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A Case Study of the Enactment of a State Building Code in South Carolina

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STATE INITIATIVE CASE STUDIES

The following case study is one of an expected twelve developed as part of an investigation into the reassessment of state roles in disaster mitigation and management which was funded under the National Science Foundation grant #CMS-9629871. The intent of the study is to use case studies to understand why states have taken the initiative to develop in-state programs, to determine how other states can be encouraged to follow suit, and to determine an appropriate role of the federal government to support state initiatives. When the case studies are completed, a theoretical model of the initiation process presented in the research proposal will be tested.

A CASE STUDY OF THE ENACTMENT OF A STATE BUILDING CODE IN SOUTH CAROLINA

CASE STUDY 2: SOUTH CAROLINA STATE BUILDING CODE

Prior to Hurricane Hugo, in 1989, State Senator Glenn McConnell introduced a bill to establish a state-wide building code in South Carolina. He actively pursued its passage in 1990, calculating that the impact of the hurricane would influence other legislators to support his cause. As detailed in an earlier examination of the public policy response to Hurricane Hugo in South Carolina (Mittler, 1993), his efforts failed as well as subsequent efforts in the 1991-1992 legislative session.

This case study centers on the ultimate success of Senator McConnell's struggle to enact a state-wide building code which culminated with the passage of Senate Bill No. 236 (Ratification No. 193, Act No. A123) in June, 1997, four legislative sessions after it was first introduced. It highlights the arcane machinations of South Carolina legislative politics including changes which occurred in the state House of Representatives after the Republicans gained control in the 1995-1996 legislative session and which threaten to supplant traditional ways, and how Senator McConnell eventually triumphed.

APPROACH

This analysis of the passage of Senate Bill No. 236 is a follow-up to the author's case study (Mittler, 1993) describing the earlier failures of Senator McConnell a get a statewide building code made mandatory in South Carolina. It begins with a summary of reasons for the earlier failures including established legislative rules and customs and a discussion of how important bills altering status quo relationships are treated in the General Assembly, including before and after

the Republicans ascended to power in the House. Subsequent events, between the end of the 1991-1992 and the start of the 1997-1998 legislative sessions, are then presented. Finally, the actions leading to the enactment of Senate Bill No. 236 are described, focusing on how previous roadblocks to passage were finally overcome.

POLITICS IN SOUTH CAROLINA: HOW THE SYSTEM WORKS

There are four characteristics of South Carolina politics that are critical to an understanding of how the system operates. First, South Carolina represents a "traditionalistic" political culture where "the continued maintenance of the existing order" is the predominant goal (Elazar, 1984, pp. 118-119). Although challenged by economic and social changes in recent years, the political system has been slow to change. Graham and Moore (1994, p. 137) recently concluded that the adherence of the legislature to "established policies and practices suggests a continuation of the bedrock traditionalistic political culture from the past". Second, as described by Key (1949), South Carolina state government is dominated by the legislature, with the Senate holding primacy. Third, home rule, in which counties have complete political control over their jurisdictions and budgets, has not been fully implemented, and local politicians must share decision-making power with their state legislative delegations (Underwood, 1989). Fourth, since the Republicans took over the House of Representatives following the 1994 elections, their policies have threatened traditional power relationships in the legislature, attempted to substitute partisan politics, and challenged Senate supremacy.

The political dynamics of South Carolina can best be illustrated by examining the roles of the governor and the legislature. For over 60 years, investigators (Coleman, 1935; Key, 1949; Peirce, 1974; Bass and DeVries, 1976; Uslaner and Weber, 1977; Underwood, 1986; Moore and Graham, 1989; and Graham and Moore, 1994, for example) have agreed that the South Carolina governor is among the weakest in the nation, with few official powers to initiate or implement public policy. Long-term public policies depend on the initiative and the will of the General Assembly. In essence, the roles of the governor and the legislature in determining public policy are what the legislature chooses to allocate.

The General Assembly and the Legislative Process

According to the state constitution, the power to make laws resides in the General Assembly. How the power is exercised is uniquely South Carolinian.

