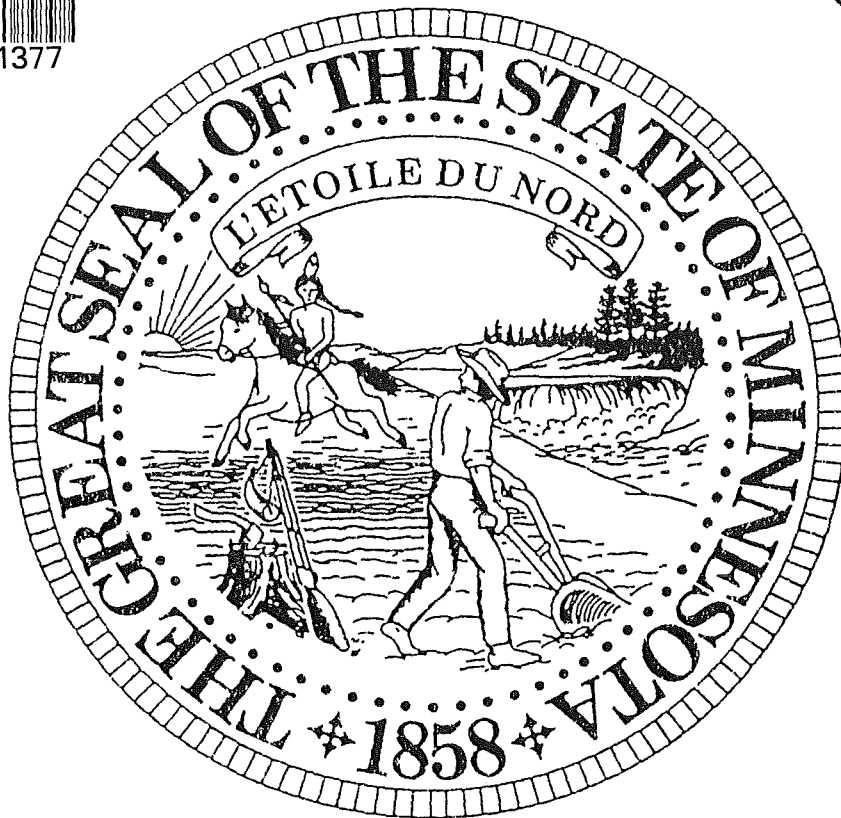


980244



GOVERNOR'S CONSTRUCTION CODES ADVISORY COUNCIL

CALENDAR YEAR
1997
PROGRESS REPORT

KFM
5859
.A1
M56
1997



Admin
MINNESOTA

Department of Administration

February 4, 1998

Commissioner Elaine S. Hansen
Department of Administration
50 Sherburne Avenue
St. Paul, MN 55155

RECEIVED

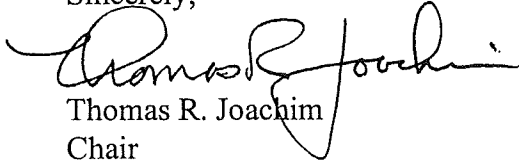
APR 07 1998


LEGISLATIVE REFERENCE LIBRARY
STATE OFFICE BUILDING
ST. PAUL, MN 55155

Dear Commissioner Hansen:

Pursuant to Executive Order 96-7, the enclosed "Calendar Year 1997 Progress Report" is submitted by the Governor's Construction Codes Advisory Council.

Sincerely,


Thomas R. Joachim
Chair


Gary R. Thaden
Vice Chair

trj/pw
enclosure

c: Legislative Reference Library

GOVERNOR'S CONSTRUCTION CODES ADVISORY COUNCIL

CALENDAR YEAR 1997 PROGRESS REPORT

1/15/98

To obtain these materials in Braille, audiotape, large print or other forms, call Caroline Wisniewski
Voice (612) 296-7058 or TDD (800) 627-3529

For more information or copies of this report, contact the Management Analysis Division at 296-7041

