



# HOUSE COMMITTEE ON APPROPRIATIONS

## FISCAL NOTE

HOUSE BILL NO. 1469

PRINTERS NO. 2186

PRIME SPONSOR: Heffley

### COST / (SAVINGS)

FUND	FY 2016/17	FY 2017/18
General Fund	\$0	See "Fiscal Impact"
Municipal Funds	\$0	See "Fiscal Impact"

**SUMMARY:** Amends the PA Construction Code Act (Act 45 of 1999) providing for the utilization of third party agencies and for a system to handle Uniform Construction Code (UCC) code administrator complaints. This legislation would take effect in 60 days.

**ANALYSIS:** This legislation amends the PA Construction Code Act to allow for optional third party agency usage; to require that building permit applications, in municipalities using one or more third party agencies to enforce the UCC, contain a written notice on where complaints can be directed about the performance of such agencies; and for the creation of a system to handle UCC code administrator complaints.

**Option to Utilize Alternative Third-Party Agency:** This legislation amends Section 501 ("Administration and Enforcement") of the act to allow permit applicants, in a municipality which has designated one third-party agency for exclusive enforcement of the UCC, to use a third-party agency of their choosing if the alternative third-party agency remits a surcharge to the municipality.

**Surcharge Amount:** The legislation gives the municipality the ability to establish the surcharge amount, via ordinance, as a percentage of up to 10% of the total fee charged by the alternative third-party agency. If no ordinance is enacted, the surcharge amount is one percent.

**Notification Requirements:** The legislation requires that the permit applicant notify the municipality and the exclusive third-party agency of its intent to utilize an alternative third-party agency; notification shall provide the name of the third-party agency and appropriate contact information for the agency.

Before commencing work on the project, the alternative third-party agency must notify the municipality and its exclusive third-party agency that it is performing code enforcement services on a project. The alternative third-party agency must provide, on the date of issuance, a copy of the building permit issued for the project and approved plans, to the municipality and its exclusive third-party agency.

**Use of Alternative Third-Party Agency by Applicant:** The legislation requires that a permit applicant utilize the services of the alternative third-party agency they select for the duration of a project.

**Issuance of Certificate of Occupancy/Forwarding of Surcharge:** The alternative third-party agency must forward to the municipality and its exclusive third-party agency, on the date of issuance, the following:

- 1) The final inspection report.
- 2) A summary of fees charged to the applicant.
- 3) Payment of the required surcharge.
- 4) The \$4 permit surcharge required by the act.
- 5) Any additional information requested by the municipality.

The municipality may prohibit an alternative third-party agency from operating in its jurisdiction if it fails to comply with the above provisions. In addition, the municipality may notify the Department of Labor and Industry (L&I) of such failure and L&I must conduct an investigation. L&I may consider an intentional failure to forward a certificate of occupancy/surcharge as just cause for decertification.

**Applicability of Legislation to Current Exclusive Enforcement Contracts:** A contract between a municipality and a third-party agency for exclusive enforcement of the UCC, that existed prior to the effective date of the legislation, shall remain in effect, and the provisions of the legislation will take effect upon expiration of the contract.

**Multiple Third-Party UCC Enforcement:** This legislation also amends Section 501 of the act to add language to require that, in municipalities that contract with one or more third party agencies to enforce the UCC, the application form for a building permit must contain written notification of the following information:

- 1) The authority of the third party agency is the result of a contract approved by the governing body of the municipality, or the result of an inter-municipal agreement entered into by the municipality.
- 2) An applicant may inform the governing body of the municipality of complaints about the agency's services, including reports of incompetence or gross negligence, a failure to abide by a time period specified in the act, rude or unprofessional behavior, or discrimination based on personal bias against the applicant.
- 3) The Department of Labor & Industry (L&I) certifies third party agencies and investigates complaints about service, including complaints about violations of the act, incompetence, or gross negligence, fraud, deceit, or acts of moral turpitude.
- 4) L&I has a complaint form on its internet website.

The legislation also requires that the municipality maintain a record of complaints that are submitted to its governing body.

**Code Administrator Complaints:** The legislation amends Section 701 of the act to require the Department of Labor and Industry to accept and review complaints submitted by a building permit applicant about a code administrator. The secretary may enforce remedial actions if necessary, including actions to decertify the code administrator or revoke the code administrator's certification for a period of time.

The legislation also delineates the duties of the department after reviewing a complaint and allows the secretary to issue an order to a municipality to allow a building permit holder who submitted a complaint under this subsection to utilize another third-party agency of their choice for any remaining code enforcement actions necessary to utilize a project. The order may also include a provision to allow the building permit holder to permanently utilize a third-party agency of the permit holder's choice for future projects in the municipality if the secretary deems that it is possible that the building permit holder will be retaliated against for filing a complaint to the department by a code administrator.

If a building permit applicant makes a complaint to the department concerning a third-party agency or code administrator, the department may not disclose the identity of the building permit holder's complaint without the building permit holder's consent unless disclosure is unavoidable as a result of an investigation of a code administrator under this subsection.

The legislation also provide that a code administrator may not discriminate, threaten, coerce or otherwise retaliate against a building permit applicant who files a complaint under this subsection. A person who alleges a violation of this paragraph may bring a civil action in a court of competent jurisdiction for appropriate injunctive relief or damages within 180 days of occurrence of the alleged violation.

**FISCAL IMPACT:** The cost of this legislation and the need for additional staff within the department would depend on the number of complaints submitted by building permit holders. The Department of Labor and Industry estimates that it will cost the department roughly \$5,300 per complaint to have the appropriate staff on hand. If 50 complaints occur annually, the total costs to the Bureau of Occupational and Industrial Safety would total approximately \$265,000. Any reasonable estimate of complaints is indeterminable at this time.

The legislation would result in some additional revenue from surcharges for those municipalities where alternative third-party agencies are chosen to inspect a project. Any estimate of that surcharge revenue is impossible as it would depend on the number of alternative third party agencies chosen, the surcharge rate and the total fees charged.

**PREPARED BY:** Tim Rodrigo  
House Appropriations Committee (R)

**DATE:** June 29, 2017

*Estimates are calculated using the best information available. Actual costs and revenue impact incurred may vary from estimates.*