The political culture that has traditionally dominated the legislature resembles the traditionalistic culture first defined by Elazar (1984) and later confirmed by Graham and Moore (1994). The purpose of lawmaking is to maintain the existing order, to defend traditional patterns of political activity. New programs are politically acceptable if they serve the interests of the governing elite. To maintain order, real political power resides within a relatively small and self-perpetuating elite with the correct family ties or social position. At the same time, those outside the inner circle are expected to be politically inactive and not challenge decisions of the governing elite. If traditional legislative government in South Carolina could be explained by a single principle, it might be that the state responds to few needs, and the masses are satisfied because their long-held expectations of inaction are met.

When the Democrats controlled both houses, in order to maintain the status quo, the two legislative bodies, the Senate and the House of Representatives, developed elaborate procedural mechanisms to prevent the passage of change-oriented or otherwise unacceptable legislation. Compared to other states, South Carolina can be termed a *bill-killing* state. From the data presented by Francis (1989, pp. 54-57) and Graham and Moore (1994, pp. 131-132), the South Carolina legislature has continually been among the state legislatures which have passed the fewest bills in both actual number and as a percentage of bills introduced. For example, in 1981, 1,300 bills were introduced and 272 (21%) passed both houses and were ratified by the governor. By contrast, in Georgia, one of the highest bill-passing states, 1,598 bills were introduced in 1981 and 998 (62%) passed both houses. More recently, in 1992, 1,438 bills were introduced in the South Carolina legislature and 387 (27%) were ratified. Even with this low enacting rate, when content analysis are performed, it can be shown that only a small percentage of new laws can be termed major policy initiatives (Mittler, 1993).

To help explain the lack of an activist legislature, Graham and Moore (1994) cited a 1991 survey of legislators conducted by the Columbia *State* newspaper. When asked to evaluate the importance of various aspects of their job, 24% of the 110 respondents "named constituent service and district funding as the most important part of their jobs, while another 38 percent said constituent service and setting state policy were equally important. Only 37 percent considered setting policy for the state as their most important function." (Graham and Moore, 1994, p. 136)

In addition to having few members with illusions of becoming major policymakers, the main reason the South Carolina General Assembly passes so few bills is because the Senate has established and maintained informal and formal rules and procedures allowing as few as one member to essentially veto legislation he or she opposes (Mittler, 1990, 1993). Under the guise of legislative courtesy, the Senate has established what amounts to a *procedural veto* that permits single individuals to postpone or deny consideration of a bill until all objections are aired and accommodated.

Until recently, the House also utilized a procedural veto. However, since the Republicans took control of the House in the 1995-1996 session following the 1994 elections, the members have voted to give the Speaker virtual control of that body, including the naming of all members of both political parties and chairs to committees. With this power, he has been able to bottle up bills he opposes in committee and have all bills which reach the floor come up for a vote, making impotent the traditional custom of permitting members to procedurally delay or kill bills. In place of tradition, Republicans, through the Speaker, are attempting to fast track bills which reflect their conservative agenda.

Using the Legislative process to maintain the status quo. Historically and currently only in the legislative process utilized in the Senate, a bill that has any serious opposition will either die in committee or on the *contested calendar* if the bill has been reported out of committee. For a bill to have any realistic chance of becoming law, it must avoid being placed on the Senate's contested calendar. In the conduct of daily business in the Senate, the call of the contested calendar is the last scheduled item on the agenda, but customarily the Senate adjourns before the contested calendar is called, thereby preventing controversial bills from being heard on the floor.

There are two ways a bill gets placed on the contested calendar. First, after a bill is introduced, it is referred to a standing committee for consideration. The bill generally does not get advanced to the committee agenda for action until its author is certain that no committee member will oppose it. In the event that a bill is reported out of committee without an unanimous favorable vote -- when one or more committee members opposed to the bill file a minority report expressing their opposition -- the bill is placed on the contested calendar, and the result is fatal. Mittler (1993) examined the fate of all bills reported out of committee of both houses with a minority report during the 1989-1990 legislative session and found that none were enacted.

