

**MECHANICS' and MATERIALMEN'S LIEN LAWS**

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**REPORT OF THE  
VIRGINIA ADVISORY LEGISLATIVE COUNCIL  
To  
THE GOVERNOR  
And  
THE GENERAL ASSEMBLY OF VIRGINIA**



**HOUSE DOCUMENT NO. 11**

COMMONWEALTH OF VIRGINIA  
Department of Purchases and Supply  
Richmond  
1969

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**MECHANICS' AND MATERIALMEN'S LIEN LAWS**  
**REPORT OF THE**  
**VIRGINIA ADVISORY LEGISLATIVE COUNCIL**

Richmond, Virginia  
December 10, 1969

**To:**

**HONORABLE MILLS E. GODWIN, JR., *Governor of Virginia***

**and**

**THE GENERAL ASSEMBLY OF VIRGINIA**

During the 1966-67 Biennium, the Council conducted a study on the present subject and developed two separate sets of changes to the then existing State Mechanics' and Materialmen's Lien Laws. The first set did not propose any great change in the concept and can best be termed "an updating of the laws"—by strengthening, simplifying, broadening or clarifying where necessary.

The second set involved a basic change by incorporating the concept of a direct lien in one form or another.

The Council was in full agreement on the first set of changes, which were consolidated into a single bill that was recommended to the Governor and the General Assembly. This bill was introduced into and enacted, as modified, by the 1968 Regular Session of the General Assembly.

Neither the Council nor the Committee it selected to conduct the initial study were in full agreement on the other set of changes and consequently they were presented to the Governor and the General Assembly without any recommendation but merely for consideration.

This second set of changes was not introduced into the 1968 Regular Session of the General Assembly at the request of the advocates of such changes, but House Joint Resolution No. 135 was adopted at that time directing the Council to continue the study on this matter.

**HOUSE JOINT RESOLUTION NO. 135**

**Directing the Virginia Advisory Legislative Council to make a continuing study and report on existing mechanics' lien laws, and related matters.**

**Whereas, there has been a consistent legislative policy to enact laws affording protection to persons performing labor or furnishing materials by allowing said persons to perfect liens on improvements erected; and**

**Whereas, significant changes in the methods and practices of the construction and building industry have occurred since the enactment of existing laws pertaining to the perfection of liens by persons performing labor or furnishing materials; and**

**Whereas, laws affording protection to persons performing labor or furnishing materials should be revised or amended to conform to the present methods and practices of the building and construction industry; and**

Whereas, it is deemed advisable that the study of laws affecting the foregoing matters, pursuant to Senate Joint Resolution No. 2, enacted in the 1966 regular session of the General Assembly, be continued for another two years; and

Whereas, it is the consensus of the members of the Virginia Advisory Legislative Council committee appointed pursuant to Senate Joint Resolution No. 2, enacted in the 1966 regular session of the General Assembly, that the study be broadened to include a review of all laws pertaining to the registration and licensing of contractors; now, therefore, be it

Resolved by the Senate, the House of Delegates concurring, That the Virginia Advisory Legislative Council is directed to continue its study of the need for revision or amendment of existing laws pertaining to the perfection of liens by all persons performing labor or furnishing materials. The Council shall also consider the effect on such changes as may be proposed, insofar as general contractors, subcontractors, home builders, property owners, and lending institutions are concerned, and to give further consideration and study to the general subject of the laws affecting and applicable to the registration and licensing of contractors in this State. The Council shall conclude its study and make its findings and recommendations to the Governor and the General Assembly not later than September one, nineteen hundred sixty-nine.

The Council selected Tom Frost, member of the House of Delegates and member of the Council, as Chairman of the Committee to make the initial study and report to it. Upon the untimely death of Mr. Frost on September 18, 1969, the Council selected Russell M. Carneal, also a member of the Council and of the House of Delegates, as a replacement for the Chairmanship.

Also selected to serve on the Committee were Hilton J. Herrmann, President, The Central National Bank, Richmond; Richard B. Johnson, President and Treasurer, York Supply Company, West Point; N. David Kjellstrom, President, Kjellstrom and Lee, Inc., Richmond; R. H. Ligon, President, Kane Plumbing Company, Richmond; George B. Little, Attorney at Law, Richmond; Ben H. McGehee, Vice-President, Finance, and Treasurer, Noland Company, Newport News; John L. Melnick, Attorney at Law, Arlington; J. Harry Michael, Jr., member of the Senate, Charlottesville; J. Clifford Miller, Jr., President, Miller Manufacturing Company, Richmond; Ernest W. Minson, Secretary, Ruffin & Payne, Inc., Richmond; Frederick J. Napolitano, Senior Vice-President, Terry Corporation of Virginia, Virginia Beach; Paul F. Rosenberger, President, Paul F. Rosenberger and Company, Winchester; James D. Rowe, Counsel, First Mortgage Corporation, Richmond; Louis B. Stephenson, Jr., President, Fauquier National Bank, Warrenton; and Donald D. Williams, Attorney at Law and Vice-President, Franklin Federal Savings and Loan Association, Richmond.

