

COMMONWEALTH OF PENNSYLVANIA  
HOUSE OF REPRESENTATIVES

LABOR AND INDUSTRY COMMITTEE  
PUBLIC HEARING

STATE CAPITOL  
HARRISBURG, PA

MAIN CAPITOL BUILDING  
ROOM B-31

WEDNESDAY, MARCH 20, 2019  
9:30 A.M.

PRESENTATION ON  
HOUSE BILL 349  
TO AMEND THE PENNSYLVANIA CONSTRUCTION CODE ACT OF 1999

BEFORE:

HONORABLE JIM COX, MAJORITY CHAIRMAN  
HONORABLE CRIS DUSH  
HONORABLE MINDY FEE  
HONORABLE DAWN KEEFER  
HONORABLE RYAN MACKENZIE  
HONORABLE DAVID MALONEY  
HONORABLE LORI MIZGORSKI  
HONORABLE ERIC NELSON  
HONORABLE MICHAEL PUSKARIC  
HONORABLE PATRICK HARKINS, DEMOCRATIC CHAIRMAN  
HONORABLE MARIA DONATUCCI  
HONORABLE LEANNE KRUEGER  
HONORABLE JEANNE MCNEILL  
HONORABLE DAN MILLER  
HONORABLE ADAM RAVENSTAHL

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*Pennsylvania House Of Representatives  
Commonwealth of Pennsylvania*

INDEX

TESTIFIERS

\* \* \*

| <u>NAME</u>  | <u>PAGE</u> |
|--|-------------|
| REPRESENTATIVE DOYLE HEFFLEY,<br>PRIME SPONSOR OF HOUSE BILL 349.....  | 5           |
| JOHN EBY<br>BUILDING AND ZONING COORDINATOR, LOWER ALLEN TOWNSHIP<br>PRESIDENT, PENNSYLVANIA ASSOCIATION OF BUILDING CODE<br>OFFICIALS ..... | 14          |
| LORI MCENTARFER,<br>BUILDING CODE OFFICIAL AND ZONING OFFICER<br>THE BOROUGH OF LITITZ.....  | 17          |
| JERRY LEACH,<br>EXECUTIVE VICE PRESIDENT,<br>HOME BUILDERS ASSOCIATION METROPOLITAN HARRISBURG....   | 22          |
| DOUGLAS MESHAW,<br>PENNSYLVANIA BUILDERS ASSOCIATION.....  | 25          |

SUBMITTED WRITTEN TESTIMONY

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(See submitted written testimony and handouts online.)

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P R O C E E D I N G S

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MAJORITY CHAIRMAN: I'd like to call this meeting to order, and if you would, please rise with me and join in the Pledge of Allegiance.

(The Pledge of Allegiance was recited.)

MAJORITY CHAIRMAN: I would like to welcome everyone to the hearing, this hearing of the House. We'll be discussing House Bill 349. I would like to remind everyone that this meeting is being recorded so I'd ask that all members and guests would silence their phones and any electronic devices. And would the secretary please call the roll.

(The roll was taken.)

MAJORITY CHAIRMAN: Thank you. We called this hearing today at the request of Chairman Harkins to discuss House Bill 349 sponsored by Representative Doyle Heffley. This issue has been debated for several years now, and we do plan to schedule a committee vote on this bill in the very near future. And I wanted to accommodate Representative Harkins' request for a hearing prior to that

1 vote.

2 This is an issue that, as I just mentioned, has  
3 been around for a while. The question is, do we move it  
4 the way the Senate amended it, which is the way  
5 Representative Doyle introduced it? Do we peel it back?  
6 These are the types of questions I have been hearing from  
7 some of the members and some of the colleagues who are not  
8 on the Committee, so I thought it best, at the request of  
9 Representative Harkins, to go ahead and have the hearing.  
10 Let's get the questions out there, get them answered, and  
11 so I appreciate Representative Doyle taking the time to  
12 come this morning.

13 I've asked him once he presents his brief  
14 introduction of the bill -- brief, not 20 minutes. You'll  
15 compromise with 15. -- Once you've completed your  
16 introduction and answered any questions from committee  
17 members, you're welcome to join us up here to hear the  
18 additional testimony.

19 And before I begin, Chairman Harkins, do you have  
20 any opening remarks?

21 MINORITY CHAIRMAN HARKINS: Thanks, Chairman Cox.  
22 I would just like to thank you, Chairman, for allowing us  
23 to have this. As has been stated, this has been an issue  
24 that's gone on for years. I've heard about it in the Erie  
25 area. There's been solutions suggested from all points, it

1 seems like, from Erie to Philadelphia and in between, but I  
2 just though this was essential that we have this hearing,  
3 get things out on the table, let people see what's  
4 involved. I appreciate Representative Heffley's input here  
5 today and his hard work and labor on this issue. And I  
6 just look forward to testimony. Thank you.

7 MAJORITY CHAIRMAN: All right. Thank you,  
8 Chairman Harkins. Representative Heffley, as I mentioned,  
9 is the prime sponsor of House Bill 349, and I would invite  
10 him to make a five-minute opening statement. Shannon  
11 Walker, seated to my right, audience's left, will provide  
12 you with an audio reminder when you've got about 30 seconds  
13 left. After that, she starts throwing things, so you'll  
14 want to wrap up. Go ahead Representative Heffley.

15 REPRESENTATIVE HEFFLEY: Good morning, and thank  
16 you, Mr, Chairman. I just want to give a quick shout-out,  
17 and that will use some of my five minutes. Today is my  
18 mom's 74<sup>th</sup> birthday, so I just want to wish her a happy  
19 birthday.

20 And just to thank the members and the staff, the  
21 L&I Committee for the opportunity to speak before you today  
22 as we once again hold a hearing on this very important and  
23 very much needed legislation.

24 House Bill 349 is legislation to amend the PA  
25 Construction Code to require that municipalities which opt-

1 in to enforce the Uniform Construction Code by utilizing  
2 third-party agencies have at least two or more under  
3 contract to administer the code. The legislation has been  
4 well-vetted. A hearing was held on this legislation, which  
5 formerly was House Bill 782, May 7, 2015, before this  
6 committee and then a previous version of this bill, House  
7 Bill 1469, actually passed the House last session and was  
8 amended and then passed in the Senate only to run out of  
9 time before we could concur in the House to send it to the  
10 Governor's desk. So the bill, as presented right now, is  
11 as it was amended with the language in the Senate. It was  
12 agreed to and passed in the Senate.

13           Ninety percent of Pennsylvania's 2,562  
14 municipalities have elected to administer and enforce the  
15 UCC code locally using their own employees, joint  
16 administration, or via certified third-party agencies,  
17 which are private code enforcement for-profit companies.  
18 It is estimated that about 60 percent of the opt-in  
19 municipalities have chosen to administer the code by  
20 contracting with third-party agencies, with clear majority  
21 of that 60 percent using just one third-party agency.

22           The primary arguments that municipalities use to  
23 rationalize contracting with one third-party agency is that  
24 can hold the agency accountable for administering the  
25 program. They also argue that a competition will lead to

1 some agencies compromising their enforcement standards to  
2 obtain business.

