



**Department of Housing, Buildings and Construction
Public Protection Cabinet
101 Sea Hero Road, Suite 100
Frankfort, Kentucky 40601**

**HJR 134 Kentucky Single Family Inspection Task Force Report
November 2015**

Background

In 2015, the Kentucky General Assembly passed HJR 134, which called for the Kentucky Department of Housing Buildings and Construction (DHBC) to create a task force of stakeholder organizations to study the feasibility of providing structural inspections of all newly constructed homes statewide.

Today, newly constructed homes are inspected for electrical, plumbing, and heating and cooling installations statewide under the auspices of the DHBC.

Currently, authority for the enforcement of permitting and inspections under the Kentucky Residential Code is statutorily reserved solely to local government, meaning that plan review and inspection is only required if the local government chooses to pass an ordinance creating a mandatory residential building program. As of January 1, 2015, only 55% of the counties in Kentucky have some sort of new home inspection program in place, either by city or countywide.

The Task Force

The Commissioner of the DHBC assembled a Kentucky Single Family Inspection Task Force, consisting of the following stakeholders:

- **Home Builders Association of Kentucky**
- **Kentucky Association of Realtors**
- **Kentucky Housing Corporation**
- **Kentucky Bankers Association**
- **Insurance Institute of Kentucky**
- **Kentucky Association of Counties**
- **Kentucky League of Cities**
- **Code Administrators of Kentucky**
- **Kentucky Building Materials Association**
- **Kentucky Farm Bureau Federation**

The task force met throughout the year, looked at all aspects of the residential housing industry, and discussed various options to provide structural inspections for all newly constructed homes in Kentucky.

Findings

First, research was conducted to quantify the extent to which newly constructed homes in Kentucky were structurally inspected. This research included analysis of plumbing permits, which are already required for all new homes and issued at the state level. The Department has determined as follows:

- 7,819 new homes were constructed in Kentucky in 2014 (based upon the number of plumbing permits issued for new homes statewide).
- Of those new homes, only 748 (or 10% of the total) were built in counties that do not require or provide any structural inspections of new homes (either city or county).
- The majority of new homes built in 2014 (5,977, or 76%) were built in counties that already require and provide structural inspections under a countywide mandatory residential program.
- The remaining new homes built in 2014 (1,094, or 14%) were constructed in counties where one or more of its cities operate a local residential inspection program but the county does not. As a result, the task force did not have sufficient data to determine how many of those 1,094 homes were inspected for structural integrity at the local level.

A map illustrating these findings is attached.

The HJR 134 Kentucky Residential Building Code Task Force provides the following, pursuant to HJR 134 Section 2:

Task 1. How to allow the cities and counties to have the option of providing new home inspections and, if they choose not to create a building department, how the state can provide those inspections where local governments do not.

All local governments already have the option of providing new home inspections; in fact, this power is explicitly reserved solely to local government under current law, KRS 198B.060.

Under this statute, a local government that wishes to require permitting and inspection of single-family residences within its jurisdiction must:

- Pass an ordinance requiring inspection of single-family residences (a sample ordinance is provided within the Kentucky Residential Code);
- Employ or contract with the necessary certified building officials, inspectors, and other code enforcement personnel needed;
- Establish a schedule of fees, if any (typically by ordinance); and then
- Properly enforce the Kentucky Residential Code as adopted under 815 KAR 7:125.

KRS 198B.060 also authorizes local governments to associate with each other (such as by inter-local agreement) to combine resources for a shared program, and to seek assistance from other agencies and area development districts to provide for local code enforcement.

The real issue is that, in the absence of a local government's voluntary decision to require single-family dwelling inspections, there exists no other general authority to require such inspections. Moreover, KRS 198B.060 explicitly denies the DHBC any authority to assert jurisdiction for code enforcement on any single-family dwellings, or to preempt a local government's single-family dwellings in the event that the local program is inadequate.

Accordingly, the primary options for affording the state authority to provide these inspections where a local government does not are:

- Expand the Kentucky Housing Corporation's current Single Family Dwelling Program to include authority for inspection of all single-family dwellings not covered by a local government's building program; or
- Amend KRS 198B.060 and related provisions to grant the DHBC authority and responsibility for all single-family buildings for which a local government has not chosen to assume responsibility. For example:
 - Paragraph (1): "Each local government shall employ a building official or inspector and other code enforcement personnel as necessary, or shall contract for inspection and code enforcement services in accordance with subsections (8) and (11) of this section, to enforce the Uniform State Building Code within the boundaries of its jurisdiction. **Nothing in this subsection shall be construed to impose responsibility on a local government for enforcement of the Uniform State Building Code with respect to single-family residences**~~[except that permits, inspections, and certificates of occupancy shall not be mandatory for single-family residences]~~ unless ~~the~~**[a]** local government passes an ordinance requiring inspections of single-family residences."
 - Paragraph (4): "~~[With the exception of single-family dwellings,]~~ The department shall be responsible for the examination and approval or disapproval of plans and specifications for all buildings which are not the responsibility of local governments. The department may issue and revoke permits, licenses, certificates, and similar documents within its area of responsibility, and shall have concurrent jurisdiction with local governments for the inspection of all buildings pursuant to the provisions of this chapter and the Uniform State Building Code. If the commissioner determines that the local jurisdiction is not adequately performing any portion of its program, he or she may recommend to the board that the department preempt that portion of a local program~~[, except that the commissioner shall not preempt or assert jurisdiction for the enforcement of the code on single-family dwellings]~~. The commissioner shall explain his or her reasons for preemption in writing and provide a copy to the board and the local jurisdiction. The local jurisdiction may appeal the recommended preemption directly to the board, and the board shall review the appeal according to the procedures found in subsections (8) to (10) of KRS 198B.070. No preemption by the department shall take place until the final decision of the board. If the department preempts any portion of a local program, it shall collect the fees applicable to that portion of the program."
 - Paragraph (8): "No building shall be constructed in this state until a local building official and an official representing the department, if the department has jurisdiction, issue a permit for the construction. **Nothing in this subsection shall require a single-family dwelling to be permitted or inspected unless a local government has established a building inspection program as set out in this section.]**"
 - Paragraph (13): "No building on which construction was begun nor any industrialized building system on which site preparation and assembly were

