

# MEMO

**To: Program Delegation Rule Making Advisory Committee**

**From: Douglas Dick C.B.O.; President & Owner – On the Level Inspection Concepts Inc.**

**Subject: Draft Program Assumption Rules for BCD 8-7-20**

Let me start this testimony with a little background and statements. I have been involved in the Building Codes Inspection and Plan review business in Oregon since 1996. I have been a Third Party Provider to governmental jurisdictions since 1998, which includes Oregon. I know there have been contracted Third Party providers in Oregon since 1977. **So to me the first big question is; what has happened to require such dramatic changes to a proven system and procedures that Licensed Third Party Companies provide in this State?** The instigators of this issue is Mark Long, former BCD Director, he is not involved in the business anymore. Also, Andrea Simmons, former enforcement manager, who has been reassigned at BCD. **So why continue pursuing a matter that was only significant to Mr. Long and Ms. Simmons?**

Recently, (now with a 20 year history) I sat on the OAR rules development committees for the Oregon **SRB license for Third Parties**, and the **TPI Third Party Pre-Fab Modular Building** rules committee. These OAR's have provided guidance for how Third Party Companies are to operate in the State of Oregon. Both Licenses have monitoring requirements; however, BCD has failed to provide monitoring per these rules for Third Parties. The BCD interpretations of the OAR 918-090 and 918-674 may be the real issues here. Mark Long is now gone from BCD, and most of these issues concern how he ran his operation. **If BCD would have done the required monitoring, wouldn't BCD's concerns have been enforced per their understanding of those rules?**

Removing Third Party providers is a major step backwards for progressive Building code enforcement and consumer protection for the citizens. More and more of American jurisdiction use some form of contracted Third Party Code enforcement. Many cities and counties use Contracted City Attorneys, sometimes as many as 3-4 different discipline attorneys, City, Planning, Finance, LULA appeals and Public Work. City use Third Party contracted Planners that can also be in different discipline from Coastal issues, Flood Planes. Subdivisions. This could become a long comparison list. **This point is why the new discrimination concerning Building Codes Third Party Providers?**

It seems to me that this is an employment action for attorneys, and OPEU and AFSME unions. **Why are others providers, as those mentioned above, allowed to provide professional services to State, County, and City without being certified as such? Are you aware that Building Officials, Plan Reviewers, and Inspectors must have certification and licenses to conduct their work? Did BCD monitor these requirements to validate a need to pursue these new rules? I will answer that one “NO”.** BCD has never done their 918 rule requirements, but wants to block those that have.

My final comment before I deal with specifics is the requirements for **Third Party Pre-Fabricated Modular Buildings Plan Reviews and Inspections**. The OAR 918-674 rules go in depth on Third Party providers for this industry, yet your proposed rules do not even address any building official, plan review, and inspection of these OAR 918-674 issues when conducted by a Contracted Third Party. The rules you proposed for fees do not address this Prefabricated Modular Industry. **Can fees be charged as set amounts, or percentages in Modular Pre-Fab construction?**

## **Comments from proposed rules**

### **918-020-0015**

**Can “Directly Employed” be a part time employee?** Go on a search of the ORS 316 law stated in the OAR rule, good luck finding what Directly employed means. Why not just specifically state what BCD specifically wants in the employment requirements, Full time, part-time, specific task.

### **918-020-0090**

**If an Operating plan is so important, why doesn’t BCD develop specific basic requirements form for all jurisdictions and the jurisdictions fill in specific requirements if these are needed?** This would save a lot of work by staff as most items are required by Statutes and Rules already.

### **918-020-0090(m)**

**What is the reason these proposed rules have a “Directly Employed “Building Official? A Third Party is in a much stronger fiscal position if the proposed rule issue is a matter of insurance. Based on State Tort Liability Laws, a jurisdiction’s Building Official can only be charged with a Tort for \$100,000, and that will take a few years to go through the legal system. Right now the E&O insurance for licensed third parties is \$500,000 per incident, much more than any jurisdiction has to pay. Also, remember the fee for Third Party providers goes up based on a percentage of gross sales of inspection receipts.**

Based on OAR 918-090 a revised EO insurance for Third Parties has been raised to 1,500,000 policies. This is a strange issue if Private Third Party Companies are no longer allowed to conduct business.

**918-020-0090(o), 918-020-0095(g)**

Proposed rules are not clear here in how compensation for services is determined. **Must it be by set flat fee for each task? Why is a percentage out of line?** I would determine a set fee, then add a percentage, then tell the jurisdiction this is the cost. No monitoring was mentioned or stated here, this rule portion is subject to much fiscal abuse. If the percentage process for fees used by Third Parties is the concern, please have BCD monitor jurisdictions that throw all building department fees into their General Fund. Then use those funds for their other jurisdiction departments not following Statutes and Rules for dedicated funds to the building dept. fees for permits.

These rules are not needed for Third Party Inspection Companies. If BCD followed the monitoring requirements as set in OAR 918-090-0400, OAR 918-674-0300(4), I truly believe these new proposed rules would be totally unnecessary. BCD does not follow the law, and then wants to take away valid Third Party Companies right to work and employee credentialed people. Please take a step back and ask why, and have solid answers for the questions I asked before making this massive mistake.