



PABCO

**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 John Eby. I am the Building and Zoning Coordinator for Lower Allen Township, Cumberland County. I also serve on the township's development authority and emergency management agency, and chair the Cumberland County Blighted Property Reinvestment Board. I have been administering construction and zoning codes for over 34 years, and am certified by the Commonwealth as a Building Code Official (BCO), Construction Code Official (CCO) and Sewage Enforcement Officer (SEO).

I serve on the Board of Directors of the Pennsylvania Association of Building Code Officials (PABCO), the Pennsylvania State Professional Chapter of the International Code Council (ICC). PABCO currently has a membership of approximately 1100 individuals who are involved in various aspects of code administration and enforcement throughout Pennsylvania. Our membership includes municipal and third party agency Building Code Officials, as well as municipal and third party agency plans examiners and inspectors in every discipline, including building, plumbing, mechanical, electrical, energy, fire protection and accessibility. Our membership also includes inspectors for property maintenance, rental housing and student housing programs, design professionals, builders, other associations and companies interested in code administration and enforcement in Pennsylvania.

I am currently in the first year of a two year term as President of the Pennsylvania Building Officials Conference (PENNBOC), the Pennsylvania State Governmental Chapter of the ICC. PENNBOC presently has approximately 425 individual members--primarily municipal government employees. While PENNBOC shares PABCO's desire to publicly discuss aspects of HB 782 that we mutually believe will be detrimental to the Uniform Construction Code (UCC) programs administered by our members, PENNBOC's incorporation under IRS Code Section 501.c.3. precludes PENNBOC from advocating a particular outcome for proposed legislation.

My comments today will focus primarily on HB 782 from the perspective of a municipality that has opted-in to administer and enforce the Uniform Construction Code. Lower Allen Township is atypical because our small group of employees includes one of the 78 ICC Master Code Professionals in Pennsylvania, which enables us to perform CCO duties (UCC plan examination and construction inspection) without regular third party agency (TPA) assistance. In spite of this employee capability, it is necessary to retain a TPA to assure that our customer service will not be impaired by unusually heavy workload, temporary employee absences or loss of highly certified employees.

We periodically select a TPA in accordance with guidelines in the First Class Township Code for procurement of professional services. Our customers have no direct interaction with the TPA staff for plans examination and construction inspection services, nor do they pay any additional fees when TPA support becomes necessary.

This method of providing UCC customer service has been quite satisfactory for many years. Enactment of HB 782 will mandate a costly and time-consuming biennial bidding process for selection of multiple TPA that will seldom be utilized. The provision in HB 782 that allows the UCC customer to choose one of the multiple TPA for a specific project will also create a burden on the BCO and permit technician to track and document TPA activities. It is also unclear how HB 782 would impact contract CCO services that my department provides for a small nearby borough that has a UCC staff of one person. For these and other reasons, our Township Manager presented Committee Member Delozier, whose district includes Lower Allen Township, with a letter expressing opposition to HB 782.

The first topic I want to address on behalf of PABCO is a general misimpression that HB 782 will not impact cities and larger municipalities that have their own "in house" code operation. This is not correct. PABCO has done extensive polling and surveying of its membership and has also been in communication with some jurisdictions that are not members, to obtain an accurate picture.

Virtually all opt-in municipalities in the Commonwealth use one or more third party agencies for one or more functions that are regulated by the Uniform Construction Code. Even the cities of Philadelphia and Pittsburgh make use of third party agencies. Pittsburgh makes extensive use of third party agencies. In fact, PABCO has found only one jurisdiction in the state that does not use one or more third party agencies at all.

The conclusion – the image of a municipality that completely administers and enforces the UCC with all in-house employees is simply not accurate. This bill would literally impact 92% of all municipalities in the state – those who have opted-in to administer and enforce the UCC.

Municipalities utilize third party agencies for many different purposes, and those purposes vary from one municipality to the next. They may include:

- Serving as the Building Code Official
- Providing plan review services (very frequently for electrical and/or all commercial work)
- Providing inspections (very frequently for electrical and/or all commercial work)
- Providing back up for plan review during periods of heavy work volume
- Providing back up for inspections during periods of heavy work volume, vacation, sick leave, etc.