CONTENTS

<i>page</i>	
1	INTRODUCTION
3	ORGANIZATIONAL STRUCTURE FOR ADMINISTERING THE CODES
	AUTHORITY 4
	PRIMARY ROLES 4
	TECHNICAL ADVISORY GROUPS 4
	STREAMLINING 5
	COUNCIL FUNDING AND MEMBERSHIP 5
	ENFORCEMENT 5
	RECOMMENDATION 5
6	OTHER OPERATIONAL POINTS
	TECHNICAL ADVISORY GROUPS 6
	COUNCIL FUNDING AND MEMBERSHIP 6
	AUTHORITY 7
	FURTHER COUNCIL ISSUES 7
7	STATEWIDE CODE ADOPTION
	TABLE 1. <i>1990 MINNESOTA CONSTRUCTION VALUATION COMPARISON — BUILDING-CODE-ADMIN- ISTERED VS. "NON-BUILDING-CODE"-ADMINISTERED</i> 8
	RECOMMENDATION 10
10	CODE ADOPTION CYCLE
	RECOMMENDATION 11
11	PROCESS FOR COLLECTING AND SPENDING FEES
	RECOMMENDATION 12

INTRODUCTION

Governor Arne Carlson created the Governor's Construction Codes Advisory Council in May 1996 by executive order. The council was created to bring the various public and private interested parties together to discuss, debate, and provide the governor, legislature, and building construction regulatory agencies with advice on construction statutes, rules, standards, and licenses. The governor asked the council to focus on and find ways to:

- eliminate inconsistencies and streamline construction regulation and licensing processes;
- review and comment on current and proposed regulations;
- advise agencies on changing rules and regulations to make them easier to understand and apply;
- assist in the coordination of rules and regulations; and
- consolidate construction code enforcement and administration within authorized jurisdictions.

The council is composed of representatives from:

- four of the state agencies that administer construction codes — Administration's Building Codes and Standards Division, Health's Environmental Health Division, Public Safety's Fire Marshal Division, and Public Service's Energy Regulation and Resource Management Division;
 - Minnesota Building Officials;
 - Minnesota State Fire Chiefs' Association;
 - American Institute of Architects;
 - Consulting Engineers Council;
 - Building Owners and Managers Association;
 - Builders Association of Minnesota;
 - Associated Builders and Contractors;
 - Associated General Contractors;
 - Minnesota Association of Plumbing, Heating, and Cooling Contractors;
 - Minnesota Mechanical Contractors Association; and
 - the League of Minnesota Cities.
-

Additionally, the Minnesota House and Senate could each have two ex officio, nonvoting members on the council. The council is required to report its progress at the end of each calendar year.

RECOMMENDATIONS

Based on council members' expertise and data collection efforts and discussions in Calendar Year 1997, the council makes the following recommendations for improving state building code administration and enforcement:

1. **Create a Construction Codes Advisory Council in statute to coordinate: codes, code enforcement, and streamlining of the construction regulatory process.**
2. **Adopt statewide building codes by the Year 2001.**
3. **Implement a three-year cycle for coordinating code adoption for the building, fire, plumbing, mechanical, energy, accessibility, electrical, and elevator codes.**
4. **Dedicate all fees in conjunction with the Minnesota State Building and Fire Codes received by government units for permits required by State Building Codes to a fund to be used exclusively to cover costs incurred by government units to administer the codes.**

BACKGROUND

The advisory council met monthly and sometimes twice a month starting in December 1996 to discuss issues regarding construction regulations in Minnesota. This report focuses on the council's research, discussions, and recommendations from Jan. 1 to Dec. 31, 1997. After the initial meetings, it was determined that the five issues outlined in the executive order needed to be looked at collectively rather than addressing each separately.

At the May meeting, members identified the issues and questions they felt should be addressed under their charge and grouped them into categories for discussion. Of the key focus questions drafted, one best captured the challenge before the council. That question was:

How do we implement an optimal process that will result in cost-effective, safe construction?

The council identified and explored seven main issues, then focused its research and discussions around them:

- Statewide code adoption
-

- Code adoption cycle
- Organizational structure for administering the codes
- Building permit and plan review fees
- Code writing process
- Code oversight
- Coordinated reviews
- Certification of inspectors

The council, recognizing the need for information in these areas before making recommendations, spent summer and fall 1997 reviewing and discussing data collected from other states and local units of government by members and staff. Four issue areas emerged from the research and discussions as key concerns: organizational structure for administering the codes, statewide code adoption, code adoption cycle, and process for collecting and spending fees. The other areas were addressed in the key areas or could be handled by mechanisms established in the council's recommendations.

This report summarizes the research findings, council discussions, and council recommendations in each of the four key issue areas.

ORGANIZATIONAL STRUCTURE FOR ADMINISTERING THE CODES

The council reviewed three options for an organization structure to meet the needs being addressed by the council's action to "implement an optimal process that will result in cost-efficient, safe construction." The options were broad in scope and looked at (1) leaving the department and divisions in their current organization, (2) creating a new department for or consolidating into one department all code functions, and (3) developing an authoritative construction codes council to coordinate rules and streamline procedures between the various entities in the code process.