3 I have argued, and continue to argue, that all  
4 third-party agencies are certified by the Department of  
5 Labor and Industry, and thus are legally required to  
6 enforce the standards of the code. In fact, there are many  
7 areas of the state where municipalities allow property  
8 owners the choice of multiple third-party agencies and  
9 there have been no issues. I think it is also important to  
10 note that the same PPAs that are here today arguing that  
11 choice will weaken the standards also compete and work in  
12 those opt-out communities and they enforce the code to the  
13 same standard whether they are the lone third-party  
14 monopoly or whether they are competing.

15 My legislation simply requires that  
16 municipalities with third-party agency monopolies contract  
17 with another third-party agency to provide some choice for  
18 property owners. Agreements between municipalities and  
19 third-party agencies are considered professional services  
20 under law, and not subject to competitive bidding. I argue  
21 that requirements for a second third-party agency is not a  
22 burdensome mandate, and I believe there are some ample  
23 third-party agencies in this state that would be willing to  
24 offer their services as a second third-party agency. The  
25 legislation provides a means for very rural municipalities

1 that cannot find a second third-party agency to apply for a  
2 waiver through the Department.

3           It is important to note that my legislation has  
4 no effect on municipalities that have their own indigenous  
5 code enforcement. So if they have their own municipal  
6 employee that enforces a code, such as Philadelphia or  
7 Pittsburgh, this legislation does not deal with them at  
8 all.

9           And I would just like to take a couple of minutes  
10 to just explain a couple of the scenarios and why this was  
11 brought to my attention. Certainly, when we run for  
12 office, we talk about taxes and all the other things, but  
13 not necessarily third-party agencies. This is a burdensome  
14 mandate that we have placed on small businesses throughout  
15 the Commonwealth to have to work with just one monopoly. I  
16 had a project in the district and a gentleman -- I asked  
17 him to send me a quick note -- and he told of how a code  
18 enforcement officer threatened his business by over-zealous  
19 application of the new building code to an existing  
20 business. Over a year, the township and their solicitors  
21 fought a dictatorial interpretation of this code by a  
22 monopoly-authorized inspector. In the end, after consuming  
23 massive legal fees and the consumption of taxpayer dollars  
24 churning the system, the officer conceded at the final  
25 appeal hearing that he admitted the application of the

1 existing code on an existing building would be more  
2 appropriate. In the end, the question of whether to fight  
3 or to churn the money from the community or be able to  
4 choose an inspector who is going to enforce the code to the  
5 state standards and not their own standards, has cost this  
6 small business the opportunity to grow in a community.

7 Is that a warning or 30 seconds. All right.

8 We also had the opportunity for a distillery to  
9 come in, in our area and this was by another third-party  
10 TPA that wanted to enforce a code to a higher standard than  
11 what the state code is. And all we're looking for is  
12 uniformity and the opportunity for recourse. So if you  
13 have a history with one particular inspection agency, the  
14 next time you do a building project, you can choose another  
15 one. This bill -- if you hire one third-party agency, this  
16 bill will require that you use that agency for all of your  
17 inspections for that project. You can't just switch out  
18 halfway through the project, but it would allow choice and  
19 opportunity and, therefore, would increase opportunities  
20 for economic development across this state.

21 MAJORITY CHAIRMAN: All right. Thank you,  
22 Representative Heffley. Do we have any questions for  
23 Representative Heffley at this point? Representative  
24 Nelson.

25 REPRESENTATIVE NELSON: Thank you, Mr. Chairman,

1 and I appreciate your efforts, multi-year efforts, at this  
2 issue which does carry a good bit of controversy. In my  
3 area, there's a lot of passion in the construction world.  
4 It's fast paced and there's also conflict. So can you  
5 expand a little bit more on the importance of a builder  
6 that may have a conflict history with a certain inspector,  
7 how that could impact their project, whether the pouring of  
8 a form or getting final approval? Because the option of  
9 choice in going with someone seems to be something, at  
10 least in our area, that our builders would like the choice.

11 REPRESENTATIVE HEFFLEY: Yeah. Originally, the  
12 legislation we had authored was to expand it that you could  
13 contract with any state licence third-party inspection  
14 agency for your inspection, similar to what we do with  
15 automobile inspections. It would be absurd to think that a  
16 municipality was going to pick one service station in each  
17 township or municipality to say everybody has to take their  
18 car there for a state inspection. That's as absurd as it  
19 is for that concept, that's how absurd this concept is. So  
20 what happens is, maybe you do have a history with somebody.  
21 It could be a family history. It could be just work  
22 history, maybe the person worked for you and no longer  
23 does, but when you have a monopoly and they could just  
24 delay the inspection process -- you have a whole crew there  
25 ready to pour forms and they have to come out and inspect

1       beforehand, there's been history of folks that just never  
2       showed up so they had to pay the crew for the whole day to  
3       sit there and never got to pour their concrete. There's  
4       also been instances where people maybe don't like a  
5       particular business in their community, but they're a legal  
6       business in their community and they're set up to run that  
7       way, and townships could use that as a tool to hinder  
8       economic development and growth in those areas. But I  
9       think monopolies are always bad, and forcing somebody to  
10      use somebody that they don't want to, especially when these  
11      are third-party, for-profit companies, and these contracts  
12      are not put out to bid -- I think it's really -- obviously,  
13      this was brought to my attention by folks in the community  
14      that were struggling to get their projects completed.  
15      Businesses wanted to follow the code, to make sure the code  
16      is applied correctly, but they don't want people to  
17      misinterpret the code and cost them extra dollars.

18                 REPRESENTATIVE NELSON: Thank you. Thank you,  
19      Mr. Chairman.

20                 MAJORITY CHAIRMAN: And we're going to try to  
21      limit the questions at this point. I'll allow one  
22      additional question.

23                 REPRESENTATIVE HEFFLEY: I'll kind of make my  
24      answers quicker. Are we over five minutes there?

25                 MAJORITY CHAIRMAN: Not yet. Representative

1 Krueger.

2 REPRESENTATIVE KREUGER: I'll be quick, Mr.  
3 Chairman. Thank you for joining us here today. I was just  
4 looking at the bill history and I voted no on this bill  
5 last session on the floor because I had some concerns about  
6 the impact of this new regulation on our local  
7 municipalities, including the folks I represent in Delaware  
8 County. Can you tell us, how has this bill changed since  
9 last session? I know that there was mention of an  
10 amendment in the Senate.

11 REPRESENTATIVE HEFFLEY: Yeah. What we had  
12 passed in the House last session would have allowed for any  
13 municipality -- it wouldn't have been no mandate.  
14 Actually, the municipality would have done everything that  
15 they always did. They could contract with one, but the  
16 builder or contractor or homeowner could then use their own  
17 state licensed third-party agency and pay an additional fee  
18 to the township. So that was changed in the Senate and it  
19 was amended to apply that municipalities must contract with  
20 two or more. Right now, it's one or more. They have the  
21 option to contact with two or more, three or more, four or  
22 more, or five or more, and many municipalities already do  
23 that and there are no issues. So to say that this is a  
24 mandate is not accurate because municipalities don't have  
25 to opt-in. They can just allow it. In ten percent of

1 municipalities across the state, they opted out. L&I  
2 enforces the code so there is no mandate. So the argument  
3 of a mandate on municipalities is incorrect because they  
4 don't have to do anything. They could opt-out and just  
5 have those builders in that area have any state licensed  
6 inspection agency do the inspection.

