

**REPORT OF THE
JOINT SUBCOMMITTEE STUDYING**

**The Interrelationship Between the Powers
of the Commonwealth and the Powers of
Local Governments In Environmental and
Building Code Matters**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



HOUSE DOCUMENT NO. 85

**COMMONWEALTH OF VIRGINIA
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**REPORT OF THE
JOINT SUBCOMMITTEE STUDYING THE
INTERRELATIONSHIP BETWEEN THE POWERS OF THE
COMMONWEALTH AND THE POWERS OF LOCAL
GOVERNMENTS IN ENVIRONMENTAL AND BUILDING CODE
MATTERS**

**To
The Governor and the General Assembly of Virginia**

**Richmond, Virginia
April, 1994**

TO: The Honorable George F. Allen, Governor of Virginia,
and
the General Assembly of Virginia

INTRODUCTION

This study was undertaken to examine the interrelationship between the powers of the Commonwealth and the powers of local governments in environmental and building code matters. The study evolved from conflicting recommendations made by the Governor's Advisory Commission on the Dillon Rule and Local Government ("Dillon Rule Commission") in its report, dated November 1, 1992, and the Governor's Advisory Commission on Community Issues Relating to the Pickett Road Tank Farm ("Pickett Road Tank Farm Commission") in its report, dated December 18, 1992.

The Dillon Rule Commission concluded that certain areas of regulation, including environmental laws and building codes, should continue to be uniform throughout the Commonwealth. The Pickett Road Tank Farm Commission, however, recommended the enactment of legislation that would grant local governments broad environmental regulatory authority and authorize a local government to adopt more stringent requirements than those provided in the Uniform Statewide Building Code in connection with construction and reconstruction work at a petroleum products tank farm.

BACKGROUND

The catalyst for the Pickett Road Tank Farm Commission was the discovery in September 1990 of oil in Crook Branch, a creek in Fairfax County. The source of the oil was traced to the Pickett Road Tank Farm, a 114-acre site in the City of Fairfax. Remediation efforts were quickly undertaken and are ongoing. The U.S. Environmental Protection Agency has taken the lead role in directing and monitoring the cleanup with the Virginia Department of Environmental Quality in a backup position.

While various reports refer to an oil leak, the amount of petroleum products in the ground is estimated to be approximately 172,000 gallons, accumulated over a 27-year operating period.

The tank farm opened in 1965. Its initial storage capacity was 54 million gallons of product. The product is piped to the farm from the Colonial Pipeline whose main lines are located approximately six miles to the west.

Eight expansions of the tank farm have taken place, bringing its storage capacity to approximately 73 million gallons. The tank farm is currently used by Star Enterprise (Texaco), Chevron, Amoco, and Citgo.

From the farm over one billion gallons of petroleum products a year are moved by truck to wholesale and retail outlets in Virginia, the District of Columbia, Maryland, and West Virginia. It is estimated that from this facility one-third of the petroleum needs of four million people in the described area are serviced.

Governor Wilder, in response to public concern over health and environmental issues related to the tank farm, issued Executive Order No. 52 on July 29, 1992. The Order created the Pickett Road Tank Farm Commission to provide the Governor with advice on two matters:

1. Methods by which the State can further assist the community and neighboring citizens cope with the contamination problems; and
2. Strategies by which the State can assist the community with the longer-term implications of the problems, to include the possibility of relocation.

The Pickett Road Tank Farm Commission made its report in December 1992. That report was composed of three major sections: background, findings and recommendations, along with appendices of supporting materials.

SUBCOMMITTEE BRIEFINGS

The Joint Subcommittee met on October 18, 1993, and received briefings from the Department of Economic Development on its "Analysis of Tank Farm Relocation," and from the Department of Environmental Quality on organization and recently enacted regulations.

On April 1, 1993, the Virginia Department of Environmental Quality was created to bring several State environmental agencies under one umbrella to aid in a more coordinated response to natural and man-made environmental problems. The Department, in response to the Pickett Road Tank Farm occurrence, has adopted regulations pertaining to the construction and maintenance of aboveground petroleum storage tanks, registration and reporting requirements for tanks and spills, and oil discharge contingency plans.

