



Admin
MINNESOTA

Department of Administration

Commissioner's Office
200 Administration Building
50 Sherburne Avenue
St. Paul, MN 55155
Voice: 651.296.1424
Fax: 651.297.7909
TTY: 651.297.4357

December 18, 1998

Mr. James Nobles
Legislative Auditor
658 Cedar Street
St. Paul, MN 55155

Dear Mr. Nobles:

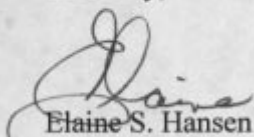
The legislative audit report regarding the State Building Code raises a number of issues we believe could improve the adoption, application, administration and coordination of our building and fire codes in the state of Minnesota. We compliment you and your staff on your quick grasp of the various concepts in these codes. We concur with your recommendation that major structural changes are not needed and that procedural changes to address cooperative agreements between building and fire officials would be beneficial.

We believe that the existing memos of understanding between the Building Code Division and the State Fire Marshall Division work well when followed. However, expanding the current memos of understanding into signed cooperative agreements to address the administrative responsibilities for building and fire officials, similar to agreements established by the State of Oregon, would address the procedural issues raised in the report, including the Certificate of Occupancy.

The Construction Codes Advisory Council would be the appropriate vehicle to research and provide recommendations to the legislature for implementation. The current Governor's Construction Codes Advisory Council, which will become the Construction Codes Advisory Council as authorized by the 1998 legislature, is made up of the four state agencies discussed in this report and 11 members representing the construction industry: design professionals, building officials, fire officials, residential and commercial contractors and local government. The current Council has established technical advisory groups (TAGs), one of which is Code Coordination and Procedures, and could establish additional TAGs for other issues raised in the report.

We will provide the legislature or other interested parties the existing memos of understanding, State of Oregon cooperative agreements or other information as requested.

Sincerely,


Elaine S. Hansen
Commissioner

MINNESOTA DEPARTMENT OF PUBLIC SAFETY



State Fire Marshal Division

444 Cedar Street, Suite 145, St. Paul, Minnesota 55101-5145
Phone: 612/215-0500 FAX: 612.215.0525 TTY: 612/282-6555
Internet: <http://www.dps.state.mn.us>

December 18, 1998

Mr. Roger Brooks
Deputy Legislative Auditor
Office of the Legislative Auditor
1st Floor South, Centennial Office Building
658 Cedar Street
St. Paul, Minnesota 55155

RE: Legislative Auditor Report: *State Building Code*

Dear Mr. Brooks,

Thank you for the opportunity to review the final revised draft of the *State Building Code* report. Again, I would like to express our appreciation to your staff for the excellent job that they did in analyzing the necessary information and developing this report. We value the opportunity to make these final comments and suggestions.

The State Fire Marshal Division would like to formally state our support for the following issues addressed in this report:

- The State Fire Marshal supports the development of an appeals process for state building code issues. The process should provide timely responses to persons and should be readily accessible to those interested.
- The State Fire Marshal supports measures to provide the State Building Codes and Standards Division additional supervisory control over local building officials.
- The State Fire Marshal supports having building and fire officials arrive at agreement on and provide written approval for proposed equivalencies and certificates of occupancy on fire safety issues addressed in both codes.
- The State Fire Marshal supports requiring the departments of Administration and Public Safety to approve the overlapping portions of each other's codes before taking effect.
- The State Fire Marshal supports having a mechanism for resolving differences between building and fire officials concerning enforcement and adoption. The suggestion of having an administrative law judge decide these issues is particularly noteworthy.

I would like to raise the following issues or concerns based on the revisions made to the final draft:

- **Dual Sign-Off for All Equivalencies.** A literal and strict reading of this suggestion would seem to indicate that both building and fire officials would need to agree on all equivalencies granted, including new and existing conditions. I am concerned that this would require that fire officials receive building official approval on all "fire protection"

Alcohol &
Gambling
Enforcement

Bureau of
Criminal
Apprehension

Capitol Security

Driver & Vehicle
Services

Emergency
Management/
Emergency
Response
Commission

State Fire
Marshal/
Pipeline Safety

State Patrol

Traffic Safety



Letter to Legislative Auditor
December 18, 1998
page 2

issues in existing buildings. It is very common for fire officials to give approval to conditions not meeting the strict "letter" of the code based on hardships posed by existing conditions.