Even with unanimous committee support, a bill may still reach the contested calendar through a second process. When a bill is reported out of committee with unanimous support, it is placed on the *uncontested calendar*, the main item of daily business considered by the legislature. However, if a single senator or currently five (increased from three in 1991) representatives oppose the bill, they can express their opposition by placing their names on the bill (termed a *desire to be present* in the Senate and *objecting* in the House) which moves the bill to the contested calendar. As long as at least one senator and five representatives keep their names on the bill, it remains on the contested calendar, where currently in the Senate its chances of being enacted are slim.

Both the Senate and the House have procedural recourse to remove bills from the contested calendar over the objections of a small minority. Until the end of the 1993-1994 session, the rules were so stringent that the House almost never employed its rules and the Senate restricted the number of contested bills that might be considered at any one time. Beginning in the 1995-1996 session, after Republicans took control of the House, the new speaker began to change the House customs surrounding the rules. Today, he permits all bills on the contested calendar to be heard and voted on. The Senate has maintained its traditional implementation of the rules. If the Senate reaches the *motion period* in the daily order of business, a senator may make a motion to move a bill from the contested calendar to *special order*, allowing the bill to be heard on the floor. However, senate rules permit only three bills to be on special order at any one time and two-thirds of those members present must agree to the motion.

Rescuing a bill from the Senate's contested calendar does not guarantee a smooth path to enactment. On the contrary, a bill originating in the Senate must still garner full Senate approval and then withstand the scrutiny of the House and

possible conference before being enrolled. Very few controversial bills successfully clear all these hurdles. Mittler (1993) reported that in the 1990 legislative term, "the Senate made 12 Senate bills special order, and, of these, seven died later in the Senate, four were passed by the Senate and died in the House or in conference, and only one was eventually passed by both houses and enacted" (page 10).

Using the motion period in the Senate to move House-originated bills to special order has not been as damaging. Having already secured House approval, Senate concurrence is one of the last steps needed for a House-originated bill to become law. Thus, the probability of enrollment is much higher if a House-originated bill reaches the floor of the Senate. To confirm this, Mittler (1993) analyzed the fate of House-originated bills which were made special order during the 1990 legislative term. He found that "the Senate made nine House bills special orders, and, of these, one died in the Senate and eight were passed by the Senate and later enacted" (Mittler, 1993, page 11).

Justifying retention of the status quo. As first indicated by Mittler (1993), there is one overriding reason why the South Carolina Senate has maintained its clearly undemocratic handling of controversial bills. Historically, prior to 1974, county governments were not self-governing. Each county had a legislative delegation composed of its state senator and one or more representatives who oversaw the development of the annual county budget or supply bill, which was submitted to and passed by the state legislature. Consequently, both policy and financial decisions for the counties were made by state legislators. In order for the legislative delegations to retain control over their counties at the state capitol, the procedural veto given each senator allowed counties to prevent unwanted state mandates from being enacted.

Although counties now have limited home rule and the state must apportion its legislature on population, thereby eliminating the tradition in South Carolina of having one senator per county, the procedural veto remains. It is still regarded as essential to protect the parochial interests of legislators' constituents, considered by a majority of legislators to be their main function, and a cherished mechanism for individual senators and the Senate as a whole to maintain their power in legislative affairs.

Standing Committees, Professional Staff, and Legislative Capacity

The South Carolina legislature is composed of 46 senators and 124 representatives. They are part-time legislators, and no paid professional staff are allocated to them.

To accomplish their work and to maintain control over the consideration of new legislation, the House and Senate refer all bills, after their introduction, to standing committees. Over the past five legislative sessions, the number of standing committees has remained relatively stable, approximately 11 in the House and 15 in the Senate.

Prior to and since Hurricane Hugo, no standing committees in either house have claimed jurisdiction over natural hazards issues. Consequently, there is no legislative history in this area, and there have been no identifiable champions of disaster-related legislation.