7 REPRESENTATIVE KRUEGER: Okay. Thank you.

8 MAJORITY CHAIRMAN: Thank you. Representative  
9 Doyle, I appreciate your testimony and again, you're  
10 welcome to join us up here with the rest of the committee.  
11 And at this time, I would like to ask our additional  
12 panelists to come forward. We are going to hear from both  
13 supporters and opponents of the legislation, and then we'll  
14 have some time afterwards for the committee members to  
15 question the entire panel and we can kind of hear from both  
16 sides at one time.

17 So I think we actually might need one more chair,  
18 unless one of you would like to stand for your testimony.  
19 I would like to welcome John Eby, Building and Zoning  
20 Coordinator from Lower Allen Township and President of the  
21 PA Association of Building Code Officials. We also have  
22 Lori McEntarfer? All right. I get lucky on those every  
23 now and then. Building Code Official and Zoning Officer  
24 with the Borough of Lititz. We also have Jerry Leach,  
25 Executive Vice President with the Home Builders Association

1 of Metropolitan Harrisburg. And Douglas Meshaw -- close  
2 enough -- PAUCC Codes Consultant with the PA Builders  
3 Association.

4 And before we begin, I would ask that each of you  
5 try to limit your remarks to that five-minute period of  
6 time. Again, Ms. Walker will be providing you with a 30-  
7 second gentle reminder before she takes more serious  
8 action. The reason we're trying to keep things moving  
9 along is because all of us can read your testimony. What  
10 this allows is... The bulk of the hearing, in my opinion,  
11 I'd love to have the opportunity for that back and forth  
12 questions and the kind of interaction that I think will  
13 benefit the discussion of this bill. So Mr. Eby, if you'd  
14 like to begin.

15 MR. EBY: Yes, sir. Okay. Good morning, and  
16 Chairman Cox, Minority Chairman Harkins, and committee  
17 members, thank you for the opportunity to present brief  
18 commentary regarding House Bill 349 and the opportunity to  
19 participate in the subsequent discussion. As you stated,  
20 I'm John Eby, the Building and Zoning Coordinator for Lower  
21 Allen Township. I'm an appointed building code official,  
22 sewage enforcement officer, and zoning officer, and  
23 president of PABCO. PABCO has been, over the last several  
24 sessions, monitoring this type of legislation and we  
25 sincerely want to participate, and our main goal is to

1 improve the customer service across the board regardless of  
2 third-party agencies or municipal employees.

3           We provided you with a two-page written  
4 commentary, which I'm paraphrasing from right now. Also  
5 PABCO has presented in the last session and has, again,  
6 presented with your packet, some alternate language to  
7 section 501b of the Pennsylvania Construction Code Act that  
8 we think would improve and clarify local agency  
9 responsibilities and the options they have regarding  
10 administration of enforcement. We also added the DEP fact  
11 sheet regarding local agency administration. That includes  
12 requirements for alternate SEO. So when I'm performing as  
13 an SEO, if I have a conflict, either perceived by a  
14 customer I was rude to, or they hate my cousin or  
15 something, we can do an alternate. Or if I have personal  
16 interest financially or otherwise in a property in my  
17 jurisdiction, we use the alternate.

18           So we've provided that for you because a lot of  
19 our proposed changes to 501(b) are really across the board,  
20 irrespective of whether you're using third-party, you're a  
21 municipal monopoly, or you're a combination thereof. So  
22 that's what we want to stress. That's the purpose of being  
23 here. We acknowledge there are problems with oversight by  
24 municipal officials over the UCC programs. There are  
25 problems with building code and construction code

1 officials. We want to work with you to improve UCC  
2 customer service and provide some alternatives to this  
3 bill.

4 We think we're legislating to the three percent  
5 that aren't doing it right, and also, I think a lot of the  
6 anecdotal evidence that was presented to support the bill -  
7 - I'm a municipal code official. I can be as arbitrary,  
8 mean, incompetent, overpriced as any third party. So we  
9 want to work with the whole program. So these aren't  
10 exclusive third-party issues. In fact, PABCO did a right-  
11 to-know request with the Department of Labor and Industry  
12 for all complaints against local agency code officials and  
13 85 percent were against municipal code officials. The  
14 scenarios that were presented earlier -- if my inspector is  
15 late and he holds up a concrete pour, if we misinterpret  
16 something, we're costing people money. So it's a  
17 professionalism issue, not a third party versus municipal  
18 versus combination.

19 Again, our proposal is for UCC customers, for  
20 adequate staffing. Every permanent stakeholder deserves to  
21 have adequate local staff, an alternative in case there is  
22 some form of perceived conflict, actual conflict, or the  
23 code official has a conflict with the situation. Again,  
24 we've provided Act 537, the Sewage Facilities Act examples.  
25 We are also local officials, whether we're third party or

1 not. We're appointed as local agency representatives to  
2 administer a program under the Pennsylvania Ethics Act. So  
3 the analogy of shopping things around, an inspection agent  
4 is not tied to any municipality, he's tied to the state  
5 inspection program under the oversight of the Pennsylvania  
6 State Police. DLI does not have much oversight over  
7 building code officials. They have limited staff and they  
8 investigate complaints and they audit us on accessibility,  
9 but not on overall competency. So there are some changes  
10 that really need to be made.

11           Rather than reading the rest of my testimony,  
12 I'll yield to questions and the other panelists. We'd be  
13 glad, in the discussion phase, to go over in detail what  
14 I've mentioned. Thank you.

15           MAJORITY CHAIRMAN: Thank you. Ms. McEntarfer.

16           MS. MCENTARFER: Thank you, and good morning. My  
17 name is Lori McEntarfer and I currently serve on staff as  
18 the Zoning Office and BCO for the Borough of Lititz. For  
19 27 years, I have worked as a zoning officer for  
20 municipalities with a single TPA and those with multiple  
21 TPAs. I have a very strong opinion with regard to taking  
22 power away from the local elected officials.

23           In 2013, Budget Travel voted the Borough of  
24 Lititz the coolest small town in America. Between 2009 and  
25 2019, the Borough is very proud to have received numerous

1 awards that I have enclosed as an attachment. After  
2 reading the awards list, you must conclude that our elected  
3 officials and the Borough staff make excellent decisions  
4 that are in the best interest of our community for both  
5 current and long-term planning.

6           Competent code enforcement is integral to long-  
7 term planning. Lititz has put a tremendous amount of  
8 resources into creating and maintaining our community and  
9 we continue to do so. Lititz has historic structures, a  
10 large percentage of mixed-use structures, many attached  
11 structures, and structures that are in close proximity to  
12 each other. The elected officials understand that it takes  
13 a knowledgeable agency with a high level of customer  
14 service to best serve the complex code needs of our  
15 community and guarantee a consistent level of building  
16 safety. Consistency and accountability are our main focus.

17           Lititz has been enforcing the code since 1994 and  
18 needed a company that was accessible to our staff, that was  
19 accessible to our residents, a company that would meet and  
20 preplan with contractors that had design issues before the  
21 permitting process, who would coordinate with emergency  
22 services, and who would provide us with extensive  
23 documentation for each permit upon request. These services  
24 are not a requirement of the PAUCC, yet they are provided  
25 at no additional cost to the Borough from our current TPA.

1           Some of the state professed that all building  
2 inspectors take the same tests so one is just as good as  
3 another. That's like saying a Pinto is a Mustang because  
4 both are cars.