The state fire code contains requirements for fire protection; in the case of new construction, these requirements are identical to the requirements of the state building code. For existing buildings, however, the requirements are less strict, based on the realization that there are practical difficulties in existing conditions.

In the State Fire Marshal Division alone, there are approximately 8,000 inspections conducted each year that address over 17,000 code violations. If we would be required to receive local and/or state building code approval for every situation where we approve a fire protection equivalency, it would create a major impediment to our inspectors.

Under our existing arrangement, each Deputy State Fire Marshal – Inspector is required to inspect buildings in accordance with written division policies and procedures. Deviation from accepted equivalencies in our policies must receive supervisory approval or a formal variance.

Instead of having each situation individually reviewed by local and/or state building officials, we would offer that a building code representative be appointed to serve on our internal fire code policy committee.

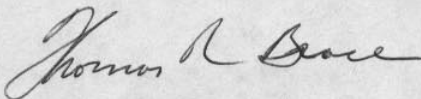
- **Require that Building Code Orders be Provided in Writing and Explain the Right of Appeal.** Your report urges that some form of building code appeal process be developed; as stated earlier, we strongly support that concept. In keeping in that same line of thinking, I feel that it would be very appropriate that building code officials be required to provide and keep written records of their inspection findings and corrective orders. In addition, these written orders could explain to the recipient that there is an appeals procedure.

The State Fire Marshal Statutes have contained such a provision for years and we have found that it works well. You can find these fire code requirements in Minn. Stat. §299F.011, subd. 6, which states:

Subd. 6. Penalty. A person who violates a provision of the uniform fire code shall be guilty of a misdemeanor. No person shall be convicted for violating the uniform fire code unless the person shall have been given notice of the violation in writing and reasonable time to comply. The notice must contain a statement explaining the right to appeal the orders.

Once again, thank you for the opportunity to review and comment. We found it to be most insightful and believe it to have far-reaching impact. If you have any questions or need additional information, please feel free to contact me.

Sincerely,



Thomas R. Brace
State Fire Marshal

cc: Mr. Donald Davis, Commissioner of Public Safety



MINNESOTA
DEPARTMENT OF
PUBLIC SERVICE

OFFICE OF THE COMMISSIONER

December 21, 1998

Roger Brooks, Deputy Legislative Auditor
1st Floor South, Centennial Building
658 Cedar Street
St. Paul, MN 55155

Dear Mr. Brooks:

Thank you for the opportunity to review your final report on the State Building Code. Many of the report's recommendations are well founded and would ultimately improve the safety, durability, and comfort of Minnesota's buildings. However, the Department of Public Service (DPS) takes issue with the recommendation to transfer energy code rulemaking authority to the Department of Administration (DOA).

The rationale for recommending the transfer of energy code rulemaking authority is not based on a comprehensive consideration of relevant issues, and may have detrimental consequences if enacted. The report argues that this transfer will help improve coordination and timing, but no mention is made of possible negative impacts. The report also cites that moving the authority for promulgation would make it easier for building officials to enforce the energy provisions of the building code, but no reasons are given to support this conclusion.

As you know, the Department of Public Service took a major step in successfully addressing the issue of depressurization in buildings in the most recent energy code rulemaking. These provisions address serious problems in the way houses are presently being built. The Department of Public Service had the necessary expertise -- based on its own research and long association with the building industry -- to develop these proposals, work with a broad range of stakeholders and ensure the incorporation of these provisions into code. As you are also aware, DOA is just now beginning to consider these necessary changes for their ultimate inclusion in the building codes.

A key finding of the report is that major structural changes in the way the state administers the building and fire code are not needed at this time because "...building and fire officials balance the building code's various philosophies and goals..." Why this same logic should not apply to the energy provisions of the building code, which are prepared by DPS experts having similarly unique qualifications, is never explained.



Roger Brooks
December 21, 1998
Page Two

The Department of Public Service certainly recognizes that certain procedural changes can improve the building code rulemaking process. We only want to ensure that any changes not detract from the ultimate and primary goal -- that of enhancing the overall effectiveness of the program.

Sincerely,

A handwritten signature in cursive script that reads "Kris Sanda".

Kris Sanda
COMMISSIONER

KS:mm