

PENNSYLVANIA UNIFORM CONSTRUCTION CODE REVIEW AND ADVISORY COUNCIL

TESTIMONY OF FRANK C. THOMPSON , CHAIRMAN BEFORE THE SENATE LABOR AND INDUSTRY COMMITTEE ON SEPTEMBER 24, 2013

Good morning Chairman Gordner and members of the Labor and Industry Committee.

My name is Frank Thompson and I am the Chairman of the Uniform Construction Code Review and Advisory Council, the appointed body charged with determining which building code revisions are adopted in the Commonwealth. I have proudly served as the elected Chairman since the Council was first organized in 2009. I have chaired two Council reviews of ICC triennial code revisions: the first in 2009, when every new or amended code revision was adopted, and again in 2012 when after a more extended process the Council decided not to adopt any revisions that were within the scope of our review.

Following the 2012 decision to not adopt the latest revisions, the comments I and other Council members received were overwhelmingly supportive of our decision. Beginning with the 2004 implementation of the UCC, adoption of the 2012 codes would have represented the fourth set of code revisions in 10 years. Coupled with the dire economic conditions of many segments of the construction industry and the building code departments of our municipalities, the decision was the right one. The most popular public comments made to the Council during the 2012 code review was for the Council to adopt no new revisions.

We have learned much in the two cycles that have been completed and I know the Council, despite comments from some who may suggest no new revisions will ever be adopted, that the Council is committed to the adoption of new code revisions that are prudent for Pennsylvania. Prudence means that not every suggested change will be adopted or rejected but that the result would be something in between. The review of the 2015 code revisions is scheduled to begin in the spring/summer of 2014.

The Council has not yet discussed SB1023 but will do so at our next meeting. We customarily forward our legislative recommendations to all members of the House and Senate Labor and Industry Committees following our meetings. The Council's Legislation Work Group reviewed SB1023 during a conference call earlier this month and will be recommending "not for passage" to the Council. SB 1023 is not consistent with a number of provisions of the statute that the Council supports as well as changes the Council is itself recommending, particularly the change to the voting and reject out provisions of Section 107 (b.1)(5), the re-review of the 2012 codes in Section 107(b.1)(6), and the additional two Council seats provided for in Section 107(c)(20) and (21).

Before I go in to the details of the Council's recommended changes, I would like to address some background issues and public comment that I have been made aware of as they pertain to SB 1023.

1. Pennsylvania is operating with out-of-date building codes - the reality is that as of today, only 11 states have adopted the 2012 International Building Code (IBC), six states have adopted the International Residential Code (IRC) and six states have adopted the International Energy Conservation Code (IECC). Only one of the states that adopted the IECC have adopted it without modifications to reduce its stringency. Currently, Pennsylvania is one of 26 states that have adopted the 2009 IBC and 33 that have adopted the 2009 IECC. As these figures show, Pennsylvania is in line with the majority of the nation and the claims of a broken code process that will doom Pennsylvania to the dark ages are clearly false, disingenuous, and self serving. Only 9 states presently have a legislative mandate to adopt building codes within three years of publication. Two states require adoption of energy codes within that time frame. Pennsylvania law requires only review of the latest building codes within one year of publication and mandatory adoption of only the accessibility provisions. Of our surrounding states - New Jersey, New York, Ohio, West Virginia, Maryland and Delaware, only Maryland has a state mandate to adopt the latest building codes and in Maryland each county can modify the provisions and enforcement requirements.

2. In 1999, when the General Assembly passed the Pennsylvania Construction Code Act, it referenced two model code books - the 1999 BOCA National Building Code and the 1998 ICC One and Two Family Dwelling Code. The total thickness of those two books is two inches. The 2009 ICC codes adopted in Pennsylvania - the Building Code, Residential Code, Energy Conservation Code, Mechanical Code, Plumbing Code, Existing Building Code, Fuel Gas Code, Wildland - Urban Interface Code, Performance Code and certain provisions of the Fire Code total a thickness of approximately seven inches, an increase of 350%.