In the Senate, each of the 46 senators are members of four or five committees. As tradition dictates, the chairs are determined strictly by seniority on the committee without reference to political affiliation. Even though Democrats are the majority party with 25 of the 46 seats, six of the 15 committees are presently chaired by Republicans, who happen to have served longer on their committees than any other members. Typically, because of their experience and length of service, the senior senators who chair the Senate's most important committees, Finance and Judiciary, dominate legislative business.

In the House, each of the 124 representatives are members of one or two committees. Until 1997, as was their tradition, the chairs were elected by the committee members, always to those in the majority political party. For the first time, in 1997, the chairs and all members of each committee, irrespective of political party were selected by the Speaker. Unlike the Senate, seniority has not often been rewarded, and adherence to party agendas has become important.

To accomplish their policy making duties, committees have been assigned full-time paid professional staff. However, staff report directly to their respective committee chairs, who most often channel staff resources to promote their

individual agendas. Because chairs, especially now in the Senate, are senior members of the legislature and have absorbed the traditions of the General Assembly, the chairs, for the most part, have become keepers of the faith, conservative, and protective of the status quo.

The power of the individual legislators who are not committee chairs traditionally came from the power inherent in the procedural veto. These members may not have had the resources to develop and promote comprehensive new legislation, but they did have the ability to prevent others from enacting legislation of which they disapproved. Because it was likely that the vast majority of the legislators would attempt at some time in a legislative session to enact bills that were aimed at enhancing the lives of their key constituents, the procedural veto was used sparingly for fear of reprisal. According to an especially astute political observer, the threat of the veto was sufficient to make the General Assembly appear to resemble a giant *log roll* as legislators traded favors with one another to accomplish very limited goals.

Since Republicans took over the House, only the individual senators have retained the procedural veto. Consequently, power has shifted in the state. The Speaker has become very powerful and eager to move his and his party's agendas, especially to shift power from the Senate to the House. The top ranking senators, on the other hand, have overtly begun to exercise their traditional power to keep the Speaker at bay.

How Important Changes are Legislated

As described by Mittler (1993), the process of getting major pieces of controversial legislation enacted is slow and arduous. Most new ideas must be introduced in several consecutive two-year sessions before passage becomes feasible. The rules and procedures of the House and Senate described earlier force proponents into combat with defenders of the status quo, whom they must overcome before even the thought of enactment can be taken seriously. Success, if it comes, generally is due to the patience, perseverance, and persuasiveness of a bill's supporters and their ability to get reelected so bills can be reintroduced in subsequent sessions. Some members of the legislature will oppose a bill merely because they believe it has not been around long enough for full consideration to have occurred; and again, it only takes one Senator to enforce delay.

PAST LEGISLATIVE FAILURES

Senator McConnell introduced and failed to get his colleagues' support to enact a mandatory building code in South Carolina for four legislative sessions before succeeding on his fifth try. His efforts to overcome opposition are reported next.

The 1989-1990 Legislative Session

On March 1, 1989, Senator McConnell introduced S. 460 to mandate a statewide building code. The original bill was based on the result of a decade-long citizens' effort to protect the state from earthquake hazards. Supporters of the bill had formed Citizens and Organizations for Minimum Building Standards (COMBS) in 1987 to advocate the adoption of statewide mandatory building codes (Lindbergh, 1988). They developed draft legislation and then sought out a sponsor. After meeting with Senator McConnell, who represents Charleston, where the state's earthquake threat is centered, and who was then the ranking Republican but more importantly the sixth most senior member on the Judiciary Committee, they secured his support and willingness to sponsor the legislation.

After it was introduced, S. 460 was referred to the Judiciary Committee. Typical of most controversial bills at that time, Senator McConnell had no intention of pursuing passage of this legislation during the 1989-1990 session. However, the bill's introduction was important to demonstrate the existence of the issue on the legislative calendar and to notify others of his interest in pursuing the issue at a later date.