There also has been introduced in the U.S. Congress legislation by the Virginia congressional members pertaining to aboveground storage tanks. The federal legislation is similar in content to Virginia's statutes and regulations.

The petroleum industry involved at Pickett Road has taken a cooperative stance with federal and state regulatory agencies and they have spent or obligated themselves to spend in excess of \$160 million. The industry in general has, and is continuing to, install the latest technology available at their refinery and storage facilities in the state. They have undertaken significant training programs for their personnel in industry standards as well as the various laws and regulations that pertain to above ground storage tanks.

The Subcommittee also was briefed on the relocation of the Pickett Road Tank Farm by the Department of Economic Development. The cost estimates covered:

1. Dismantling of tank farm and pipelines between the Fairfax facility and Colonial's Chantilly pump station.
2. Construction of a new tank farm within ten miles of Colonial's existing Chantilly pump station.
3. Construction of new pipelines between the new location and the Chantilly pump station. In these estimates, it is assumed the existing six-inch pipeline from Chantilly to Dulles does not need to be moved.

The estimates do not include:

1. Land costs

2. Permitting fees
3. Some engineering and legal fees
4. Any extra requirements by locality in which it might locate

PRELIMINARY CONSTRUCTION COST ESTIMATES

<i>COST COMPONENT</i>	<i>\$ MILLIONS</i>
New Facility Construction	\$90.0
Dismantling of Fairfax Facility	\$ 8.0
Pipeline Removal	\$17.5
New Pipeline Construction*	\$24.3
TOTAL	\$139.8

**Assumes new location is 10 miles from Colonial's Chantilly pump station.*

The Subcommittee was told that probably 27 different approvals and permits would be required and at a minimum two years' time would lapse in the process. Seven potential sites for the relocation of the tank farm were examined by the Department of Economic Development and all appeared to be properly zoned. The sites were located in Fairfax County, Fauquier County, Loudoun County and Prince William County and would require local government acceptance.

During general discussion at the October 18, 1993, meeting, additional information was requested on process and procedure definition from the Department of Environmental Quality on how localities statewide respond to future emergencies, and from the Department of Housing and Community Development on the Uniform Statewide Building Code.

A second Joint Subcommittee meeting was held on December 20, 1993, to receive material requested from the Department of Environmental Quality and Department of Housing and Community Development.

The Subcommittee then considered what additional measures should be undertaken. The Subcommittee determined:

1. Since 1972 the State has had a Uniform Statewide Building Code (Title 36, Chapter 6 of the *Code of Virginia*). As the title states it is uniform in its provisions and the provisions are applied statewide. The application of the building code is conducted by local government building inspectors as is its enforcement. The inspectors periodically are trained by the State with the goal of achieving a uniform application of the building code provisions.

The business community endorses the uniform approach for construction and State study groups that have considered allowing local governments authority to add additional provisions to the building code have concluded statewide uniformity is of greater importance than more local autonomy.

2. The state's Department of Environmental Quality has recently adopted tank construction standards, spill containment provisions, reporting requirements for tank locations, types of stored materials and spill occurrences. The Department has also established enhanced reporting mechanism for emergencies.
3. The federal government in all likelihood will also pass legislation in this area.

RECOMMENDATION

The Subcommittee is of the opinion that the action to be taken at this time is to close all potential gaps between the regulation of the Department of Housing and Community Development and those of the Department of Environmental Quality. The proposed legislation amending statutes that authorize the Uniform Statewide Building Code requires uniformity in regulation of underground and aboveground storage tanks in installation, repair, upgrade and closure of the tanks. By incorporating the tank standard regulations of one department into the regulations of the other department the Subcommittee believes no gaps will exist. Further, the business community will have a desired uniformity in standards. Other amendments are for purposes of clarity and conforming statutory law to current practices.

