evaluated as to whether the regulations will provide buildings that will be safe for people to live, work, or assemble and in addition, the buildings for commerce and industry will have the necessary features for safety.

Very truly yours,

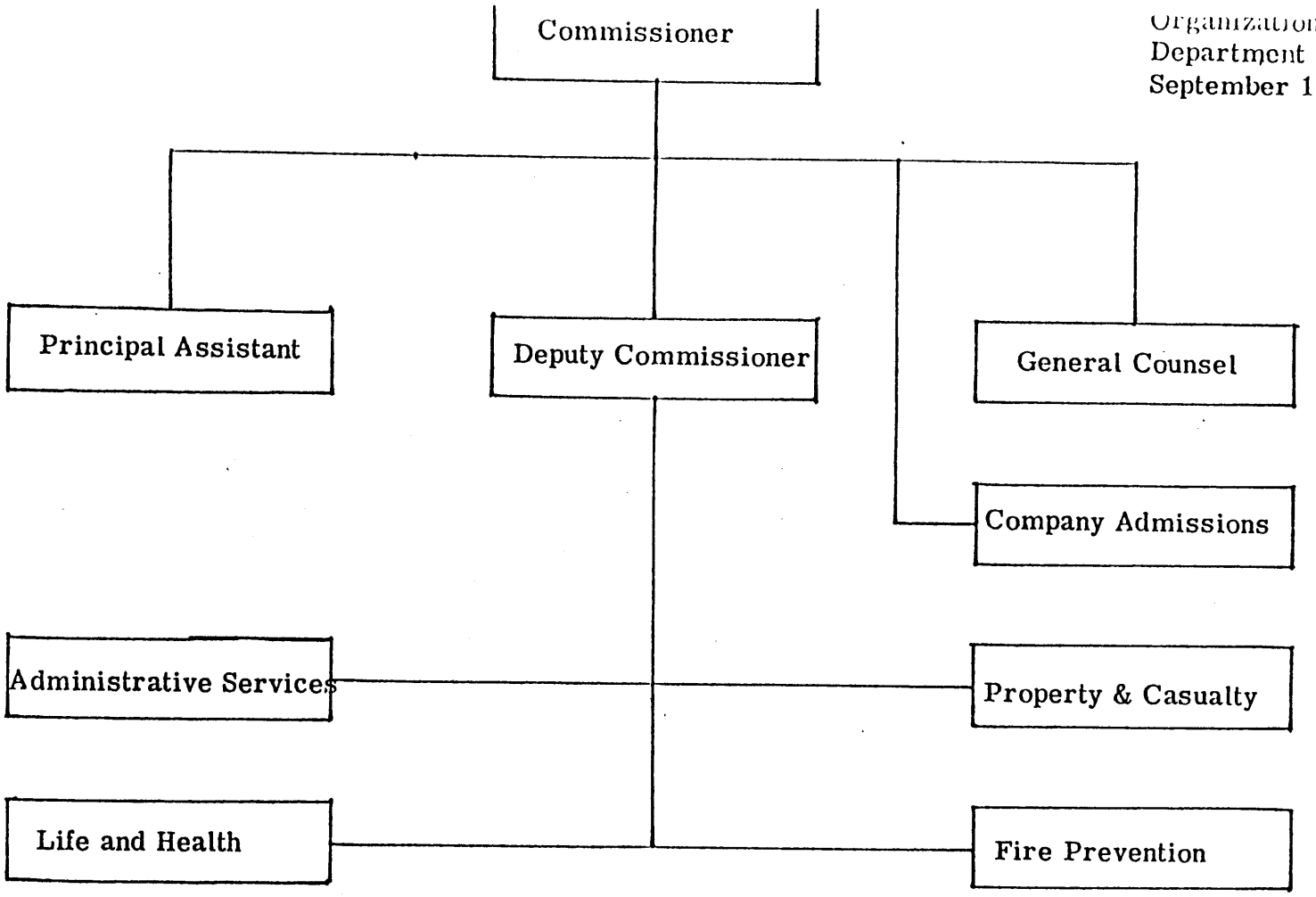
G.M. Watson
Manager
Bldg. & Fire Prevention Div.

