

**ASSOCIATED BUILDERS & CONTRACTORS TESTIMONY**

**Before the House Labor & Industry Committee on House Bill 782**

**May 7, 2015**

Good morning Chairwoman Gingrich, Chairman Gergely, and members of the House Labor & Industry Committee and thank you for allowing me to testify on House Bill 782 this morning. My name is Patrick Dolan and I am the President of Dolan Construction, a family-owned and operated general construction firm based in Reading, Pennsylvania.

For nearly forty years, Dolan Construction has managed and delivered projects throughout central and eastern Pennsylvania, ranging from new residential construction to industrial construction. In addition, we have also been consistently involved as members of the Associated Builders & Contractors, helping to promote a merit shop philosophy and the benefits of free enterprise. While I am here today in my role the President of Dolan Construction, I am also here as the 2015 Chairman of the Keystone Chapter of the Associated Builders & Contractors (ABC), representing more than 600 member organizations throughout Pennsylvania. On behalf of the Keystone Chapter of ABC, I would like to offer my support of House Bill 782.

The Pennsylvania Construction Code, or Act 45 of 1999, created two avenues for building code enforcement in Pennsylvania. Municipalities had the option of "opting out," allowing the Commonwealth's Department of Labor & Industry to enforce building code standards, or "opting in," which requires municipalities to administer and enforce the Uniform Construction Code (UCC) standards through a number of statutorily authorized providers. Approximately 90% of Pennsylvania's municipalities have chosen to administer and enforce the UCC on their own, limiting the ability of the Department of Labor & Industry to mediate concerns and complaints.

Of the six options for enforcement that are available to opt-in municipalities, the two most common are: (1) the practice of designating an employee to serve as the municipal code official and (2) the retention of one or more construction code officials or third-party agencies to act on behalf of the municipality. While the statute explicitly allows for more than one code official or third-party agency, very few municipalities maintain the services of multiple third-party agencies. Additionally, third-party agencies and private code officials frequently solicit business from multiple municipalities within a specific geographic area, essentially creating regional enforcement monopolies. While government safeguards traditionally work to deter monopolies in other areas of business, this trend in code enforcement can be particularly harmful because it consequently affects construction growth and job creation.

As a member of the construction industry who deals with code officials and third-party inspection agencies on a routine bases, I can assure you that construction professionals are often hesitant to voice any concerns about these empowered officials for fear of retribution on the existing project, a future project, or projects in other jurisdictions. Unfortunately, construction professionals have very little protection under current law since, as I mentioned before, the opt-in process cedes much of the Commonwealth's authority to local governments, who hired the code official or third-party in the first place. The Department of Labor & Industry is clear on the nature of concerns that it will (and will not) investigate when dealing with opt-in municipalities. The Department will investigate incidents involving uncredentialed code inspectors, but will not investigate disagreements with a code official's interpretation of a construction code provision. The Department will investigate incidents where a final inspection report has been issued and there are delays regarding a Certificate of Occupancy, but will not investigate rude or unprofessional behavior. The Department will also not investigate the fees that code officials and third-party agencies choose to charge, nor will they investigate incidents where alleged code violations allegedly require destructive inspections. In short, there is little remedy for construction professionals who find themselves working with unprofessional or substandard code officials or third-party agencies. This frustration can become particularly evident during the height of the annual construction season, from

May to September. During these months, construction occurs at a rapid pace and it is vital for construction professionals to maintain a timely process in order to meet owners' defined schedules. This is also the height of vacation season, and like professionals in many other areas, code officials and inspectors are frequently unavailable. This bill would allow construction professionals to select and work with inspection officials on an agreed-to timeframe that reduces delays and ensures timely delivery of a finished product.

Fortunately, House Bill 782 addresses many of the concerns of construction professionals and provides a reasonable alternative. While the current state of the law allows municipalities to contract with more than one third-party, many choose not to do so, limiting the efficiency and choice that could be provided to members of the construction industry. By requiring two or more third-party agencies, this bill will provide cost savings to taxpayers, efficiency in choice, and transparency throughout the process.

House Bill 782 allows construction professionals to choose the third-party agency of their choice for an individual project, however these third-party agencies have already been identified and contracted by the host municipality. This method allows construction professionals to work with a firm that best understands the nature of the project at hand, encouraging cooperation and efficiency throughout the inspection process, while also preserving the statutory authority that has been granted by Act 45 of 1999 to host municipalities. While municipalities in more rural areas of the Commonwealth have expressed concern about this concept because of the lack of availability of third-party agencies to satisfy this choice requirement, House Bill 782 provides a waiver process for these cases.

This bill also adds the standard procurement process to the selection and utilization of third-party enforcement agencies. Under House Bill 782, third-party agencies would respond to a municipality's Request for Proposals (RFP), which has been publicly advertised. Responses to the RFP would be announced publicly at an open municipal meeting, allowing taxpaying residents the opportunity to fully understand the services that will be performed for their tax dollars. House Bill 782 also establishes

criteria for a contractual decision, including the availability of services, the fee proposal by the third-party agency, and input from affected stakeholders. This transparency would discourage nepotism and pre-established relationships from tarnishing the use of taxpayer resources.

This bill promotes a main tenet of ABC in that it encourages the free enterprise system by allowing for competition, which reduces monopolies, adds efficiency, and ensures transparency.

In conclusion, on behalf of the Keystone Chapter of ABC, I would like to reiterate my support for House Bill 782 and thank Representative Heffley for his efforts to bring much-needed reform to the code inspection process in Pennsylvania. This bill will ensure the efficiency and choice of the free market system, as Act 45 originally intended, while providing appropriate safeguards for taxpayer resources.

Again, I thank you for your time this morning and I would be happy to answer any questions you may have.