Original: 2283

IRRC

From: swihart@nb.net
Sent: Tuesday, November 11, 2003 11:29 PM
To: IRRC
Cc: Trusky, William; Chuck Sludden; Karen Galli; Jon Balson
Subject: Comments on Regulation #12-60 (#2283) for Implementation of the Uniform Construction Code

Mr. John R. McGinley, Chairman
Independent Regulatory Review Commission

Dear Mr. McGinley:

Attached are my comments on regulations the Department of Labor & Industry reissued on October 22 for implementing the new statewide Uniform Construction Code - Regulation #12-60 (#2283). I ask that the Commissioners consider these comments in their deliberations on November 20 as you meet and act on these regulations.

Sincerely,
David Swihart, Acting Chair
Accessibility Advisory Board
Department of Labor & Industry

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2003 NOV 12 AM 7:29
REVIEW COMMISSION

November 11, 2003

Original: 2283

2003 NOV 12 AM 7:29
REVIEW COMMISSION

Comments on Proposed Regulations for Administering and Enforcing the Uniform Construction Code (U.C.C.) as Reissued by the Dept. of Labor & Industry on 10/22/03 Regulation #12-60 (#2283)

Prepared by: David Swihart, Acting Chair
Accessibility Advisory Board
Department of Labor & Industry

I believe that the General Assembly intended for the Department of Labor & Industry to have much more responsibility for ensuring that local code administrators adequately administer and enforce the accessibility requirements of the U.C.C. than what is required by these regulations. The procedures described in *Section § 403.104. Department review* would be powerful enforcement tools if implemented. Unfortunately, the Department is not necessarily required to use them. It still remains that all the Department is required to do by these regulations is to review a municipality's administration and enforcement of accessibility in response to a complaint, or at least once every five years, and to submit a written report of its findings to the municipality.

To require the Department to go only as far as submitting a report is not much of an enforcement program. It is certainly nothing like what those of us in the disability community had in mind when working with legislators on the bill to establish a statewide uniform construction code and I do not think it is what they had in mind either. They very clearly expected the U.C.C. to have strong accessibility provisions as evidenced in Section 102, Part (b)(7) of Act 45 of 1999. Here the General Assembly states that it is its intent to not diminish from the requirements in effect under the state's current accessibility law, Act 235 of 1965. When Act 235 was amended by Act 166 of 1988, it became one of the most effective laws in the nation for making new and remodeled construction accessible to people with disabilities. Its effectiveness is primarily due to the strong enforcement that it requires of the Department of Labor & Industry – there is nothing optional about it. Without the Department being required to make non-compliant municipalities properly administer and enforce the accessibility requirements of the U.C.C., the requirements of Act 235 most certainly will be diminished, especially in municipalities that have no previous experience in (and perhaps no interest in) administering and enforcing accessibility.

In my previous comments on the Department's two previous drafts of the proposed regulations (comments dated 9/9/02 and 6/5/03) I recommended language for two alternate ways of providing for an effective enforcement program that would be consistent with the intent of Act 45. I repeat them here.

ALTERNATIVE #1- Revise Part (b) of Section § 403.104 to read:

> "(b) The Department will review each municipal enforcement program at least once every ~~5~~ 3 years UNLESS A COMPLAINT IS RECEIVED UNDER SECTION 105(a) OF THE ACT to ensure that code administrators are adequately administering and enforcing the provisions of Chapter 11 (Accessibility) of the Uniform Construction Code and any other accessibility requirements contained in or referenced by the Uniform Construction Code. The Department will submit a written report to the

municipality of its findings within 30 days of completion of its review. THE MUNICIPALITY ~~MAY~~ SHALL THEN SUBMIT A WRITTEN RESPONSE TO THE DEPARTMENT within 30 days which describes action it will take to correct any deficiencies identified by the Department's review and will have an additional 30 days to implement such action. The Department shall verify that corrective procedures have been put into place."

ALTERNATIVE #2 – Add to beginning of Part (c) in Section § 403.104 so that it reads:

"(c) THE DEPARTMENT MAY TAKE ANY OF THE FOLLOWING ACTIONS FOR VIOLATIONS OF THE ACT OR TO OBTAIN COMPLIANCE WITH THE ACT AND MUST DO SO WITHIN 60 DAYS OF FINDING A VIOLATION:"

If Alternative #2 were adopted, Part (b) of Section § 403.104 should still be changed to require the Department to review each municipality's administration and enforcement of accessibility every three years instead of every five years. The latter is a long time between reviews and would allow a lot of inaccessible construction to be built in a municipality that has little interest in accessibility.

Original: 2283

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TIMOTHY A. PALASKI
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2003 NOV 17 AM 9:31
INDEPENDENT REGULATORY REVIEW COMMISSION

November 11, 2003

John R. McGinley Jr.
Chairperson IRRC
14th Floor
333 Market Street
Harrisburg, PA 17101

Re: Proposed Regulations, Title 34, Part XIV, Chapters 401, 403 and 405.

Dear Chairman McGinley;

Five months have transpired since the Department of Labor and Industry (L&I) withdrew their proposed regulations from your commission's review process. The withdrawal caused widespread debate and controversy throughout the state. Jon Balson's e-mail on June 16, 2003 explaining the withdrawal and L&I's hope on the re-submittal (within 30 days) of the proposed regulations, did help alleviate some of the apprehension that was originally generated. But after the 31st day, with no word on the regulations being resubmitted, the speculation, rumors and innuendo have reached the panic stage.

We in the construction industry are happy to see that L&I has finally resubmitted the proposed regulations to your committee for consideration. This should, at the least, put to rest the Nay Sayers and skeptics that felt Act 45 was dead in the water. But will this be the final review? Unfortunately, I can only say, we hope not. In the five months that have past, L&I only addressed a few of the many shortcomings in the proposed regulations and again, unfortunately, the changes that L&I made do not take into account the economic impact, public health and safety, reasonableness, and clarity needed to make the Uniform Construction Code uniform throughout all of Pennsylvania.

In the paragraphs that follow, I will attempt to explain many of the problems with the proposed regulations through the eyes of an experienced multi-discipline code enforcement inspector, past contractor and lifetime resident of Pennsylvania.

In the Preamble issued with the proposed rulemaking document Annex A, the Department of Labor and Industry states:

Statutory Authority

"This rulemaking is adopted under the authority provided in sections 301 and 304 of the Act (Act 45)(35 P.S. §§ 7210.301, 7210.304), which requires the Department to promulgate regulations adopting the 1999 BOCA National Building Code and successor codes and allows the Department to make changes to Chapter 1 of the 1999 BOCA Code. The Department must also adopt the *International Fuel Gas Code* and prescriptive methods for energy related standards under section 301."

The Act (Act 45) Section 301(a)(1) only allows for the adoption of the 1999 BOCA National Building Code. Section 301(a)(2) allows for the adoption of the 1998 ICC International One and Two Family Dwelling Code. And Section 301(b) allows for the adoption of the International Fuel Gas Code (note: no edition is listed.)

Further Section 304(a)(1) & (2) does give the Department the authority to update the BOCA and ICC One and Two Family Dwelling Code to the successor codes by December 31, of the year they are issued. Section 304(b) gives the Department this same authority for the International Fuel Gas Code.

The problem with the proposed regulation is that under Standards § 403.21 *Uniform Construction Code*, the Department fails to list all of the standards recognized in the 1999 BOCA code. The Department has chosen to list only ICC codes and has even added additional codes that were not in existence at the time of passage of the Act. No reason is offered for the Department's decision. Shouldn't the Department provide substantiation for this action? The Department has stated in § 403.21(a) that "these codes are adopted and incorporated by REFERENCE as the Uniform Construction Code." In order for the Act to be uniform, ALL referenced standards must be recognized. The Department was not given the authority to change the intent of the Act or the definition of the Uniform Construction Code. It is hoped that all referenced standards listed in Chapter 35 of the 1999 BOCA National Building Code are included in the regulations, as was clearly the intent of the Act.

And furthermore the **Preamble page 7** states: The IRRC and numerous other commentators questioned the adoption of the IEC as part of the UCC in section 403.21(a)(2).

The Department explains that they do not have "the authority to adopt other codes, such as the NEC, except if these codes are incorporated in an ICC building code or enumerated in Act 45. 35 P.S. §§ 7210.301(a), 7210.304." The department goes on to state that "The ICC Electrical Code contains only administrative provisions and adopts, by REFERENCE, the NEC as it's electrical construction standard." Pennsylvania needs the

NEC in its entirety and all future editions should be made part of the UCC, as was the intent of the legislators. With the 2003 edition of the ICC codes the 2002 NEC is the referenced standard, in 2005 a new NEC will be published and Pennsylvania will not have the authority to implement it until the following year under the Departments current proposal.

