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CORRECTED COPY

SUBJECT: SB 245, Interested Party Testimony

1. Introduction: Chair Reynolds, Vice-Chair Johnson, Ranking Member Craig, and members of the Senate Select Committee on Housing, my name is Charles Huber and I'm employed by the City of Lakewood where I administer Ohio Revised Code (ORC) 3781, Ohio rules including Ohio Building Code (OBC) [Ohio Administrative Code (OAC) 4101:1] and Residential Code of Ohio (OAC 4101:8). Thank you for the opportunity to provide interested party testimony on Senate Bill (SB) 245. My service of 33 years administering State of Ohio law regulating building construction includes City of Moraine, City of Kent, and Medina County.
2. Summary: SB 245 adds Ohio Revised Code 3781.181 where if the building department having jurisdiction does not conduct the plan review or inspection within 30 days of plan submission or inspection request, then the building owner and the design/construction team may accomplish these via qualified third-party. It also provides for the general contractor to request a Certificate of Occupancy from either the building department having jurisdiction or the Ohio Board of Building Standards (BBS). Although remedies for a building owner and the design/construction team already exist in statute and rule, amended/substitute SB 245 language can improve the options for providing building safety, building sanitation, energy efficiency, and handicap accessibility.
3. Background: SB 245 correctly reflects existing/continuing statute which charges the BBS to adopt rules regulating residential construction (one-, two-, and three-family residential construction and buildings accessory thereto such as detached garages) and nonresidential construction (everything else including apartment and condominium buildings with four or more dwelling units, hotels, motels, and dormitories). Ohio's residential code is the RCO. Ohio's nonresidential code is the OBC.
4. OBC & RCO Personnel Certification Accessibility. SB 245 adds ORC 3781.10(E)(3)(c) requiring BBS to make rules relating to "... residential building code enforcement ..." certification "... as accessible as possible, while still ensuring that certificate holders are adequately qualified ..." BBS has drafted revisions to these rules and held the Common Sense Initiative (CSI) Stakeholders Meeting April 5, 2024. The CSI comment period opened June 5, 2024 with the last day tomorrow, June 26, 2024. The draft revised rules are available at the BBS website. Therefore, this portion of SB 245's unnecessary and may be deleted.

5. Plan Review. Under current law if the building department fails to accomplish plan review within 30 days of submittal, then the building owner and representatives may request the board of building appeals (BBA) having jurisdiction to accomplish the plan review. Furthermore, a complaint may be filed with BBS regarding the county, municipality, or township failure to accomplish the plan review. If the BBS finds a systemic problem with the local building department (such as underfunding, understaffing, or not understanding the time requirement in OBC and RCO), then BBS will order the local jurisdiction to correct the problem or face decertification.
 - a. Failure to accomplish an OBC plan review may be referred to the BBS certified local nonresidential BBA. Where no such local nonresidential BBA exists, the failure may be referred to the Ohio BBA.
 - b. Failure to accomplish a RCO plan review may be referred to the local residential BBA.
 - c. BBS in their earlier draft revision of personnel certification rules (attached) included provision at OAC 4101:7-2-02 for the building departments to have a procedure available for the building owner's design/construction team to accomplish plan reviews and inspections. These are in addition to the existing/continuing provisions at ORC 3791.042 and the existing/continuing requirements for special inspections at OBC Chapter 17 (OAC 4101:1-17). BBS removed these provisions from their current draft because they now believe statutory authority for them doesn't exist. Amended/substitute SB 245 language could allow the building department to authorize the building owner's design/construction team to proceed with plan review via private third-party without waiting 30 days.
6. Inspection. Both OBC Section 108.1 and RCO Section 108.1 (at OAC 4101:1-1 & 4101:8-1 respectively) state that if the building department fails to accomplish the inspection within 4 business days of the request, then the construction's allowed to proceed to the next inspection point. Again, a complaint may be filed with BBS regarding the county, municipality, or township failure to accomplish the inspection. If BBS finds a systemic problem with the local building department (such as underfunding, understaffing, or not understanding the time requirement in OBC and RCO), then BBS will order the local jurisdiction to correct the problem of face decertification.
7. Certificate of Occupancy. Both OBC Section 108.2.13 and RCO Section 108.2.11 require the building department to issue a Certificate of Occupancy when all of the required inspections have been satisfactorily completed. OBC Section 111 and RCO Section 111 provide further details regarding the Certificate of Occupancy. Neither, OBC nor RCO provide a time requirement for issuing the Certificate of Occupancy. Rather than adopt a time requirement via statute, a better method to address this shortcoming is via a petition to BBS to place in OBC and RCO a time requirement for issuing the Certificate of Occupancy. Lakewood would assist interested parties in processing the petition. The petition to change OBC and RCO could add in the right to ask the BBA to issue the Certificate of Occupancy if the building department failed to do so in the required time. Pursuing these provisions via rule petition/change allows these to be deleted from SB 245.
8. Coordination With Existing/Continuing Statute.