The context of the proposed legislation provided with the report will clarify the authority of the local building officials relating to the aboveground storage of oil. This bill will enable the Department of Environmental Quality to better coordinate its compliance efforts with the locality to ensure consistency and to avoid redundancy, as it has done in the regulation of underground storage tanks.

ADDITIONAL REFERENCE MATERIAL

- ◆ Appendix A: HJR 519
- ◆ Appendix B: Draft Proposed Legislation
- ◆ Appendix C: State Assistance to Localities Relating to Pollution Prevention and Response
- ◆ Appendix D: The Virginia Uniform Building Code

Respectfully submitted,

Delegate Robert E. Harris, **CHAIRMAN**
Senator Robert L. Calhoun, **VICE CHAIRMAN**
Delegate Lewis W. Parker, Jr.
Delegate J. Paul Councill, Jr.
Delegate George W. Grayson
Senator Virgil H. Goode, Jr.
Senator Jane H. Woods
Gerald "Gerry" W. Hyland
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HOUSE JOINT RESOLUTION NO. 519

Establishing a joint subcommittee to study the interrelationship between the powers of the Commonwealth and the powers of local governments in environmental and building code matters.

Agreed to by the House of Delegates, February 18, 1993

Agreed to by the Senate, February 16, 1993

WHEREAS, the federal and state governments each have various responsibilities in the administration and enforcement of laws and regulations pertaining to the environment; and

WHEREAS, the role of local governments in the administration and enforcement of such laws is uncertain; and

WHEREAS, the 1992 Session of the General Assembly created a new Department of Environmental Quality, effective April 1, 1993; and

WHEREAS, one of the purposes of the Department is to promote environmental quality through public hearings and expeditious and comprehensive permitting, inspection, monitoring and enforcement programs, and provide effective service delivery to the regulated community; and

WHEREAS, the Governor's Advisory Commission on the Dillon Rule and Local Government concluded in its report, dated November 1, 1992, that certain areas of regulation, including environmental and labor laws, taxation, building codes, fire codes, and state policies guiding local land use controls should continue to be uniform throughout the Commonwealth; and

WHEREAS, the Governor's Advisory Commission on Community Issues Relating to the Pickett Road Tank Farm recommended in its report, dated December 18, 1992, the enactment of legislation that would authorize a local government to adopt more stringent requirements than those provided in the Uniform Statewide Building Code in connection with construction and reconstruction work at a tank farm and otherwise recommended that local governments be granted broad environmental regulatory authority which has a potential statewide impact on all major businesses and industries in Virginia; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That a joint subcommittee be established to study the interrelationship between the powers of the Commonwealth and the powers of local governments in environmental and building code matters. The joint subcommittee shall propose any legislation it deems appropriate after making an assessment of the proposed legislation's impact on business and industry in the Commonwealth.

The joint subcommittee shall consist of 13 members to be appointed in the following manner: four members of the House of Delegates to be appointed by the Speaker; three members of the Senate to be appointed by the Senate Committee on Privileges and Elections; three citizen members representing local government, business community and environmental interests, respectively, to be appointed by the Governor; one member shall be the Director of the Department of Environmental Quality or his designee; one member shall be the Director of the Department of Economic Development or her designee; and one member shall be the Director of the Department of Housing and Community Development or his designee.

State agencies shall provide such assistance as is needed for the work of the joint subcommittee.

The joint subcommittee shall complete its work in time to submit its findings and recommendations to the Governor and the 1994 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

The indirect costs of this study are estimated to be \$13,045; the direct costs of this study shall not exceed \$11,700.

Implementation of this resolution is subject to subsequent approval and certification by the Joint Rules Committee. The Committee may withhold expenditures or delay the period for the conduct of the study.

HOUSE BILL NO. 289

House Amendments in [] — January 31, 1994

A BILL to amend and reenact §§ 36-97, 36-99.6, and 36-105 and to repeal § 36-99.6:1 of the Code of Virginia, relating to the Uniform Statewide Building Code.

Patrons—Harris, Councill and Grayson; Senators: Calhoun and Woods

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 36-97, 36-99.6, and 36-105 of the Code of Virginia are amended and reenacted as follows:

§ 36-97. Definitions.

