

LBA Performance Audit Report Summary:

Department of Safety, Division of Fire Safety Performance Audit Report – November 2001

This report addresses the concern that the Department of Safety's Division of Fire Safety (the division) exceeds its statutory authority in its enforcement of the State Fire Code (the Code). In addition, the report describes the division and reviews management controls over its operations. The audit period includes the seven years from fiscal years 1995 through 2001.

The division's mission is to prevent deaths, injuries, and property loss due to fires; to promote the establishment of a fire-safe environment for the citizens of New Hampshire; to investigate fires, including all that result in loss of life; and to ensure the safe and efficient coordination of hazardous materials emergencies. The division also has oversight of the State's modular building program.

The Code is comprised of provisions of the National Fire Protection Association code and the Building Officials and Code Administrators code. It is a de facto statewide building code for all buildings except single and multi-unit dwellings. By statute, locally adopted fire codes cannot be less restrictive than those adopted by the State Fire Marshal.

Observations

The division's work in investigating fires received praise from many organizations that have dealings with the division. However, questions were raised regarding the division's legal authority to enforce the State Fire Code when it differs from local codes, and its authority to require costly improvements to municipal buildings and schools. We provided the division six observations with recommendations: two related to improving management oversight of the division and four compliance issues. In addition, we identified and discussed a number of issues and concerns the Legislature and the division may want to review.

Division Has The Authority To Enforce The State Fire Code On Local Governments

The Attorney General does not view the division's enforcement of the Code on municipally-owned buildings (such as schools) as an unfunded State mandate on local government. There had been concerns that the division was exceeding its authority, specifically in regards to Part 1, Article 28-a of the New Hampshire Constitution, which prohibits State actions that would necessitate additional local expenditures. While the Attorney General's office does not rule out the possibility that some provision of the Code may be found to be an unfunded mandate, no such example has been identified.

Many Fire Investigations And Inspections Not Documented

We found fire investigation and inspection files for calendar year 1999 were either missing or incomplete. We did not find reports for 50 percent of the inspections and 22 percent of the fire investigations we sampled. In fact, over half of one investigator's fire investigations could not be located in the files. Given the importance of these reports, it is very troubling that division management has little, if any, formal reporting standards and an ineffective tracking system.

Division Not Fulfilling All Of Its Statutory Requirements

We found a number of instances where the division is not meeting its statutory requirements. The division is not systematically inspecting State-owned buildings; only some buildings are inspected regularly. The division cannot consistently report when some State buildings were last inspected. The division has not enforced a statute requiring all fire chiefs to report certain fires to the division. Less than half of the chiefs regularly report these fires to the State, potentially putting them in violation of State law. In addition, the State Fire Marshal has not provided annual evaluations to electrical inspectors statutorily assigned to him.

Other Issues And Concerns

As a result of our review of the division's statutory responsibilities, the Attorney General's opinion, and answers from the State Fire Marshal, we have identified two issues for Legislative consideration: inconsistent Statewide enforcement of the Code, and locally granted variances.

There are no statutory requirements that buildings be checked for compliance with the State Fire Code. Both the State Fire Marshal and local fire chiefs have the authority to enforce the Code, but neither have a mandate to enforce it. In some communities, the local fire chief enforces either the local or State Fire Code, in other communities there is no local enforcement. The State Fire Marshal usually will inspect a building when asked or if complaints are filed. While State law requires that buildings meet the Code, the law does not ensure compliance through mandated inspections or plan reviews, resulting in the Code not being consistently enforced statewide.

It is the State Fire Marshal's practice to accept locally granted variances to the Code if they have gone through a formal public process. However, State law establishes a two-tier system of fire safety regulation and enforcement in which the State fire Marshal does not have the statutory authority to accept or overrule local variances.

In addition, we suggest the Electricians' Board and the Department of Safety consider having the department take over the responsibility for providing administrative support to the board by transferring current staff to the division. Day-to-day management oversight could then become the responsibility of the newly created Chief Electrical Inspector and ultimately the State Fire Marshal.