



Testimony of Peter Gallagher,
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Labor & Industry Committee
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Good morning. I would like to thank Chairman Gingrich, Chairman Gergely, and the members of the Committee for the opportunity to testify this morning. My name is Peter Gallagher, and I am the Vice-President of Sales and Operations for Liberty Homes Custom Builders, based in the Pocono region. I also serve as the 2015 President of the Pennsylvania Builders Association (PBA), and it is in that capacity that I am pleased to address you this morning regarding House Bill 782.

In March of this year, PBA's Board of Directors met and approved legislative priorities aimed at fixing multiple problems with the current administration and enforcement of the Uniform Construction Code (UCC) as it relates to the use of Third Party Agency (TPA) code inspection services. I would like to read those motions to you now, so there can be no confusion on PBA's official position:

- PBA supports legislation to require municipalities that do not have a municipal employee dedicated to plan or inspection duties under the UCC to contract with at least two third party agencies to provide inspection and plan review services;
- PBA supports legislation to require an open bidding process for municipalities who contract with third party agencies to administer the UCC;
- PBA supports legislation to strengthen the Department of Labor and Industry's complaint review process regarding all building code official actions and professional behavior in their administration and enforcement of the UCC; and
- PBA supports legislation that creates standards of accountability relating to fees charged for inspection and plan review services under the UCC.

Construction code officials in Pennsylvania have police powers inasmuch as they have the authority to shut down worksites, deny occupancy permits, repeatedly fail inspections, and condemn structures they deem to be unsafe. They also have the authority to approve an alternative material, design or method of construction if the proposed design is satisfactory and complies with the intent of the UCC. Each code inspector in Pennsylvania is allowed substantial latitude to "interpret" the UCC and the required building code provisions. Building Code Officials (BCOs) are appointed by a governmental body, are considered "public officials", and are subject the PA Public Officials and Employees Ethics Act.

In rural counties and high-growth regions alike, BCOs are under constant pressure to meet the increasing demand for code inspections and plan review. Allowing for more than one TPA to provide review and inspection services will allow for a more efficient and streamlined process. Currently, opt-in municipalities using a TPA are required to contract with only one TPA to fulfill the requirements of the UCC. There are no statutory limits to the fees the TPA may charge for its services nor are there any guarantees that required inspections will be timely. In addition, there are no specific set of standards that apply to contracts between municipalities and TPA's for the enforcement of the UCC.

PBA recognizes and applauds the regions of our state where the current methods and choice of TPA's made by local municipalities work to the benefit of property owners – creating an efficient and professional working environment for all housing industry professionals. Unfortunately, where things work well it is more a product of the honorable and hard-working BCOs in those regions rather than a product of the structure under which they work.

In those areas where the administration and enforcement of the code works well, we have found that individual inspectors apply logic and reason to their individual interpretations of the code and work in tandem with the construction professional to eliminate, correct, and remediate any problems that may occur.

Regrettably, there are areas of the state where the lack of consumer choice in the retention of plan review and inspection services are causing harm. In these areas of Pennsylvania where problems do exist, nightmare scenarios continue to persist, with little to no recourse or relief for property owners.

As an example of the inequitable fee structures I have personally encountered in my business: I pulled permits in two separate townships, 24 miles apart in the Northeast. The first charged \$1,529 and the second charged \$3,188 respectively for permit fees associated with the exact same floor plan. If municipalities are required to take a TPA's proposed fee schedule into consideration when awarding a professional service contract, fees for services will be based on what the market can bear in that specific area, not what the TPA can charge because they are the only provider granted a monopoly to perform services for that municipality. Additionally, if at least two TPA's are competing for business in the same community, we believe fees for services and response times for inspections will improve.