As used in this chapter, unless the context or subject matter requires otherwise, the following words or terms shall have the meaning herein ascribed to them, respectively:

“Board” means the Board of Housing and Community Development.

“Review Board” means the State Building Code Technical Review Board.

“Building Code” means the Uniform Statewide Building Code *and building regulations adopted and promulgated pursuant thereto.*

“Code provisions” means the provisions of the Uniform Statewide Building Code as adopted and promulgated by the Board, and the amendments thereof as adopted and promulgated by such Board from time to time.

“Building regulations” means any law, rule, resolution, regulation, ordinance or code, general or special, or compilation thereof, heretofore or hereafter enacted or adopted by the Commonwealth or any county or municipality, including departments, boards, bureaus, commissions, or other agencies thereof, relating to construction, reconstruction, alteration, conversion, repair, maintenance, or use of structures and buildings and installation of equipment therein. The term does not include zoning ordinances or other land use controls that do not affect the manner of construction or materials to be used in the erection, alteration or repair of a building or structure.

“Municipality” means any city or town in this Commonwealth.

“Local governing body” means the governing body of any city, county or town in this Commonwealth.

“Local building department” means the agency or agencies of any local governing body charged with the administration, supervision, or enforcement of ~~building codes~~ *the Building Code* and regulations, approval of plans, inspection of buildings, or issuance of permits, licenses, certificates or similar documents ~~prescribed or required by state or local building regulations.~~

“State agency” means any state department, board, bureau, commission, or agency of this Commonwealth.

“Building” means a combination of any materials, whether portable or fixed, having a roof to form a structure for the use or occupancy by persons, or property; however, farm buildings not used for residential purposes and frequented generally by the owner, members of his family, and farm employees shall be exempt from the provisions of the Uniform Statewide Building Code, but such buildings lying within a flood plain or in a mudslide-prone area shall be subject to flood proofing regulations or mudslide regulations, as applicable. The word “building” shall be construed as though followed by the words “or part or parts thereof” unless the context clearly requires a different meaning.

“Equipment” means plumbing, heating, electrical, ventilating, air-conditioning and refrigeration equipment, elevators, dumbwaiters, escalators, and other mechanical additions or installations.

“Construction” means the construction, reconstruction, alteration, repair or conversion of buildings *and structures.*

"Owner" means the owner or owners of the freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, or lessee in control of a building [*or structure*] .

"Director" means the Director of the Department of Housing and Community Development.

"Structure" means an assembly of materials forming a construction for occupancy or use including stadiums, gospel and circus tents, reviewing stands, platforms, stagings, observation towers, radio towers, water tanks, *storage tanks (underground and aboveground)*, trestles, piers, wharves, swimming pools, amusement devices, storage bins, and other structures of this general nature but excluding water wells. Farm structures not used for residential purposes shall be exempt from the provisions of the Uniform Statewide Building Code, but such structures lying within a flood plain or in a mudslide-prone area shall be subject to flood proofing regulations or mudslide regulations, as applicable. The word "structure" shall be construed as though followed by the words "or part or parts thereof" unless the context clearly requires a different meaning.

"Department" means the Department of Housing and Community Development.

§ 36-99.6. Underground [and aboveground] storage tank inspections.

A. The Board of Housing and Community Development is authorized to incorporate *shall incorporate*, as part of the Building Code, regulations ~~developed~~ *adopted and promulgated* by the State Water Control Board governing the installation, *repair, upgrade* and closure of underground *and aboveground* storage tanks.

B. ~~The Board is also authorized to incorporate, as part of the Building Code, regulations developed by the State Water Control Board pursuant to § 62-14-34:15.1 governing aboveground storage tanks.~~

C. B. Inspections undertaken pursuant to such *Building Code* regulations shall be done by employees of the local building department or another individual authorized by the local building department.

§ 36-105. Enforcement of Code; appeals from decisions of local department; inspection of buildings.