GMW/rjr

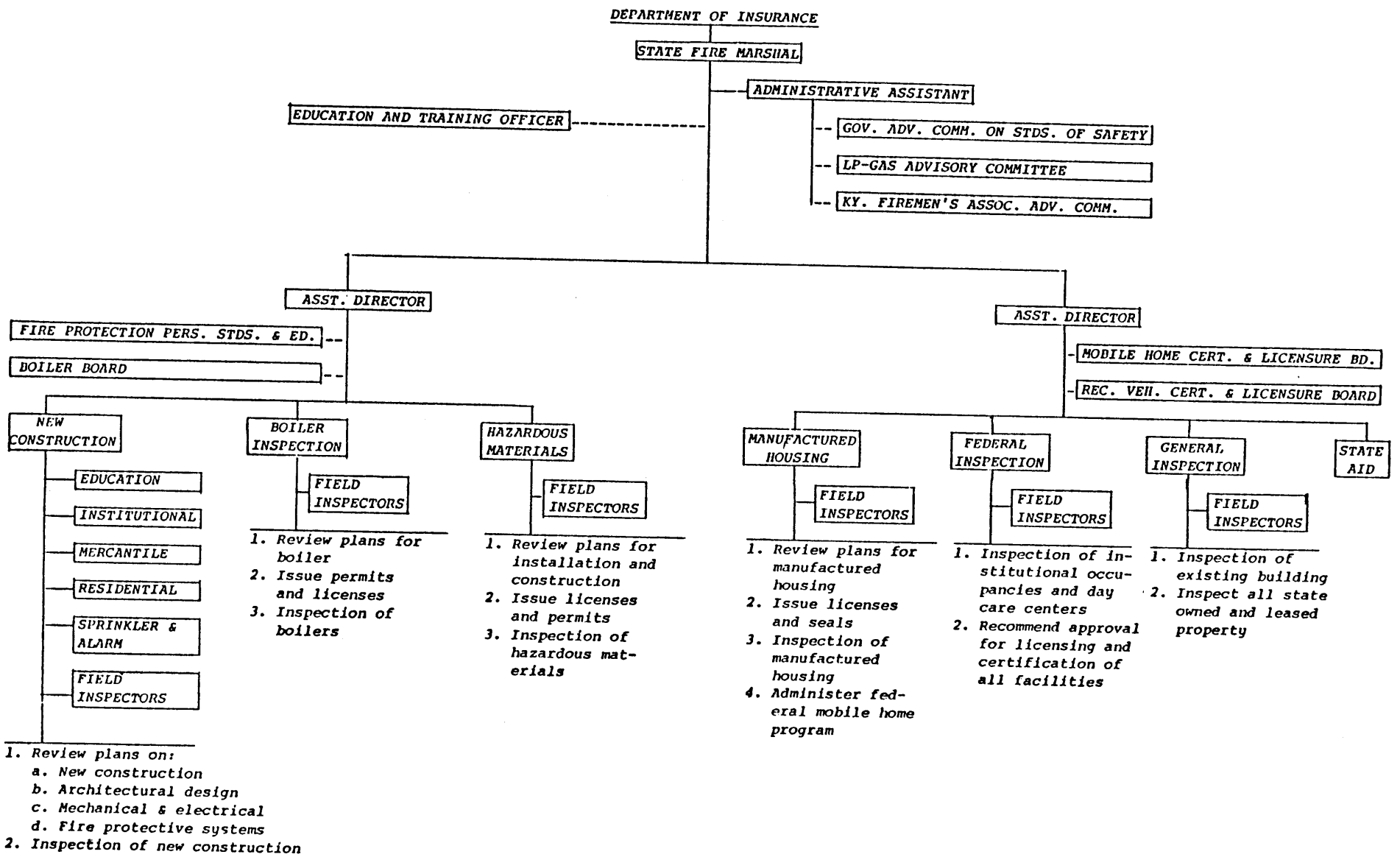
cc: Mr. Southworth

APPENDIX F

Organization Chart
Department of Insurance
September 1, 1976



* Chart prepared by Department of Insurance


DEPARTMENT OF INSURANCE
STATE FIRE MARSHAL
ADMINISTRATIVE ASSISTANT
EDUCATION AND TRAINING OFFICER
GOV. ADV. COMM. ON STDS. OF SAFETY
LP-GAS ADVISORY COMMITTEE
KY. FIREMEN'S ASSOC. ADV. COMM.
ASST. DIRECTOR
FIRE PROTECTION PERS. STDS. & ED.
BOILER BOARD
NEW CONSTRUCTION
EDUCATION
INSTITUTIONAL
MERCANTILE
RESIDENTIAL
SPRINKLER & ALARM
FIELD INSPECTORS
1. Review plans on:
a. New construction
b. Architectural design
c. Mechanical & electrical
d. Fire protective systems
2. Inspection of new construction
BOILER INSPECTION
FIELD INSPECTORS
1. Review plans for boiler
2. Issue permits and licenses
3. Inspection of boilers
HAZARDOUS MATERIALS
FIELD INSPECTORS
1. Review plans for installation and construction
2. Issue licenses and permits
3. Inspection of hazardous materials
ASST. DIRECTOR
MOBILE HOME CERT. & LICENSURE BD.
REC. VEH. CERT. & LICENSURE BOARD
MANUFACTURED HOUSING
FIELD INSPECTORS
1. Review plans for manufactured housing
2. Issue licenses and seals
3. Inspection of manufactured housing
4. Administer federal mobile home program
FEDERAL INSPECTION
FIELD INSPECTORS
1. Inspection of institutional occupancies and day care centers
2. Recommend approval for licensing and certification of all facilities
GENERAL INSPECTION
FIELD INSPECTORS
1. Inspection of existing building
2. Inspect all state owned and leased property
STATE AID