Shortly after the introduction of S. 460, Representative Ralph Davenport was enlisted to introduce companion legislation in the House. On March 13, H. 3675 was formally introduced. The House version of the bill contained an additional section, inadvertently omitted from S. 460, which required the certification of all building inspectors. It was

referred to the Labor, Commerce, and Industry (LCI) Committee, where Davenport was not a member. If proponents of the bill had intended to actively pursue legislation during this session, this referral was not a good outcome; management of a bill is difficult when its author is not part of the committee deliberating the issue.

During 1989, neither McConnell nor Davenport asked that their bills be referred to subcommittees for debate. Consequently, the bills remained dormant.

Hurricane Hugo struck South Carolina on September 22, 1989. The General Assembly was not in session at that time and was not scheduled to reconvene until January 9, 1990. In response to the hurricane and indications that poor building codes or their enforcement might have contributed to the damage caused by Hugo, Senator McConnell asked the chair of the Judiciary Committee to form an ad hoc subcommittee chaired by McConnell to hear testimony of S. 460 before the session reconvened. This was done, and McConnell called a hearing for October 18, 1989.

Testimony at the hearing provided evidence why proponents of controversial bills typically work behind the scenes for several years before attempting to secure enactment. The public forum permits opponents to express their dissenting opinions and others to attach unwanted and/or non-germane amendments in exchange for their support. In this case, the Association of Counties, which lobbies for the defeat of state mandates to local governments, argued against the bill, stating that 1) the bill would intrude on current county home rule prerogatives, 2) the bill did not provide funds needed for compliance, and 3) counties would have to raise taxes to pay for implementing and enforcing the code program. The State Fire Marshal saw the bill as an opportunity to increase the State Fire Commission's control over fire regulations and to mandate the inclusion of water sprinklers in new residential housing units. Senator McConnell also took the opportunity to propose an amendment adding the mandatory certification of building inspectors which had been left out of the original bill.

At the end of the hearing, a vote was taken to adopt the bill as amended. The vote was 3-1 in favor. Senator Stilwell sided with the County Association, claiming he was opposed to a state mandate and was not willing at this time to have state building codes imposed on counties that chose not to have them. Without a positive vote from him, the bill would certainly not get out of the full committee with a favorable report. Senator McConnell, as a consequence, was forced to hold further hearings and not report the bill back to the full committee.

The timing of the October hearing also gave the Association of Counties time to notify its members of the bill and its opposition to it. The association holds its annual meeting in December, when it discusses policy positions and legislative goals for the subsequent legislative session. In the 1989 meeting, it alerted county officials throughout the state to the existence of the building codes bills and the association's policy of opposition. If they agreed with that position, county officials were encouraged to support their association by putting pressure on their state representatives to kill the bill.

During the entire 1990 session, Senator McConnell unsuccessfully attempted to fight off the challenge of the County Association. As detailed in Mittler (1990 and 1993), the county association threw up one roadblock after another which McConnell had to overcome before proceeding further. However, on the positive side, progress would occur when roadblocks were overcome.

There were two main substantive challenges to the bill. First, it was argued that a building code enforcement program was not financially self-supporting and would force counties to impose taxes. Second, it was argued that the bill did not contain an appropriate funding mechanism as required by state law. These were dealt with deliberatively and taken care of once and for all time.

Professor Charles Lindbergh of the Citadel, chair of COMBS, conducted a survey of counties which had already adopted building codes to determine if they collected sufficient building permit fees to pay for the costs of the program. The results of his survey showed that only two counties, which had ordinances restricting the amount of fees that could be charged, collected less than what was spent. The state Attorney General was asked for an opinion concerning whether the bill violated state law by not having a funding mechanism and later responded in the negative, noting that the counties, not the state, would be required to provide funding in the event the bill was enacted.

Ultimately, the county association was left with its philosophical argument, that home rule would be violated. While

there was evidence to demonstrate that the vast majority of the General Assembly favored mandatory building codes, there were sufficient members who both supported the association's position and were also willing to put their names on the bills to keep them on the contested calendar if and when they would be reported out of committee (Mittler, 1990 and 1993).

After the subcommittee fashioned a bill which was accepted by the Fire Marshal and the challenges to the bill were successfully countered, Senator Stilwell voted to support the bill with the other members of the subcommittee. So it was reported to the full committee by unanimous vote.