The council discussed the pros and cons of each option. The council accepted the first option of leaving the departments and divisions in their current organization, but find it is not sufficient in and of itself to address the needs of the code community.

The second option of creating a new department or consolidating departments was rejected because it could create an unwieldy “superbureaucracy” or would simply co-locate the various government parties dealing with code enforcement, but would do little to eliminate inconsistencies in the various codes or make the codes easier to understand and apply. In addition, it is the perception of the council that the cost of consolidation would outweigh any efficiencies.

The third option of creating an authoritative council had the most appeal, mainly for its long-term focus. Many issues identified in the executive order, especially elimination of inconsistencies and streamlining of the construction regulation process, are long-term goals. Such goals would require a dynamic process that could react to issues as they arise and also foresee and deal with issues before they become major problems. It was believed by the council that an authoritative council would have this long-term focus.

A number of questions were raised about creating an authoritative council. To address these questions, research was conducted to learn about authoritative construction code councils in the states of Virginia, Oregon, Washington, New Hampshire, and California. Six key areas were studied — authority; primary roles; technical advisory groups providing expertise and advice to the council; streamlining the process; council funding and membership; and enforcement. Research findings from other states, reviewed by the council and used as rationale for the council’s decision making, were:

FINDINGS ON AUTHORITY From the research, the predominant finding was that adoption of one state council with broad representation and final authority over the various state codes is most effective. In most cases, authority is over promulgation, adoption, amendment, interpretive process, appeal process, and enforcement of these codes. The council specifies one lead authority for the various points in the facility construction and maintenance processes. Other regulatory authorities are assured input and influence in the process through cooperative agreements (at state and local levels between building officials and fire officials) and by membership on technical advisory groups created by the council to provide input and expertise on specific issues.

FINDINGS ON PRIMARY ROLES Information gathered from other states pointed to a strong council with final authority that interprets and decides code issues based on an interrelationship of state codes first, model codes second, and reference standards third. Other primary roles include dispute resolution and prevention, and eliminating inconsistencies and working out conflicts.

FINDINGS ON TECHNICAL ADVISORY GROUPS Research uncovered technical advisory groups with a broad membership of relevant regulatory agencies, licensing boards, and stakeholder groups and possible ex-officio membership for state council members and legislators. The technical advisory groups (TAGs) have 10 to 15 members with expertise in key areas. TAGs are appointed by the council for staggered terms and are usually formed

around major code areas or special projects. Their key areas for discussion are code promulgation, amendment, key language, inconsistencies, and conflicts. Some hear certain appeals. Decision making in the TAGs is usually by consensus (80 percent agreement at the determination of the TAG chair). If consensus is not reachable, then a majority vote approves issues and minority members may submit a minority position to the full council.

FINDINGS ON STREAMLINING Streamlining options of the various processes depend on the specific situation in the state. Proposals being considered include making local government the focus for simplifying and streamlining; cooperative agreements at both state and local levels; one-stop shopping at the local level through an application coordinator or jointly staffed offices; inclusion of health and zoning/planning departments in the local process; pre-project review meetings with all parties; standardized application information and referencing on forms; careful promulgation, adoption, and amendment of codes to eliminate inconsistencies; complementary plan reviews; modifications approved and documented in writing and attached to the certificate of occupancy; and co-location of fire and building code personnel to help communication.

FINDINGS ON COUNCIL FUNDING AND MEMBERSHIP The various states have a wide range of funding options, from no funding to an additional fee on code permits. Most councils have a broad membership of representatives from regulatory agencies and key stakeholder groups. Council members' terms are staggered.

FINDINGS ON ENFORCEMENT In most cases, enforcement starts with a local appeal process in combination with local officials authorized to approve waivers or modifications. This process operates with state oversight and assistance to local programs through consulting, monitoring, training, and issuing interpretations. The state appeal process comes after the local process and provides one final expert technical review before an issue goes to the courts, where such review is not available. Finally, the courts decide cases only where they determine that the state council's decision was based on insufficient findings. Technical advisory groups assist with state appeals and make recommendations to the full council or make decisions appealable to the board.