begun after the Uniform State Building Code became effective shall be occupied until the local building official or a representative of the department issues a certificate of occupancy certifying that the building was constructed in conformance with the standards of the Uniform State Building Code, or assembled or installed in conformance with applicable instructions. ~~[Nothing in this subsection shall be construed to require a certificate of occupancy to be issued for any single-family dwelling unless a local government has established jurisdiction for the enforcement of the Uniform State Building Code under this section.]~~

These or substantially similar amendments to KRS 198B.060 would allow the DHBC, if necessary, to establish a statewide Single Family Dwelling Permitting and Inspection Program designed to provide single-family dwelling inspection and code enforcement services in the absence of a local program.

Task 2: Costs involved in creating such a system of statewide inspections.

The exact costs of creating a single-family residential building inspection program at the state level are both uncertain and subject to unknown variables, primarily because it is not possible to accurately predict the extent to which local jurisdictions that do not currently choose to operate a local residential building program under KRS 198B.060 may or may not be willing to assume that responsibility in the future. However, the DHBC presumes that although most local jurisdictions that currently operate such a program will continue to do so, the creation of a statewide program may also lead some jurisdictions to forfeit future responsibility in favor of the state's new obligation. Therefore, the DHBC estimates that a statewide Single Family Dwelling Permitting and Inspection Program operated by the DHBC would need to be of sufficient size to be capable of performing those services where local coverage is currently lacking and where local coverage ceases, but not based upon total new statewide residential construction.

Assuming a yearly pattern of new construction consistent with the 2014 data provided above, and assuming that no new local jurisdictions choose to initiate a residential program of their own, any DHBC-run residential program would need to be equipped to assume ongoing primary responsibility for the 10% of new construction that currently takes place in counties with no residential programs at all, as well as up to a significant (but unknown) portion of the other 14% of new construction currently occurring in mixed counties (those with some city-level programs but no countywide coverage). Finally, for the purposes of this estimate the DHBC assumes an additional 5% of new construction responsibility, to account for inadequate, unprofitable or otherwise struggling local programs that may be closed in light of the state program.

Based on these factors, the DHBC estimates that a state-run residential inspection program will therefore need to be prepared to handle up to 25% of the total annual volume of new residential construction in Kentucky (based on 2014 data, approximately 1,955 homes annually).

In order to accomplish this additional workload, the DHBC would require an increase in current staffing levels of five (5) positions: one administrative position, one plan reviewer, and up to three field inspectors. Based on current data for positions of this type, the DHBC estimates a total annual program cost of **\$500,000**, including all wages, benefits, and operating expenses. Initial startup would require appropriation.

In order to offset these expenses thereafter, the DHBC would also be required to amend the Kentucky Residential Code in order to establish a schedule of fees for these services.

Task 3: The effects of such a system on home builders, cities, counties, banks, and insurance companies.

- a. Increase consumer protection by ensuring quality construction.
- b. Insurance companies believe that better built homes are less likely to suffer damage in natural catastrophes. This also could lead to lower premiums.
- c. Lenders will have assurance that homes are built to reasonable standards of quality.
- d. Requiring uniform inspection of single-family dwellings statewide may result in some degree of delay in one or more phase of construction (commencement or completion), at least in areas in which uniform enforcement is currently absent.
- e. Requiring uniform inspection of single-family dwellings statewide may also result in varying degrees of increased building costs associated with permitting or inspection fees, at least in areas in which uniform inspection and enforcement is currently absent.

Task 4: Any similar programs in other states.

1. Georgia, Virginia, Connecticut, Texas, Tennessee, Ohio, Indiana, Oklahoma, Illinois, and North Carolina each have uniform building codes whose enforcement is substantially similar to Kentucky: specifically, where the single-family dwelling inspection and enforcement is administered through local governments.
2. Washington has a state law that requires all jurisdictions to implement and enforce the state approved codes.
3. Louisiana has a statewide code that is administered through the Disaster Recovery Unit for the Division of Administration, and uses its Housing Corporation to conduct a statewide Single Family Dwellings Program. The state applies and receives HUD grants to help pay some of the program costs, and fees cover the remaining costs.
4. Oregon has a uniform code that assigns responsibility to the state for all code enforcement, unless a city or county chooses to seek approval from the state to administer a local program.