5           We used to have a single TPA for building  
6 inspections and open third-party electrical inspectors. My  
7 elected officials rescinded that decision when the TPA did  
8 not meet expectations and the multiple electrical  
9 inspectors had varying levels of enforcement and poor  
10 documentation. We now have a single TPA for all  
11 disciplines. The Borough regularly reviews proposals from  
12 other TPAs. The makeup of the counsel has changed several  
13 times during my tenure, but their decision has always  
14 remained the same, a single TPA is the only option to meet  
15 our needs.

16           Because of my time spent with two separate and  
17 distinct municipalities, I feel I have a unique  
18 professional view and understanding of some of the  
19 difficulties I have experienced with multiple third-party  
20 advisors. Vast differences in recordkeeping with no regard  
21 to inspection reports and submitting final paperwork,  
22 difficulties in closing permits in relation to knowing if  
23 all inspections have been performed or even approved,  
24 response time issues, complaints of late arrivals or no-  
25 shows, code knowledge or lack thereof. I, as a building

1 code official, am tasked with keeping all the records. I  
2 rely on my third-party adviser to accurately and adequately  
3 answer my questions and those of the contractors. It  
4 frustrated residents for not being able to reach the  
5 company that they choose at permit issuance.

6 It has taken most local authorities years of  
7 trial and error to weed through which companies are bad  
8 actors. Who will suffice and who is exceptional? The  
9 decision must be left to the local authority to determine  
10 their needs for their community and act accordingly.

11 Ironically, municipalities that did not take on  
12 the responsibility of implementing Act 45 by opting out,  
13 have the benefit of a sole TPA for commercial construction  
14 which covers everything in the International Building Code.  
15 Who? Well, the Department of Labor and Industry.

16 To me, it seems ridiculous that opt-in  
17 municipalities, in part to provide exceptional customer  
18 service to our residents, have less enforcement control.  
19 Why not allow commercial contractors in opt-out areas to  
20 hire their inspectors of choice as they do in residential  
21 construction? At the very least, can we admit some  
22 commercial construction is important enough to warrant a  
23 single TPA if the local officials choose?

24 Additionally, I've noted some problematic  
25 language in House Bill 349 that will affect all

1 municipalities that enforce the third-party advisors,  
2 single or multiple. In the essence of time, as I was only  
3 given five minutes to speak, you can refer to my written  
4 testimony.

5 Now let's talk redundancies. The Building Code  
6 Board of Appeals, it already exists. To file a complaint  
7 at the local level, that already exists. To file a  
8 complaint with L&I, that already exists, and to enforce  
9 with multiple TPAs, if we choose, well, that already  
10 exists.

11 Thank you for inviting me to testify today. I  
12 hope that my testimony gives you some insight into the  
13 radical change that this bill would cause for myself and  
14 the municipality that I proudly serve. I believe that  
15 House Bill 349 may encourage municipalities to opt-out,  
16 further burdening L&I or increase the permitting fees  
17 enabling them to hire in-house code enforcement. Both  
18 developments would be unintended consequences. I believe  
19 that it is a sad day when only the more affluent  
20 municipalities can afford additional staff and have the  
21 luxury of code continuity, allowing them the option of how  
22 they choose to enforce the PAUCC. I respectfully ask, as  
23 someone with 27 years of experience in code administration,  
24 that you do not take power away from the local elected  
25 officials, and vote no on House Bill 349. Thank you.

1 MAJORITY CHAIRMAN: Thank you. Next, we'll hear  
2 from Mr. Leach.

3 MR. LEACH: Good morning. Thank you, Chairman  
4 Cox, Chairman Harkins, and members of the Committee for  
5 giving me the opportunity to testify this morning. My name  
6 is Jerry Leach, and I'm the Executive Vice President of the  
7 Home Builders Association of Metropolitan Harrisburg. I  
8 have over 40 years background and experience in the  
9 building industry, 30 years as a general contractor  
10 primarily building residential single-family homes in  
11 central Pennsylvania. Ironically, 15 years of pre-UCC  
12 experience and 15 years under the UCC. In addition, I have  
13 served for five years as the Director of Building Codes for  
14 the Pennsylvania Builder's Association. I am certified  
15 under the UCC as a building code official, and as a  
16 residential inspector, and have worked for a third-party  
17 agency as such. Additionally, I have worked as a private  
18 code consultant, an instructor for both the Pennsylvania  
19 Construction Codes Academy and the Pennsylvania Housing  
20 Research Center where I still serve as a member of the  
21 Industry Advisory Council.

22 I share this rather diverse mix of background and  
23 experience with you as I believe I am able to view this  
24 issue and the contents of HB 349 through a very unique lens  
25 or lenses, if you will, than probably any other testimony

1 you may hear today. As a builder, I had to accept years  
2 ago that the UCC was now the law and I needed to learn  
3 about it and build to it. As a BCO and an inspector, I had  
4 the greatest respect for the need for this code and the  
5 proper administration and inspection of it.

6 In June 2017, I applied for a building permit in  
7 New Cumberland Borough, Cumberland County. Filling out the  
8 land use or zoning permit, there was a space to fill in for  
9 the code inspection agency I would be using. When I asked  
10 if I was to fill this in, the permit officer said, "Yes."  
11 I had never built in any municipality where I had a choice,  
12 so this was new for me. I asked her for the list of the  
13 approved agencies, and she said, "We don't have a list."  
14 So I asked for clarification. You mean, I could pick any  
15 Pennsylvania UCC approved third-party agency I want to use?  
16 And she said, "Yes." She did tell me that usually people  
17 pick from one of these three, and she named three local  
18 third-party agencies, but again stressed, you don't have to  
19 use one of them. While I was familiar with all three and  
20 had no problem with any of them. I decided to go with one  
21 that was not mentioned to see how that may be received.  
22 When I contacted that third-party agency and asked if they  
23 would be willing to inspect in New Cumberland, they were  
24 pleasantly surprised that I was given the option and agreed  
25 to handle the application, land review, and inspection

1 process. In the end, all went well. I paid the third-  
2 party agency directly for the permit, plan review, and  
3 inspections, and they coordinated all the necessary  
4 documentation with the Borough.

5 While, this may not be the norm, I have come to  
6 learn it does occur in various municipalities across  
7 Pennsylvania. Where I live, Juniata County, I am aware of  
8 one municipality that has a choice of three or four third-  
9 party agencies, and when they heard I was doing inspections  
10 locally, they asked if they could add me to their list.

11 Another municipality, Fermanagh Township also  
12 Juniata County, I had been dealing with an issue in which  
13 there seem to be no resolution to resolve the dispute  
14 between the builder and the third-party agency other than  
15 to just give the builder the authority to contact another  
16 third-party agency to complete the process.

17 I would imagine you're going to hear a number of  
18 reasons why this is a good idea and some that are obviously  
19 opposed to it. As a resident and taxpayer in Pennsylvania,  
20 I rarely see supporting a monopoly in any industry as a  
21 good thing. Where fair competition is encouraged, good  
22 things usually follow.

23 As a former builder and a code official, I see  
24 the merits of House Bill 349 and strongly support it. I  
25 thank you again for the opportunity to testify today, and

1 would be happy to take your questions.