RECOMMENDATION

The findings of the council indicate that a strong code council be established, with the eventual role of reviewing and causing the coordination of codes, code enforcement, and streamlining of the construction regulatory process. Towards that end, the council recommends that **the 1998 Legislature establish in statute a Construction Codes Advisory Council to coordinate: codes, code enforcement, and streamlining of the construction regulatory process.**

The council discussed a number of issues to recommend regarding specific powers and duties of the proposed council. Decisions were made in key areas to help define the council. How-

ever, these decision areas create only a skeleton structure on which future discussions, deliberations, and decisions of the proposed council would create a dynamic Construction Codes Advisory Council capable of addressing the varied and changing issues in modern building construction. Recommendations for the proposed council's operation and authority would include:

- **Resolve inconsistencies among the various codes.**
- **Resolve, in a reasonably short time, inconsistencies in the code process and ensure a mechanism to resolve future code inconsistencies.**
- **Initiate changes in codes and administrative processes.**
- **Establish cooperative agreements between regulatory parties.**
- **Set up standards for, coordinate, and have final approval for code development, adoption, administration of the codes, and streamlining of code(s) procedures.**
- **Review and make recommendations on streamlining the entire permitting and construction regulatory process.**
- **Create subcommittees or technical advisory groups to carry out research and gather input from interested parties.**

OTHER OPERATIONAL POINTS

Based on the findings from other states, the council discussed other key points about the proposed council's operations. They are:

TECHNICAL ADVISORY GROUPS The technical advisory groups would be subcommittees of the council. They would be issue-focused and used as the council desires. The TAGs' functions would be research on issues, resolving inconsistencies and conflicts, advising on code promulgation, and obtaining stakeholder and public input. The TAGs would be composed of people appointed by the council for their technical expertise. Members would serve on a voluntary basis.

COUNCIL FUNDING AND MEMBERSHIP No additional funding should be needed for the council start-up, depending on the workload of the council and its ability to find volunteers to work on the TAGs.

- Council membership is recommended as 15 voting members comprising representatives from: Minnesota Building Officials; Minnesota State Fire Chief's Association; American Institute of Architects; Consulting Engineers Council; Building Owners and Managers Association; Builders Association of Minnesota; Associated General Contractors of Minnesota; Associated Builders and Contractors; Minnesota Association of Plumbing, Heating, and Cooling Con-
-

partment of Administration Building Codes and Standards Division; Department of Health Environmental Health Division; Department of Public Safety Fire Marshal Division; and Department of Public Service Energy Regulation and Resource Management Division.

- It was further suggested that a construction codes association be created to include interested parties in the construction industry in Minnesota and be part of the council's communication network, which would include receiving meeting notices, agendas, minutes, updates, newsletters, and other council communications.

AUTHORITY The council would have the authority to coordinate: codes, code enforcement, and streamlining of the construction regulatory process.

FURTHER COUNCIL ISSUES The council would be responsible for implementing the other recommendations in this report. The council would look at the various issues with a long-term focus that provides reasonable workable solutions as opposed to short-term fixes. Other issues the proposed council should consider include the code-writing process, coordinated reviews, and certification of inspectors.

STATEWIDE CODE ADOPTION

Minnesota uses the Uniform Building Code (UBC) as the substantial basis for the state code. The International Conference of Building Officials (ICBO) published the first UBC in 1927. The ICBO, a nonprofit service organization consisting of member cities, counties, and states, is dedicated to public safety in the built environment through developing and promoting uniform codes and standards.

The premise of Minnesota's State Building Code is similar to the UBC's. Minnesota Statutes Chapter 16B, which governs the policy and purpose of the State Building Code, directs the commissioner of Administration to:

administer and amend a state code of building construction which will provide basic and uniform performance standards, establish reasonable safeguards for health, safety, welfare, comfort, and security of the residents of this state, and provide for the use of modern methods, devices, materials, and techniques which will in part tend to lower construction costs.

The first State Building Code became effective in 1972 and superseded all municipal building codes. The 1977 State Legislature made the code mandatory statewide, effective no later than 1978. A 1979 law, however, allowed nonmetropolitan counties, by negative referendum, to rescind the code, except for the handicap access provisions, in areas that had not adopted it prior to Jan. 1, 1977. Only eight counties retained the state code, in addition to the mandatory seven Twin Cities metropolitan area counties. Finally, a 1981 law authorized municipalities with popu-

TABLE 1. 1990 Minnesota construction valuation comparison — building-code-administered vs. “non-building-code”-administered

Construction activity	Gross construction valuation	Construction valuation		% construction covered by building code
		Code-administered	Non-code-administered	
Seven-county metropolitan area	\$2,763,203,000	\$2,763,203,000	- \$0 -	100%
Greater Minnesota	1,309,556,000	904,310,000	\$405,046,000	69%
Statewide totals	\$4,072,759,000	\$3,667,513,000	\$405,046,000	90%

SOURCE: Extracted from Bureau of Census, Construction Statistics Division, Building Permit Branch 1990 Annual Report for State of Minnesota, April 19, 1991.

