



**TESTIMONY BY  
THE PENNSYLVANIA STATE ASSOCIATION OF  
TOWNSHIP SUPERVISORS**

**BEFORE THE  
SENATE LABOR AND INDUSTRY COMMITTEE**

**ON**

**SB 1001**

**PRESENTED BY**

**ELAM M. HERR  
ASSISTANT EXECUTIVE DIRECTOR**

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HARRISBURG, PA**

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Chairman Gordner and members of the Senate Labor and Industry Committee

Good morning. My name is Elam Herr, and I am the assistant executive director for the Pennsylvania State Association of Township Supervisors. Thank you for the opportunity to appear before you today on behalf of the 1,455 townships in Pennsylvania represented by the Association.

Townships comprise 95 percent of the commonwealth's land area and are home to more than 5.4 million Pennsylvanians, nearly 42 percent of all state residents. These townships are very diverse, ranging from rural, agricultural communities with fewer than 200 residents to more urban, populated communities with populations approaching 70,000 residents.

We are here today to testify concerning Senate Bill 1001 and changes to the Uniform Construction Code (*Act 45 of 1999, as amended*) that would be made through the adoption of the 2009 International Codes Council Codes. Every three years the International Code Council revises the International Building Code and the International Residential Code, which are the basis for the Commonwealth's Uniform Construction Code. The UCC requires the Department of Labor and Industry to adopt the IBC as the new UCC by December 31 of this year.

With the passage of the 2009 ICC changes, the Association has heard from many members about the impact these proposed changes would have in their communities and have voiced their concerns about enforcement. By far the biggest issue is the new requirement that sprinkler systems be installed in all new single-family homes. Our members believe that the additional cost to install sprinklers in new homes, particularly those on private wells, would be simply unsustainable and would decrease the number of new homes being built.

While we have heard from many township officials on both sides of this issue, the majority oppose this mandate. In addition, the Association's Executive Board voted several weeks ago to oppose the mandatory requirement of sprinklers in single-family residential structures and instead ask that local governments be granted the discretion to determine if sprinklers should be required in their community.

Examples of other mandates of concern contained within the 2009 revisions include the following: increase required width for fire apparatus access roads; limit pipe hangers to metal only; increase anchorage to foundation requirements; and tamper-proof receptacles in all locations. These requirements add costs to construction and result in our membership enforcing provisions that may not be needed.

The Association took the position in the 80s and 90s when we were working on the building code legislation that the state building code should be a minimum code and that a municipality should have the authority to exceed that requirement if the local circumstances dictated a more stringent code. We also argued that any municipality that had provisions more stringent than the national building code at the time the law was

enacted should be able to keep those provisions that exceeded the code. The only issue that we had was that the criteria for a municipality to change its building code is too stringent and, as such, is not workable. We have asked for changes to this provision since the law went into effect in 2004.

The courts have ruled that the any provision more stringent than the UCC must meet a series of strenuous tests in the act, including one of unique local circumstances that truly warrant the additional regulation. This is a very difficult standard to overcome. While we understand that criteria is needed so that additional provisions are not unlimited by local discretion, we believe that the current standard is simply too great to overcome. Based on case history, we believe that each of the five criteria currently in the act are overly stringent and must be rewritten. In addition, the great emphasis on “uniqueness” by the courts effectively eliminates circumstances that should otherwise warrant higher standards simply because they are not sufficiently “unique.”

One example of this is residential sprinklers. The courts have authorized residential sprinkler ordinances for a municipality that contained two large oil refineries and extensive oil pipelines close to housing developments, as well as in a borough where many homes were built on very steep slopes that hindered the fire company’s response. However, in *Schuylkill Township v. Pennsylvania Builders Association*, 935 A.2d 575 (*Pa. Commonwealth Ct*, 2007), the court held that the fact that the township’s volunteer fire company was becoming less able to provide adequate protection for the residents due to various demographic changes and that traffic congestion and topographical conditions in the township rendered fire protection facilities ineffective was not sufficiently unique to warrant a requirement for residential sprinklers.

We believe that the UCC must be amended to remove the requirement for “uniqueness” and to give local officials a real degree of discretion in determining whether a more stringent provision, such as residential sprinklers or even radon regulations, is needed in their communities. Such a local option would lead to less litigation over these more stringent provisions. This flexibility is truly necessary if we are to create a valid alternative to simply adopting the 2009 ICC codes in their current form.