2 MAJORITY CHAIRMAN: Thank you, and now we'll hear  
3 from Mr. -- I'm going to try it another way -- Mr. Meshaw.

4 MR. MESHAW: Yep, you got it. If it'll stand up  
5 for me. There we go.

6 Good morning. I'd like to thank Chairman Cox and  
7 Chairman Harkins and the members of the committee for  
8 allowing me to testify here today. My name is Douglas  
9 Meshaw, and I am the Pennsylvania Uniform Construction Code  
10 Consultant for the Pennsylvania Builders Association. I've  
11 been with them since 1991 and working on the State Uniform  
12 Construction Code since 1998 before it was actually brought  
13 into law. There's a couple of people in the room here that  
14 also has been involved in it for that long a period of  
15 time. I've been involved in all the amendments and so  
16 forth. I go to all the International Code Council hearings  
17 when they are writing these codes. I testify for codes,  
18 against codes on behalf of the builders in Pennsylvania.

19 A lot of people have already said a few things  
20 here today that I was going to speak about, so I'm going to  
21 try to highlight a few of them. I'm going to start, first  
22 of all, with Ms. McEntarfer here stated that all code  
23 officials take the same tests, but all code officials  
24 aren't the same. And I'd like to say, she's absolutely  
25 right. That's why we're here talking about this House Bill

1 because they're not the same. We'll get that out right  
2 away.

3           And we have to remember that these third-party  
4 agencies are for-profit agencies. They are not part of the  
5 municipal government even though they act as a quasi-  
6 municipal government body. They are not municipal  
7 government, but they have that power. They have enormous  
8 power. They can shut down job sites. I mean, they can  
9 evict you from your home if they think your home is unsafe.  
10 They have more police power sometimes than the actual  
11 police do. So just remember, they're fighting to keep  
12 monopolies in these municipalities.

13           This bill doesn't affect either one of these two  
14 people. It doesn't affect John; it doesn't affect Lori  
15 because they are municipal employees so they're allowed to  
16 have their one party inspection agency. We're talking  
17 about a bill here that provides a choice in those areas  
18 where a third-party agency does everything for the  
19 municipality, and a lot of those municipalities in addition  
20 to what the third-party fees are, the municipalities don't  
21 set the fee. They might argue that they are too high or so  
22 forth, but these third-party agencies set their own fees.  
23 Municipalities could either accept them or not accept them.  
24 They might want to change them or bring them down, but  
25 that's a negotiating process. You could do that with more

1 than one third-party agency.

2           This law already allows the use of multiple --  
3 you know, it doesn't limit it to one BCO. I live in a  
4 township -- I live in West Hempfield Township. I've been  
5 there ever since the building codes have been in effect.  
6 I've never had one complaint in that township. That  
7 township has three third-party agencies. Every third-party  
8 agency is mandated to carry -- they must have a BCO as part  
9 of that agency. So when somebody in my township wants to  
10 submit an application, they can either take it directly to  
11 whichever one -- the township gives you a list of the  
12 agencies that they have approved -- and you can either take  
13 it them or the township, in which case the township sends  
14 it over, they review the plans, they send it back. The  
15 township issues a building permit. That third party does  
16 all the inspections, comes back, gives a final inspection,  
17 the BCO issues a final occupancy permit. No problem. And  
18 it can be done anywhere in the state. To me, it's the  
19 simplest fix.

20           Now we talk about, you know, there's all kinds of  
21 reasons people can't get along with their code official.  
22 You have a recourse. You can file an appeal if you  
23 disagree with my decision. Or you can file a complaint  
24 with the Department of Labor and Industry. I'm a builder.  
25 I've been building in this township and I have to continue

1 building in this township. I really don't want to file a  
2 complaint against this code official because my next house,  
3 he's going to be the same guy out there doing the same  
4 thing again and again. So I'd like to have a choice to be  
5 able to try at least one more. I'd like to be able to try  
6 a lot more, but at least one more. I think we should have  
7 all of those out there.

8           That fear, I think, is one of the biggest  
9 impediments to why we need more than one code official. You  
10 file a complaint with the Department of Labor and Industry,  
11 Labor and Industry only investigates certain types of  
12 complaints. Period. They will not investigate a complaint  
13 about the attitude of a building code official and whether  
14 he's a jerk or not. They don't do that. They'll  
15 investigate such things as if somebody's building without a  
16 permit or if a guy didn't inspect the property and issued  
17 an occupancy permit. They will investigate those and make  
18 a report back to the township officials.

19           I think everything that I'm talking about here,  
20 and there's a lot more in my written testimony that you  
21 have copies of, and I would encourage you to please read  
22 the attachments that are in there dealing with facts and  
23 fictions. Thank you, sir.

24           MAJORITY CHAIRMAN: Thank you. We'll now open it  
25 up to questions from committee members, and while our staff

1 here starts to garner a list of names of individuals who'd  
2 like to ask questions, I'll start with one of my own.

3           The question has come up regarding insurance.  
4 People in my own area came to me and said, you know,  
5 there's an insurance question here. It's going to put us  
6 in a situation of having one sign off on another, this  
7 liability issue of "I have to sign off on the other party's  
8 work." Can I hear a response from both sides of the issue  
9 on that, as far as the obtaining of insurance regarding  
10 that and the potential problems it creates, or if it  
11 doesn't create a problem? I'd like to get your take on  
12 that particular question.

13           MR. MESHAW: Sure. Who would you like to answer  
14 first?

15           MAJORITY CHAIRMAN: Well, whichever. You seem to  
16 be chomping at the bit, so we'll let them go after you.

17           MR. MESHAW: Okay. The insurance. I mean, every  
18 third-party agency is mandated to carry insurance, period.  
19 I mean, that's a requirement to be able to be an approved  
20 third-party agency. But we're talking about in these  
21 municipalities where you're using more than one third-party  
22 agency, every one of them have their own BCO. Each one of  
23 those third-party agencies have their own BCO, they have  
24 their own insurance, and that insurance covers them for  
25 whatever project they're doing. They're not going to be

1 looking at anybody else's work. If they are, that would be  
2 crazy. But if you have, let's say two or more out there,  
3 each one of those guys, okay, if I pick this one, he's got  
4 his insurance. He follows the inspection process through  
5 from plan review to the final inspection report, issues the  
6 occupancy permit, sends a copy over to the township, and  
7 they file it away. It's done, so he has nothing to do with  
8 the other third party, should not, at least.

9 MAJORITY CHAIRMAN: Okay.

10 MR. EBY: Okay. From the discussions I've had  
11 with third-party agencies and their concerns, I'm not  
12 certain how -- is it West Hempfield, Doug?

13 MR. MESHAW: Yes.

14 MR. EBY: I'm not certain how the municipality  
15 works with multiple BCOs because the BCO is a building code  
16 official who administers and enforces the program. The  
17 construction code official does the plan review and the  
18 inspection, okay. So DOI and the statute and regulations  
19 require a municipality to designate a BCO, okay. And then  
20 BCO can delegate to other BCOs, but our concern and what  
21 we've heard is that in having multiple BCOs, let's say,  
22 there's a designated BCO who's responsible for the  
23 community's program administration, and a customer then  
24 opts to use another BCO and the municipal BCO has to accept  
25 that information in those records. There is a problem with

1 his insurance covering him for the work done by others.  
2 That's my understanding of the problem.

3 MAJORITY CHAIRMAN: Representative Heffley, you  
4 have some input on that issue?

5 REPRESENTATIVE HEFFLEY: Yeah. Actually, here's  
6 a form. The Department of Labor and Industry already  
7 allows for a notification of addition to multiple building  
8 code officials and once again, this legislation, while  
9 people would argue otherwise, would not require any other  
10 agency to sign off on another agency's work as was well  
11 explained. Each one would have their own BCO, and that BCO  
12 would sign off. We are not asking any agency to sign off  
13 on somebody else's work, but every agency must, obviously,  
14 apply the code to the state standards.

