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May 23, 2017

To: Chairman Ron Young
Ohio House Economic Development, Commerce and Labor Committee

From: Chief Jonathan M. Westendorf
City of Franklin, Warren County

Re: House Bill 128, Opposition Testimony
(132 General Assembly)

Good Afternoon. Chairman Young, Vice-Chair DeVitis, and Ranking Member Lepore-Hagan, I come before you today representing the the Ohio Fire Chiefs' Association. Personally, I have had the honor of serving the City of Franklin, Division of Fire & EMS, located in Warren County, for the past 17 years.

Code enforcement is equally important to a community's safety, health and welfare. This is true in a manner similar to other safety service functions such as law enforcement, fire, rescue and emergency medical services. In fact, there is often a great deal of collaboration required between building officials and fire safety inspectors. Ideally, both building and fire prevention inspectors work together to achieve voluntary compliance to a myriad of policies, codes, rules and regulations stipulated by federal, state and local community mandates. The Ohio Fire Chiefs' Association opposes House Bill 128 in its current form for the following reasons.

Building Officials and/or Inspectors are Law Enforcement Officers

In the event voluntary code (law) compliance is unachievable by either the building or fire official, the inspector's role must switch to that of a law enforcement officer. It is important to note that the public official has specific responsibilities beyond ensuring code compliance that must remain independent from the influence of private interests so that the official may properly fulfill enforcement duties and pursue potential litigation when required. When a public official performs such actions, consumer and community confidence is enhanced resulting from the innate transparency afforded to all interested parties.

Transparency and Accountability

HB 128 stipulates General Contractors or Building Owners pay inspection fees directly to the third-party inspectors. This arrangement creates a circular relationship whereby the construction industry will become a



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self-regulating. That process is flawed and improper. Currently, a building inspector is prohibited from receiving direct and indirect benefit (financial or otherwise) from the party whose work is being inspected. HB 128 turns that philosophy inside out and creates a situation that is contrary to all of the protections afforded to individuals and parties by Ohio law. Such an incidence involving a public official would be a clear ethical violation, potentially subject to prosecution.

Generalized Interpretation and Application of Codes Disincentivize Safety

The large variety of buildings and subsequent uses of structures throughout the state requires a number of disciplines to evaluate the application of Ohio's Building, Residential, Plumbing, Mechanical and Fire Codes, in addition to the various reference codes, local zoning and fire protection requirements. The plan review process requires buildings to be constructed per the approved architectural drawings. There is often communication between architects and local building officials during the design process.

Without a consistent point of reference, there is sure to be wasted time, energy and cost as designers work to meet requirements established by a 'pooled' list of third-party inspectors that is disassociated from the local community. Further, this circumstance creates an environment where General Contractors or Building Owners can actually 'shop' for the most generalized code interpretation available on the open market, requiring the least capital investment by the building owner. Such a practice essentially dilutes the effectiveness of existing codes. Before long, building contractors will know which third-party inspectors are most 'friendly' to the business interests of their clients (ultimately the building industry) resulting in less stringent code interpretation and application. Ultimately, overall community safety deteriorates.

Timing

While all parties should be interested in swiftly performing code inspections, doing so within a 24-hour time period may not be possible in every circumstance. Building code inspections occasionally require coordination between the code official and other contractors or supporting agencies such as the local fire division. From personal experience, far too often contractors schedule inspections before the work is completed or outstanding violations are corrected. If all parties do not coordinate schedules, contractors could face additional expense and delay.

Home Rule and Local Inspections

In *A Comprehensive Approach*, code enforcement is defined as, "the prevention, detection, investigation and enforcement of violations of statutes or ordinances regulating public health, safety, and welfare, public works, business activities and consumer protection, building standards, land-use, or municipal affairs"



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(Schilling and Hare, 1994). As written, HB 128 offers no practical manner in which local fire safety inspectors or other community officials will be able to effectively maintain a collaborative working environment with disassociated third-party building officials. Essentially, the construction industry will be left to self-regulate as code interpretations will be paid for by industry professionals reliant on satisfying a customer base whose primary focus is placed on the corporate bottom line and not that of public safety.

Thank you for the opportunity to testify on HB 128. I am happy to answer any questions.