



**TESTIMONY BY
THE PENNSYLVANIA STATE ASSOCIATION OF
TOWNSHIP SUPERVISORS**

**BEFORE THE
HOUSE LABOR AND INDUSTRY COMMITTEE**

ON

HB 782 (PN 925)

PRESENTED BY

**ELAM M. HERR
ASSISTANT EXECUTIVE DIRECTOR**

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Chairman Gingrich and members of the House Labor and Industry Committee:

Good morning. My name is Elam Herr, and I am the assistant executive director for the Pennsylvania State Association of Township Supervisors. Thank you for the opportunity to appear before you today on behalf of the 1,454 townships in Pennsylvania represented by the Association.

Townships comprise 95 percent of the Commonwealth's land area and are home to more than 5.5 million Pennsylvanians — or 44 percent of the state's population. These townships are very diverse, ranging from rural communities with fewer than 200 residents to communities with populations of more than 60,000 residents.

Since the original enactment of the Uniform Construction Code in 1999, PSATS has been working to educate our members on the options for administration and enforcement under the act, as well as their responsibilities for ensuring compliance if they choose to opt-in and their need to notify applicants and the Department of Labor and Industry if they opt-out. In addition, we have promoted best practices of our membership to promote fair and uniform enforcement. To further add perspective to this issue, we have attached a recent article from the Pennsylvania Township News, the Association's monthly magazine.

The number of municipalities that chose to opt-in and take on the responsibility for administering and enforcing this state mandate can be credited to the number and flexibility of options provided under Act 45, particularly the ability to hire a third-party agency to exclusively handle this role or to supplement an employee's expertise.

Municipalities of all sizes have found third-party agencies to be an effective mechanism to administer and enforce the UCC and it is our understanding that exclusive contracts with third parties are the most commonly used enforcement mechanism. Many small townships had limited options and not enough activity to warrant the expense of an additional employee, and the third party agency option filled this need. Larger communities found that third party agencies could bring professionalism and customer service to the building code process, while providing a more efficient and effective mechanism than one or two full or part-time employees.

HB 782 would mandate that any municipality choosing to administer and enforce the Uniform Construction Code with third-party agencies must appoint at least **two** third party agencies and allow the builder or homeowner to pick which agency should oversee an individual project. PSATS opposes this proposal, as townships throughout the state, whether individually or part of a consortium or council of governments, have found that exclusive agreements with third party agencies have resulted in fair and uniform administration and enforcement of the UCC at a reasonable price to their residents.

Townships do not want to lose control over their current programs and are concerned that mandated use of multiple third parties will bring with it additional liability, a move away from fair and uniform enforcement, and decreased customer

service. In fact, the issue of a municipality's ability to have exclusive contracts with third-party agencies was fought in court and decided by the Pennsylvania Supreme Court in the 2009 decisions in *Allegheny Inspection Service, Inc. v. North Union Township* and *Allied Building Inspections v. Township of Millcreek, et al.* These decisions validate townships' designation of a single third party agency to perform building code inspections under current law.

Effective administration

How are townships currently fulfilling their obligations to uniformly and fairly administer and enforce the UCC? In many cases, consortiums or councils of government of municipalities of all sizes and levels of building activity have worked together for the administration and enforcement of the UCC and many of these entered into exclusive contracts with third party agencies. These contracts were entered into thoughtfully, with objective review processes that considered customer service issues, capacity of the third party agency, fees and hourly rates, and require inspection turn-around time as part of the contract, often at 48 hours.

For example, the Franklin County Council of Governments carefully chose its third party agency, which is providing uniform and fair inspections for all but one municipality in the entire county at a reasonable cost. Participating municipalities rarely hear complaints and work with their agency to address them. These cooperative efforts provide a convenience to the builders and homeowners by having one contact over a wide area.

Our members are concerned about the customer service level and convenience provided to their residents and businesses. Whether a township is fulfilling its role through a COG or consortium or individually, the vast majority have worked to ensure that the process is handled uniformly and fairly.

Athens Township, Bradford County uses the Western Bradford Council of Governments for the UCC, which has an exclusive contract with a third-party agency. The township provides office space for the agency to meet with residents twice a week and to pick up completed applications, which are available at the township office. The third party has multiple inspectors and a management structure to ensure that if the primary inspector is ill or on vacation, back-up is provided and permits and inspections are not delayed. Fees have only gone up once in five years and any change is subject to approval by all participating municipalities. The contract provides for inspection turnaround time of 48 hours. Due to the well-designed program, the township rarely hears complaints and ensures the few that are received are fully addressed by an established procedure. The township is concerned that if they are forced to use more than one agency, they could be forced to use another third party that has a less than stellar reputation.

Individual townships have similar programs with a heavy emphasis on customer service. In Cross Creek Township, Washington County, the township originally used multiple third-party agencies, but one rose to the top with the best service and reasonable

fees. Today the township works with its third party by providing applications at the township office, which the third party picks up on a regular basis. The township rarely receives complaints. In Liberty Township, Mercer County, the township is very happy with its third party agency, which provides excellent and responsive service for the residents. The township has had no complaints or problems and since they work with and for the residents, township officials have kept their fees low.