15 MAJORITY CHAIRMAN: And Mr. Eby, if I could ask a  
16 quick followup question and then we'll move on to some  
17 additional members. I don't want to hog this as Chairman.  
18 Your response to that as far as the -- do you have a  
19 response to what Representative Heffley just described?

20 MR. EBY: I believe he described that there is a  
21 process for multiple BCOs.

22 REPRESENTATIVE HEFFLEY: Yes.

23 MAJORITY CHAIRMAN: And that each BCO -- because  
24 that's what I'm trying to get my head around -- BCOs. My  
25 understanding, and from the reading of the legislation, I'm

1 looking and saying maybe the BCO for any particular project  
2 owns that and that is all he is signing off on.

3 MR. EBY: That is the way it would have to work.

4 REPRESENTATIVE HEFFLEY: Right.

5 MAJORITY CHAIRMAN: And so my question is, do you  
6 see something in the legislation that differs from that  
7 intent? My discussions with Representative Heffley have  
8 been that the intent is to basically say, if you're the  
9 BCO, you sign off on these projects. If it's a separate  
10 BCO, they sign off on these projects and any oversight of  
11 that is essentially saying, look, I'm not the BCO for that.  
12 That was approved by that BCO. I'm off the hook. And so  
13 you're not taking responsibility. That's where I'm trying  
14 to get my head around because I've heard it from both sides  
15 and I want to make sure I have a full understanding of it.

16 MR. EBY: Right. The distinction is the  
17 municipality decides to opt into the UCC. The municipality  
18 decides whether to have a sole BCO or multiple BCOs. So  
19 the municipality is making the decision, not the customer.  
20 As the other testimony indicated, some municipalities have  
21 a lot going on that they want to maintain control and the  
22 contact point with a single BCO, who should have an  
23 alternate for the reasons we mentioned, as opposed to  
24 customer chooses from a menu of BCOs.

25 MAJORITY CHAIRMAN: Okay.

1           MR. EBY: So it's not right or wrong. What I'm  
2 saying is, if the municipality opts in, they have to make  
3 the decision on do they have sole BCO or multiples.

4           MAJORITY CHAIRMAN: Okay. Thank you. Okay, I'm  
5 going to go with the order that I've received them in. I  
6 have Representative Maloney.

7           REPRESENTATIVE MALONEY: Thank you, Mr Chairman.  
8 Thank you folks for being here. There's so much about this  
9 that I think we wouldn't have enough time all day, but I do  
10 believe that many of the issues have been brought front and  
11 center, some of the practical reasons as to why this is a  
12 good piece of bill.

13           So, just a couple questions first to John and  
14 Lori. How often do you -- since you bring up the local  
15 folks and they way you interact -- how often do you discuss  
16 with those elected officials those projects proposed in  
17 your area?

18           MS. MCENTARFER: The elected officials, as far as  
19 construction projects do you mean?

20           REPRESENTATIVE MALONEY: Yes, sure.

21           MS. MCENTARFER: They are the ones that are  
22 approving all the construction projects so they are aware  
23 of everything that is going on.

24           REPRESENTATIVE MALONEY: Correct. But any  
25 interaction during this process of discussion where we have

1 somebody maybe building a house or somebody wanting to put  
2 a swimming pool in or what have you. How often does that  
3 interaction happen for you?

4 MS. MCENTARFER: Not for the simple residential  
5 or swimming pool. If we're talking about commercial,  
6 that's different. They get involved with that.  
7 Residential, not so much.

8 REPRESENTATIVE MALONEY: Go ahead John. It looks  
9 like you want to answer.

10 MR. EBY: Our agency issues 500 to 700 permits a  
11 year. The commissioners of Lower Allen are certainly aware  
12 of any commercial construction project that requires a land  
13 development plan or any new residential development that  
14 requires a subdivision plan. They don't interact with us  
15 regularly on day-to-day ministerial duties for permit  
16 applications, permit issuance, or inspections. We do  
17 provide them with monthly and annual statistical reports.  
18 We discuss with them each year our fee structure and our  
19 rules and regulations of our department.

20 REPRESENTATIVE MALONEY: If they have a question  
21 about a particular job, do they call you up directly?

22 MR. EBY: Most likely. I'm the supervisor of the  
23 Building and Zoning, so naturally, if there's a problem or  
24 an accolade, I'm involved.

25 REPRESENTATIVE MALONEY: Okay. I'm not going to

1 belabor that, but unlike Representative Heffley, I do come  
2 from the building industry and I've been very aware of this  
3 problem for a long, long time. Not only have I been aware  
4 of it, I've been so adversely affected by it that I'm not  
5 so sure any of you here today could justify the behavior  
6 that I received.

7 I had a daughter put out of a house because I  
8 could not get final approval to a project. Thus the  
9 solicitor, who was not brought into this discussion today,  
10 who accessed the strong arm of the elected official who  
11 wants to block a project, you are on the receiving end of  
12 that. What happens, unfortunately -- and kudos especially  
13 to the testimony we heard here today about those who are  
14 upstanding citizens and serve the residents, kudos to you.  
15 That's exactly what we want. But to those who don't, I'll  
16 tell you how evil it is.

17 Discussion takes on behind the scenes illegally,  
18 breaks the sunshine law. I get a call from a supervisor  
19 who says to the inspector, "I don't want to see that  
20 project happen. Do everything and anything you can to  
21 block that project." It's un-American, it's illegal, and  
22 it happens.

23 I built my own legislative office after being  
24 elected. A third-party agency, who I know very well, came  
25 to inspect it. They started to tell me I needed some

1 electrical conduit and some other things. I not only  
2 upgraded the breaker box, I not only ran home runs to every  
3 work station, Cat 5 cables, and made everything an  
4 individual work station without the requirement of the  
5 code, but he came in and told me I had to do something. I  
6 said, "Can you show me that in the code?" He said, "No.  
7 I'll have to call my commercial inspector." So he wasn't  
8 certified to do the inspection, but he was the owner of the  
9 company.

10           And when we talk about multiple inspectors, what  
11 we have in the third-party agency is multiple employees  
12 working for that third-party agency and they send those  
13 individuals out. They should be like me as a PIAA  
14 official, the rule should be the rule. You should apply  
15 that rule across the board in an evenly fashion. But when  
16 they want to stop a project, or when they want to do more  
17 billing, they slow it up.

18           And so in my case, which I would ask you, how do  
19 you send a third-party agency out who denies the township  
20 line on a project? What do you do with that as a consumer?  
21 So the supervisor sends the third-party agency out to the  
22 project and says, "We don't know where the township line  
23 is." Well, that's your problem. That's the municipal  
24 planning code under the township. It's their requirement  
25 to prove their line. But now when you hold me up and you

1 hold up an estate and you hold up many people's lives  
2 because now you're going to send somebody through the  
3 courts to prove your line, and now that it's split by two  
4 municipalities, one municipality says one thing and the  
5 other municipality says another. And so what happens is  
6 the third-party agency is used as a strong arm. They're  
7 used to do the dirty work. This is what happens. It  
8 doesn't have to happen, let's be clear about that, but this  
9 is what happens. And so it goes on and on and on.