The Act under section 102(b) and under the heading "**Background**" of the Preamble for the proposed regulations states the intent and purpose of the UCC. The regulations are severely lacking in meeting this intent and purpose. Residential construction throughout the State will be ignored by the regulations. The code is being adopted but only limited enforcement is being mandated for one and two family dwellings in municipalities that choose to "Opt Out" of enforcement. The intent is to **"provide standards for the protection of life, health, property and environment and for the safety and welfare of the consumer, general public and the owners and occupants of building and structures".** This does not limit the intent to just commercial occupancies.

§ 401.2a (c) states: "A municipality or third party agency may establish a fee refund policy."

The Department does not allow for their inclusion in establishing "a fee refund policy" as is proposed for municipalities and third party agency to do in §401.2a(c). We propose the Department add their refund policy/amount in §401.2(b) as a new line item (6).

§ 403.1 (b)(2) states: (The UCC does not apply to) "New buildings or renovations to existing buildings on which a contract for design or construction was signed before (*Editor's Note:* The blank referes to the effective date of adoption of THESE REGULATIONS.)."

Section 104 (b)(2) of the Act only covers these instances "on projects requiring department approval." With the current wording of the proposed regulations it can be misunderstood that any project (New or Renovation) that had a design contract signed prior to the effective date of the UCC would be exempt from the UCC. The words are clear - to cover only projects that have been submitted to the Department for approval and were not yet returned to the applicants so that they could apply for a local permit. This oversight in writing the proposed regulations paves the way for unscrupulous individuals to circumvent the clear intent of the legislators. In fact this misinturpertation is currently posted on the Departments web site

§ 403.42 (c)(1)(xiii) states for commercial construction: (A permit is not required for) "WINDOW REPLACEMENT WITHOUT STRUCTURAL CHANGE."

In the first paragragh on Page 11 of the Preamble the Department stated that "Code officials presented information that permits should not be required for window replacement without structural change." No further explanation is given on just what type

of information was presented.

Three very important considerations are being overlooked by this action.
1. Public safety (safety glazing is required in numerous locations throughout buildings)
2. Energy efficiency (the U-value of the window is part of the over-all envelope of the building)
3. Widespread improper code administration only compounds the problem and should not be used as an excuse.
Without a permit and inspection safety glazing and energy efficiency cannot be verified for code compliance.

§ 403.42 (c)(5)(i) states: (A permit is not required for) "Stopping leaks in a drain and a water, soil, waste or vent pipe. The UCC applies if a **concealed** trap, drainpipe, water, soil, waste or vent pipe becomes defective and is removed and replaced with new material."

The wording in this first sentence leads the reader to believe that if only a water, soil, waste or vent pipe is leaking and no drain is involved that they would be exempt. Removing "and a" between "drain" and "water" would clarify this sentence.
Stating "CONCEALED" in the second sentence leads the reader to believe that they could in fact remove and replace all exposed faulty plumbing with new material and not have the work inspected under the UCC. Removing the word "concealed" would correct this misunderstanding.

§ 403.42(f) along with subsections **(1), (2) and (3)** state: "A building code official may issue an annual permit instead of an individual permit for each alteration to an already approved electrical, gas, mechanical or plumbing installation. All of the following are required:"
(1) The applicant shall regularly employ at least one qualified trades person in the building or structure owned or operated by the applicant.
(2) The applicant shall submit an application in accordance with §403.42a(m).
(3) An annual permit holder shall keep detailed records of alterations made in accordance with the annual permit. The permit holder shall provide access to these records to the building code official.

The use of the word "may" is not definitive. No guidelines are being established to direct the building code official on "may" or "may not" issues.
Under item (1) the broad term "qualified trades person" is left to the imagination of the building code official. The ICC codes do not offer a definition of a "qualified trades person". There is no mention in the proposed regulations to cover a different "qualified trades person" for each discipline ie. Plumbing, Electrical, Gas or Mechanical that may qualify for an annual permit.
If as required in item (2) an application will be required for each alteration (even with the annual permit) then progressive inspection should occur as the work is performed. Not

on an annual basis. The true intent of all codes is to safeguard people and their property from the hazards associated with the use of the structure. Allowing for alterations to a system that was inspected for code compliance, by anyone, even a "qualified trades person" does not assure a code compliant or safe installation. Please remember that in most cases the original installation is normally performed by trades people and we in the inspection industry find violations everyday on them.

§ 403.42a(f)(4) Page 11 of the preamble references this section in the proposed regulations. Page 22 of the proposed regulations does not include this section. The correct section number is **§ 403.42a(f)(i) not "(4)"**

§ 403.43(c) states: "A building code official shall stamp or place a notation on EACH PAGE OF the set of reviewed construction documents that the documents were reviewed and approved for UCC compliance before the permit is issued. The building code official shall clearly mark any required NON-DESIGN changes on the construction documents. The building code official shall return a set of the construction documents with this notation and any required changes to the applicant. The permit holder shall keep a copy of the construction documents at the work site open to inspection by the construction code official or authorized representative."

Paragraph (c) of this section as well as paragraph (f) of this section seem to indicate that a permit will be issued if the construction documents are not fully in compliance with the UCC.
The first sentence uses the term "approved" to be marked on each page of the Construction documents. If there are NON-DESIGN items marked on a page, how can this page be marked "approved"? What are NON-DESIGN items?

Suggested wording for this paragraph (c): A building code official shall stamp or place a notation on each page of the set of reviewed construction documents that the documents were reviewed for UCC compliance. The building code official shall notify, in writing, the permit applicant of any items that are non-code compliant. The permit applicant shall make all necessary changes and return the construction documents for re-review of code compliance before a permit is issued. The permit holder shall keep a copy of the final reviewed construction documents at the work site open to inspection by the construction code official or an authorized representative.

§ 403.43(l) and § 403.63(j) state: "Work shall be installed in accordance with the approved construction documents. The permit holder shall submit a revised set of construction documents for approval for changes made during construction that are not in accordance with the approved construction documents."

In the first paragraph on Page 12 of the Preamble the Department makes reference to their practice of requiring the submission of revised plans for changes made during construction. The problem with § 403.43(l) and § 403.63(j) in the proposed regulations

is that no definitive time frame is given for the revised plans to be submited. I would hope that the regulations would mention that the work should not proceed until the revision is reviewed and approved by the Building Code Official.

Preamble Page 13 Second, third and fourth paragraphs. The department gives a detailed account of rewriting section 403.62 to limit the impact of the regulations "on citizens making minor repairs to their residences."

I do agree that not all minor repairs should need to be inspected for UCC code compliance. What I do not agree with is exempting these minor repairs from the permit process. Building code officials should make the final decision if the work proposed will be exempt from the inspection process. All citizens making minor repairs or having them performed by others should be offered the same benefit of code safety as their neighbors doing larger, more detailed improvements. A minimal cost for plan review, setback requirements verification, material approvals for the application proposed and workers comensation insurance if a contractor is involved will go a long way in limiting the long term impact on all citizens in Pennsylvania.

With the departments inclusion of section **§ 403.62(c)'s wording** "A permit is not required for the exceptions listed in § 403.1(b) (relating to scope) and the following construction **if the work does not violate a law or ordinance:**" How will the Building Code Official know **if the work does not violate a law or ordinance** if the citizen doesn't need a permit? The list of exemptions that follow section **§ 403.62(c)** will surely be misunderstood and misapplied if left to the discretion of our citizenry or the contractors they may hire to work for them.

Nowhere in Act 45 does it mention that the Department is granted the authority to make changes to Chapter 1 of the IRC. I would hope that the regulations will reflect only the exemption granted in Chapter 1 of the IRC for residential occupancies.

§ 403.62 (c)(1)(ix)(for residential construction) states: (A permit is not required for) "Replacement of glass in any window or door. The replacement glass shall comply with the minimum requirements of the International Residential Code."

How will the Building Code Official know **if the glass complys with the minimum requirements of the IRC** if the citizen doesn't need a permit? How will the citizen know if it complys? Will contractors install untempered glass where tempered glass is required?

This section must be deleted from the regulations in order for the UCC to protect all Pennsylvanians by assuring minimum code compliance.

§ 403.62 (c)(1)(x) states: (A permit is not required for) "Installation and replacement of a window, door, garage door, storm window and storm door in the same opening if the

dimensions or framing of the original opening are not altered. The installation and means of egress and emergency escape windows may be made in the same opening without altering the demensions or framing of the original opening if the required height, width or net clear opening of the previous window or door assembly is not reduced."

Editorial note: In the second sentence above, the correct wording should be "The installation **of** means of egress..." Not "The installation **and** means of egress..."

The Department does not have the authority to modify certain standards under section 301(a)(1) of Act 45. Exempting window, door, garage door, storm window and storm door installations if they are or are not emergency escape or means of egress is not the direction to go in order to reduce the impact of the regulations on Pennsylvania's citizens.

