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Oregon State Legislature
House Committee on Business and Labor

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Re: House Bill 2544

Chair Holvey and Members of the Committee, thank you for reviewing my written testimony today. My name is Joshua Lay-Perez and I am an attorney here in Salem. My office specializes in the representation of contractors, and currently has a number of electrical contractors as our clients.

In providing legal services to my clients, I have found serious issues in a set of promulgated rules by the Building Codes Division. House Bill 2544 seeks to rectify a glaring issue created by agency promulgation, interpretation, and application of rules. Specifically, House Bill 2544 seeks to rectify rules that disproportionately disadvantage small businesses in Oregon by allowing those businesses to employ a supervising electrician (commonly called signing supervisors) on a part-time basis. The rule and its current amendment also seek to replace a bizarrely worded definition within the agency's definitions.

One point of clarification I'd like to make is that there was serious concern over the language allowing for contracted for electrical supervisors. Such an allowance already exists within the Oregon Administrative rules under the definition of continuously employ, which includes, "a person leased from a worker leasing company licensed under ORS 656.850." Perhaps those in opposition would be more in agreement if the language in House Bill 2544 more similarly tracked the already existing schematic.

Currently, under the Rules of the agency, electrical contractors are required to continuously employ at least one full-time supervising electrician. The agency has defined continuously employ as meaning, "a person, including a person leased from a worker leasing company licensed under ORS 656.850, during time periods when electrical work for which they are responsible is performed, devotes their entire time of employment to tasks of supervising, designing, laying out, planning, controlling, and making electrical installations for the electrical contractor for which the supervisor is registered as signing supervisor." OAR 918-251-0090(8). The rule making session held on May 24, 2001 sought to change the definition to include this language with the purposes of insuring that signing supervisors were employed by only one electrical contractor as the signing supervisor. As a result, the cumbersome definition above was adopted and is being applied by the agency to require a signing supervisor to be actually employed for all hours of business of the electrical contractor.

More confusing is that ORS 479.860 currently allows signing supervisors to design, plan, and lay out electrical installations (noting the important “*may*” language), however the administrative rules require that besides the task of supervising, the signing supervisor is required to devote his or her entire time to designing, planning, and laying out electrical installations. Even more confusing is that their definition and its interpretation of continuously employ is at odds with another one of the agency’s rules which allows the supervising electrician to perform his or her supervision by, “Be[ing] available in person, or have a supervising electrician available to meet with the jurisdictional inspector at the job site within two business days following the request.” OAR 918-282-0015(1).

Alarming, the agency’s adoption of its change of definition of “continuously employ” is devoid of its statutory obligation to conduct an analysis and mitigate any disproportionate adverse effect its rules have on small businesses. The agency adopted its rule with no consideration of the consequences that it had on Oregon businesses and its obligations under the Legislative mandate to do so in ORS 183.335.

House Bill 2544 is here to stop the agency from its continued threat to small businesses and help promote entrepreneurial growth here in Oregon. I strongly encourage the Legislature to take appropriate steps to help clarify and limit the impact these rules are having on Oregon businesses.

Sincerely,

/s/ Joshua B Lay-Perez

Joshua B Lay-Perez
Attorney at Law