3. You might find it ironic that prior to the Council taking any formal action on the 2012 code revisions, proposed code changes were already required to have been submitted for about half of the various codes in the I-Code family for 2015. We hadn't even decided what to adopt yet for 2012 and there were proposed changes submitted. Since the development of the ICC Family of Codes, there have been approximately 2,000 codes changes proposed for each triennial edition. In 2012, about 1,000 codes changes were approved. For 2015, over 2,200 codes changes were proposed. Many, including myself, consider this churning and it needs to stop! Two of ICC's five strategic partners - the American Institute of Architects and the National Association of Home Builders are on record, in writing, requesting the ICC to reevaluate their business model of selling code books and services every three years and extending the code development cycle to a more manageable five or six year cycle.

There is an ever growing recognition in the building code and construction community that the churning of building code changes needs to end and a more reasonable time frame for model code development and adoption by states be put in place. In the last several years, actions by state legislatures has been in the direction of slowing down the state code adoption process, not accelerating it, with several states revising their code adoption process from a three year cycle to

a more extended, typically six year cycle.

4. The ICC Codes should represent tried and proven technologies that have been developed over time to deliver safe and affordable structures. Over the past few decades, we have seen revisions incorporated into the codes that later are found to not be compatible with the existing provisions and result in significant problems that have costly solutions. Any revisions to the I codes should be able to be integrated into the construction of a structure with a proven positive cost/benefit. Instead, newly modified provisions are again and again the subject of further changes.

I am very familiar with the ICC model code development process, having served on ICC code development committees since 2000 and most recently on the Residential Energy Code Development Committee this year where we heard some 270 proposed code changes and took action on them. It is a process that often places material manufacturers at the podium to encourage acceptance of their products or require more of their products in the codes. From a manufacturer's perspective, acceptance of a code revision that requires a product or requires more of it has become a key marketing strategy for manufacturers. Once accepted into the model code, it creates a special interest by material manufacturers who have seen their products mandated in the model code, to see that those code revisions are adopted by states.

The ICC policy on cost / benefit as part of a code change only requires a statement of whether the change would increase the cost of construction and the opportunity to provide cost and benefit information which is rarely detailed by the proponent of a change. Even when it is provided, there is no standard methodology to calculate the cost / benefit. I have seen energy code changes for 2015 that one party has suggested will have a 10 year payback period and another party suggest a 100 year payback of the same change.

5. I have severe concerns about Pennsylvania participation in the model code development process. The ICC code development process is one where the final decisions are made ONLY by the designated voters of ICC governmental members. Though Pennsylvania has over 2500 municipalities that could be members, there are only 68 designated voters from Pennsylvania who are considered "validated voters" for the upcoming Final Hearings in Atlantic City on October 2-10. Of those, 12 are from the City of Philadelphia and 12 from the Review and Advisory Council. The cities of Pittsburgh, Erie, Harrisburg and many others will not be represented. I would suggest that only about 30 Pennsylvanians will actually vote at the hearings. We have at least three Council members, myself included who will pay their own way to participate and vote. Clearly, declining municipal budgets and travel costs to participate in the hearings have many eligible voters staying home, but I would offer another reason; apathy over the churning of the code provisions is minimizing Pennsylvania participation.

At our May meeting, the Council discussed recommendations that our Legislation Work Group was bringing forward to improve the code adoption process that would be reflective of the experiences the Council had been through. The Work Group labored for months to reflect on the experiences of the first two triennial code revision reviews and develop a proposal that would best serve the citizens of the Commonwealth in providing a reasonable and effective process for

adopting building codes in Pennsylvania. Those proposals were approved by the Council unanimously, with one abstention. These recommendations do not represent the positions of any special interest group but instead the recommendations of the people who have been through the process - architects, building code officials, engineers, elected municipal officials and builders who know first-hand how to correct the problems. Over the summer, the Council forwarded these recommendations to the Chairmen and staff of both the House and Senate Labor and Industry Committees with the intent of beginning a dialogue to provide for needed statutory revisions prior to the start of the 2015 code adoption process. We have also presented these recommendations to Secretary Hearshway and await a meeting with the Governor's Office.

Earlier this month the Council leadership attended meetings of the Board of Directors of both the Pennsylvania Association of Building Code Officials (PABCO) and the American Institute of Architects - Pennsylvania, to present our recommendations. I am pleased to report that PABCO is in full support of the Council's recommendations and we await a response from AIA-PA.

