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Senate of Pennsylvania

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SERVICES CAUCUS

October 4, 2002

Mr. Steve Snyder
3029 North Front Street, Suite 301
Harrisburg, PA 17110

Dear Mr. Snyder:

Thank you for contacting my office regarding The Department of Labor and Industries Uniform Construction Code Regulations.

The 30-day public comment period concluded on September 23, 2002. Department personnel have begun reviewing the public comments. In mid- to late-October, additional comments are due from the legislative committees and the Independent Regulatory Review Commission. I am taking the liberty of forwarding your comments to the Department for their evaluation. The nature of these comments will determine the extent to which the proposed regulation will have to be amended, and the timing of the submission of the regulation for final approval.

Again, thank you for contacting me. If you have any further questions or comments please do not hesitate to contact me or Joe Marsicano of my staff.

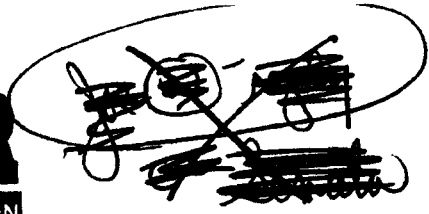
Sincerely,

Harold F. Mowery, Jr.
Senator, 31st District

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September 24, 2002

The Honorable Harold Mowery, Jr., Member
Senate Labor and Industry Committee
Senate Post Office
Main Capitol Building
Harrisburg, PA 17120

Dear Senator Mowery:

I am writing on behalf of the Modular Building Systems Association (MBSA) regarding proposed regulations by the Department of Labor and Industry, before the Senate Labor and Industry Committee to implement the Pennsylvania Uniform Construction Code under Act 45 of 1999. 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.

Pennsylvania has more modular manufacturers than any other state in the United States. Currently there are approximately 23 modular 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, 2100 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.

Of all the states throughout the eastern United States our members ship homes to, 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. 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 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 violates both the language and intent of Act 45.

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.

Act 45 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. 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 tracks the meaning of the law.

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].” The scope of the regulations (§ 145.3) reiterates the intent of the Industrialized Housing Act to “govern the design, manufacture, storage, transportation and *installation* of industrialized housing. Section 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 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 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.

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. 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 encourage you to oppose this section of the regulations as the Labor Relations Committee reviews them under the regulatory review process. If I may be of assistance, please feel free to contact me.

Sincerely,

STEVE SNYDER

Steve Snyder,
Executive Director

CC. MBSA Members

SRS/kal