



August 7, 2020

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Re: Program Delegation Rules Advisory Committee Proposed Rules

As a member of the Program Delegation Rules Advisory Committee (RAC), the Oregon Building Officials Association (OBOA) represents more than 1,000 building officials and personnel throughout the state. Its members include a wide range of building officials, both in large, metropolitan cities and counties, as well as small, rural jurisdictions and includes third-party building inspectors. We are grateful for the opportunity to serve on this RAC and look forward to the continued discussion.

OBOA is submitting these comments in response to proposed rulemaking aimed at program delegation changes. We have both technical concerns and timing concerns that we've outlined more fully below.

OAR 918-XXX1 (new) – Building Official Employment Requirements

The discussion around whether a Building Official, as defined in rule, must be an employee of a municipality has been an ongoing conversation for the past three years and the basis for this Rules Advisory Committee. The Oregon Building Officials Association has long believed that the question as to whether a Building Official must be an employee of a municipality is a legal one that must be answered in order to ensure programs are operating appropriately. OBOA does not employ and has not contracted for a legal opinion on this issue and has and will continue to remain neutral pending clear legal guidance.

OBOA strongly believes in the value of third-party building inspections and plan review services. Third-Party building inspectors play a critical role in Oregon and serve an important function when there's unforeseen increases in workload or unexpected staffing changes by helping maintain internal operation standards within a jurisdiction and most importantly, maintain customer service delivery needs. When contemplating solutions to solve the legal issue, OBOA strongly

encourages the Building Codes Division and interested stakeholders to work collaboratively with third-party building inspectors and jurisdictions that directly rely on these services to ensure any structural changes have the least impact on operations as feasible.

OAR 918-020-0090 – Program Standards

OBOA is concerned about the proposed changes to qualification requirements for Building Officials due to both technical and timing concerns, as well as the possibility for unintended consequences.

First, the new proposed rules would require, in addition to an A-Level Structural Certificate, five (5) years experience performing A-Level structural inspections and plans reviews. There's uncertainty as to why five (5) years was the chosen amount of experience. This is a significant change, especially for smaller jurisdictions that may rarely encounter this type of work. Further, after a robust discussion, the Electrical and Plumbing Certification requirement was recently changed to four (4) years. We would propose additional conversation around the years of experience and consider aligning with other certifications.

Second, in lieu of the required five (5) years of experience, the proposed rules would allow a bachelors or graduate degree in structural or civil engineering. We believe this should not be limited to just engineering and we would recommend, at a minimum, adding architecture. With further stakeholder conversation, there may be additional alternatives that have yet to be contemplated.

Lastly, OBOA has concerns around both timing and the potential for unintended consequences. We have long been supportive of raising the bar for our profession and increasing the qualifications to become a Building Official. OBOA is supportive of a comprehensive discussion around certification requirements to become a Building Official and support raising the bar for our profession. However, due to both technical concerns as stated above and the ongoing COVID-19 pandemic, OBOA believes this conversation would be better had in the future with impacted stakeholders when this issue can be the sole focus. Local governments currently face significant challenges, both operationally and financially, and a change of this nature, if not legally required, would place an unnecessary additional burden on local governments and cause other unintended consequences. For these reasons, we respectfully request these changes be tabled for a later date when a more robust conversation around this singular issue can be had.

OAR 918-030-XXXX (new) – Conflict of Interest

OBOA had previously expressed concerns when “conflict of interest” rules were put in place several years ago. Not because of their intention, but more about the unintended consequences that frankly do not make common sense. It was and remains our hope that if new or amended language was added as part of these

proposed rules, that they bring them more into alignment with what seems reasonable and practical while also serving the original intended purpose of avoiding conflicts of interest for an individual serving in the municipality for which they are employed. Examples of needed revisions include, but are not limited to, clarifying that certified or licensed individuals serving in an instructional or educational role are not in violation of the rules. Additionally, licensed individuals performing work outside of the municipality for which they are employed, in accordance with the statutes and rules that govern them through their respective state licensing agency, are not in violation of the rules.

Specific to these new proposed rules, it is unclear as to how these relate to the existing rules. Do the existing rules still remain and what do these new rules seek to clarify further?

Thank you for your time and consideration of our comments.

Respectfully,

A handwritten signature in blue ink, appearing to read "Ted Zuk", is positioned above the typed name and title.

Ted Zuk
President
Oregon Building Officials Association