The Council's detailed recommendations are attached to this testimony. Let me mention some of the key changes the Council is recommending:

1. Change to a six year major review cycle - our proposal provides for what we characterize as a major review every six years, instead of every three. At that review we would consider the two latest triennial revisions to the code. But at the same time we recognize that the ICC currently remains on a three year code development cycle and so we are proposing a "minor review" in between the six year major reviews at which the Council, at its discretion, would review selected latest triennial revisions that it believes represent significant improvement or benefits to the Commonwealth. In this fashion the Council would have the opportunity to review and adopt the best and most significant provisions - perhaps an update of the electrical code, or energy efficiency improvements, or other technological advances that have been introduced to the codes.
2. Time for review and submission of the report - the one year the Council currently has from official publication to submission of the report is not adequate. Our experience in 2012 clearly demonstrated that once the codes are published, the construction industry and the public need time to digest the proposed changes. In 2012 the codes were published during the summer of 2011, we held public hearings in September through November across the Commonwealth with dismal public input. We had three testifiers in Harrisburg, none in West Hazelton and nine in Cranberry Township. The public was clearly not educated and ready to provide much needed input. With the extended period both the Council and the public would have an opportunity to learn about the changes and **then** the Council could begin holding public hearings and deliberations.
3. Modifications - currently the Council can only approve or disapprove a revision as it is approved by ICC, word for word. We are recommending that the Council be able to make modifications to that language that are limited to the subject matter of the triennial revision being modified and are consistent with the intent and purpose of the PCC Act. An example is provisions in the 2012 IECC that reduce the number of permitted air changes per hour in a structure from seven to three, thereby requiring mechanical ventilation. Of the six states that

have adopted the 2012 IECC, only one has not modified this provision to a number of five or higher.

4. Extension of Council Member terms - Council Members serve two years. This is just too short. We need a Council that has had the benefit of additional time and experience to provide the most effective code review and adoption process. Our proposal would extend the term to three years in length and adjust the appointment date to September 1st instead of the current June 30th.

5. Accessibility - the triennial revisions to the accessibility provisions of the I-Codes are outside the scope of review of the Council and are currently adopted automatically. In 2011, during Senate consideration of HB 377, a key phrase was overlooked in matching up the provisions that are excluded from Council review with what is included in the automatic adoption regulations. That phrase included the language “or any other accessibility requirements contained in or referenced by the UCC related to person with physical disabilities”. Our proposal would add that language and require other accessibility requirements be specified in the adopted regulations. This will resolve the current problem where the Department of Labor and Industry has not provided a list of the specific codes sections that are included as “other accessibility provisions” which has caused confusion among building code officials, design professionals and the construction industry as what is to be enforced.

That is the core of our proposal that addresses the code adoption process.

Additionally, the Council is making a request for essential clerical, technical and legal support services. The department has provided for meeting locations, advertising of meetings, developed and maintained a Council website, coordinated conference calls, advised the Council of proper communications retention protocol and stenographic services of the meetings. During the 2011-12 code review period they also provided some clerical support. Over this period it has become evident that additional services to support the volunteer members are warranted and would improve the professionalism and effectiveness of the Council. Though full time staffing is not anticipated as being needed, there are several areas where additional support is warranted as follows:

Clerical - would be needed for all meetings

Technical - review and research proposed code changes per the statute and provide written analysis of costs and benefits. This would only be needed during the code review time frame.

Legal - needed on an as needed basis, could be for all meetings.

The PCCA does not provide for any reimbursement of travel expenses or per diems to members for meetings attended in the performance of their duties. Other Pennsylvania state boards are provided travel reimbursements and/ or per diem payments.

The last part of our recommendations are a variety of specific PCCA provisions that we recommended changes to in 2011 and submitted to you and have reaffirmed those.

In closing, based on the current statute, there is a need for the General Assembly to make changes prior to the start of the 2015 code adoption process next year and SB 1023 in its current form is not the answer. The Council members are hopeful that this hearing can be the start of a dialogue with the Senate Labor and Industry Committee to address those problems in a manner that is not driven by special interests but instead reflects the experiences and recommendations of those committed Council members to adoption of building codes that are in the best interest of the Commonwealth.

Thank you Mr. Chairman and Committee members for the opportunity to present this testimony.