Three very important considerations are being overlooked by this action.
1. Public safety (in numerous locations throughout buildings safety glazing is required)
2. Energy efficiency (the U-value of the window is part of the over-all envelope of the building) Windows and doors are the second largest concern in a home after the roof structure for energy efficiency correction.
3. Widespread improper code administration only compounds the problem and should not be used as an excuse.

Without a permit and inspection safety glazing and energy efficiency cannot be verified for code compliance.

And again how will the Building Code Official know **if the original openings are altered or if the net clear opening of the previous window or door assembly is not reduced** if the citizen doesn't need a permit and the work is not inspected?

This section must be deleted from the regulations in order for the UCC to protect all Pennsylvanians by assuring minimum code compliance.

§ 403.62 (c)(1)(xiv) states: (A permit is not required for) "Repair or replacement of any part of a porch or stoop which does not structurally support a roof located above the porch or stoop."

Many porch and or stoop installations are 30 inches or more above final grade and require guardrails and handrails in accordance with the IRC. Many of the existing porch and or stoop installations were not erected according to any code and they do not currently incorporate the needed safety features of today. When repairing or replaceing these stoops or porches it is the opportune time to make these installations code compliant.

By not requiring a permit for porch and/or stoop repair or replacement we will be prolonging these unsafe conditions for the life of the structure.

§ 403.62 (c)(1)(xv) states: (A permit is not required for) "Installation of an additional roll or batt insulation"

Editorial note: The correct wording should read; "Installation of an additional roll **of** batt insulation" Not "Installation of an additional roll **or** batt insulation"

With the skyrocketing cost of energy this practice is becoming common place. The problems associated with adding an additional roll of batt type insulation are numerous. Is there an existing vapor barrier? Are there existing recessed luminaires, exhaust fans or appliances that are not designed to be covered? Is the area ventilated? Are there any electrical junction boxes present that should not be covered? Does the additional roll have a vapor barrier? Will the additional roll block any ventilation openings? Will the additional roll cover any device, appliance, junction box or luminaire that should not be covered?

For a residential property owner to spend hundreds, if not thousands, of dollars in the hopes of making the structure more energy efficient, it shows that they are concerned with cost, comfort and maintaining their property for the future. And if done correctly the added insulation should be a good return on their investment. But none of these things will be possible if the roll of additional batt insulation is installed incorrectly. And in reality, in some cases this additional roll could be very dangerous if not properly installed. Under the proposed regulations, these residential property owners will not know if the insulation was installed correctly or if any of the above mentioned problems have been created.

This section must be deleted from the regulations in order for the UCC to protect all Pennsylvanians by assuring minimum code compliance.

§ 403.62 (c)(1)(xvi) states: (A permit is not required for) "Replacement of exterior rain water gutters and leaders."

Are we to assume that all existing exterior rain water gutters and leaders are installed correctly? That they are directed away from the foundation a minimum of five feet or are directed into an approved drainage system? Too many of our municipal sewer authorities are finding (at great cost) that many existing exterior rain water gutters and leaders are currently directed into their systems. Many property owners are faced with wet basements/crawlspaces because the exterior rain water gutters and leaders are not directed away from the foundations.

To allow for the replacement of exterior rain water gutters and leaders without inspection is only going to continue the problems that already exist, and in some cases create new problems because of improper installations.

This section must be deleted from the regulations in order for the UCC to protect all Pennsylvanians by assuring minimum code compliance.

§ 403.62 (c)(2)(ii) states: (A permit is not required for) "Replacement of a receptacle, switch or lighting fixture rated at 20 amps or less and operating at less than 150 volts to ground with a like or similar item. This shall not include replacement of receptacles in locations where ground-fault circuit interrupter protection is required."

Experience has shown us in the inspection industry that these supposedly simple replacements (even when performed by contractors) are not completed correctly. It is being assumed by these proposed regulations, that the existing installation was done correctly and that the proper wiring method, device enclosure, luminaire (lighting fixture) was originaly installed. What is also being ignored by these regulations is that the majority of Pennsylvanians do not know where ground fault circuit interrupter (GFCI) protection is required. Even some electrical contractors are not always certain of all the GFCI requirements and installation procedures.

To exempt these replacements from the permitting process is doing Pennsylvania a disservice. This section must be deleted from the regulations in order for the UCC to protect all Pennsylvanians by assuring minimum code compliance.

§ 403.62 (c)(2)(iv) states: (A permit is not required for) "Installation, alteration or rearrangement of communication wiring."

With this short simple sentence the Department is deleting an entire Article of the National Electrical Code (NEC). Article 800 of the NEC lists the detailed requirements for the installation of communication wiring in all occupancies, including residential. Communication wiring systems are in almost every residential occupancy in our state; with the constant advances in technology their application will continue to expand. The proper installation, connection and grounding of these systems must be verified to assure that they will operate when needed and be as safe as possible for the people utilizing this equipment.

This section must be deleted from the regulations in order for the UCC to protect all Pennsylvanians by assuring minimum code compliance.

§ 403.62 (c)(2)(v) states: (A permit is not required for) "Replacement of dishwashers"

Are we to assume that all existing dishwashers are installed correctly, and that they are all standardized for their connections? Any individual who has ever replaced a number of these units will surely tell you that they (existing dishwashers) are NOT always installed properly. And that the new units are NOT all standard in their connections. What is often found is a multitude of incorrect fittings, connections, extension cords and devices that are leaking, sparking, frayed or opened. To assume that this is a normal/simple

replacement is wrong. To not require a permit for this procedure is just opening the door for more problems in the future.

This section must be deleted from the regulations in order for the UCC to protect all Pennsylvanians by assuring minimum code compliance.

§ 403.62 (c)(2)(vi) states: (A permit is not required for) "Replacement of kitchen range hoods."

Are we to assume that all existing kitchen range hoods are installed correctly, and that they are all standardized for their connections? Any individual who has ever replaced a number of these units will surely tell you that they (existing kitchen range hoods) are NOT always installed properly. And that the new units are NOT all standard is their connections. Is the replacement hood to be vented? Was the existing hood vented? Was the vent installed correctly? What is often found is a multitude of incorrect fittings, connections, extension cords and devices that are sparking, frayed or opened. To assume that this is a normal/simple replacement is wrong. To not require a permit for this procedure is just opening the door for more problems in the future.

This section must be deleted from the regulations in order for the UCC to protect all Pennsylvanians by assuring minimum code compliance.

§ 403.62 (c)(4)(v) states: (A permit is not required for) "Replacement of any minor part that does not alter approval of equipment or make the equipment unsafe."

Paragraph (3)(ii) of this section was modified to remove the word "any" between "of" and "minor" and replace it with the word "a". Making this same wording change in this section would help standardize these regulations.

§ 403.62 (c)(5)(i) states: (A permit is not required for) "Replacement of bib valves if the replacement hose bib valves are provided with an approved atmospheric vacuum breaker."

How will the Building Code Official know **"if the replacement hose bib valves are provided with an approved atmospheric vacuum breaker."** if the citizen doesn't need a permit and the work is not inspected?

This section must be deleted from the regulations in order for the UCC to protect all Pennsylvanians by assuring minimum code compliance.

§ 403.62 (c)(5)(x) Please see comments for section § 403.62 (c)(2)(v)

§ 403.62 (c)(6)(vi) Please see comments for section § 403.62 (c)(2)(vi)

§ 403.63 (a) states: "... The building code official and the applicant may agree in writing to extend the deadline by a specific number of days."

Section 502 (a)(3) of the Act only allows for this extension of time for one family and two family dwellings in historic districts.

§ 403.63 (c) states: "A building code official shall stamp or place a notation on EACH PAGE OF the set of reviewed construction documents that the documents were reviewed and approved for UCC compliance before the permit is issued. The building code official shall clearly mark any required NON-DESIGN changes on the construction documents. The building code official shall return a set of the construction documents with this notation and any required changes to the applicant. The permit holder shall keep a copy of the construction documents at the work site open to inspection by the construction code official or authorized representative."

Paragraph (c) of this section as well as paragraph (f) of this section seem to indicate that a permit will be issued if the construction documents are not fully in compliance with the UCC.
The first sentence uses the term "approved" to be marked on each page of the Construction documents. If there are NON-DESIGN items marked on a page, how can this page be marked "approved"? What are NON-DESIGN items?

Suggested wording for this paragraph (c): A building code official shall stamp or place a notation on each page of the set of reviewed construction documents that the documents were reviewed for UCC compliance. The building code official shall notify, in writing, the permit applicant of any items that are not code compliant. The permit applicant shall make all necessary changes and return the construction documents for re-review of code compliance before a permit is issued. The permit holder shall keep a copy of the final reviewed construction documents at the work site open to inspection by the construction code official or an authorized representative.