10           When the second inspector came to do my final  
11 inspection on my legislative office, he came, he looked at  
12 the breaker box, he said, "Wow. Well done, but why is that  
13 man's name on the sticker?" I said, "I can't answer that,  
14 but he's the owner of the company." He said, "He's not  
15 qualified to do inspections on commercial work." I said,  
16 "I can't help you with that, but please inspect it, tell me  
17 what I need to do. You're good to go."

18           So there's a lot here. I think the ICC bill,  
19 which I actually had a bill to put it online, read-only,  
20 would make it very transparent to any person -- and for  
21 copyrights it wouldn't be printed -- but any person could  
22 go and check out that code because when they're told one  
23 thing and they don't know how to back it up, they could  
24 read it. So I think this is what this does. This brings  
25 accountability to what the code actually is so some people

1 cannot be actually abused. Thank you.

2 MAJORITY CHAIRMAN: We have about ten minutes  
3 before the hearing is going to -- you're welcome to  
4 comment.

5 MR. EBY: There's been free access to the ICC  
6 codes for years. We've had a link on our website. I think  
7 DLI has a link also. I testified in May 2015 and I'm  
8 hearing the same things and I'm telling you the same thing.

9 I'm a municipal monopoly. DLI is a municipal  
10 monopoly in places where they opt-out, so the M-word keeps  
11 coming up. It happens, okay. But what I'm hearing is that  
12 there are egregious problems that Representative Maloney  
13 brought up that I don't think the bill will solve. Those  
14 are ethical and competency issues. That's why we were  
15 focusing on our proposed changes across the board, broad  
16 brush, that I should be subject to the same thing that the  
17 TPAs are.

18 REPRESENTATIVE MALONEY: Mr. Chairman, may I make  
19 a brief comment to that.

20 MAJORITY CHAIRMAN: Very brief.

21 REPRESENTATIVE MALONEY: My only question to  
22 that, John, would be that if we can use somebody else to  
23 bring accountability to the project or to challenge what is  
24 being stated, it does make a difference. Thank you.

25 MAJORITY CHAIRMAN: Representative Harkins.

1           MINORITY CHAIRMAN HARKINS: Thank you. Thank you  
2 all for your testimony. It's very interesting to hear all  
3 the sides of it.

4           Is there another way that we can do it? With 67  
5 counties, can we do something specifically to a certain  
6 county? First question.

7           Secondly, it sounds like residential is different  
8 than commercial. Is there any way that we can do what  
9 those who opt-out of UCC do? Residential covered under  
10 this change and commercial kept as is. Open for anybody.

11           MR. MESHAW: I'm not exactly sure what you're  
12 asking. Comparing apples and oranges here, but I don't see  
13 any way -- I mean, we're basically taking a part of where  
14 municipalities that have opted out now can go and get  
15 anybody that's certified to do their residential  
16 inspections, but they must go to the Department of Labor  
17 and Industry for commercial inspections. Every community  
18 has the option to do that. They can opt-out and that's the  
19 way it's done. The consumer go gets his own. It works  
20 fine. You don't have any problems. That's what we're  
21 trying to do is just add another individual to  
22 municipalities for when those municipalities do a lot of  
23 bad stuff and the third party they have as their single  
24 provider is somebody I cannot get along with. I have no  
25 choice. I mean, we're going to have a bad report for the

1 duration of my project and my next project and my next  
2 project. I'd like to at least try -- I mean, if I go to  
3 Walgreen's and I'm not happy with their products I can go  
4 to CVS, you know, because Walgreen's is charging me tons of  
5 money.

6 And these third parties, I think they actually  
7 add additional cost to municipalities because not only can  
8 they set their own fees. See, we have the option when  
9 municipalities do the whole program because they can only  
10 charge a fee to cover the cost of the operation of that  
11 department. These third-party agencies are for-profit  
12 agencies. So we can challenge a municipality's fee  
13 schedule based on the fact that it is an exorbitant fee and  
14 I can show you between your income and expense report just  
15 how much more money you're making over that, and depending  
16 on how much you're making over that, it becomes an  
17 unauthorized tax and no longer a fee. We don't have that  
18 with third parties.

19 MAJORITY CHAIRMAN: Mr. Eby.

20 MR. EBY: Again, it's anecdotal, but we have  
21 third-party agencies who have told me they had customers  
22 complain about their fees. I'll use this example. It  
23 costs \$2000 to inspect my home and get the permits issued.  
24 Well, I only charged you \$1000. Oh, it turns out that the  
25 municipality tacked \$1000 on to it. So there's bad

1 municipal practices out there. There are also  
2 municipalities that are like Lower Allen, they have in-  
3 house BCO and construction code officials, but they're not  
4 fully certified. Well, they're charging you a fee based on  
5 a multiplier times your construction value, but then you  
6 have to go out and hire third parties for what they're not  
7 competent in. So there are municipalities that are doing a  
8 poor job in fee structure and fee control also.

9 MAJORITY CHAIRMAN: Not being facetious here, but  
10 if the municipalities -- you've described a few problems.  
11 Should we focus on that to address some of the concerns  
12 you've raised?

13 MR. EBY: What I'm saying is --

14 MAJORITY CHAIRMAN: What I really am hearing  
15 repeatedly here -- and I apologize to Representative  
16 Harkins if I'm coming in -- but what I'm hearing repeatedly  
17 is -- and these are the anecdotal, if you want to call them  
18 that. I've heard them from builders sitting across from me  
19 in my office. I don't know if that's anecdotal or just  
20 like a different type of testimony, but they've said, "Once  
21 you get on a blacklist, you're done." And I know that's  
22 kind of the origin behind Representative Heffley's proposal  
23 and we're hearing that as well today. So how do you get  
24 around that blacklisted mentality?

25 I had officials come in my office, there were

1 about five or six people. The individual who was  
2 introducing everybody said, you know, this gentleman over  
3 here is our current inspector. This gentleman over here is  
4 a former inspector. Due to a falling out, he's no longer.  
5 And to me that made the case right there that there  
6 shouldn't be a falling out. He's either competent. His  
7 firm is either competent or not. There shouldn't be the,  
8 oh, my kid plays baseball with his kid and that sort of  
9 thing. So I'm having real trouble getting past that  
10 because human nature, people hold grudges. People hold  
11 grudges for one reason or another and when that starts to  
12 affect what should be a checklist of, are they meeting the  
13 code, becomes a personality thing and they say, well, I'm  
14 going to enforce the code a little heavier over here and  
15 they don't have a choice, that's why I am a co-sponsor of  
16 the bill. I really felt like that was the hinge of the  
17 legislation. Again, we're hearing it over and over here  
18 today.

19 MR. EBY: I think that's why PABCO recognized  
20 since 1966 in the Sewage Facilities Act in municipalities  
21 that are opting in -- we don't opt in. We have to be in  
22 the Sewage Facilities Act -- but we, as a local agency,  
23 have to have alternates. So that caught our attention at  
24 PABCO and that's why we wrote that into the proposed  
25 amendments to 501(b) so that all municipalities must have

1 sufficient staffing to meet their customer's needs and they  
2 have to have the redundancy. So if the code official has a  
3 conflict due to personal reasons or the customer has a  
4 conflict, there's a built-in alternate. So that's what we  
5 were proposing.