Enforcement of the Building Code shall be the responsibility of the local building department. There shall be established within each local building department a local board of Building Code appeals whose composition, duties and responsibilities shall be prescribed in the Building Code. Appeals from the local building department concerning application of the Building Code or refusal to grant a modification to the provisions of the *Building Code* covering the manner of construction or materials to be used in the erection, alteration or repair of a building or structure shall first lie to the local board of Building Code appeals. No appeal to the State Building Code Technical Review Board shall lie prior to a final determination by the local board of Building Code appeals. Whenever a county or a municipality does not have such a building department or board of Building Code appeals, the local governing body shall enter into an agreement with the local governing body of another county or municipality or with some other agency, or a state agency approved by the Department for such enforcement and appeals resulting therefrom. For the purposes of this section, towns with a population of less than 3,500 may elect to administer and enforce the Building Code; however, where the town does not elect to administer and enforce the Building Code, the county in which the town is situated shall administer and enforce the Building Code for the town. In the event such town is situated in two or more counties, those counties shall administer and enforce the Building Code for that portion of the town which is situated within their respective boundaries. Fees may be levied by the local governing body in order to defray the cost of such enforcement and appeals.

Any building *or structure* may be inspected at any time before completion, and shall not be deemed in compliance until approved by the inspecting authority. Where the construction cost is less than \$1,000, however, the building inspection may, in the discretion of the inspecting authority, be waived. A local governing body may provide that buildings and structures, permanent or temporary, which are used to store hazardous materials, or

occupied or to be used by twenty or more persons who are employed, lodged, housed, assembled, served, entertained or instructed therein, or the common areas of residential structures containing four or more units, including buildings owned by the Commonwealth or by any of its political subdivisions and the equipment therein, be inspected periodically after completion to insure that the Building Code regulations are properly maintained. The building official shall coordinate all reports ~~with~~ of inspections for compliance of ~~with~~ the Building Code, ~~from~~ with inspections of fire and health officials delegated such authority, prior to issuance of an occupancy permit.

The local governing body may also inspect and enforce the building regulations promulgated by the Board Building Code for existing buildings and structures, whether occupied or not. Such inspection and enforcement shall be carried out by an agency or department designated by the local governing body.

2. That § 36-99.6:1 of the Code of Virginia is repealed.

STATE ASSISTANCE TO LOCALITIES RELATING TO POLLUTION PREVENTION AND RESPONSE

The following information is provided to HJR 519 Committee members.

Emergency Response

For reports of releases to the environment the Local Director or Coordinator of Emergency Services for the local government appointed pursuant to § 44-146.19 of the *Code of Virginia* is a key contact person. The discharger is required to immediately notify the Director or Coordinator and the DEQ-Emergency Response Office whenever a discharge occurs. DEQ's 24-hour reporting number is (804) 527-5200. Any question concerning the status of a response may also be directed to this number during normal work hours.

Also, as stated in Article 11, §§ 62.1-44.34:18.C1-4 of the *Virginia Code*, any person discharging oil to state waters, lands or storm drain systems is liable to the Commonwealth of Virginia or any political subdivision thereof. This liability extends to costs associated with containment and cleanup, damages to property, loss of tax or other revenues, compensation for loss of any natural resource, and injury or damage to person or property real or personnel. In addition, § 62.1-44.34:19.2 provides for local government to have access to all facilities and site records.

The Federal Oil Pollution Act of 1990 (OPA 90) allows and encourages localities to be involved in the drafting of the AREA Contingency Plans required by OPA 90. The Virginia Coastal Area Contingency Plan is complete and several localities played major roles in its development. The Inland Area Plan is now under development and localities are also involved. DEQ representative on the Coastal and Inland Area Committees is David Ormes at (804) 527-5197. He is available to answer any questions relating to the plans.

Storage Tank Pollution Prevention Requirements

Local officials are required to permit and inspect any installation, upgrade, repair and closure of aboveground storage tanks (ASTs) through VR 680-14-13 and underground storage tanks (USTs) through VR 680-13-02 as stated in § 36.99.6 of the *Virginia Code*. The Board of Housing and Community Development is authorized to incorporate, as part of the Building Code, regulations developed by the State Water Control Board. Inspections undertaken pursuant to such regulations are done by employees of the local building department or another individual authorized by the local building department.