§ 403.63 (h) states: "The permit holder shall keep a copy of the permit on the work site until the completion of the construction."

The inspection industry would greatly appreciate the assistance of the department by requesting the following sentence to be added to this section of the proposed regulations.

The permit holder or their agent shall post the permit on the jobsite in an accessible and conspicuous place, visible from the road, street or highway where the property is located.

§ 403.64 (g) states: "A third-party agency under contract with a permit holder shall submit a copy of the final inspection report to the property owner, builder and the lender designated by the builder."

The property owner, builder and the lender may not be known to the third-party agency. Suggested wording: A third-party agency under contract with a permit holder shall submit 3 copies of the final inspection report to the permit holder.

§ 403.81, § 403.82, § 403.83 and § 403.84 are a few of the proposed regulations for "*Department, Municipal and Third-Party Enforcement for Noncompliance*". These regulations cover the procedures that are to be followed to issue Stop Work Orders, Notices of Violation, Orders to Show Cause/Order to Vacate and how to deal with Unsafe Buildings, Structures or Equipment for all buildings in our State.
Section 104 (a) of the Act states: "This act shall apply to the construction, alteration, repair and occupancy of all buildings in this Commonwealth."

It might appear that the regulations meet the intent of the Act, but what is being overlooked are residential properties in "opt-out" areas of the state. There are no appeal boards in "opt-out" municipalities (§ 403.103).
§ 403.83 (c) states: "The building code offical shall forward all requests for variance, extensions of time or appeals regarding interpretations of the UCC to the board of appeals within 5 business days."

Another key issue that is missing from the regulations for "opt-out" municipalities is what to do when it is discovered that an Unlawful Act is being committed. The 2003 IBC and IRC cover Unlawful Acts in section 113.1 of each book. Sections 113.1 and R113.1 state: "It shall be unlawful for any person, firm or corporation to erect, construct, alter, extend, repair, move, remove, demolish or occupy any building, structure or equipment regulated by this code, or cause the same to be done, in conflict with or in violation of any of the provisions of this code." To whom does a building code official report an Unlawful Act (swimming pool, room addition, new dwelling, etc.) discovered in "opt-out" municipalities?
It is understood that by virtue of Sections 301(a)(1) and 304(a)(1) of the Act that the Department has the authority to promulgate separate regulations which may make changes to Chapter 1 of the 1999 BOCA NBC and its successor codes, relating to administration. Nothing in the Act or the proposed regulations allows for the deletion of Chapter 1 of the 1998 ICC International One and Two Family Dwelling Code or its revised or successor codes.

§ 403.86 (c) states: "A construction code official may not enter a building, structure or premises that is unoccupied or after normal business hours without obtaining permission to enter from the owner or the owner's agent."

This section appears to contradict section **§ 403.86 (a) "which states that a construction code official may enter a building, structure or premises during normal business hours..." I** would like to point out that normally new construction is "unoccupied" and the permit holder calling for the inspection may or may not be the "owner or the owner's agent".

Including the term **permit holder** in the last sentence of section **§ 403.86 (c) and** the first sentence of section **§ 403.86 (a)** would clarify both of the sections and allow for inspections to be made by the CCO on "unoccupied" projects.

§ 403.86 (e) states: "This section shall be used in conjunction with the Fire and Panic Act."

Some sections of the Fire and Panic Act are being repealed by Act 45.

Suggested wording: This section shall be used in conjunction with the **saved portions** of the Fire and Panic Act covered in Section 1101 of the Act.

§ 403.101 (a) states: "The Fire and Panic Act and a locally enacted building code shall remain in effect until the date that one of the following has transpired:"

Suggested wording: The **complete** Fire and Panic Act and **all** locally enacted building codes shall remain in effect until...

§ 403.102 (g)(1) states: "Employ at least one construction code official and designating an employee to serve as a building code official."

Section 501 (b) (1)-(5) of the Act covers how a municipality may elect to administer and enforce the UCC. Nowhere does it state in the Act that a municipality shall **EMPLOY** a construction code official. What is stated is that they may **RETAIN** one or more construction code officials. The wording should change "Employ" back to "Retain" to correctly state the law.

§ 403.102 (i)(2) could be clarified by adding "of 403.102" at the end of the sentence.

§ 403.103 (d) states: "A building code official shall determine the climactic and geographic design criteria contained in table R301.2 (1) of the IRC for residential construction."

Building Code Officials are not design professionals. Guidelines are needed from the Department to complete this important table. Current statistics gathered by the Department are indicating that a large portion of municipalities in our state will be "opting out" of enforcement of the UCC. Table R301.2 (1) of the IRC is (by code section 301.2) to be completed by the local jurisdiction. If this is left to the discretion of any BCO, then it is certain to have numerous different calculations from one project to the next. As an example, we could have neighbors building to different frost depths. One at 36" and the next at 42", when in fact the true depth may need to be 48". If in this same example one of the projects is a commercial building being inspected by the Department, the Department will be required by section 1805.2.1 of the IBC to know the local frost

depth for the commercial project. Since the Department must develop standards for every geographical area of the state for their purposes, they should distribute this information to all BCOs for insertion in Table R301.2 (1) of the IRC. The intent of the General Assembly (Section 102 (b)(1), (2), (3) and (8) of Act 45) is not being met if blank tables are made part of the regulations.

§ 403.103 (f) states: "A third-party agency shall send a copy of the final inspection report to the property owner, builder and a lender designated by the builder."

All that may be known to the third-party agency at the time of the final inspection is the municipality and the permit holder. The Department of Labor & Industry has stated in numerous public meetings that if a municipality "opts-out", they could not issue Certificates of Occupancy or a Building Permit.
Section 501 (e)(4) of the Act states: "In municipalities which require a building permit or a certificate of occupancy but do not conduct inspections, the code administrator shall also be required to submit a copy of the report to the municipality."
The legislature recognized some municipalities would issue permits and certificates of occupancy but not conduct inspections, and the lawmakers did not prohibit this.

Suggested wording: A third-party agency under contract with a permit holder shall submit 3 copies of the final inspection report to the permit holder and one copy to the local municipality.

The Department quotes section 501(e)(3) of Act 45 as their reason for removing "municipalities" from the list of those required to be sent a copy of the final inspection report. But this appears to contradict section 501 (e)(4) of Act 45.

§ 403.121 (a) states: "A municipality which has adopted an ordinance for the administration and enforcement of the UCC or is a party to an agreement for the joint administration and enforcement of the UCC shall establish and appoint members to serve on a board of appeals under section 501(c) of the act."

501(c) of the Act refers the municipality to Chapter 1 of the 1999 BOCA NBC for direction in establishing their appeals board. Section 121.2 in Chapter 1 of the 1999 BOCA NBC states: "The board of appeals shall consist of **five** members..."
There is no mention in the regulations as to how many people are needed to make up the appeals board. To meet the intent of the Act, I propose a new sentence at the end of §403.121(c)(1) stating: The board of appeals shall consist of **five** members appointed by the municipality's governing body.

§ 403.121 (c) 3 states: "Members of a municipality's governing body and its code administrators may not serve on a board of appeals."

Section 112.3 of the IBC 2003 states: "The board of appeals shall consist of members who are qualified by experience and training to pass on matters pertaining to building construction and **are not employees of the jurisdiction.**"

To meet the intent of the act the wording "municipal employees" should be added to this list of non-approved members of the appeals board.

Preamble Fiscal Impact pages 3 & 4: The Department states that it "will augment its plan review staff and may have to increase its inspection staff to review and approve plans and perform required inspections under the UCC."

What is lacking in the proposed regulations is any language pertaining to how a third-party agency with appropriate categories of certification, may contract with the Department to conduct the plan review and inspections required by this act.

The Department has been given the authority in Section 501(e)(2) of the act to contract with a third-party agency. With the combined efforts of the Department and Registered Third-Party Agencies, the Fiscal Impact may be controlled, but a regulation is needed to allow for the contracting with the third-party agencies.

The comments and suggestions that are offered are, to the best of my knowledge and understanding, based on portions of the law and are within the power of the Department to develop proper and suitable regulations.

If the commission requires any clarification, or has any questions regarding these comments and suggestions, please feel free to contact me.

Sincerely

Timothy A. Palaski
Manager Codes & Standards, MDIA

HAP

Original: 2283

THE HOSPITAL & HEALTHSYSTEM ASSOCIATION OF PENNSYLVANIA

RECEIVED
2003 NOV 17 AM 9:35
INDEPENDENT REGULATORY
REVIEW COMMISSION

November 11, 2003

Mr. John McGinley, Jr.
Chairperson
Independent Regulatory Review Commission
333 Market Street
14th Floor
Harrisburg, PA 17101

Dear Mr. McGinley:

The Hospital and Healthsystem Association of Pennsylvania (HAP), on behalf of its members (more than 250 acute and specialty hospitals and health systems in the commonwealth), appreciates the opportunity to comment on the Department of Labor and Industry's final-form rulemaking for the adoption and enforcement of the Uniform Construction Code.

