



DEPARTMENT OF INSURANCE  
State of North Carolina

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May 10, 2007

VIA HAND DELIVERY

TIME SENSITIVE

The Honorable R.C. Soles  
Chairman, Senate Commerce Committee  
North Carolina General Assembly  
Raleigh, NC 27601-1096

Re: My opposition to SB 490 (Industrial Machinery – Building Code) in Senate Commerce Committee

Dear Senator Soles:

Today I am following up on letters, email and telephone calls you have received from me and others about SB 490.

Specifically, as Commissioner of Insurance and State Fire Marshal I am duty bound to express my **strong opposition to SB 490**, filed by my good friend Senator Hoyle. The bill is in your committee and, as of a few minutes ago, has just been placed on next Tuesday morning's committee calendar (May 15). In addition to SB 490, you may recall that I sent you and other leading legislators very detailed letters two months ago in opposition to SB 490 **and its companion bills, SB 575 and HB 999**. The text of SB 490 also appears in one section of two other bills – **Part 7 - of SB 91 and HB 39**. HB 999 was scheduled for hearing this week in the House Judiciary 2 Committee but I was informed by one of the co-sponsors that it will not be heard.

Without going into detail again, I have attached those letters and incorporate those items by reference. Suffice it to say that anyone who is concerned about workplace safety, foreign-made industrial machinery that does not meet safety standards Americans have become accustomed to, and compliance with the State Building Code (which includes the National Electrical Code and OSHA regulations that must be followed anyway) should oppose these bills. Building inspectors in cities and counties are statutorily responsible for compliance with the OSHA and NEC regulations and codes (that is, the State Building Code). These inspectors - who are regulated in part by the Department of Insurance and its Office of State Fire Marshal - are on the frontlines at workplaces *before* the N.C. Department of Labor has jurisdiction after workers arrive.

Meanwhile, you may recall that my department hosted just one month ago the "INDUSTRIAL MACHINERY SUMMIT". It featured experts from across the spectrum and from around the country. Approximately 75 people attended, including several legislators and persons from the business community, the engineering profession, inspectors associations, the N.C. Department of Labor, the N.C. Economic Developers Association, the N.C. Department of Commerce, and attorneys involved on all sides. **The general consensus among the vast majority of the attendees is that the proposed legislation is not necessary because the alleged incidents leading to the legislation are due to a misunderstanding of the law.** Passage of this legislation would put us at odds with other jurisdictions outside of North Carolina. Moreover, passage of the legislation could lead to fires, explosions, losses of jobs, injuries, or deaths. It would also upend law that has existed for decades. **I have enclosed a copy of the DVD recorded at that meeting, and have sent a duplicate to your colleagues on Senate Commerce, as well as to legislative staff attorneys Denise Huntley and Tim Hovis. Given the DVD's length I have provided a timeline so that you, your colleagues, and legislative staff may fast-forward to pertinent sections.**

**Letter to Senator R.C Soles, Senate Commerce Chairman**  
**Re: Industrial Machinery – SB 490**  
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Given that it took the experts and the public three hours to discuss the subject and the conference could have lasted longer due to the level of interest by all parties, and that the official record for pending litigation on the subject exceeds 2,000 pages for one case, I am sure you would agree with me that **it would be bad public policy for the legislature to intervene and pass this legislation without a solid understanding of the consequences of their actions.** The bill is unduly and overly broad. And, it would also affect pending litigation, another impact that the legislature regularly seeks to avoid.

In fact, Senator Daniel Clodfelter had this to say as an attendee at the INDUSTRIAL MACHINERY SUMMIT meeting on April 9th:

“The legislation I filed was filed at the request of the local governments I represent. I will speak with them offline about what constitutes a local bill [and what does not] ... **I’m still waiting to hear the case for change. [I] had hoped to hear that this afternoon and didn’t hear it.** ... I’m still waiting to hear somebody to tell me what has changed in a year and a half [and decades of the same statutes in place] to put us in crisis mode that requires us to file legislation. ... **I haven’t heard that case made yet.**”

Sen. Clodfelter introduced his own version (SB 575) of Sen. Hoyle’s bill before attending the INDUSTRIAL MACHINERY SUMMIT, thus making his statement even more profound.

In conclusion, I respectfully request that SB 490 be held by you and not heard, or, better yet, given an **unfavorable report** in light of the analysis of the phalanx of experts. *Alternatively*, the only remaining acceptable option in my opinion is for the bill to be converted into a **study**. If and only if the bill is converted into a study would I then withdraw my objections. A study would at least give legislators and all parties a comprehensive opportunity – without the heated rush of crossover - to understand better the complicated and highly technical codes and allow everyone to see that this proposed legislation is too broad.

Please let me know if you need additional information or if Assistant Commissioner of Insurance Wayne Goodwin or I may be of further assistance to you and the Committee.

Thank you for your consideration of the above.

With warmest personal regards, I am

Very truly yours,

JIM LONG  
*Commissioner of Insurance and State Fire Marshal*

#### Enclosures

c: The Honorable Marc Basnight  
Senate President Pro Tem

Mr. Wayne Goodwin, Assistant Commissioner of Insurance  
and Assistant State Fire Marshal

Members of the Senate Commerce Committee

Mr. Tim Hovis, Legislative Staff Attorney, Senate Commerce Committee  
Ms. Denise Huntley, Legislative Staff Attorney, Senate Commerce Committee

Mr. Chris Noles, Secretary  
N.C. Building Code Council