The UCC currently allows for a mix of code enforcement approaches for Pennsylvania municipalities to choose from for both building plan and inspections services. Opt-in municipalities choose to enforce the UCC at the local level with either a municipal employee, a contract with a TPA, or a municipal employee who acts as the building code official and a TPA who does the required inspections. Each opt-in municipality is required to have an officially designated BCO, which can be either a municipal employee or a TPA designee. Opt-out municipalities defer responsibility for code enforcement to the state and consumers are able to use any certified TPA listed on the Department of Labor and Industry's (Department) website for plan and inspection services.

A third method for code enforcement taken by many municipalities is to create a regional approach, allowing multiple municipalities to share one BCO through an inter-municipal agreement. This approach often utilizes a TPA for inspection services. A good example is Indiana County where one BCO serves 27 municipalities to administer the UCC, and a TPA is responsible for inspection services.

One building code organization who represents building code officials, and whose members are primarily TPA's, has come out strongly in opposition to any legislation that would require municipalities to contract with at least two TPA's, citing problems with recordkeeping, and insurance coverage. Unfortunately those talking points are, at best, misleading.

Municipalities that have an officially designated building code official who is an employee of the municipality will not experience the problems cited by opponents – as there are currently many municipalities that have voluntarily opted to contract with more than one TPA - an example is Fayette County, which allows consumers to choose between the county inspector or SIX different TPAs for inspection services.

Almost ten percent of Pennsylvania's municipalities have opted-out of enforcement of the UCC. In these municipalities, consumers may contract with any accredited TPA for plan and inspection review services. Requiring two or more TPA's will not affect these areas since consumers already enjoy the freedom to choose any TPA that holds the required certifications.

Opponents of consumer choice point to instances where the designated BCO is not a municipal employee but is instead an employee of the TPA. In this situation, the municipality has opted to enforce the UCC at the local level but does not have a municipal employee who is responsible for that enforcement. Instead, the municipality delegates all enforcement power and authority over to a single source provider TPA and designates that TPA the BCO. The concerns related to this single mechanism of enforcement when requiring municipalities to contract with two or more TPA's are based on the idea that one TPA will have direct control over another TPA by virtue of the first TPA also being the designated BCO. We believe there are solutions to this individual issue, and are ready and willing to work with all interested parties to find an equitable solution.

In the limited time we have, I would like to address one final issue. Unfortunately, the current environment breeds a pervasive fear among building professionals that they may be the target of reprisals from the inspector community. Our members believe they will face vindictive responses from certain BCOs if they initiate a complaint to the Department or the UCC Board of Appeals procedures. It is important to note that the Department will not investigate excessive fees charged for code enforcement services, rude or other unprofessional behavior, or any disagreement with a code official's interpretation of a construction code provision. This gap in enforcement leaves building professionals no recourse from *some* individual inspectors who choose to abuse the considerable power they have been granted. Moreover, in monopoly jurisdictions, the building professional will have no choice but to interact directly with that same BCO on every future job.

The complaint and appeals procedures require a building professional to name themselves as the complainant; forcing our members to choose between filing a complaint against an enforcement official that can issue a stop work order in retribution and remaining silent. Some have dismissed this very real concern as, "nonsense" or "rare", but I assure you, the ability to meet our deadlines within the allocated budget is one of the most important issues for building professionals. One member described the situation to me this way, "The L&I complaint process is outing yourself as a whistleblower without any whistleblower protection." There don't have to be many retaliatory actions before a very real chilling effect sets in. No building professional can afford to be an "example" when margins are as tight as they

are. Our reputations are all that we have to set us apart from substandard or nonprofessional participants in the construction industry.

While we support all of the legislative priorities discussed in my earlier testimony and ask the Committee to schedule a vote on House Bill 782; PBA has immediate concerns for our members and the retaliatory tactics that they may face because of my testimony today. As such, we request the legislature move swiftly to set specific standards with respect to the professional behavior expected from the code enforcement community and grant the authority necessary to the Department to move expeditiously to sanction and decertify code officials who use their considerable power as a means of retaliation. We believe this is the most important issue before you at this time.

On behalf of the Pennsylvania Builders Association and the more than 255,000 members and employees it represents, I thank you again for the opportunity to testify today, and would be happy to take your questions.