

My name is Nathan Philips. I started my career in the electrical industry as an IBEW member working with the tools, then became an owner of an electrical contractor which I still am today. I served on Electrical and Elevator Board for 13 years, three as chair and am currently chair of CMP 5 in the National code making process.. In 2003 I branched out and formed a real estate and property management company specializing in medical office buildings. I offer an unusual perspective on the construction industry having seen it from many angles.

The regulatory process for the construction of buildings is a model for the rest of the country. We have a statewide building code that is adopted through an open public process. The operation of the building codes program is vested with the Building Codes Division of DCBS which delegates its authority to more than 100 local government jurisdictions. When there are inconsistencies in code interpretation between the jurisdictions or with a particular jurisdiction, there is an appeals process in which BCD makes the final ruling on the meaning of the code. In most cases this is a collaborative process where the chief inspectors work with the local building official to reach agreement. This works very well, is highly expedited and reduces the uncertainty and conflict that exists in many other parts of the country. With the construction of health care facilities there are two unrelated parties in the building codes regulatory process. These are the licensing agency (DHS or OHA) and the state fire marshal's office which provides fire and life safety inspections and compliance with federal licensing standards (CMS). There is no clear and consistent means for resolving conflict between the building codes process and the licensing process which has led to much waste.

My first experience with this process was as a design build electrical contractor constructing an ambulatory surgery center more than 20 years ago. I was frustrated and amazed to find that an inspector could show up at the last minute and require significant changes without citing specific code requirements. Since then I have been on a mission to bring consistency and predictability to code compliance in these facilities.

Unlike any other type of structure, the regulatory process for the construction of health care facilities is unnecessarily cumbersome, unpredictable, lacks basic levels of accountability and offers no clear and predictable ability to seek redress. It involves multiple agencies with overlapping areas of authority which creates inconsistency in code interpretation. Our regulatory process for all other buildings, from single family dwellings to the most complex and largest industrial facilities such as semiconductor fab shops is not flawless but it works well.

As contractors and developers we work closely with local government, including the local fire marshals when the building officials have involved them, to assure compliance with land use and building codes requirements. Where there is a lack of consistency across jurisdictions or a disagreement about the application of the building code, we have a clear and effective method for resolving these problems using the state building codes division as the final decision maker. The purpose of this bill is bring that consistency and predictability to the construction of health care facilities. Although the agency has commissioned a study as a result of our efforts in the last session, our experience was that the scope of the study did not include solutions that address the real problems that exist. Rather than disrupt a process that was not working, the study group reviewed only small tweaks to the existing system, like co-locating desks and adjusting the work environment of the people involved, or "aligning" the codes, which are largely symbolic changes

but really not substantive as they left in place the two code authorities to continue the dysfunctional system.

I have participated in the workgroups, including the current project to bring the various codes into alignment and do mean to disparage those efforts but they do not address the fundamental lack of consistency in the present system. We have been in conversations with DHS and they have been very helpful in providing guidance and specific changes they need for the bill to function as intended. In short, we have agreed to all of DHS's suggested amendments and we are working with the Chair of this committee to develop amendments to this bill that address their concerns, but unfortunately they were not completed in time for this hearing.

Finally, while the current form of the bill might not reflect exactly what we are intending to do, please let me be crystal clear about what we are NOT intending this bill to do. It is not our goal to remove the authority of OHA and DHS to license health care facilities. We believe these healthcare agencies rightful and necessary place is to regulate health care and assure that facilities are designed and constructed in a manner that promote best practices in patient care and safety. We do not intend to change the relationship between OHA and DHS with CMS or in any way seek to change their important on-going role in assuring compliance with federal CMS requirements after the facilities are licensed and commissioned. We do NOT intend this bill to have any impact on the important role local governments and local fire marshals play in assuring compliance with the building codes, including fire and life safety.

Again, it does seek to bring the same consistency and accountability to the construction of these facilities that we apply to all other buildings in Oregon.

We ask that this bill be seen again with the needed amendments and that the testimony that will inevitably be heard today about the flaws the amendments will correct do not prevent that from occurring.