HB 782 would require municipalities to competitively bid and enter into professional service agreements for any UCC-regulated services that would be provided. Third parties that provide back-up during heavy work flow periods or for vacation, sick leave, etc. would have absolutely no reason or interest in submitting to the demands of a competitive bidding process for work that may never materialize even if they were to receive the contract, since the work they perform is treated as an "on call" type service.

Our second major concern with HB 782 is the method by which the bill mandates selection of multiple TPA.

PABCO, in consultation with counsel and local government associations in Pennsylvania, has determined that code administration and enforcement services, including plan review and inspections, qualify as a professional service which can be procured by any municipality under a Professional Services Agreement.

Rep. Heffley's bill is attempting to mandate how municipalities will conduct their procurement of professional services.

Under the statutory codes of all of the municipalities in Pennsylvania, professional services MAY BE "put out" for competitive bidding, at the discretion of the municipality. However ***competitive bidding is not required for professional services.***

A third issue is that there really isn't a problem that needs to be fixed by this bill, which would require municipalities' to restructure their UCC programs that have been operating satisfactorily for years. We have no **problems** with the current system, and as president of PENNBOC, I come into contact regularly with hundreds of municipal code officials from all regions of Pennsylvania. This is not a subject of conversation or complaint. Municipalities are not experiencing a problem with their choice of third party agencies from around the state.

Lower Allen and every other opt-in municipality has the **option to use more than one third party if we want to**. As an opt-in municipality, you have multiple choices on how you administer and enforce the UCC. My professional experience with utilizing multiple TPA for electrical inspection services was not good, which is why we contracted with a single firm for this UCC task until we had adequate in-house capability. This same experience presents reasons why our local choice to supplement our staff is the vetting of qualified TPA through a request for proposal process, and selection of one TPA that best fits our needs.

Particularly since the system seems to be working just fine, we do not want the legislature to "remove" **our choice**, which mandating multiple third parties would do.

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.

Municipalities know best what the unique needs of our communities are – and therefore – we know best which third party agency (or agencies) are best equipped to serve the needs of our community while working with municipal officials in a professional and cooperative manner. Forcing a second or multiple third parties on our municipality which may not reflect our philosophies of code enforcement or dealing with the public are counter-productive and not acceptable.

There is no third party agency monopoly as many have reported – virtually all "sole source" third party agencies appointed by opt-in municipalities have been through a publicly vetted RFP and selection process, resulting in selection of the third party agency that municipalities believe will best represent the needs and interests of their community while properly enforcing the UCC in a cost-effective manner.

In those very few, spotty communities where there may have been issues with third party agencies, ***municipal officials have the power and authority to correct those, by simply selecting a different third party agency.***

Displeased permit applicants and contractors can and should **use the mechanisms that the legislature has already established for resolving problems** – filing a ***written complaint*** with the Department of Labor and Industry and/or using the ***UCC Board of Appeals process.***

Finally, we want to bring to your attention that in ***excess of 300 municipalities*** in the state are administering and enforcing the Uniform Construction Code under ***Council of Government (COG)*** Agreements, pooling their limited resources to assure lawful and sufficient enforcement of the Uniform Construction Code. The majority of these UCC COGs then contract with a third party agency to provide services throughout their COG jurisdictions.

If HB 782 were to become law, it would undo everything that these COGS have put into place to assure That their individual municipalities are provided with affordable, professional and reliable UCC plan review and inspection services.

Each of these COGS would need to re-bid the services they have already contracted for. In many cases, the COGS have been utilizing the same third party agency for a number of years, because they are satisfied with the fees, services and professionalism of the third party agency they have contracted with.

Additionally, each municipality that has entered into an agreement with the COG would need to cancel or amend their existing agreement with the COG and enter into a new agreement allowing more than one third party to provide UCC services in their jurisdiction. This would be a legal and administrative nightmare for these small jurisdictions that have utilized a COG agreement for UCC services – an arrangement that was heavily promoted by the Governors Center for Local Government Services at DCED during the early years of UCC implementation.

Thank you for the opportunity to testify before you today. On behalf of PABCO and Lower Allen Township, I urge you to reject passage of HB 782.

Thank you.