April, 1977

APPENDIX G

1977 TENNESSEE REPORT ON BUILDING CODES

Summary of Recommendations

The Committee recommends that:

1. The Standard Codes including the Building, Housing, Gas, Mechanical, Plumbing and Fire Prevention Codes as promulgated by the Southern Building Code Congress should be adopted as the state building code for all state-owned construction and education buildings and that no state agency should construct any building which does not conform with the provisions of such codes.

2. Counties and municipalities desiring to adopt building codes should be required to adopt the codes used by the state but may adopt such codes individually, as the county or municipality may decide.

3. Any statutory provisions which grant express or implied authority to state agencies or local units of government to adopt building codes or building regulations which may conflict with the provisions of the Standard Codes should be repealed or superseded.

4. Portions of Tennessee Code Annotated, Title 53, Chapter 25, should be revised so that the Standard Building Code would be the state fire safety construction code.

5. State departments and local governments should be prohibited from promulgating any building regulation or restriction which conflicts with the state codes.

6. No municipality or county should be permitted to amend or alter any of the Standard Codes which constitute the state building code, even though such municipality or county has adopted such codes for local enforcement.

7. Amendments or supplements to the Standard Codes which are used as the state codes should be effective as soon after their adoption by the Southern Building Code Congress as the law will permit, but such amendments or supplements should not affect any state construction project which has been approved for preplanning by the State Planning Commission.

8. In the construction of state-owned facilities, the State Building Commission should consider conforming to any amendments to the state code which may be pending adoption by the state.

9. A State Building Codes Council should be created to administer the state building code.

10. The Board of Building Code Appeals, established by Tennessee Code Annotated, Sections 53-2555 thru 53-2561, should be abolished upon the creation of the State Building Codes.

11. The State Building Codes Council should be composed of six members, two from each grand division, with one member being a licensed architect, one a licensed engineer, one an urban fire marshal, and one a representative of the Tennessee Building Officials' Association.

12. The Council members should be appointed by the Commissioner of Insurance, serve the same terms, and receive the same compensation as members of the Board of Building Code Appeals.

13. The Council should meet no more than quarterly, with emergency meetings authorized for appeal hearings.

14. The State Building Codes Council should be authorized to draft regulations for the administration of the state codes and to serve as an appeals board for such codes and regulations with appeals from local appeals boards to the Council being permitted but not being required to be heard by the Council.

15. The State Building Codes Council should have the following authority:

    (a) It should be vested with authority over all state codes and regulations affecting building construction;

    (b) It should work with state departments and agencies to coordinate federal agency building regulations with state codes;

    (c) It should assist the public in obtaining all applicable code clearances or permits;

    (d) It should mediate any problems which might arise in code enforcement involving more than one level of government or more than one state agency;

    (e) It should act as a central clearing house for information concerning the state codes and county and municipal codes and code enforcement;

    (f) It should be authorized to appoint technical advisory committees whose members would serve without compensation and whose recommendations on matters referred to them would not be binding upon the Council.

16. Whenever building codes are adopted by local governments, such codes should be enforced by the county or municipality, individually or collectively.

17. Inspection and certification of buildings for compliance with state codes by personnel of a local government should be accepted by a state agency, when the capability for such personnel of the local government has been determined by the State Building Codes Council to be adequate for such certification and inspection.

18. Retroactive enforcement of building codes or life safety codes should be prohibited if a building conformed to building regulations at the time it was constructed.

19. The program of training and technical assistance to building officials as developed and established by the University of Tennessee through the Institute of Public Service and as authorized by Tennessee Code Annotated, Section 49-3359, should be funded.

20. Adequate staffing of the Division of Fire Prevention in the Department of Insurance should be provided.

21. Energy building standards in Appendix J of the Standard Building Code should be adopted as part of a state building code to provide standards to insure energy conservation and efficient utilization of energy for heating and cooling buildings and such standards should be enforced.

BUILDING INDUSTRY RECOMMENDATIONS ON BUILDING REGULATIONS

STATE OF TENNESSEE

1. Protection for Public Safety - It is the responsibility of the state to provide an adequate administrative organization to insure appropriate building regulations for the protection of life, public safety and property in the design and construction of buildings and structures constructed within the state. In establishing the methods and procedures for discharging this responsibility, the following factors should be taken into consideration:

   (a) Building regulations should be based on the minimum requirements which are absolutely necessary to provide reasonable yet adequate safety and be based on proven needs.