HAP fully supported the adoption of a uniform construction code to provide consistency in standards for construction and renovations throughout the commonwealth, and recognizes that regulations are required to implement the uniform construction code. However, HAP cannot support the final-form rules as proposed.

HAP acknowledges the Department of Labor and Industry's efforts to incorporate many changes in the final-form rulemaking from the proposed version. However, the final-form version of the uniform construction code regulations remain administratively burdensome, duplicative and cost prohibitive for hospitals and health systems. The end result, if approved, will be to shift the focus of providing and improving the delivery of health care services to patients by diverting limited resources to address and comply with regulatory mandates. Patients and their communities are the ones ultimately affected when regulations are complicated, duplicative and cost prohibiting.

As presented in final-form, health care facilities will still have to coordinate activities between the Department of Health, the Department of Labor and Industry and/or the local municipality or third party administrator. The fact that multiple entities have an "approval role" in hospital construction and/or renovation will likely result in duplicative and redundant activity, present confusion (e.g., how are hospitals to know if the local municipality has elected to enforce the code), as well as the potential for construction delays which can result in added costs at a time

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haponline.org

when seven in ten hospitals in Pennsylvania are losing money on patient care, and more than 40 percent are at even greater risk, with negative total margins.

The end result of the adoption of these regulations will be to, yet again, impose a regulatory package which fails to effectively coordinate process and procedures, and will divert limited hospital resources to address and comply with regulatory mandates.

We strongly urge you to support efforts to ensure that fair and appropriate standards are adopted for hospitals and health systems in the commonwealth. Please feel free to contact me at (717) 561-5344, or Melissa N. Speck, director, policy development, at (717) 561-5356 should you have any questions regarding our position on this final-form regulation.

Sincerely,

Paula A. Bussard

PAULA A. BUSSARD
Senior Vice President
Policy and Regulatory Services

MNS/jb

Original: 2283
IRRC

From: Larry Spielvogel [spielvogel@comcast.net]
Sent: Sunday, November 02, 2003 1:42 PM
To: IRRC
Cc: Wilmarth, Fiona E.
Subject: Labor & Industry ID Number 12-60

To Whom It May Concern:

Enclosed please find my one page of comments on the proposed rules submitted to IRRC last month by the Department of Labor and Industry (L&I) for the Uniform Construction Code. I also enclose a copy of my testimony to the House Labor Relations Committee last June in connection with their proposed rule.

I would appreciate your consideration of my comments and concerns before approving this proposal. The citizens and taxpayers of Pennsylvania deserve regulations that are fair and comply with the requirements of the Law, and the relevant Federal Law and Regulations. What L&I has proposed does not do either. Please reject their current proposal and direct them to revise the rules.

Larry Spielvogel, PE
L. G. Spielvogel, Inc.
203 Hughes Road
King of Prussia, PA 19406
Tel: 610-687-5900; Fax: 610-687-5370; Email: spielvogel@comcast.net

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2003 NOV -3 AM 8: 14
REVIEW COMMISSION

LAWRENCE G. SPIELVOGEL, INC.

CONSULTING ENGINEERS

203 HUGHES ROAD KING OF PRUSSIA, PA 19406-3785 TELEPHONE 610-687-5900 FAX 610-687-5370 EMAIL spielvogel@comcast.net

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2003 NOV -3 AM 8: 14
REVIEW COMMISSION

COMMENTS OF LAWRENCE G. SPIELVOGEL, PE
ON PENNSYLVANIA L&I PROPOSED UCC IMPLEMENTATION
November 2, 2003

My name is Larry Spielvogel, and I am an independent Registered Professional Engineer practicing in Pennsylvania, with offices in King of Prussia. Thus, I and all Pennsylvania citizens will be subject to these rules. I am commenting on my own behalf and at my own expense. For the last 30 years I have participated in building code development and adoption hearings, served on, commented on, and chaired the national committees that write, maintain, and revise the codes and standards used for buildings, including those being proposed for adoption in Pennsylvania. These comments are in response to the Preamble and Final Form Regulation posted on the L&I website on October 22, 2003. See www.dli.state.pa.us, and type UCC in the Keyword window and then Implementation Update.

Paragraph 403.21 (e) (1) allows compliance with the Code by using "Pennsylvania's Alternative Residential Energy Provisions" (PHRC) dated February 2003 and published by the Pennsylvania Housing Research/Resource Center at Pennsylvania State University, as an alternative to the 2003 Codes of the International Code Council, including the International Energy Conservation Code (IECC). It allows grossly substandard energy performance for new houses.

PHRC is essentially identical to the December 2001 PHRC version, which made reference to the 2000 International Residential Code (IRC), except that the February 2003 version deletes all references to the year of the IRC. While it is clear that the 2001 PHRC version referred to and is based on the 2000 IRC and the 2000 IECC, the 2003 PHRC version has the identical requirements and references to the 2003 IRC. However, the energy-related requirements in the 2003 IRC and 2003 IECC are not identical to the 2000 IRC and IECC.

Every other code and standard referenced and adopted by L&I for the Uniform Construction Code in this rulemaking is consensus based, and has readily available procedures for proposing changes, conducting public hearings, and getting both formal and informal interpretations. None of these procedures and provisions are available for PHRC. No public notice was ever provided, nor were any public hearings held to receive public comment. Since it was not, is not, and will not be possible to comment or testify in the development of the PHRC, due process has been denied.

Most of the standards and references in the 2003 PHRC have since been superseded, revised, and updated. Yet, the requirements in the 2003 PHRC are based on the obsolete and out of print standards and references. Thus, in many instances, it is not possible to purchase products meeting the standards in PHRC, because manufacturers are testing and rating their products to the requirements in the current standards.

On page 8 of the Preamble, L&I states that the US Department of Energy Pacific Northwest National Laboratory reviewed the PHRC. That statement is simply not true. What they did review was an early draft of the 2001 version. They did not review either the final 2001 version or the 2003 version. Thus, any of their comments or conclusions cannot be relied upon without their review of the final versions.

The provisions of PHRC are not as stringent or as energy efficient as the IRC or the IECC. Therefore, by allowing PHRC as an option, Pennsylvania will not be in compliance with the requirements of the 1992 Federal Energy Policy Act, and the subsequent Federal Regulations. Besides not complying with Federal Law, allowing the use of PHRC does a disservice to the citizens of Pennsylvania, and intentionally wastes our precious energy and money, compared with the provisions of the International Codes and Federal Law. No other state has adopted anything like this.

The trade-offs allowed by PHRC make a bad situation even worse. Besides encouraging additional energy waste, they preclude the use of the most energy efficient coal, oil, and propane heating equipment and even gas fired boilers.

The Department of L&I has not considered or responded to most of my substantive and technical comments on their August 2002 Proposed Rule submitted on September 19, 2002. A copy of those detailed comments on the August 2002 Proposed Rule is available upon request. The PHRC Alternative must be deleted from the UCC.

LAWRENCE G. SPIELVOGEL, INC. CONSULTING ENGINEERS

203 HUGHES ROAD KING OF PRUSSIA, PA 19406-3785 TELEPHONE 610-687-5900 FAX 610-687-5370 EMAIL lgspielvogel@comcast.net

2003 NOV -3 AM 8: 14

REVIEW COMMISSION

STATEMENT OF LAWRENCE G. SPIELVOGEL, PE

Before the Pennsylvania House of Representatives
Labor Relations Committee and
Local Government Committee
Hearing on Statewide Building Code Regulations
Thursday, June 5, 2003

I am Larry Spielvogel, an independent consulting engineer from King of Prussia and I appreciate the opportunity to assist you in your hearing on the Pennsylvania Building Codes. For most of the last 30 years I have served as a volunteer on and have chaired the 60-person committee that sets the national energy standards for buildings. These standards are referenced in the 1992 Federal Energy Policy Act and serve as the basis for energy codes adopted by most state and local governments in this country. They are also used by the Federal Government for their buildings.

Thus, I am intimately familiar with the issues and economics in energy codes and standards. I have nothing to gain or lose by what L&I does in their rulemaking. Rather, my purpose here is to try to help you do the right thing for your constituents. I am here to both praise and criticize the manner in which the Department of Labor and Industry (L&I) has proposed implementing the building code Law you passed in 1999.

I commend L&I for proposing the major change to their rules by adopting the 2003 set of International Code Council (ICC) Codes, in lieu of the 2000 versions. While the Law requires adoption of the BOCA Codes, they have been superseded by the International Codes or the I Codes for short. These include the International Building Code (IBC), the International Residential Code (IRC), and the International Energy Conservation Code (IECC).