The bill went to a vote of the full committee. Here, Senator Bryan voted against the bill and filed a minority opinion. In an interview with the author, he stated that he personally favored a statewide building code but was opposed to the bill at this time because the adoption of building codes in Laurens County, which he represented, had become a campaign issue in the county's upcoming June election. As a courtesy to his constituents, he believed strongly that they should have their say without state interference. When asked what he would do next year if the bill was reintroduced, he said no matter what the outcome of the county vote, he would not oppose it. Senator Bryan's opposition killed the Senate bill.

On the House side, Representative Davenport attempted to have his bill debated but he could not control the outcome in the LSI committee or subcommittees. Ultimately, he asked the committee chair to table the bill, which he did.

Near the end of the 1990 session, a new bill, H. 4981, identical to the amended S. 460 which Senator Bryan opposed, was introduced and referred to the Medical, Military, Public, and Municipal Affairs Committee where Davenport was a member. In exchange for his assistance in getting out other legislation favored by the Association of Counties, the bill was not opposed by the association and it was unanimously reported out of committee to the floor for second reading. There it died when a sufficient number of House members objected to the bill and moved it to the contested calendar.

1991-1992 Legislative Session

In the interim between the 1989-1990 and the 1991-1992 legislative sessions, two events helped seal the fate of the mandatory state building codes bill. First, in the November, 1990, elections, Representative Davenport was defeated in his bid for re-election. The proponents of the bill did not have a ready replacement. Second, Senator McConnell decided to prefile his bill early (September, 1990) ostensibly to guarantee that the bill would be heard early and reach the Senate floor before the calendar got crowded. Unfortunately, this action also alerted the Association of Counties of his intentions and gave it ample time to develop and publicize its negative policy position.

Senator McConnell attempted to win over the County Association by developing compromise legislation to meet their objections. To get the bill out of committee (now the Labor, Commerce, and Industry (LCI) Committee where McConnell was a member and there was no known opposition), he agreed to drop the section mandating the certification of building inspectors. On February 27, 1991, the committee reported the bill out of committee favorably with amendments.

Before second reading, three senators (Bryan, Stilwell, and Mullinax) opposed it, making known their "desire to be present." In the Laurens County election of the previous year, anti-building code advocates unseated the incumbents by a wide margin, sending Senator Bryan a message that he should continue to oppose building codes legislation. Apparently Senator Bryan heard the message. Senator Stilwell continued to oppose a state mandated program. Senator Mullinax objected because he opposed a section of the bill that gave the state Fire Marshal exclusive jurisdiction over state buildings, eliminating jurisdiction of local fire districts. Neither Senators Bryan nor Stilwell could be swayed to change their position, and the bill remained on the contested calendar for the remainder of the entire 1991-1992 session.

The 1993-1994 and 1995-1996 Legislative Sessions

In the next two legislative sessions, there was a virtual replay of the 1991-1992 legislative session. Senator McConnell

filed his bill early, the Association of Counties objected and found members to place their names on the bills, including Senator Bryan, who now claimed that he supported the Association of Counties' stance that the bill would infringe on local home rule.

In this four-year period, Senator McConnell displayed the patience needed to eventually get this legislation enacted. He continued to compromise with the Association of Counties to virtually eliminate their reasons for opposition and he moved up the seniority ladder, more able to exert his will over the handling of Senate business. At the same time, several opponents, including Senator Stilwell, had left the Senate.

SUCCESS FINALLY COMES

There were some key changes that characterized the handling of the building codes legislation during the 1997-1998 session. First, Senator McConnell had become chair of the Rules Committee and third in seniority on the Judiciary Committee, primed to become chair in the near future. As such, he had become one of the avowed leaders in the Senate, irrespective of his political affiliation. Second, the state Department of Insurance joined with Senator McConnell and his traditional allies to fashion a bill that the Association of Counties would not object to. Dean Kruger, Forms and Rate Director of the Department of Insurance, worked directly with Robert Croom at the Association of Counties to develop language in the final bill which would satisfy the county association. Third, the inability of House members to employ procedural vetoes removed a critical stumbling block to this legislation. Fourth, unlike previous bill introductions, McConnell did not prefile this bill. Fifth and most important, Senator Bryan did not file an objection to the bill placing it on the Senate's contested calendar.

