

SB 866 -1 STAFF MEASURE SUMMARY

House Committee On Rules

Prepared By: Tyler Larson

Meeting Dates: 6/21, 6/24

WHAT THE MEASURE DOES:

Permits municipality or Department of Consumer and Business Services (DCBS) to contract with person to administer and enforce building inspection program and act as building official (BO) under specified conditions. Defines "discretionary decision" as waiving a plan review, inspection, or code provision; or allowing alternative material, design, or method of construction. Limits cities that did not procure contract BO services before January 1, 2018 and counties to use of contract BOs while recruiting for individual to employ as BO. Requires municipality procuring contract BO service to: 1) designate qualified municipal employee to review and ratify or disapprove all contract BO's discretionary decisions; 2) establish or otherwise have specified access to a local review board to which permit applicant may appeal contract BO's discretionary decisions; and 3) obtain and publish an independent financial audit of the building inspection program at least once every two years. Establishes that BO, contract BO, and other staff that provide building inspection services are public officials for purposes of Oregon government ethics laws. Allows municipality to validate discretionary decisions of contract BOs taken prior to effective date of measure and requires any action to challenge discretionary decision of contract BO to be commenced by December 31, 2024. Authorizes DCBS to investigate potential violations, prescribe corrective actions against municipalities, and take action against certification of contract BO. Prohibits municipality found to have pattern of violations from procuring services of contract BO.

Senate vote: Ayes, 28; Nays, 1--Hea5rd; Excused, 1--Manning Jr

Minimal fiscal impact; no revenue impact

ISSUES DISCUSSED:

- Reliance of small municipal building inspection programs on contract building officials
- Stakeholder work to develop consensus legislation
- Relative merits of supporting small municipal building inspection programs versus larger county or regional inspection programs

EFFECT OF AMENDMENT:

-1 Requires municipal building official, responsible for administering and enforcing building inspection program, to be government employee. Establishes minimum qualifications. Authorizes municipalities to hire contractor for building inspection services, subject to supervision by building official. Allows multiple municipalities to jointly employ building official and inspector, if all municipalities located within three adjacent counties and Department of Consumer and Business Services determines timely service can be provided. Subjects building officials and building inspectors to government ethics laws. Requires municipality operating program to establish administrative appeal process. Provides municipalities with 90 days to declare intention to comply with Act or intention to relinquish program, on or before July 1, 2022. Validates historical actions of municipalities, if actions would have been lawful if performed by Department of Consumer Business and Services. Declares emergency, effective on passage.

BACKGROUND:

Oregon law establishes a statewide building code that is applicable and uniform throughout the state. Municipalities can apply to the Department of Consumer and Business Services to assume responsibility for

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administering and enforcing specified provisions of the state building code. Municipal building inspection programs must establish and maintain minimum standards and policies designed to ensure consistent administration and enforcement, and must appoint a building official (BO) as the person responsible for the program.

In a 2019 opinion, the Attorney General found that Oregon law does not allow a municipality to entirely contract out the administration and enforcement of a building inspection program, effectively rendering the roughly 20 local building inspection programs that relied on a contract BO noncompliant. The Attorney General also found that such contracts lacked adequate procedural safeguards and ran afoul of the nondelegation doctrine of the Oregon Constitution, which requires that any delegation of government power be accompanied by procedural safeguards adequate to protect against arbitrariness. *Corvallis Lodge No. 1411 v. OLCC*, 67 Or.App. 15, 20 (1984).

Senate Bill 866 explicitly authorizes the use of contract BOs for the administration and enforcement of a municipal building inspection program and establishes procedural safeguards for the use of contract BOs. Cities that did not procure contract BO services before January 1, 2018, and counties are limited to the use of contractors while seeking a permanent replacement BO. All municipalities utilizing a contract BO must: 1) designate a qualified employee to review and ratify or disapprove all discretionary decisions of the contract BO, which includes waiving any requirement or allowing an alternative material, design, or method; 2) establish or otherwise have access to a local review board to which permit applicants may appeal the contract BO's discretionary decisions; and 3) obtain and publish an independent financial audit of the building inspection program at least once every two years. The measure allows a municipality to validate the discretionary decisions of a contract BO made before the effective date, and limits the time frame under which an aggrieved party may file a challenge of those discretionary decisions. Finally, the measure gives DCBS express authority to investigate and take action against noncompliant municipal programs and contractors, and prohibits municipalities with a pattern of violations from procuring the services of a contract BO.

The -1 amendments to Senate Bill 866 replace the measure with House Bill 2420-A (2019). The amendments require a BO to be a government service employee and authorize the use of contractors for building inspection services. The amendments establish minimum qualifications for BOs, allow multiple local governments to jointly employ building officials and inspectors under certain circumstances, and subject all building inspection program staff, regardless of how or by whom they are employed, to government ethics laws. The amendments require local government to establish an administrative appeal process and to determine, within 90 days of passage, whether to comply in advance of July 1, 2022, or to return operation of the building inspection program to the county or state.