NOTES: Report includes only new construction or building additions, not interior remodeling projects. The 3,213 single-family homes constructed in the non-code-administered areas of the state in 1990 had a valuation of \$194 million.

lations of fewer than 2,500 to decide whether the code would apply in their jurisdiction, if they were located in a county exempted by the 1979 law. Currently, the code is enforced in 375 of Minnesota's 854 cities, 225 of the state's 1,801 townships, and 17 of the state's 87 counties.

Currently, the following construction codes are mandatory statewide: accessibility code, boiler and high pressure piping code, electrical code, elevator code, fire code, manufactured home code, prefabricated and modular buildings code, and the plumbing code.

With the seven metropolitan counties mandated to enforce the code, approximately 85 percent of the population is affected by enforcement. The council sees a need for statewide enforcement because it has become increasingly evident that the majority of construction problems Minnesotans experience result from a lack of inspection and code enforcement. For example:

- During the 1996-97 blizzards, a record number of building roofs failed due to snow loads. These failures were located, predominantly, in areas where the code is not enforced.
- Rural areas experience more severe fire losses than do urban areas. Reconstruction after fire damage does not benefit from a building inspector's review.

Who would benefit from a cost-effective, safe construction standard with a statewide building code?

- Occupants of the building would be the primary beneficiaries, because of the building and structures' enhanced level of safety.

- Taxpayers and the community as a whole would benefit in both direct and indirect ways from decreased fire loss. Direct costs would be the damage and losses sustained; indirect costs would include loss of tax base, increased insurance premiums, business interruptions, and increased cost of fire department operations.
- The design and construction community would benefit from having a statewide set of requirements for design purposes. Ultimately, this would equate to lower costs for construction design.

The building code is a safety-related document developed in large part in response to catastrophic incidents typically involving fire and/or structural collapse. National experts¹ estimate that a majority, perhaps as much as 75 percent,² of the building code is related to fire and life safety. Building code requirements related to size and height of buildings, type of occupancy, type of construction, fire protection system installation, means of egress, hazardous area separation, and occupancy separation all relate to fire safety.

Statistically, the instances of fire do not vary greatly from rural to metropolitan areas.³ Response to fires and the fire suppression capabilities of a fire department, however, vary greatly from jurisdiction to jurisdiction. The council found, somewhat ironically, that the state's population having lower levels of fire protection (for example, longer response times or in rural areas) typically experienced little or no "built-in" protection through the building code.

The non-metropolitan area (where typically there is little or no code enforcement) has experienced more than twice the number of deaths in the last seven years as the Twin Cities metropolitan area experienced,⁴ even though the populations are roughly equal. In addition, the non-metro area has experienced approximately 52 percent of the fire damage, even though the property valuations in the non-metro areas are believed to be lower than in the metro area.⁵

Consumer protection is another reason for statewide code enforcement. Most Minnesotans believe they are protected by codes when they hire a contractor to build. This is not always the case. If someone in Alexandria, for example, built a home, their project would be subject to regular types of inspections, but if a person built on one of the lakes outside Alexandria, the code would not

¹ *Fire Chiefs Handbook*, Fire Engineering Books, 1995, P. 982.

² *Introduction to Fire Inspection Principles and Practices*, Federal Emergency Management Agency and National Fire Academy, 1996.

³ *Fire in Minnesota, 1996*. State of Minnesota, Department of Public Safety, State Fire Marshal Division, 1997, P. 2.

⁴ *Ibid.*, P. 34.

⁵ *Ibid.*, Pp. 52-53.

be enforced and inspections would not be required. In the latter case, the consumer must rely on the builder to construct a safe dwelling. Consumers today expect quality buildings, up to code, no matter where they build in the state. That expectation is not always met.

Statewide code enforcement is a critical component of the current home warranty program. It is difficult to enforce the warranty without knowing if the homes were inspected and built according to code. Homeowners may also benefit in the future through lower insurance premiums. The Insurance Services Organization (ISO) is auditing code enforcement practices nationwide to reduce the potential for losses. The ISO has scheduled Minnesota's review for 1998-99. Buildings constructed after the survey in high-scoring communities will qualify for rate reductions; buildings constructed before the survey will have to meet code requirements to qualify. Qualifications under this program may affect insurance premiums.