The National Fire Protection Association (NFPA) has recently published a comparable set of national consensus building codes. I suggested that L&I compare them with the I Codes to see if they may be more appropriate for Pennsylvania, even though it might require amending the Law. I have seen no evidence that this was done. It should be done.

There is a very serious problem in the L&I proposal. We have the law of unintended consequences at work here. What should have provided energy benefits and savings to homeowners will now result in greater energy use. Section 301 (c) of Act 1999-45 provides:

> "Prescriptive methods for energy-related standards. - The department shall, within 180 days of the effective date of this section, by regulation promulgate prescriptive methods to implement the energy-related standards of the Uniform Construction Code which take into account the various climatic conditions through this Commonwealth. In deriving these standards the department shall seek to balance energy savings with initial construction costs."

The IRC and IECC already provide nationally accepted "prescriptive methods for energy-related standards" and take "into account the various climatic conditions" in Pennsylvania. The IRC and IECC "balance energy savings with initial construction costs."

L&I has proposed implementing the prescriptive method provision by the highly unusual practice of adopting a proprietary alternative to the I Codes, with additional options. Unlike almost every other building code or standard, this proposal makes no provisions for regular changes, revisions, interpretations, public hearings and comments, or reviews of the basis for the requirements. This violates due process.

L&I proposes to adopt the PHRC Alternative, prepared by the Pennsylvania Housing Research Center (PHRC) at Penn State University as an option in lieu of the energy-related requirements in the I Codes. This is shown in Section 403.21 (e) (1) on page 13 of the L&I proposal. Nothing like this is adopted or required in any major jurisdiction in the United States.

The preface to the PHRC Alternative says it is simpler than Chapter 11 of the IRC. Yet, the PHRC Alternative consists of 13 pages of provisions, while the IRC has only 7 pages of energy-related provisions that apply to Pennsylvania.

The PHRC Alternative has three climate zones, while Chapter 11 of the IRC has six climate zones in Pennsylvania. For example, Erie and New Castle are 5 to 10% colder than Pittsburgh. Yet, for these two locations the PHRC Alternative requires almost 30% more ceiling insulation and 17 to 23% more wall insulation than in Pittsburgh. I ask you: Do those requirements make common or economic sense and "take into account the various climatic conditions?"

Despite my repeated requests for the technical and economic information behind the derivation of the PHRC Alternative, none have been forthcoming. Indeed, the current version of the PHRC Alternative is not even shown as available for sale on the PHRC website, as late as yesterday. Thus, citizens subject to these requirements cannot readily obtain copies.

The IRC and IECC energy-related provisions are adopted almost without modification in most states in the country. The IRC and IECC do a much better job than what L&I proposes, making any other standards or alternatives unnecessary and confusing.

While the PHRC Alternative claims it is "equivalent to the provisions of the International Energy Conservation Code (IECC)," I can tell you authoritatively that it is not equivalent. The statement by L&I in the preamble that greater savings will be achieved is also not technically accurate or correct.

The most egregious provisions in the PHRC Alternative are the Trade-offs. If one uses what they consider to be "high efficiency heating and air conditioning equipment," you are allowed to use less insulation in the walls and less efficient windows. They define high efficiency equipment as the least efficient air conditioning units available in the market and any gas or oil heating equipment with a 90% Annual Fuel Utilization Efficiency (AFUE). This is easy to do with gas furnaces, at a net cost saving in construction, because a chimney is not needed.

There are also substantial construction cost savings from lower quality windows and less insulation. Windows can be 16 to 20% less efficient, and wall insulation can be reduced by 7 to 11%. Thus, builders could save thousands of dollars by using this trade-off, and the homeowners will likely end up with higher utility bills than had the house complied with the minimum requirements of the IRC or IECC. This is not what you envisioned when the Law was passed.

To heap insult upon injury, this trade-off will have a negative impact on many Pennsylvania businesses. Should a homeowner desire a hot water heating system, or a radiant heating system, there are virtually no manufacturers of either gas or oil hot water boilers that can meet the efficiency required for the trade-off. Also, there are no oil furnaces made that meet the required efficiency. Thus, Pennsylvania oil dealers and

boiler manufacturers will not be able to compete, since builders will obviously choose gas warm air furnaces. This will have a major impact on Pennsylvania based companies like Burnham, Columbia, Crown, Patterson-Kelley, Peerless, Pennco, and New Yorker Boiler.

While I am not a lawyer, I understand the Federal Government preempts the states from adopting minimum equipment efficiency standards any higher than those they adopt. Thus, the PHRC Alternative violates this requirement for heating equipment in their trade-offs. There may also be anti-trust and restraint of trade issues with the PHRC Alternative.

The 1992 Federal Energy Policy Act, 42 USCA 6833, and the implementing Federal Regulations, 66 FR 1964, January 10, 2001, require that Pennsylvania certify to the U.S. Department of Energy that its residential energy codes are no less stringent than those in the IECC, and that they were developed in a consensus process. By adopting the PHRC Alternative, Pennsylvania will not be able to make that certification.

When L&I first proposed these regulations last year, I provided 21 pages of detailed comments, most of which still apply to the proposal before you. I will give the staff an electronic copy of my comments for anyone who may be interested in more details.

The provisions in the PHRC Alternative provide large construction cost savings to builders and a disservice for Pennsylvania homeowners for the life of their homes. Please direct L&I to delete the PHRC Alternative from their proposal. The way to avoid these issues and problems is to do what almost every other state has done by adopting the I Codes alone. This can be done by simply deleting the definitions for PHRC and Pennsylvania's Alternative Residential Energy Provisions on page 4 and deleting the words "or 'Pennsylvania's Alternative Residential Energy Provisions'" in Section 421.1 (e) (1) on page 13 of the proposed rule. In the alternative, direct L&I to publish the basis for the PHRC Alternative and subject it to public hearings and public comment, just like every other regulation they issue.

Original: 2283

Balson, Jon

RECEIVED
2003 NOV -5 AM 7:28
REVIEW COMMISSION

From: Michael.Fink@phila.gov
Sent: Wednesday, October 29, 2003 3:00 PM
To: Balson, Jon
Subject: Re: UCC Implementation Update #12

Jon,
We in Philadelphia have been trying to adjust our existing administrative and enforcement regulations to match the latest regulations from the PA UCC. In doing so, I've come across a confusing situation.

Section 403.102 (L) details which sections a municipality may meet or exceed in its own ordinance. One of these sections is Section 403.42(b) which is only one small portion of the Permit Requirements and Exemptions for Commercial Construction. By listing only item (b) of this section, a municipality cannot create exemption requirements which exceed those items listed in this section under (c). These exemptions include things like window replacement and finish work (both of which raise serious concerns for our jurisdiction).

This seems to be inconsistent with the Residential Construction exemptions which ARE able to be exceeded by a municipality. Is it possible that this is some type of typographical error?

Michael E. Fink
Director of Construction Codes Compliance
Department of Licenses & Inspections
City of Philadelphia
215-686-1437

"Balson, Jon" <jbalson@state.pa.us>

10/22/03 12:51 PM

To:
cc:
Subject: UCC Implementation Update #12

Today, October 22, the Department re-submitted the UCC Administration and Enforcement Regulation to the Independent Regulatory Review Commission (IRRC) and the legislative committees for final approval.

The final form regulation and the Preamble are available on the UCC "Regulations" page. You may access this page by clicking on the following link:
http://www.dli.state.pa.us/landi/cwp/view.asp?a=124&Q=70577

It is our expectation that the IRRC will vote on this at its November 20 meeting. (This meeting date is tentative). We do not expect that the last approval (from the Attorney General's Office) will be secured until the end of December. Thus, the regulation will probably not be published in the Pennsylvania Bulletin until sometime in January. At this juncture, it would appear that the 90-day municipal opt-in, opt-out period will run from sometime in April to sometime in July 2004. Whenever we can be more definitive about this, we will advise you by e-mail (and on the UCC web site).

Jon C. Balson
Administrator
Uniform Construction Code Program

10/29/2003

GOVERNOR'S OFFICE OF
GENERAL COUNSEL

DEPUTY CHIEF COUNSEL
OFFICE OF CHIEF COUNSEL
LABOR LAW COMPLIANCE DIVISION
10TH FLOOR, LABOR & INDUSTRY BUILDING
SEVENTH AND FORSTER STREETS
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DEPARTMENT OF
LABOR & INDUSTRY
COMMONWEALTH OF PENNSYLVANIA

November 4, 2003

FACSIMILE TRANSMISSION

TO: Mary Lou Harris
Senior Regulatory Analyst
Independent Regulatory Review Commission

FAX NO: 783-2664

FROM: James A. Holzman
Deputy Chief Counsel

PAGES: 2
(including cover)

TIME: 11:40 AM

RE: **Uniform Construction Code (No. 12-60)**

RECEIVED
2003 NOV -5 AM 7:28
INDEPENDENT REGULATORY REVIEW COMMISSION

E-mail from City of Philadelphia, which was considered in making revision to § 403.42(l) as discussed in your November 3, 2003 letter. Thank you.