Unintended consequences

If HB 782 passed, it would require all of these well-functioning, carefully designed programs to be completely redone and these townships are greatly concerned that their time and effort to make sure this important service and public safety function is properly provided would be undone.

Local government is always being pushed to provide better service to its residents at a lower cost and this is one area where the private sector is able to provide this function more effectively and efficiently than the township may be able to by hiring its own inspectors. Inspectors must meet the same state qualifications and certifications whether they are working directly for the township or for a third party agency.

Townships aren't required to have more than one solicitor, engineer, certified public accountant, or other professional service provider, but they can if they choose. Some municipalities do choose to have more than one inspector and this is an option that any community can take advantage of today. However, it should not be mandated.

Under a mandatory multiple third party system, residents and builders who begin with one agency and have difficulties would not be able to switch to another agency mid-project. Due to liability issues, the third party agencies would be very hesitant to sign off on someone else's work. A resident would be locked into a contract, even if the third party was over extended and had difficulties responding and it would make it easier for less stellar agencies to give preference to builders with more projects and the possibility of future business over smaller operations or homeowner projects. Less respectable builders may pick the inspector likely to provide the easiest inspections, defeating the purpose of the UCC, which is to uniformly ensure that safe structures are constructed and occupied in Pennsylvania.

From the municipal standpoint, there are significant liability and administration issues. It would be difficult to control multiple third parties and ensure that all projects had a permit in place. Homeowners and builders would likely need to travel further to submit permits and possibly wait longer for inspections. Lack of uniform and consistent enforcement is a concern, along with difficulties scheduling multiple agencies.

Eliminating the option of exclusive contracts would take away a frequently used option and require significant efforts to try to figure out what to do, particularly in rural areas with limited construction activity. Municipalities would consider opting out. Other municipalities that rely on third party agencies would be forced to consider hiring an employee as the building code official, which would lead to increased costs and permit

fees. Consortiums and COGS would have to weigh their options and decide if they should continue to operate, and if so, how.

Having one agency with a stable contract offsets these factors, particularly in the many municipalities that ensure their inspectors are providing fair and uniform enforcement at reasonable fees.

Specifics of HB 782

HB 782 would require a municipality to procure services from multiple third party agencies from a process that combines objective aspects of a sealed bid with subjective pieces of a request for proposal process. Currently, municipalities may contract for professional services, such as solicitors, engineers, and third-party agencies without going through a specific process. However, many use, and have used, a request for proposal process, particularly for third party agencies.

HB 782 would require expensive legal advertisements for third party agency procurement, which are not normally a required part of a request for proposal process. As currently designed, this would allow any third party to participate in the procurement process for any municipality. The municipality could add objective prequalification requirements, such as needed certifications to fully administer the program and good standing with L&I. However, the board would be required to evaluate the proposals based on the proposed fee schedule, which is objective, with the availability of services and input of affected public stakeholders, which are both subjective. The input of affected stakeholders is particularly problematic as a basis for rejecting an otherwise qualified third party based upon allegations. The municipality would be required to award the contracts based upon a favorable combination of rates or fees and the agency's ability to perform services in a timely and efficient manner, again mixing objective and subjective elements. We fear this process, along with the mandate to appoint more than one third party, will provide less than stellar agencies with the ability to expand their current service area.

While the bill would authorize municipalities to apply for a waiver from the Department if it can satisfactorily demonstrate that it has made a reasonable effort to solicit and retain two or more third-party agencies, this would add a burden onto the township. In addition, why must this go to the Department for a waiver process?

HB 782 would enable the municipality to designate a single third party as the enforcement agent for work already being completed in accordance with a building permit. However, if another agency or inspector issued this permit, it will be difficult to find a third party that would be willing to fulfill this role. Instead, for liability purposes, they would want to start the process over again and reissue the permit.

L&I Oversight Considerations

The General Assembly should not eliminate one of the best tools for administration and enforcement of the Uniform Construction Code and should instead carefully think out the ramification of this legislation. Due to the procurement procedures in the

legislation, it appears clear that an unintended consequence could be to provide a less than stellar third-party agency with the ability to expand its territory and enjoy more business, not less.

At the end of the day, how does this legislation deal with the heart of the matter, which is a rogue inspector or official? It does not. Perhaps we should change the conversation to try to address an issue that can create problems for everyone.

Unless a township has documented, personal experience with a problem inspector or third party agency, they would have difficulty not entering into a professional services contract as stipulated under HB 782 with a third party who is otherwise in good standing with the Department of Labor and Industry and has all required certification categories.

Section 701 of Act 45 empowers the Department of Labor and Industry to require code administrators to take remedial education for just cause and to decertify. The department has adopted regulations in Title 34, Section 401.14 to implement these provisions and created a program for decertification. In light of this issue, we must ask if the Department is following its regulations and addressing complaints of rogue agencies and functioning as originally intended. The decertification procedure should be reviewed to determine how best to ensure that all of our code enforcement programs, whether by third party agencies, municipal employees, or intermunicipal agreements are working to provide fair, effective, and uniform public safety protections at a reasonable cost and acceptable customer service levels to our citizens and the building community.

Thank you for the opportunity to comment today and I will attempt to answer any questions that you have.