### **SB 1001**

SB 1001 attempts to address and diffuse the controversy over residential sprinklers. Generally, we can support its provisions, but offer the following comments. While Section 503 does a laudable job of providing clear and simple criteria for authorizing local option residential sprinklers in townhouses, the requirements for one- and two-family structures are nearly as stringent as the current law and would require passing a fairly stringent test to enact an ordinance requiring residential sprinklers. In addition, the two criteria offered in this section – that no fire station be located within a 5-mile radius of the residential homes and that a reliable public water supply be in place for these homes – are too stringent. Simply because a home is located close to a firehouse does not mean that enough volunteer firefighters are in the area and available to respond to a fire call at any one time. Instead, this criteria should be lessened to allow for general fire response. Second, while the presence of a public water supply does appear to make

residential sprinklers less expensive, they can be placed in areas without public water and we should not preclude local officials that want to require residential sprinklers in areas not served by public water to do so. While amendatory language has been offered to address this problem, it does not go far enough.

### **Related legislation**

We have heard that legislation will be introduced shortly which will stay the adoption of the 2009 version of the IBC and IRC and instead provide that the 2006 versions remain in effect until the 2012 updates are adopted. We do not have a problem with this concept, provided that the 2006 codes remain available.

We have also heard that this legislation will require the Legislative Budget and Finance Committee to examine the effectiveness of the UCC and the code adoption process to determine whether this is right for Pennsylvania or whether changes should be made. We support such a notion and believe that now that the UCC has been in effect for five years, there is sufficient data and experience to warrant such a study. We believe that this study should examine the UCC Advisory Committee, determine if the makeup is appropriate, and whether the committee has sufficient time and autonomy to perform the duties it was assigned. The study should also review the Department of Labor and Industry's role in overseeing the act and if there is room for improved and clearer processes.

### **Recreational cabins**

We must take this opportunity to comment on one of the stunning weaknesses in Pennsylvania's UCC – the exemption of recreational cabins. This issue remains a very sore spot for our members, both in terms of safety, since many of these structure are poorly built or maintained, and also in terms of fairness. In many areas, the permanent residents live in modest homes, which must comply with the UCC, while the many large, expensive second homes are exempted from the UCC because their owners can legally claim these structures as “recreational cabins.” Our members have stated that recreational cabins should be required to comply with the UCC for safety reasons, the same as all other construction. In addition, our members are concerned that even though a recreational cabin is built as a seasonal structure, often the owner eventually decides to take up permanent residence in the recreational cabin. This puts our members in the awkward position of informing the owner that they cannot permanently reside in their recreational cabin unless the structure complies with the UCC, which often cannot be done without major structural changes.

PSATS supports an amendment to the UCC to allow municipalities that wish to regulate the construction of recreational cabins to do so and to clearly stipulate that a recreational cabin must be brought up to code before it can be used as a permanent residence. This is no different than the existing electrical exemption for residential structures owned by members of a recognized religious sect that later sell their property to an individual that is not part of that religious sect. Also, these provisions present enforcement problems for townships because the recreational cabin exclusion is self-enforcing. If a resident files the affidavit and has the required smoke detectors, fire

extinguishers, and carbon monoxide detectors, there is little the township can do to make sure the structure meets the definition of recreational cabin. Again, our members believe these structures should be built to code for safety reasons. And remember that one of the driving events behind the enactment of the UCC was a cabin fire in the central region of the state that killed dozens of students!

### **Additional options**

Our members, particularly those in the high growth areas, would like to see the following optional provisions made available to them. Municipalities should have the option to permit and regulate the installation of tanks, piping, and appliances for liquid petroleum gas within residential, commercial, and industrial uses and to authorize certified municipal inspectors to inspect these installations. L&I has taken the interpretation that only L&I inspectors can inspect these installations. The problem is, L&I will only inspect if there is a problem. We believe that this is a serious safety issue and that when there is a problem, it is too late.

Also, we would like to have the option of requiring the installation of communication amplification systems in new or renovated non-residential structures to provide adequate communications for emergency personnel. Many current building materials in non-residential structures block signals from communications devices that are used by fire and other emergency personnel working within these buildings during an emergency. Communication amplification systems would help correct the problem in these structures and protect emergency personnel.

In closing, we believe that there is a genuine need to reexamine the process of code adoption in Pennsylvania and to identify whether a different course of action, such as a much longer time frame for adopting new codes and a genuine process for vetting new provisions, is needed. We oppose the mandate of residential sprinklers, but believe that municipalities should be given a true local option to require residential sprinklers. Finally, the standards in the UCC for adopting provisions more stringent than the state law is far too onerous and needs to be loosened to allow for a true local option.

Thank you for the opportunity to testify today. I will now try to answer any questions that you may have.