   (b) Building requirements should be based on performance standards wherever practical, permitting the exercise of individual initiative using new technologies, techniques and materials, methods of construction and building concepts.

   (c) Nationally recognized model codes and standards should be adopted. Such proposed building regulations should be reviewed before adoption by an independent organization or council composed of competent professionals representing broad experience and balanced viewpoints, in order to prevent such documents from becoming unnecessarily complicated, restrictive, subservient to special interests, or dictated by administrative convenience.

   (d) Provisions should be made for periodic review and revision of building regulations to prevent stagnation and obsolescence.

   (e) Building Code revisions generally should not be retroactive. A building owner should not be required to periodically modify his building to meet each and every revised code requirement, unless an extreme hazard exists due to this lack of conformity, if the building in fact met the prevailing code requirements when it was built.

   (f) Overlapping, conflicting, and duplicating building regulations should be eliminated. Building codes apply to the design and construction of new buildings, alterations to existing buildings, changes of occupancy, and to inherently dangerous conditions. Other regulations which pertain to the operation and maintenance of buildings are contained in the fire prevention, health and safety laws. These differing regulations should be maintained in separate codes. Duplicating or conflicting requirements should be eliminated and these regulations appropriately coordinated so as to provide the appropriate protection with a minimum of interference to the owner, his designer and builder. The building requirements for all structures should be contained within the building code and no additional requirements should be imposed by other regulatory agencies. Requirements needed by such regulatory agencies should be reviewed for possible inclusion when adopting or revising building regulations.

(g) A binding interpretations procedure should be included which requires the Enforcing Official to adopt and promulgate rules and regulations setting forth his official interpretation and implementation of the provisions of the Building Code.

(h) Appropriate remedies for the aggrieved must be provided through an appeals process, which includes competent and knowledgeable professionals, to prevent improper decisions due to ignorance, misunderstanding or caprice. An Appeals Board is recommended in lieu of leaving the only recourse through the courts.

2. Building Regulations - Promulgation and Enforcement:
Building regulations should be adopted, promulgated, coordinated or enforced at a single level of government by a single regulatory agency. These several differing functions can be performed at different levels of government (state or local); however, no one function should be performed at duplicating levels.

(a) Building regulations, being one of the police powers reserved to the states, and in turn customarily delegated to local jurisdictions, should be kept at the lowest level of government and as close to the people governed as practical. These policing powers should not be taken over by the higher levels of government, except in those exceptional cases where local jurisdictions cannot, or will not perform, or where the required coordination cannot be obtained except at the higher level.

(b) Where several regulatory agencies at the same level of government have building requirements with their area of purview, these requirements should be integrated into a single building code administered by a single regulatory agency to prevent overlapping and conflicting requirements.

(c) The traditional separation of the functions of government, i.e., Legislative, Executive and Judicial, should be observed. Legislation (the adoption and revision of codes) should not be relegated to the administrative arm of government; appeals of the aggrieved should not be delegated to the administrator.

(d) The state should promote upgrading of the administration of building regulations through improved training programs and qualifications of building officials, plans to examiners and building inspectors.

(e) In delegating any of this responsibility to local government, the state has the duty to insure that adequate protection is being provided.

Endorsed by -

Memphis Society of Architects
Consulting Engineers of Memphis
Memphis Building Code Revision & Advisory Board
Memphis Area Chamber of Commerce;
Tennessee Society of Architects

Tennessee Society of Professional Engineers
Consulting Engineers of Tennessee
Tennessee Joint Engineers Action Group
Tennessee Building Materials Association
Associated General Contractors
Tennessee Hospital Association, Inc.

APPENDIX H

APPENDIX H

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Assistant President Pro Tem

Tom Garrett
Majority Floor Leader

Eugene P. Stuart
Minority Floor Leader

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Majority Caucus Chairman

Walter A. Baker
Minority Caucus Chairman

Kelsey E. Friend
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Majority Whip

Raymond Overstreet
Minority Whip

September 8, 1977

Mr. Warren Southworth
State Fire Marshall
Department of Insurance
Capital Plaza Towers
Frankfort, Kentucky 40601

Dear Mr. Southworth:

In a letter dated June 24, 1977, I enclosed a draft of my report on The Regulation of Building Industry and requested your comments. Since that time we had a brief meeting in which we discussed the report. It was my understanding that you would submit some written comments following that meeting.

The report is now in the final stages of editing, and we urgently need your comments if they are to be considered by publication time.

Sincerely,

Don Stosberg

Don Stosberg
Legislative Analyst

DS/pw

cc: Brian Kiernan
James Peyton
Representative C. M. Hancock