The building codes bill, S. 236, was introduced by Senator McConnell on January 22, 1997. It passed through committee and floor debate quickly with a few amendments to satisfy the county association. There were no objections raised. According to Senator McConnell, his "patience had paid off." According to Senator Bryan, who chose not to object this time and place the bill on the contested calendar but who still believes the state should let the counties decide, there weren't any other opponents and he "finally got worn out." Without opposition, the bill was passed by the Senate on the 12th of February.

On the House side, Representative George Bailey, a Democrat from the Charleston area, shepherded a companion bill through the legislative process. When finally passed by the House on May 8th, it had slightly different language, which ultimately led to the formation of a conference committee to iron out the differences. McConnell and Bailey worked together to finalize the bill while Dean Kruger worked behind the scenes to satisfy the concerns of both the Department of Insurance and the Association of Counties. The conference committee report was adopted by both houses and enrolled on June 5 and signed by the governor as Act A123 on June 13.

Why Legislation Succeeded

As mentioned earlier, successfully enacting a major piece of legislation often depends on the patience, perseverance, and persistence of its sponsors and overcoming the arguments of their adversaries. In this case, that held true. For ten years, Senator McConnell had negotiated compromises with the Association of Counties until Robert Croom exclaimed that "we ran out of objections."

Getting the Association of Counties on board at this particular time was also due to the efforts of Dean Kruger. He was the first person to actively involve the Association of Counties in the bill writing and amendment phases, thereby eliminating the all-too-common result of the association objecting to bills which they took no active part in creating.

The role of the Department of Insurance was also critical. In 1995, by rule, the department authorized property and casualty insurance companies to use ISO (Insurance Services Office) Building Code Effectiveness Grading Schedule Classifications to partially determine insurance rates for personal and commercial lines. When the first ratings came out, they indicated that the vast majority of communities had received ratings of a "9" out of 10 for one and two family dwelling buildings, with 10 being the lowest possible. This implied that rates for homeowners could be raised to reflect poor building code effectiveness in low ranked communities.

As a consequence of ISO rankings, the Department of Insurance got involved with Senator McConnell. Dean Kruger also contacted the Association of Counties to understand its objections and to work with the association to produce legislation that overcame their objections and still met the needs of the insurance department.

As part of his commitment to passage of the buildings code bill, Dean Kruger performed services that are often accomplished by legislative staff, including the drafting of bills and amendments, the analysis of the differences between the Senate and House bills prior to conference, and personal negotiation with potential opponents. In South Carolina, this effort filled a void because Senator McConnell had no staff.

The lack of opposition to the bill by the Association of Counties smoothed the way for eventual passage by the Senate and then the House. Senator Bryan was not willing to stand alone and therefore did not put his name on the bill when it reached the Senate floor. Ironically, Senator Bryan was named to the conference committee to work out differences between the Senate and House versions of the bill. The new House practice of not permitting procedural vetoes to hold up legislation also made passage easier once the bill was reported out of committee.

THE NEW BUILDING CODES LAW

The new law specifies that all municipalities and counties in the state shall adopt by reference the latest editions of the national, regional, or model building codes provided in the law. This implies that construction would typically be in accordance with the Standard Building Code published by the Southern Building Code Congress International, Inc. and the One and Two Family Dwelling Code published by the Council of American Building Officials. For manufactured housing construction and installation, the state establishes that federal regulation shall preempt state and local laws in the event they were in conflict.