Local officials participate in many ways with respect to AST facilities. These include periodic fire inspections, building code permit inspections, and emergency responses to reports of releases.

Any required external and internal inspection under VR 680-14-13 must be performed by API certified inspector and the API and NFPA codes are referenced by the building and fire codes. Questions about implementation of these regulations can be directed to the local officials or Russell Ellison of DEQ. His phone number is (804) 527-5192.

Discharge Contingency Plan Requirements

Oil Discharge Contingency Plans must be approved by DEQ Water Division for all facilities which store greater than 25,000 gallons of petroleum (VR 680-14-07). These plans outline actions that will be taken and resources that are available in the event of a release of petroleum. Janet Queisser is DEQ's contact for questions about specific plans. Her phone number is (804) 527-5275.

Reports by owners of any discharges discovered during the installation of ODCP equipment must be reported to DEQ-Prep and the Local Director or Coordinator of Emergency Services. All cleanup actions that involve structural changes involve building permit requirements which require the building inspector to inspect the site.

Tank Registration

Each owner of an Aboveground Storage Tank (AST) that is greater than 660 gallons or at facilities with greater than 1,320 gallons AST storage must register using DEQ Form 7540-AST with DEQ-Water and the Local Director or Coordinator of Emergency Services. Thus, each locality will know of the existence of ASTs in the locality. DEQ's contact for this program is Sam Lillard at (804) 527-5314.

Underground Storage Tanks must be registered in accordance with VR 680-13-02. Larry Syverson of DEQ may be reached at (804) 527-5202 for questions about UST registration.

Ground Water Remediation

All petroleum contamination resulting from Aboveground Storage Tanks or Underground Storage Tanks must be cleaned up in accordance with Articles 9 and 11 of the State Water Control Law and VR 680-13-02. The Groundwater Section of the DEQ regional offices is the primary contact for determining the status of a remediation effort. For questions about cleanup regulations and procedures you may also contact Fred Cunningham (DEQ headquarters) at (804) 527-5189.

Ground water remediations require building and fire official permitting for certain activities that often occur during a cleanup. Local government officials maintain contact at such sites through the permit inspection requirements.

In addition, § 62.1-44.34:19.2 of the Virginia Code provides for local government access to all facilities and site records. DEQ's contact for questions relating to this section is David Ormes at (804) 527-5197.

THE VIRGINIA UNIFORM STATEWIDE BUILDING CODE

The following information is provided to HJR 519 Committee members.

The Purpose of the USBC

Virginia's Uniform Statewide Building Code (USBC) provides a basic, comprehensive set of regulations governing the construction, alteration, conversion, repair, maintenance or use of buildings and structures located within the Commonwealth. The USBC also establishes a framework for the enforcement, interpretation, and revision of building regulations as well as an appeals process. The USBC assigns responsibility for these various functions to appropriate levels of government. Local governments have primary responsibility for code enforcement. Amendments, formal interpretations, and appeals are handled at the State level.

As with all building codes, the principal purpose of the USBC is to protect public health, safety, and welfare in connection with buildings and structures. The Virginia USBC is distinguished from other building codes by two significant characteristics. First, as its name suggests, its provisions apply uniformly throughout the Commonwealth. Building designers and constructors therefore must comply with only a single set of standards regardless of a building's location within the State. The Department of Housing and Community Development's Division of Building Regulation works with local officials to assure that uniformity also characterizes local administration and enforcement procedures. Second, the USBC stresses the importance of meeting at the least possible cost recognized standards for health and safety, energy and water conservation, as well as access for the handicapped and elderly. Thus, the USBC is concerned both with the goal of public safety and the reasonableness of the means used for attaining that goal.

