



PENNSYLVANIA ASSOCIATION OF BUILDING CODE OFFICIALS

"Helping to Build a Safer Pennsylvania"

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Good morning Representative Gingrich, Representative Gergeley and members of the Labor and Industry Committee.

My name is Jeff Young. I am one of 78 Master Code Professionals in the Commonwealth. I am also a state-certified Sewage Enforcement Officer. I am employed by CodeMaster Inspection Services, Inc. where my duties include building plan review and inspection services for all facets of residential and commercial construction; code consultation work with designers, builders and municipal clients; and backup zoning, property maintenance and sewage enforcement responsibilities. CodeMaster Inspection Services is a third party agency certified by the Department of Labor and Industry. We provide services to 26 municipalities in the counties of Berks, Bucks, Carbon, Lehigh and Northampton. We are a sole source third party agency in 17 of those municipalities.

I serve on the Board of Directors of the Pennsylvania Association of Building Code Officials and I am also a member of the Berks County Building and Code Association, the International Code Council, and the International Association of Electrical Inspectors.

My comments today will focus primarily on HB 782 from the perspective of a third party agency that provides services to multiple municipalities that have opted-in to administer and enforce the Uniform Construction Code.

Municipalities utilize third party agencies for many different purposes, and those purposes vary from one municipality to the next. In the municipalities in which CodeMaster serves as a third party agency, those UCC services include:

- Serving as the Building Code Official
- Providing plan review services (for all commercial and residential work, including electrical)
- Providing inspections (for all commercial and residential work, including electrical)
- Providing single discipline services (electrical only for example) to those clients that utilize municipal employees for much of their UCC work
- Providing backup plan review services during periods of heavy work volume
- Providing backup inspection services during periods of heavy work volume, vacation, sick leave, etc.
- Every municipality in which CodeMaster currently serves, the municipality has the ***option to use more than one third party if they want to.***
- ***As John already mentioned, we have a Supreme Court ruling in Pennsylvania (North Union Township) that states opt-in municipalities have the choice to use a sole source third party agency if they so choose.*** This bill seeks to undo that Supreme Court ruling.
- Our municipal clients are ***satisfied*** with how things are working. They are pleased with our fees, our services, our response times and how we treat their residents, business owners and constituents.

There are ***no problems*** with the current system to the best of our knowledge.

If any of our municipal clients became dissatisfied with our third party agency, for whatever reason, they have a “bail out” clause. With written notice, they can terminate our contract and contract with a different third party or multiple third parties. Actually, they don’t even need to be dissatisfied. They can stop using our services and begin using the services of other third parties just because they want a change. That is the prerogative of the governing body and it can be accomplished by entering into a professional services agreement with others.

Municipalities all over the state have “changed third parties” numerous times in the eleven years since the UCC took effect. Third parties gain new municipal clients and lose existing ones. Sometimes for cause. Sometimes not. The point is – the system is working! There is nothing broken here. A fix is not needed for a system that’s not broken.

Trying to undo a system that is working well in virtually the entire state in order to deal with one or two local situations is not the way to fix things. If something is truly wrong or not working properly, the elected officials in specific municipalities need to be engaged and offered whatever assistance they might need in understanding the problems that are being reported and what tools and remedies they already have at their disposal for fixing them.

In most cases, third party agencies have ***invested substantial financial and human resources*** to develop positive working relationships with their municipal clients. As private, for-profit business entities, third party agencies need to cultivate that positive relationship, just as any business would need to develop that kind of relationship to be effective, successful and profitable. Given that relationship between third party agencies and municipal clients, this bill actually borders on restraint of trade, if not crossing that line.

Forcing multiple third party agencies into a municipality when the municipality does not want multiple agencies really means that the municipality no longer gets to exercise control over how codes are enforced or their constituents are treated.

In many cases a ***third party agency is an extension of municipal staff*** – and legally –we function in a quasi-governmental capacity. Third party BCOs are public employees under the State Ethics Act and subject to its provisions. Our permits and approvals are subject to the Permit Extension Act, and we are classified as a “quasi-governmental instrumentality”. While we are in the possession of any records or documents created while we serve a municipal client for UCC-regulated functions, we are subject to the Pennsylvania Right to Know Act and must comply with requests from Open Records Officers. We really do serve as an extension of the municipal government – as a legal agent – and it is a responsibility that we at CodeMaster take very seriously, just as other third parties do who are serious and professional about their operations.

Allowing a permit applicant, permit holder or contractor to select the plans examiner and / or inspector of their choosing, with little or no municipal oversight, will simply ***encourage corruption of the Uniform Construction Code*** in Pennsylvania and set the stage for life, health and safety considerations to be compromised – ***putting Pennsylvania homeowners and business owners and the occupants of all buildings at risk.***

Under this bill, if there is no municipal Building Code Official (BCO), this bill would require the municipality to appoint at least two BCOs. The UCC statute and regulations only provide for a single BCO. The Department of Labor and Industry only has the ability to publish one BCO on its website. It would be a nightmare to have more than one designated BCO. Two BCOs is simply unworkable.

For third party agencies, if there were multiple BCOs, the impact this would have on our firms is not yet fully known, but it would not be good and we believe that all third parties that would be appointed as multiple BCOs in the same jurisdiction might not be able to function under its errors and omissions insurance coverage. Our insurers are not going to find it acceptable for our firm to assume liability for someone else's work that you have no control over. If you are the BCO and someone else is doing plan reviews and inspections and you have to issue the permit and the CO – no insurer in their right mind is going to find that an acceptable practice. This is called losing control over "managed risk". And managed risk is what our required errors and omissions insurance coverage is all about.

In closing my testimony today, I want to share with the committee a relevant experience that PABCO has had related to HB 782.

Last year, some of our officers and staff met with officers and staff of the Pennsylvania Builders Association in Harrisburg to discuss an issue that their local association in Carbon County and some of their builder members were supposedly having with a third party agency that served some of the jurisdictions in Carbon County. In response to these "problems", the Pennsylvania Builders Association instituted an internal process whereby builders could file complaints about code officials – and the PBA would then investigate them and if substantiated, would assist in filing those complaints with the Department of Labor and Industry – a process established by the legislature as part of the Uniform Construction Code that John mentioned briefly in his testimony.

PABCO offered to meet with the third party agency, informally and unofficially, to see if we could help mediate the issues that were being brought forward. PABCO asked PBA for a list of the facts behind the complaints that it would need to discuss the matter with the third party agency. In the end, the builders involved were either unable or unwilling to provide that information, and the offer went nowhere. An opportunity was lost to resolve the situation that has supposedly led to the introduction of HB 782. Sometimes help is rejected.

In the meantime, PABCO has learned on its own that a significant number of the complaints coming out of Carbon County that led to PBA establishing the complaint system had absolutely nothing to do with the Uniform Construction Code at all. The complaints concerned denials under municipal zoning ordinances, where the third party UCC agency had also been appointed the zoning official by one or more of the municipalities in question. HB 782 would have absolutely no impact on zoning-based decisions .

When our association met with PBA last year, they had received absolutely no complaints submitted from their members about code officials, using the process they established. The last time that we asked the Pennsylvania Builders Association about the number of complaints they have received about code officials, the answer was still "zero". Perhaps they could be asked here, today, what that number is.

If there is truly such a problem with code officials and particularly third party agencies, then why is there no evidence of that using the very process the Builders Association established to document the scope of the problem?

Thank you for the opportunity to testify before you today. On behalf of PABCO and CodeMaster Inspection Services, I urge you to reject passage of HB 782.

Thank you.