Confidentiality Note:
The documents accompanying this fax transmittal contain information from the Commonwealth, Department of Labor & Industry, Office of Chief Counsel which are confidential or legally privileged. *The information is intended only for the use of the individual or entity named on this sheet.* If you have received this document in error, please immediately telephone the sender and arrange for its return. If you are not the intended recipient, you are notified that any disclosure, copying, distribution or taking any action on reliance on the contents of this fax transmission is strictly prohibited.

Original: 2283

IRRC

From: Steve Snyder [steve@modularhousing.com]
Sent: Friday, October 24, 2003 1:53 PM
To: Balson, Jon
Cc: Conte, Mark; IRRC; Hon. Mark McNaughton; Mary Gaiski
Subject: UCC Administration and Enforcement Regulation

Importance: High

UCC Regulations letter to IRRC...

Modular Building Systems Association

3029 North Front Street, Suite 301

Harrisburg, PA 17110

(717) 238-9130

RECEIVED
2003 OCT 24 PM 3:07
INDEPENDENT REGULATORY REVIEW COMMISSION

October 24, 2003

Jon C. Balson, Administrator
Uniform Construction Code Program

Department of Labor and Industry

Jon:

Thank you for your continued e-mail updates on the UCC Administration and Enforcement Regulation rulemaking process. I have reviewed the current draft regulations forwarded to the Independent Regulatory Review Commission and note that the regulations still seek to regulate the industrialized housing industry.

I understand that you have met with the Department of Community and Economic Development and have indicated that the modular housing industry no longer opposes these regulations, based on legislation pending in the House of Representatives addressing the stair geometry issue. I want to inform you that whether the stair geometry issues is addressed in the UCC or not has no affect on our position on these regulations. We continue to oppose any provision in the regulations which does anything other than completely exempt the industrialized housing industry as the enabling legislation clearly provides for. We would appreciate your not informing interested parties of our industry's position on these regulations without at least consulting with us first.

Thank you for your attention to this matter. Attached is a copy of our letter to IRRC for your review. If you have any questions please feel free to call me.

Sincerely,

Steve Snyder

Executive Director

CC. Representative Mark McNaughton

John R. McGinley, Jr., Independent Regulatory Review Commission

Mary Gaiski, Pennsylvania Manufactured Housing Association

Mark Conte, Department of Community and Economic Development

----- Original Message -----
From: "Balson, Jon" <jbalson@state.pa.us>
Sent: Thursday, October 09, 2003 9:21 AM
Subject: UCC Implementation Update # 11

The Department has now received approval to re-submit the final-form UCC Administration and Enforcement Regulation for formal approval.

This regulation must first be sent to the Governor's Office of General Counsel. We expect to get their approval in about a week, at which time we will submit the regulation to the Independent Regulatory Review Commission and two standing committees of the General Assembly.

You will receive another update when the latter occurs. At that time, you will also be able to access a copy of the revised, final-form regulation on the UCC web site. We will also provide you with projected dates for the municipal opt-in, opt-out period and implementation of the UCC program.

Jon C. Balson
Administrator
Uniform Construction Code Program

October 23, 2003

John R. McGinley, Jr., Esq. Chairman
Independent Regulatory Review Commission
333 Market Street
14th Floor
Harrisburg, PA 17101

Re: Uniform Construction Code Administration Regulations proposed by Department of Labor and Industry

Dear Chairman McGinley:

I am writing once again on behalf of the Modular Building Systems Association (MBSA) regarding Uniform Construction Code Regulations submitted by the Department of Labor and Industry. The MBSA is a regional trade association representing the modular industry throughout the eastern United States. We have members located throughout that region and lobby, predominantly on the state level, in those states where our members ship homes. It is worth noting that Pennsylvania has more modular manufacturers than any other state in the eastern United States, and joins Indiana as one of the top two modular producing states in the country. Currently, there are approximately 23 manufacturers located in Pennsylvania operating approximately 28 factories, employing in excess of 3,500 people in the design, manufacture and sale of modular homes. In 1996, there were approximately 6,500 modular homes manufactured in Pennsylvania. Of that number, 2,100 were sited in Pennsylvania and the rest were shipped to states other than Pennsylvania. Modular homes account for approximately 6% of the new housing starts each year in Pennsylvania. When you combine the modular manufacturing sector of the industry with the sizable building supply industry which has located in Pennsylvania to supply the manufacturer, it is not difficult to see the economic impact and tax revenue our industry generates in Pennsylvania.

When the statewide building code legislation was introduced, our association worked on amendments to the legislation which were eventually included in Act 45 of 1999. It is interesting to note, that of all the states throughout the eastern United States, Pennsylvania is the last state to adopt a statewide building code. However, for the

modular industry, we have had a statewide building code in Pennsylvania since the Industrialized Housing Act was passed in 1972. (Note: Modular housing is referred to as "industrialized housing" in Pennsylvania statutes.) Since the passage of the Industrialized Housing Act and its accompanying regulations, our industry has been required to build our homes to either BOCA or CABO (the national model code at that time) regardless of whether site-builders were required to do so. The Department of Community and Economic Development, who administers the Industrialized Housing Program is in the process of obtaining regulatory changes to update the code to the new International Codes contained in Act 45.

Because our industry is already required under the Industrialized Housing Act to build to a uniform code, and because of the extensive regulatory program provided for by the Industrialized Housing Act, administered by DCED, we were successful in having an amendment included in the legislation which became Act 45 to exempt our industry from the UCC. The amendment is contained in Section 901 of Act 45 and is straightforward and unambiguous. It states that the Industrialized Housing Industry is exempt from the Act. The language could not have been more clear and left no question for regulators to resolve.

With the adoption of Act 45, our industry was sure this issue was clearly addressed. For this reason, we were surprised when we received a copy of the Department of Labor and Industry's draft regulations and read Section 403.25 regulating the on-site completion of the modular home. Since that time, we have tried without success to help the Department understand that this section of the regulations is "...so entirely at odds with [the] fundamental principle [contained in Section 901 of the Act] as to be the expression of a whim [of the Department], rather than an exercise of judgment." (*See* Housing Authority of Chester v. Pennsylvania State Civil Service Com'n., 730 A.2d 935 (Pa. 1999)).

Our argument in opposition to Section 403.25 of the Regulations is twofold: (1) It is in direct opposition to the language and intent of Act 45, and (2) it conflicts with the Industrialized Housing Act and regulations administered by the Department of Community and Economic Development which comprehensively regulates both the manufacture and on-site completion of the home.

I

As mentioned, the language in Section 403.25 of the regulations is in direct conflict with the Act. The Act specifies that modular housing is exempt. The regulations purport to regulate modular housing. Pennsylvania case law is clear on the issue of administrative agency interpretation of statutes. I have included a number of recent court decisions dealing with administrative agencies interpreting Pennsylvania statutes. Courts afford an administrative agency a certain amount of deference when interpreting a statute in regulations. However, if the Legislature has clearly spoken on an issue, regulations which do not "genuinely tracks the meaning of the law being interpreted are invalid." (*See* Bailey v. Zoning Bd. Of Adjustment of City of Philadelphia, 801 A.2d 492 (Pa. 2002)). Section 403.25 of the regulations does not genuinely track the meaning of the law. After

numerous meetings with the Department of Labor and Industry, we have not been able to come to terms with this issue. Our association is determined to pursue this issue through the regulatory review process and in Commonwealth Court if necessary.

PENNSYLVANIA CASE LAW DEALING WITH ADMINISTRATIVE INTERPRETATION OF A STATUTE

"An administrative agency's interpretative rule cannot be valid unless it is reasonable and genuinely tracks the meaning of the law being interpreted." Bailey v. Zoning Bd. Of Adjustment of City of Philadelphia, 801 A.2d 492 (Pa. 2002).

"A regulation contrary to intent of the statutory provision to which it relates has no validity." Moyer v. Berks County Bd. Of Assessment Appeals, 2002 WL 1396032 (Pa.Cmwlth.App. 2002).

"Where there is a conflict between statute and a regulation purporting to implement provisions of that statute, the regulation must give way." Bell Atlantic Mobile Systems, Inc. v. Commonwealth of Pennsylvania, 2002 WL 1060044 (Pa.Cmwlth.App. 2002).

