

2/9/18

Representative Paul Holvey, Chair  
House Committee on Business and Labor  
900 Court St. NE  
Salem, OR 97301

Dear Chair Holvey and members of the Committee,

Thank you for the opportunity to provide testimony regarding HB 4086 as it relates to the administration and enforcement of the State Building Codes that effect communities and citizens of our state.

My name is Robert Rice. I have been employed as a Plans Examiner and Inspector in the State of Oregon since 2003. For thirteen (13) years, from 2003 until 2016, I worked for Josephine County Building Safety, first as a Residential Plans Examiner/Inspector. As I obtained additional certifications I progressed to plan review and inspection of commercial structures. I served as Building Official from 2007 to 2016 and obtained the Certified Building Official (C.B.O.) certificate from the International Code Council after passing the required exams. In 2016, I left the employ of Josephine County and went to work for North West Code Professionals, LLC as the Southern Oregon Lead. In my current position, along with the assistance of my co-workers, I provide Building Official, Plans Examiner and Inspector services to numerous small municipalities in Southern Oregon. Those services range from full-services for some jurisdictions to as-needed assistance to others.

I cannot support HB 4086 in its current form. As noted in the bill summary (shown in part below), as currently written, there are two distinct effects.

*“Removes requirement that building inspector for municipality be employee of municipality. Allows employment or other designation of building inspector by multiple municipalities.”*

*and;*

*“Requires that building official appointed by municipality be employee of municipality.”*

The first part of the summary statement captures the original intent of the proposed change (originally, HB 2907). That intent has been obscured by subsequent amendments as stated in the second part of the summary statement above. The addition of this language regarding building officials not only confuses the primary issue but also introduces significant questions and issues that could have negative impacts to smaller municipalities, the construction industry and home-owners.

In the State of Oregon, persons performing duties as Building Plans Examiners, Inspectors and Building Officials are required to obtain certifications issued under the authority of the Department of Consumer and Business Services, Building Codes Division. Those certifications, including various levels of structural, mechanical, electrical and plumbing disciplines, have specific requirements for training, testing and experience that are established by Building Codes Division (BCD). The requirements for certification apply to all persons performing these duties whether employed directly by a municipality or to those persons employed by a private entity providing services to a municipality.

For over forty (40) years, these services have been provided both by persons employed directly by a municipality and by persons employed by private firms that are contracted to provide these services to a municipality. In either case, the certification requirements established by BCD are the same.

In most of the disciplines (e.g. Structural, Plumbing, Mechanical and Electrical), there is a level of certification for residential (One and Two-Family structures and Townhouses) and another level of certification for commercial (referred to as "A-level"). The qualification requirements for most of the commercial certifications are significantly higher than the residential certifications. In particular, the A-level plumbing and electrical certifications are virtually limited to persons that have previously been a Journeyman Plumber or Electrician; respectively. That requirement significantly reduces the quantity of current and potential inspectors.

Several years ago, new certifications for "Specialized Plumbing Inspector" (SPI) and "Specialized Electrical Inspector" (SEI) were created. These new certifications require additional training and experience requirements beyond the residential certifications and allow a person to provide inspections on some limited, small-scale commercial buildings without requiring the full A-level certification. In effect, it is "Light-Commercial" inspections. In 2013, the Legislature amended ORS 455.715(3)(c) relative only to these new inspector certifications. The resulting language indicates that a "Specialized Inspector" would be employed by a municipality or by the Department of Consumer and Business Services. At a glance, it would make sense because it is only a municipality or DCBS/BCD that would be doing building inspections. However, as with all the other certifications, a municipality may utilize private entity inspectors to do these inspections.

But, with the omission of provision for a private entity inspector, this effectively means that the strict language of the law would not allow a person to provide these services to a municipality unless they were directly employed by the municipality. This is not consistent with any of the other certifications. The purpose of the original version of this bill was to correct this error to allow inspectors to obtain and use these certifications to provide services to municipalities even if they are not directly employed by the municipality.

I believe there is agreement among stake-holders, including BCD, that this should be corrected and is accomplished by the original bill as presented. In the letter from Dexter Johnson, Legislative Counsel, written to Chair Holvey, dated February 7, 2018, he states, in part, "We believe that retaining a private party to act as an agent for the municipality in performing building inspections would not violate constitutional restrictions on delegation."

As stated, unfortunately, the original bill has been amended with a provision to require that the Building Official be a person directly employed by the municipality. This added language brings up an entirely different conversation relative to the delegation of municipal authority (i.e. Building Official) to a private entity. In the previously mentioned letter, Johnson also states that the delegation of authority (i.e. Building Official) from the municipality to a private entity is different than the delegation of services of an inspector. This issue has not been vetted and I would likely present argument myself to the contrary.

Whether a Plans Examiner, Inspector or Building Official, the certifications are issued in accordance with the requirements established by BCD. In fact, as noted in ORS 455.740(1),

*“...the Director of the Department of Consumer and Business Services may deny, condition, suspend, revoke or refuse to renew a certificate of a building official or inspector if the director finds that the building official or inspector has:*

- a) Consistently failed to act in the public interest in the performance of duties;*
- b) Failed to complete the continuing education requirements as required under ORS 455.720(4);*
- c) Provided false information to the Department of Consumer and Business Services; or*
- d) Committed an act described in ORS 455.125 or 455.129.”*

*See also, sections (2), (3) and (4).*

Also, there are inherent and specific provisions in ORS/OAR that require the Building Official to work within the scope of authority as allowed and prescribed by BCD in the duty of administering the State’s building codes. The Building Official does not have the authority to add to, or waive requirements of, the State’s Building Codes.