6 MAJORITY CHAIRMAN: I think we have one more  
7 individual with a question. Representative Nelson.

8 REPRESENTATIVE NELSON: Thank you, Mr. Chairman,  
9 and thank you for your diverse testimony today.

10 Personally, I'm fortunate where the projects that we've  
11 been on and the inspector in our area in Hempfield  
12 Township, you know, professional, prompt, supporting  
13 information. But I also had a listening session with a  
14 number of builders and developers from different areas in  
15 my office, and the fear is definitely real. There were  
16 some contractors who were afraid even to come to the  
17 meeting because of the possible consequence to their  
18 project or the potential delay. They were saying that yes,  
19 you can appeal, but at the expense of the homeowner or the  
20 delay of the business if there's a dispute.

21 And they also talked to me about that sometimes  
22 within the proposal for selection within the supervisors  
23 there may be some, I'm going to say, unethical backside,  
24 that there might be incentives for supervisors to select  
25 their company, whether it's through donations. I know this

1 bill doesn't address that, but can you touch on it? It  
2 seems like it's a seedy space at times within this because  
3 there is a lot of money and dollars to be made. It is a  
4 for-profit entity. But I don't know that we will be able  
5 to clean up unethical behavior in this bill, but I think --  
6 can you touch on the benefit of having two companies might  
7 help to dilute the impact of that for both sides?

8 MR. MESHAW: First, I think you pretty well  
9 described it yourself. I mean, it's the fear, the  
10 animosity. When you've got to deal with one individual,  
11 one third-party agency, I mean, you're locked in. If they  
12 don't like you, they're not going to like you. If they  
13 don't like you on this project, they're definitely not  
14 going to like you on the next one. And to file an appeal  
15 or complaint, you face that fear plus an appeal. If I'm a  
16 contractor and if you're in the business, they work on  
17 schedules. If you got a liquidated damages clause in your  
18 contract and you don't finish that job on time, you're  
19 paying X amount of dollars back to them people every day.

20 And file an appeal, I mean, the municipality  
21 appeals board has 30 days to hear it. They must hear it  
22 within a 30-day time period. Well, I'm not going to sit  
23 there. I'm losing money on a 30-day appeal. I know they  
24 only have 5 days after they hear it to respond to it, but  
25 that's 35 days my project is sitting there, and that guy's

1 not going to like me. If he loses that appeal, he's  
2 definitely not going to like me on the next job he inspects  
3 and he's going to knit pick everything that he can.

4 MAJORITY CHAIRMAN: Mr. Eby.

5 MR. EBY: I hate to be redundant, but if we're  
6 dealing with commercial construction and the municipalities  
7 opted out, they have sole source DLI. If they're in a  
8 jurisdiction, such as mine, they have a sole source, so  
9 that's why I'm going right back to the fact that we wanted  
10 to propose the requirement to have multiple choices within  
11 the agency for an alternate when it's needed. It would  
12 apply to DLI also. So, let's say you aggravated a DLI  
13 inspector in an opt-out on a commercial job, what are you  
14 to do? Our proposal would solve that.

15 MAJORITY CHAIRMAN: Do we have any other  
16 questions from members? Representative Heffley.

17 REPRESENTATIVE HEFFLEY: Thank you, and I'd love  
18 to work together on that solution as well if you feel that  
19 all commercial properties across the state should have the  
20 ability to choose their state-certified third-party  
21 inspection agency. Is that what we're saying, or you still  
22 want the monopoly locally, but you don't want the monopoly  
23 at the state? We could pick one TPA for the whole state,  
24 right? And then just have no options. Would that be good?

25 MR. EBY: Stick with what I said that we want --

1           REPRESENTATIVE HEFFLEY: I'm just asking. But  
2 this is minimum. It's two or more, and we've been battling  
3 this for a long time. I think any time you have a monopoly  
4 it does create issues and I hope that we could certainly  
5 help. This is a pro-growth, pro-small business -- because  
6 I think you talk about commercial and you think these big  
7 buildings, but you have a bar owner who lives on the  
8 property and they're just looking to expand a little bit or  
9 do an improvement and you're going to delay them for years.  
10 They don't have the money for that. And they know it, and  
11 that's why they do it, to hold up these projects and it  
12 just becomes vendetta. Monopolies are always bad. I can't  
13 see how anybody could support a monopoly. I hope we can  
14 work on some solutions. If there's some technical changes,  
15 we'll work on that language in there, but I think we all  
16 want a thriving, growing economy and we want the free  
17 market. So I would hope that we can work together on this.

18           MAJORITY CHAIRMAN: And we do have one more  
19 question. Representative Mackenzie.

20           REPRESENTATIVE MACKENZIE: Thank you, Mr.  
21 Chairman. I apologize to the testifiers for joining late,  
22 but I have looked over the testimony. I have been  
23 following the issue for many years. I think I am  
24 relatively up to speed on the issue. Now, Mr. Ely from  
25 PABCO; is that correct?

1 MR. EBY: John Eby.

2 REPRESENTATIVE MACKENZIE: Eby. I'm sorry. Your  
3 membership, I mean, you've seen all different  
4 configurations across the state whether they have an in-  
5 house inspector, or they have a third-party agency and one  
6 inspector, or a third-party multiple, you have members that  
7 participate in both of those third-party arrangements,  
8 correct, where there's a single --

9 MR. EBY: -- And others. And others. There are  
10 cogs that have multi-municipal responsibilities. There's a  
11 broad range, a broad range of how you can accommodate the  
12 customer's needs with providing your employees or contract  
13 employees.

14 REPRESENTATIVE MACKENZIE: Absolutely. And so in  
15 those instances where it's a third party agency and it's  
16 one or it's multiple, your members provide the same  
17 inspections? They are looking at the same safety issues.  
18 They are going to treat customers the same way, correct?

19 MR. EBY: That is how it's supposed to work.

20 REPRESENTATIVE MACKENZIE: And so I believe  
21 that's correct and for me, this is about a safety issue.  
22 We want to make sure that safety is upheld, and I believe  
23 that safety is going to be maintained in any of these  
24 configurations. But the problem is that we only hear about  
25 instances of difficulty when there is a third party and one

1 agency. Because they are beholden to that one person,  
2 that's where all the problems arise.

3 So making this change seems to have no downsides,  
4 but only upsides. So I just want to make that very clear  
5 and put that on the record. Thank you, Mr. Chairman.

6 MAJORITY CHAIRMAN: Thank you, Representative  
7 Mackenzie. I would like to thank all of the members.  
8 We're pretty close to ending at about an hour, so I  
9 appreciate the brevity of the panelists and the questions  
10 of all the members.

11 I would like to say, I don't think this is going  
12 to be the end of the discussion on this. I don't think  
13 this is going to be the end of the debate of hearing both  
14 sides of the issues, and I would encourage all of our  
15 members to continue to ask questions. The panelists here,  
16 I'm sure, would be willing to provide additional contact  
17 information and be a continuing resource to the Committee.

18 The bill has been scheduled for a vote on Monday  
19 and so I would ask that all members be there, be ready to  
20 consider this bill, and we'll have additional discussion at  
21 that point.

22 Representative Harkins, do you have any closing  
23 comments?

24 REPRESENTATIVE HARKINS: I just would like to  
25 thank everyone for turning out. This is a great showing

1 this morning, as well as the testifiers. And again,  
2 Chairman Cox, thank you for allowing us to have this  
3 hearing today. Thank you.

4 MAJORITY CHAIRMAN: All right. And with that,  
5 this meeting is adjourned.

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(Hearing concluded at 10:36 a.m.)

## C E R T I F I C A T E

I hereby certify that the foregoing proceedings are a true and accurate transcription produced from audio on the said proceedings and that this is a correct transcript of the same.

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