"To show that agency's legislative rule-making powers have been exceeded, it is not enough that the prescribed system of accounts shall appear to be unwise or burdensome or inferior to another; error or lack of wisdom in exercising agency power is not equivalent to abuse, and what has been ordered **must appear to be so entirely at odds with fundamental principles as to be the expression of a whim, rather than an exercise of judgment."** Housing Authority of Chester v. Pennsylvania State Civil Service Com'n., 730 A.2d 935 (Pa. 1999).

"Rule adopted pursuant to agency's legislative rulemaking power is valid and is as binding upon court as a statute if it is (a) within grant of legislative power by legislative body, (b) issued pursuant to proper procedure, and (c) reasonable." Rohrbaugh v. Pennsylvania Public Utility Com'n, 727 A.2d 1080 (Pa. 1999)

"Where there is conflict between statute and regulation purporting to implement provisions of that statute, regulation must give way." Com. v. Colonial Nissan, Inc., 691 A.2d 1005
(Pa.Cmwlth.App. 1997).

"While courts traditionally accord interpretation of agency charged with administration of act some deference, meaning of statute is essentially question of law for court and, when convinced that interpretative regulation adopted by administrative agency is unwise **or violative of legislative intent, courts disregard regulation.** Philadelphia Suburban Corp. v. Com., Bd. of Finance and Revenue, 635 A.2d 116 (Pa. 1993)

"Validity of interpretative rule rests upon willingness of reviewing court to say that it tracks meaning of statute it interprets as matter of law." Consulting Engineers Council of Pennsylvania v. Com., State Architects Licensure Bd., 551 A.2d 380 (Pa.Cmwlth. 1988).

The reason for the exemption in Section 901 of the act is because the design, manufacture, factory inspection, and on-site completion of the modular home is extensively regulated under the Industrialized Housing Act regulations. The purpose of the Industrialized Housing Regulations set forth in § 145.2 is to "[e]stablish uniform procedures to assure that industrialized housing and housing components intended for sale, lease or ***installation*** for use in this Commonwealth will be manufactured, transported and installed in compliance with the uniform standards adopted by the [regulations]."

> **§ 145.2. Purpose.**
>
> This chapter interprets and makes specific the provisions of the Industrialized Housing Act, as provided in section 5 of the act (35 P. S. § 1651.5). This chapter establishes administrative procedures for the implementation of the act which will facilitate the use of industrialized housing and housing components in this Commonwealth consistent with safeguarding the health, safety and welfare of citizens of the Commonwealth and will carry out the purposes set forth in the legislative findings in section 2 of the act (35 P. S. § 1651.2). More specifically, this chapter is intended primarily to achieve the following objectives:
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> (2) Establish uniform procedures to assure that industrialized housing and housing components intended for sale, lease or ***installation*** for use in this Commonwealth will be manufactured, transported and installed in compliance with the uniform standards adopted by this chapter. In particular, this chapter establishes procedures under which the essential structural, electrical, mechanical and plumbing elements of industrialized housing and housing components are subjected to compliance assurance procedures, including inspections, in the manufacturing facilities during the manufacturing process, thereby eliminating the need for subsequent inspections at the building site of those elements which are enclosed within the walls which might otherwise be subjected to disassembly, damage or destruction in the course of onsite inspections.

The scope of the regulations reiterates the intent of the Industrialized Housing Act to "govern the design, manufacture, storage, transportation and ***installation*** of industrialized housing and housing components which are sold, leased or ***installed***, or are intended for sale, lease or installation, for use on a site in this Commonwealth."

> **§ 145.3. Scope.**
>
> Except to the extent otherwise stated in the act and the provisions of this chapter and in other applicable laws of the Commonwealth which are not inconsistent with or superseded by the act and this chapter, this chapter governs the design, manufacture, storage, transportation and ***installation*** of industrialized housing and housing components which are sold, leased or installed, or are intended for sale, lease or installation, for use on a site in this Commonwealth.

§ 145.36 provides that industrialized housing built to the code adopted in the Industrialized Housing Regulations (currently BOCA and CABO), is deemed to comply with the local building code for a municipality. This provision preempts local

enforcement of code provisions which are not adopted consistent with the code adopted under the Industrialized Housing Act and regulations. The home is still subject to local zoning, subdivision, development and fire district regulations. Nothing in the Act or the regulations prohibit the municipality from requiring the modular home builder to secure a building permit or the local code enforcement officer from inspecting the home on site and particularly the installation and other work done on site. The stipulation provided for in the Act and Regulations is that when inspecting the home, the local code inspector is required to inspect to the code and standards provided for in the Industrialized Housing Act, and not to the local code or the new Pennsylvania Uniform Construction Code.

As a practical matter, there will be little difference in the codes the inspector is inspecting to. Currently, the Industrialized Housing Act adopts by reference, the BOCA and CABO code. As mentioned, the Department of Community and Economic Development is promulgating regulations to update these codes to include the new International Building and Residential Codes.

The Department of Labor and Industry has continued to make the argument, particularly to local government organizations, that without Section 403.25 of the UCC Regulation, modular housing will not be inspected at the site, or our industry will somehow be unregulated. This argument is untrue and misleading. The regulations under § 145.81(a)(2) provide for the local enforcement agency to inspect the installation of the industrialized housing and housing components at the site for nonconformity with the "installation instructions in the Building System Approval Report." These installation instructions in the Building System Approval Report are pursuant to the Industrialized Housing Act and regulations and require the inspector to inspect to that standard.

> **§ 145.81. Responsibilities of local enforcement agencies.**
>
> (a) Local enforcement agencies can make an important contribution to the effective administration of the act and this chapter. In addition to discharging the responsibility under local law for the enforcement of applicable locally-enacted codes and ordinances governing site preparation work and water, sewer, electrical and other energy supply connections as described more particularly in § 145.36 (relating to applicability of locally-enacted codes and ordinances), and in view of the responsibilities of local enforcement agencies under State and local law and of the responsibilities of local governments to cooperate with agencies of the Commonwealth to protect the health, safety and welfare of the citizens of the Commonwealth, local enforcement agencies shall assist the Department in enforcing the act and this chapter for industrialized housing and housing components at the time of installation in the jurisdiction of their local government in the following respects:
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> * * *
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> (2) Site inspections of the installation of the industrialized housing and housing components at the site for nonconformity with the installation instructions in the Building System Approval Report.

The modular housing industry is intensely regulated in every phase of the process, in every state we ship to. This extensive regulation is a fact of life in our industry. However, as a result of the Industrialized Housing Regulations currently in place in Pennsylvania, consumers, state regulators and municipal officials are assured that the modular home is manufactured and installed free of defect in code and structural compliance and

workmanship. If you discuss this issue with state regulators, they will tell you that compared to the number of homes sold in Pennsylvania, it is rare that a problem arises with a modular home.

Act 45, Section 901 is clear in it's exemption of our industry from compliance with the UCC. Section 403.25 violates that exemption and should be removed from the final regulation. We raised all of these arguments with the Department the last time these regulations were introduced. To date, no changes have been made and the Department has not responded to our concerns. Thank you for your consideration of these concerns.

Sincerely,

Steve Snyder
Executive Director

CC. MBSA Members
Robert E. Nyce Executive Director
Mary S. Wyatte, Esq. Chief Counsel
Mark Conte, Department of Community and Economic Development

SECTION 901 OF ACT 45

Section 901. Exemptions.

This act shall not apply to manufactured housing which bears a label, as required by and referred to in the act of November 17, 1982 (P.L.676, No.192), known as the Manufactured Housing Construction and Safety Standards Authorization Act, which certifies that it conforms to Federal construction and safety standards adopted under the Housing and Community Development Act of 1974 (Public Law 93-383, 88 Stat. 139), nor shall it apply to industrialized housing, as defined in the act of May 11, 1972 (P.L.286, No.70), known as the Industrialized Housing Act.

SECTION 403.25 OF THE PROPOSED REGULATIONS

§ 403.25. Manufactured and industrialized housing.

* * *

(b) Industrialized housing is governed by the following under section 901(a) of the act:

(1) Except as provided in subsection (b)(2), the Uniform Construction Code does not apply to industrialized housing assembled by and shipped from the manufacturer.

(2) The Uniform Construction Code applies to all of the following:

(i) Site preparation.

(ii) Foundation construction.

(iii) Utilities connection.

(iv) Construction, alteration or repair to the industrialized housing unit after installation.

(v) Construction, alteration, repair or occupancy if industrialized housing is resold to a subsequent purchaser.

(vi) Construction, alteration, repair or occupancy if industrialized housing is relocated.

(c) The Department of Community and Economic Development may enforce and take action under the Industrialized Housing Act (35 P. S. §§ 1651.1--1651.12) and the Manufactured Housing Construction and Safety Standards Authorization Act (35 P. S. §§ 1656.1--1656.9).