Also, there are ORS/OAR provisions for the regulation of a Building Inspection Program delegated by BCD to a municipality. These provisions are specific and detailed. The program is assumed by the municipality in accordance with these established requirements. A municipal program, whether overseen by a municipal-employee Building Official or a private-entity Building Official providing services to a municipality, are subject to the same rules and requirements. These established requirements, which define the duties and limitations of the authority and responsibility of the Building Official, are provided by the State through DCBS/BCD (i.e. “Oversight”) more than they are provided by the local municipality.

As such, I would argue that there is inherent “supervision” and “authority” from the State (a Government Entity) over the Building Official whether the Building Official is a direct employee of the municipality or not.

But, I firmly believe that this discussion, while interesting, is not germane to the issue at-hand, which is the two Specialized Certifications. I implore you to consider an amendment to remove the language that was added regarding the employment of the Building Official by the municipality at this time; let us first address the more important certification issue. This discussion is paramount in how we can effectively serve the citizens of Oregon, including builders and home-owners.

As the former Building Official of Josephine County, I relied on the services of a third-party company for most of my years there. There were sporadic times that we received large quantities of plans or occasionally one or two large projects that were more than our in-house staff could handle. The third-party company was vital in helping us address the projects in a timely manner. During my years there, we typically had two inspectors; during certain times we only had one inspector and myself, largely due to budget constraints. There were times when the inspector was out ill or on vacation where the assistance of the third-party company was extremely helpful in allowing us to continue services to our customers. Regardless of the hardships and difficulties we faced, inspections need to happen every day and plans need reviewed in a timely manner. Our customers count on us to make this happen.

Currently, as I am now working for the third-party company, we are still assisting Josephine County on an as-needed basis. At the current time, this is primarily for commercial inspections and plan reviews. As a result of turn-over, they are working to add qualified and certified staff. With the training requirements for the state certifications, this takes time. At this time, the municipality is very limited on plans examiners and inspectors with commercial certifications. We have been assisting them to fulfill their obligations in this area until they hire additional staff and/or until the current inspectors obtain the necessary certifications.

We are also providing temporary assistance to another local jurisdiction that has experienced a loss of their entire staff that was there just a year ago. At the current time, they only have one inspector who was recently hired and he happens to be out for three weeks. To make matters worse, the Building Official that had only been there for three (3) months unexpectedly quit a week ago. As they work to rebuild their department, we are helping fill in the gaps. Ultimately, the inspections need done every day and the plans need reviewed in a timely manner. In a conversation with their department staff today, they told me they don't know what they would even do if we were not there to assist them. In addition, despite advertising for the vacant positions again and again, they are having extreme difficulty in even getting qualified applicants. This is a trend throughout the industry and it will not only continue, but, continue to get worse as many in my generation begin to retire.

Now is not the time to restrict certifications to qualified inspectors, especially dependent on whether they are employed directly by the jurisdiction or not. Now is the time to increase the skills, knowledge and certifications of existing inspectors and plans examiners. The effort should be to simplify and streamline the certification process.

In Oregon, unlike many or most areas of the country, the certifications are state-specific. This was not the case a number of years ago. In years past, many of the more common certifications could be obtained by examination through the International Code Council (ICC) which were recognized by BCD. ICC is the organization that authors many of the model codes that we adopt in Oregon; including our Residential, Building, Mechanical and Fire Codes. The ICC is the largest code writing organization in the Nation and most of the codes used in the United States, and in other countries, are based on the ICC family of codes. The State of Oregon used to directly recognize these ICC certifications as applicable for many areas of plan review and inspection. Similar to the issue of obtaining the State-specific Specialized Inspector certifications, the more restricted or difficult it is to obtain certifications, the fewer certified inspectors there will be in the future. This is a significant concern. Also, many out-of-state job applicants have ICC certifications but not Oregon-specific certifications.

A common theme among law-makers, citizen groups and other stake-holders is "Affordable Housing". This is a significant issue, particularly in the Pacific Northwest. By limiting certifications to only municipal employees, increasing the difficulty in obtaining certification and by requiring the Building Official to be employed directly by a jurisdiction, the costs of doing plan reviews and inspections will increase. Since a Building Department is funded with dedicated funds from permit fees, these increased costs will result in increased permit fees in the local municipalities further increasing the cost of home construction. This would cause undue costs and hardship which are not necessary.

Again, for the good of the construction industry, local jurisdictions, private entity companies, home-purchasers and the citizens of the state, I ask that you please consider;

1. Removing the extraneous, secondary issue of whether or not the Building Official is employed directly by the municipality from the bill,
2. Limit the bill to the initial, primary issue of the two Specialized Certifications for plumbing and electrical addressed in the original bill. This merely allows private entity persons to provide these inspections for a municipality just like the other certifications.

Respectfully,



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