The USBC should also be distinguished from locally promulgated zoning ordinances. As a building code, the USBC regulates only buildings and structures. Zoning ordinances, in contrast, are primarily concerned with land and its use - not structures. Unlike the State's building code regulations, zoning ordinances are promulgated as well as enforced locally. Zoning divides a locality into districts and establishes certain uniform regulations governing land use within each district. Although the use, height, setback, and site design restrictions in a given district may have an effect on buildings, zoning does not prescribe construction standards to be achieved in the interest of public health and safety.

Origin and Effective Date of the USBC

Only 93 of Virginia's 399 jurisdictions (23%) had adopted a building code prior to 1973. These 93 jurisdictions used various national model building codes (41 used Southern, 25 used BOCA and 27 used National). The Virginia Housing Study

Commission, a legislative study group established by the 1970 General Assembly, determined during 1971 that a uniform building code was needed in Virginia to help lower housing costs, provide fairer business practices and protect building users. The 1972 General Assembly passed legislation (Chapter 6 of Title 36 of the *Code of Virginia*) mandating the Board of Housing and Community Development to adopt a uniform building code, superseding all building codes and standards in Virginia.

The Board of Housing and Community Development promulgated statewide building regulations based on nationally recognized standards and stated in terms of required level of performance. The Uniform Statewide Building Code became effective on September 1, 1973, and has governed construction practice in the Commonwealth since that time. Subsequent amendments and new editions of the USBC have altered specific requirements, but the basic concept of employing a single, uniform set of performance based regulations to protect the public's health, safety, and welfare has remained unchanged.

Contents of the USBC

Although the USBC's provisions are unique to Virginia, the State's building regulations are based on national model codes, such as those developed by the Building Officials & Code Administrators International (BOCA). The model codes incorporate nationally recognized standards that are constantly updated to reflect the changing technologies of building materials and methods. The code change procedures of the national model code organizations provide extensive opportunities for participation by the public as well as by individuals and organizations representing the building construction and design professions. Following an annual series of public hearings conducted for the purpose of receiving testimony about proposed code changes, the membership of the various model code organizations convenes to vote on the proposed changes. Besides accommodating change, the use of national model codes tends to facilitate interstate commerce, benefiting Virginia's consumers as well as the state's building professionals.

The USBC consists of the Virginia amendments that modify the referenced national model codes as well as the administrative rules and regulations adopted by the Board of Housing and Community Development. The USBC currently references the following codes and standards:

- ◆ BOCA National Building Code/1993 Edition
- ◆ CABO One and Two Family Dwelling Code/1992 Edition and 1993 amendments
- ◆ BOCA National Mechanical Code/1993 Edition
- ◆ BOCA National Plumbing Code/1993 Edition
- ◆ NFiPA National Electrical Code/1993 Edition

[Published by the National Fire Protection Association]

The model code organizations will issue new editions during 1995 and 1996. The Board of Housing and Community Development adopted the most recent 1992 and 1993 editions of the national codes into the USBC.

The State selected the model codes incorporated in the USBC because of their emphasis on meeting performance standards instead of requiring (as in prescriptive codes) that certain materials or methods be used. The legislation authorizing the creation of USBC emphasized the importance of applying performance standards to promote the prompt acceptance of new materials and methods without waiting for amendments to the building code or the publishing of a new edition. The USBC, therefore, permits the local building official to accept materials and methods of construction provided their performance meets the intent of the USBC.

The USBC provides a single and uniform source of building regulation for Virginia. There is a single set of standards for new construction (§ 36-105). The adoption of the USBC also made education and training a top priority. A Virginia Building Code Academy has been established and certification of building officials and technical assistants is required.

Enforcing the USBC

The Virginia USBC and State law assign responsibility for building code enforcement to local government. The work of the local building official and his inspection staff is, therefore, critical to the success of the USBC in attaining its health, safety, and welfare goals at the least possible cost.

Code enforcement in Virginia emphasizes the prevention of unsafe conditions. Any building or structure for which a building permit is required is subject to a series of inspections governing footings and foundations; structural integrity; electrical, mechanical, and plumbing systems; and insulation. Before the building official issues a certificate of use and occupancy, a final inspection must be made and any deficiencies corrected.