- a. Existing/continuing statute at ORC 3791.042 provides that if the building department doesn't have a plans examiner as an employee (instead plans examination services are provided to the building department via contract) and the building owner's registered design professional (architect or professional engineer) certifies construction documents (drawings and specifications) comply with ORC 3781, 3791, & OBC, then the building official shall perform the plan review without a Plans Examiner's review. RCO Sections 106.1.1 & 107.4.3 state that drawings prepared by a registered design professional don't need to be reviewed for items requiring "technical design analysis" (design loads, stresses, strength, and stability). RCO Section 301.1.3 similarly allows building systems design be accomplished by a registered design professional.
- b. Existing/continuing statute at ORC 3791.04(H) requires the building department to review construction documents (such as drawings and specifications). If the SB 245 provisions (as originally drafted or as amended/substituted) for building owner's design/construction team private third-party plan review are preserved, then it must amend ORC 3791.04(H).
9. Conclusion. SB 245's new remedy for failure to accomplish plan review can be improved. Although, other remedies exist in rule, amendment/substitute SB 245 language can authorize rule allowing procedures for building owner's design/construction team to proceed with private third-party plans examination without waiting 30 days. SB 245's new remedy for failure to accomplish inspection after 30 days is unnecessary because an easier solution exists in rule after 4 business days. However, amendment/substitute SB 245 language can authorize rule allowing building owner's design/construction team to arrange for private third-party inspections without waiting 30 days. Lakewood offers SB 245 sponsors, proponents, and stakeholders assistance in drafting a petition to add criteria and remedies to OBC and RCO regarding the Certificate of Occupancy. I'd be happy to address any questions at this time.

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Partial First Draft OAC 4101:7-2-02 (no longer in current draft)

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STAKEHOLDERS' MEETING OR CSI 6/5-26/24
OAC 4101:7-2-02 Third-party inspections and plans examinations. (New)
COMMENT PERIOD

Certified municipal, township and county building departments may establish a policy to accept plans examination and inspection reports from third-party plans examiners or inspectors in accordance with this rule. The department shall submit a copy of the policy to the board. Any subsequent amendments to the policy shall be submitted to the board within 30 days of the amendment.

(A) Policy. The department policy shall specify the scope of work for which the department will accept plans examination or inspection reports from third-party plans examiner or inspectors.

(B) Role of third-party plans examiners and inspections. A building owner or owner's representative shall notify the department at time of building application for plan approval of intent to utilize third-party plans examiners and/or inspectors. Third-party plans examiners and inspectors may be engaged by a building owner to perform plans examination or inspections that would otherwise be performed by certified personnel employed by or under contract with the department to determine compliance with the board's rules. The third-party plans examiner and inspector is required submit reports within timeframes established by rules 4101:1-1-01 and 4101:8-1-01 of the Administrative Code and any additional timeframes required by the department's policy.

(1) Third-party plans examination report. Upon completion of plans examination, the third-party plans examiner shall report findings to the owner or owner's representative and building official in accordance with section 107 of rules 4101:1-1-01 and 4101:8-1-01 of the Administrative Code. Upon receipt of the third-party plans examination report, the building official shall proceed in the same manner as if the plans examination was performed by certified personnel employed by or under contract with the department.

(2) Third-party inspection report. Upon completion of an inspection, the third-party inspector shall report findings to the owner or owner's representative and building official in accordance with section 108 of rules 4101:1-1-01 and 4101:8-1-01 of the Administrative Code. Upon receipt of the third-party inspection report, the building official shall proceed in the same manner as if the plans examination was performed by certified personnel employed by or under contract with the department.

(C) Limits of authority of third-party plans examiners and inspectors. Third-party plans examiners and inspectors are only authorized to perform plans examination and inspections for which the owner engaged the examiner or inspector. The duties of building official specified in the residential code of Ohio and Ohio building code including issuing approvals and orders may not be performed by third-party personnel. The issuance of certificates of plan approval issued pursuant to 3791.04 of the Revised Code and certificates of occupancy or completion remains the exclusive authority of the certified personnel employed by or under contract with a certified municipal, township, and county building department and may not be issued by a third-party examiner or inspector. Third-party inspections under this rule are not inspections required to be

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performed by special inspectors in accordance of statement of special inspections pursuant to section 1704 of rule 4101:1-17-01 of the administrative code.

(D) Qualifications of third-party plans examiners and inspectors. Third-party plans examiners and inspectors must hold an active board certification issued in accordance with section 3781.10 of the Revised Code at the appropriate level as described in rule 4101:7-3-01 of the Administrative Code to perform the duties for which plans examination or inspection is to be conducted. The department may, but is not required to, maintain a list of third-party plans examiners and inspectors from whom the department will accept third-party plans examination and inspection reports. The policy established by the department may also specify qualifications of third-party plans examiners and inspectors from whom the department will accept third-party plans examination and inspection reports in addition to the minimum qualifications required by this rule, such as holding an Ohio registration as a design professional.

(E) Conflicts of interest. No certified person who contracts for inspection or plans examination services may perform inspection or plans examination services which would require that person to exercise authority or make an evaluation of any work furnished by the person or by a private contractor that employs the person on a full-time, part-time, or incidental basis. Further, such person shall not engage in conduct that is prohibited or considered a conflict of interest pursuant to Chapter 102. of the Revised Code.

(F) Termination of policy. The department may terminate its policy at any time to accept third party plans examination and inspection reports. Upon termination, the department is no longer required to accept such third-party reports for compliance with board's rules. All subsequent plans examinations and inspectors must be performed by certified personnel employed by or under contract with the department.

(G) Fees. The fees charged by the third-party examiner or inspector are in addition to any prescribed by the political subdivision pursuant to section 3781.102 of the Revised Code and are the responsibility of the owner.

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