In order to accommodate localities with little demand for the services of building officials, the state permits municipalities and counties to establish agreements with other government entities to issue permits and enforce building codes. However, if a municipality or county "is unable to arrange for services for any annual period at costs totally within the schedule of fees recommended in the appendices of the building codes," the municipality or county will be exempt from providing such services "until it becomes financially feasible...to provide these services, or five years, whichever is less." At every five year interval, the municipality or county may renew its affidavit until it can arrange for services whose costs do not exceed fees generated. By this action, the law establishes that no political jurisdiction should involuntarily incur costs to perform services required by building codes, a point originally demanded by the Association of Counties.

Each county and municipality must appoint or contract for a building official so that all areas of the state are under the jurisdiction of a building official. The building official may appoint and employ other personnel and assistants necessary to perform the required inspections and duties and may prescribe fees for construction permits and inspections. A schedule is established for the appointment of building officials and the establishment of a building inspection department whereby jurisdictions with a population over 70,000 must comply in one year after the effective date of the law, jurisdictions with populations between 35,000 and 70,000 must comply in two years, and jurisdictions with a population under 35,000 must comply in three years.

Six months after establishing a building inspection department, the jurisdiction must adopt building codes and standards. However, there is no requirement that it adopt "the provisions which concern the qualification, removal, dismissal, duties, responsibilities of, and administrative procedures for all building officials, deputy building officials, chief inspectors, other inspectors, and assistants." Instead, the state specifies what the job of "building code enforcement officers" is as well as minimum requirements for the job, licensing, registration, and training. Local jurisdictions may impose additional requirements.

As originally suggested by the Department of Insurance and supported by the Association of Counties, the law creates a 13-member Advisory Committee to the Director of Insurance and the South Carolina Building Codes Council "to study issues associated with the development of strategies for reducing loss of life and mitigating property losses due to hurricane, earthquake, and fire." A loss mitigation grant program is also established in the Department of Insurance to provide grants to local governments to establish loss mitigation programs and specifically for the implementation of

building code enforcement programs including preliminary training of inspectors and conducting assessments to determine the need for and desirability of making agreements with other jurisdictions to provide building code services. Grants need a majority vote of the advisory committee for funds to be appropriated.

POSTSCRIPT

To date, the only aspects of the new law which have created any controversy are the composition and scope of the Advisory Committee. The original scope included mitigation studies to reduce losses from only hurricane, earthquake, and fire, presumably because these are of the most concern of the Department of Insurance. There has been a concern that the law should be amended to include other natural disasters, including flood, tornado, and other wind. As of the writing of this case study, no amendment to the new statute has been introduced.

According to Dean Kruger, the composition of the proposed 13-member Advisory Committee was intended to include all South Carolina agencies who work to develop mitigation policies and programs. However, he admitted that he was unaware of reporting relationships and erroneously included some agencies and omitted others when this section of the final bill was written. For example, he included a representative from the Federal Emergency Management Agency when he was under the mistaken impression that the state's Emergency Preparedness Division was FEMA's state representative.

Prior to the first meeting of the Advisory Committee, the Department of Insurance took steps to rectify its oversights. It appointed Stan McKinney, the Director of the Emergency Preparedness Division as an at-large member. It also recognized the omission of floods from its charter and appointed Lisa Holland, the State Coordinator of the National Flood Insurance Program, as a member under the opinion that the new statute was permissive, did not limit the number of members who could serve on the committee to 13, and permitted the committee to select members which it believed would beneficially serve the committee.

For the record, the initial appointees to the committee include:

one representative from the Department of Insurance (Dean Kruger),
one representative from the Department of Commerce,
one representative from FEMA,
one representative from the Home Builders Association of South Carolina,
one representative from the Manufactured Housing Institute of South Carolina,
one representative from the academic community studying earthquakes,
one representative from Clemson University involved with wind engineering,
one representative from an insurer writing property insurance in South Carolina,
one representative from the State Fire Marshal's office,
two at-large members appointed by the Director of Insurance,
two at-large members appointed by the Governor, and
one additional member, Lisa Holland.

Furthermore, one member of the Building Codes Council was appointed to the committee. In this case, the choice was Gary Wiggins, who was part of the original COMBS team which wrote the first draft of a building codes bill that convinced Senator McConnell to sponsor the bill in 1989.

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