Local governments have also been given the power to conduct inspections of existing structures used for certain purposes, including the storage of hazardous materials, as well as certain types of occupancies where continued compliance with the USBC is essential to public health and safety.

Appealing Decisions under the USBC

Occasionally situations may arise where an individual disputes a decision made by a local building official, claiming that the official either:

- ◆ refused to grant a requested modification to the provisions of the USBC, **or**
- ◆ incorrectly interpreted the intent of the USBC, **or**
- ◆ incorrectly applied the provisions of the USBC, **or**
- ◆ denied the use of a form of construction equivalent to or better than that specified in the USBC.

In such cases the aggrieved party is entitled to an open hearing before the designated, locally appointed Board of Building Code Appeals. The decision of this Board is binding unless it is appealed to the State Building Code Technical Review Board.

The State Building Code Technical Review Board, which is appointed by the Governor and composed of twelve members representing various building and building safety professions, serves as a final authoritative source for rulings on the interpretation and application of the provisions of the USBC. Decisions of the State Building Code Technical Review Board are final unless appealed to the State courts according to § 9-6.14:15 et seq of the *Code of Virginia*.

Interpreting the USBC

The State Building Code Technical Review Board has another important role in addition to hearing appeals from local appeal board decisions. Although local building officials and the staff at the Department of Housing and Community Development are frequently asked for and do provide unofficial opinions as to the application of USBC provisions, only the state Building Code Technical Review Board is empowered to issue an official interpretation of the building code. Any individual seeking an official interpretation by the Technical Review Board of the provisions or application of the building code may apply through the Department of Housing and Community Development's Code Development Office. The Technical Review Board meets as necessary to consider requests for interpretations. After considering the relevant portions of the USBC and any research compiled by the Code Development Office, the Technical Review Board issues its interpretations. Affected parties are notified immediately of the Technical Review Board's decisions. Local building officials and other interested parties are regularly informed of official interpretations in order to assure consistency of enforcement.

Revising the USBC

Despite the built-in flexibility of the performance standards employed by the USBC, periodic revisions are still necessary. Action by the membership of the national model code organizations and decisions of the Board of Housing and Community Development may result in changes to specific provisions of the Building Code. Because of the significant economies associated with the use of model codes the Board has encouraged individuals to submit proposed amendments to the USBC directly to the proper national organization for their consideration.

Most of the model codes incorporated in the USBC are revised annually. The revision procedures of typical national model code organizations such as BOCA provide an opportunity for those who will enforce regulations as well as those who will be regulated by them to participate in developing the model codes. Any individual designing a change in the BOCA codes may submit a proposal to the organization. (Generally such requests originate within affected professions, industries, or trade organizations.) The organization's Code Changes Committee conducts public hearings to receive testimony about proposed changes. Following the public hearings, the Committee publishes its recommendations for action by the organization's membership. Individuals challenging the Committee's recommendations may request an opportunity to testify at a final public hearing during the model code organization's annual conference. At the annual conference the voting members (practicing building officials) vote to approve, modify or deny the proposed changes. The cumulative results of each three-year cycle of changes become the basis for a new edition of the model code.

Although the Board of Housing and Community Development may consider requests for amendments to the Virginia USBC at any time, the appearance of new editions of the model code triggers the development of a new edition of the USBC. The Virginia USBC has usually referenced only new editions of the model codes, which currently appear at three-year intervals, rather than the annual code changes of model code organizations. The process for revising building regulations, whether by amendment or the publication of a new edition of the USBC, provides additional opportunities for public participation. Both the general public and concerned parties are notified of proposed changes through a variety of media. The Board of Housing and Community Development holds one or more public hearings and considers public comments before approving a new edition of the USBC. The regulations do not become effective until the General Assembly's review period has passed and until local building departments have prepared to administer the revised regulations. Once passed, the USBC incorporates, by reference, the most recent model codes and amendments tailored to the unique needs of the Commonwealth. In accordance with Gubernatorial Executive Order 23(90)(Revised), new building regulations shall be evaluated for effectiveness and continued need within two years of the regulations being promulgated.