With the State Building Code Division's support, municipalities can provide the necessary building inspections under a statewide code system. The State Building Code Division plans to have five regional inspectors to assist municipalities that cannot afford a full-time inspector. These inspectors' duties will include coordinating city, township, and county inspection work so that one inspector may fulfill several jurisdictions' needs.

The reality of the 1990s is that metropolitan area homeowners may elect to build in a more rural area and either commute to work or use it as a second residence. Telecommuting is growing and with the advent of e-mail and direct mail, Minnesota rural areas are producing many types of small industries. These Minnesotans expect code protection. Contractors are building throughout the state rather than in one particular area. Statewide code enforcement will benefit these consumer and building industry trends.

RECOMMENDATION

The council recommends **statewide adoption of state building codes by the Year 2001**. By carefully considering the many issues surrounding this recommendation, the council concluded that it is appropriate for uniform, statewide code enforcement to again cover the entire state. Statewide code enforcement would create more consistency in buildings' quality and safety and would enhance consumer protection. It would also provide an equal "playing field" between contractors and buyers and for the entire design and construction industry.

CODE ADOPTION CYCLE

The council reviewed the state's current code adoption processes in making this recommendation.

Typically, state agencies responsible for construction codes adopt national codes within one or two years of the national code's publication. The plumbing and energy codes are both "home-grown" codes, which means that they are written entirely here and do not depend on national codes for timing revisions. All state codes must follow the state rulemaking process outlined in Chapter 14 of the Administrative Procedures Act, which allows for maximum public participation. Although the process can be lengthy, it appears to satisfy Minnesota's needs for allowing great initial industry input while creating a venue in which to encourage public participation.

A three-year, coordinated code adoption cycle would provide two major benefits. First, the codes would have improved coordination and cross-reference and would be kept up-to-date with the national model codes, which are updated every three years. State codes are regularly adopted to reflect changes, but there is no set schedule for adoption other than usually after a national code has been published. The national codes tend to be coordinated and cross-referenced so that, if the most recent code isn't adopted, conformity among codes can quickly be lost. Construction methods are changing so quickly that missing a three-year cycle can turn into a six-year lapse in safety standards.

Second, the process would be more predictable and cost-effective. By putting code adoption on a three-year cycle, appropriate planning could be done to coordinate the codes. A process could be created to obtain more orderly input on code changes.

RECOMMENDATION

The council recommends that **a three-year cycle be implemented for coordinating code adoption for the building, fire, plumbing, mechanical, energy, accessibility, electrical, and elevator codes.** The state codes are regularly updated to reflect changes in construction methods, materials, applications, and processes. Changes in national model codes, like the Uniform Building Code, often serve as a basis for state code changes. Updating is necessary to make codes current with industry practices and to raise quality and safety standards to newer levels.

PROCESS FOR COLLECTING AND SPENDING FEES

In reviewing primarily local government budgets, it was discovered that revenue from building permit and plan review fees in some communities is being placed into either the general fund

or broad "dedicated" funds used for items or services other than those related to administration of the building and fire codes. This was an area of concern for the council and has been an issue for some years in Minnesota. A Dec. 10, 1990, memo from the Minnesota Department of Administration's Building Codes and Standards Division to the state's Attorney General's Office asked whether Minnesota law supported the division's position "that revenue received by municipalities for building permits and plan review services should approximate the cost incurred by the municipality to administer the building code." The Attorney General's Office responded in a Feb. 6, 1991, memo that "the license fee should bear some reasonable relation to the burdens imposed by the activity being regulated and to the necessary expense involved in its supervision. Exactness is not required. There need only be a fair, appropriate and reasonable commensurability of the fee with the cost of regulation."

RECOMMENDATION

The council recommends that revenue received by municipalities for building permits and plan review services be dedicated to a specific fund covering only the cost incurred by the municipality to administer the Minnesota State Building and Fire Codes. The council adopted specific language on this topic:

All fees in conjunction with the Minnesota State Building and Fire Codes received by government units for permits required by State Building Codes shall be dedicated to a fund to be used exclusively to cover *costs* incurred by government units to administer the codes.

The intent of the language adopted by the Governor's Construction Codes Advisory Council is to ensure that funds generated by fees related to building and fire codes are used in connection with the administration and enforcement of such codes. To ease the burden on local governments and allow for budget planning, the council discussed the potential of phasing in this requirement over a two- or three-year period. Further, the council discussed the need to allow local units of government to carry over a reasonable amount of funds from one year to another to cover unexpected downturns in fee collections.