The Committee organized and selected Senator Michael as Vice-Chairman. The Division of Statutory Research and Drafting, represented by John A. Banks, Jr., served as secretariat.

Since a majority of the members selected to conduct the present study had served on the previous Committee, a great continuity of thought and action was enjoyed.

Soon after activation, the Committee decided that their most ap-

propriate efforts should be directed towards changes in the laws for registering contractors and subcontractors. It was felt that many of the problems in the industry could be overcome if these laws were changed to include all contractors and subcontractors who have significant ties with the building industry and owner-developers, to include stronger penalties for violations, and to provide better means of enforcement.

A subcommittee was appointed and chaired by Senator Michael to study the contractors' licensing laws of other states and to prepare a redraft of such laws in this State. During the course of the study, four such redrafts were prepared and then studied, discussed and amended by the full Committee.

All persons who addressed the Committee at its public hearing in Richmond on September 11, 1969, apparently were in agreement with the basic approach of the Committee in that all suggested a strengthening in the State's contractors and subcontractors registration laws.

Prior to its final deliberations, the Committee met with all members of the State Registration Board for Contractors to discuss the changes being considered. This meeting was most helpful in providing an insight into the operations and problems of the Board and aided in refining the final recommendations of the Committee. All members of the Board appeared to be in general agreement with the changes to the registration laws which had been developed during the course of this study.

The Board questioned the advisability of requiring registration for those who do a one hundred thousand dollar volume or more per year and those who build two or more homes per year. They seemed to favor retention of the twenty thousand dollar or more project as the only requirement for registration. After hearing this objection, the Study Committee was still of the opinion that control over these two categories is necessary if some of the problems arising under the mechanics' and materialmen's lien laws are to be resolved since a significant portion of work in the industry is done by persons falling into these categories. The failure to include these two categories will exclude from registration requirements a very large number of persons in the construction field who are responsible for a large number of losses being sustained by the general public, suppliers and subcontractors.

After full consideration of the matters referred to by House Joint Resolution No. 135, the Council hereby submits the following:

#### RECOMMENDATIONS

That Chapter 7, Title 54 of the Code of Virginia be substantially amended, as indicated in the appendices of this Report in order to broaden and strengthen the laws dealing with the registration of contractors and subcontractors;

That the Code of Virginia be further amended by amending § 58-298 in Title 58, as indicated in the appendices of this Report, in order to insure compliance with the Contractors Registration Laws; and

That no changes be made in the present Mechanics' and Materialmen's Lien Laws during the next biennium, but that such laws continue to function along with the Contractors Registration Laws, as amended by these recommendations, in order to test their effectiveness within that framework.

## CONCLUSION

The broad changes to the present Mechanics' and Materialmen's Lien Laws proposing the adoption of a limited direct lien concept, as developed by the 1966-67 biennium study, involves a basic change in the economic activities between all segments of the construction industry. It is hoped that the adoption of the changes to the Contractors the Subcontractors Registration Laws, as herein recommended, will have the effect of curing many of the problems.

## ACKNOWLEDGEMENTS

The Council acknowledges with sincere appreciation the assistance given to it by the following persons:

The knowledgeable and responsible aforementioned members of the Committee who conducted the initial study for the Council.

The many members of the public who showed their interest and shared their wisdom at the public hearing.

The members of the State Registration Board for Contractors who constantly render great service to this Commonwealth and added to that service in this effort.

Mr. Edward L. Kusterer, Secretary-Treasurer, State Registration Board for Contractors, for sharing his insight and providing effective liaison between this study and the Board.

Mr. Charles Angulo, Attorney at Law, Charlottesville, for his valuable assistance to the Study Committee.

Respectfully submitted,

C. W. CLEATON, *Chairman*  
J. C. HUTCHESON, *Vice-Chairman*  
RUSSELL M. CARNEAL  
ROBERT C. FITZGERALD  
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Enclosure:

Appendix A—Recommended Legislation

Appendix B—Explanatory Statement

## APPENDIX A

### RECOMMENDED LEGISLATION

*A BILL to amend and reenact §§ 54-113, 54-115, 54-119, 54-120, 54-124, 54-126 through 54-134, 54-138, 54-140 through 54-142, 54-154.1 and 54-154.2, as severally amended, of the Code of Virginia, relating to the registration of contractors, subcontractors and owner-developers; to amend the Code of Virginia by adding a section numbered 54-115.1, relating to the same matter; and to amend the Code of*

*Virginia by amending § 58-298, relating to business licenses for contractors.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 54-113, 54-115, 54-119, 54-120, 54-124, 54-126 through 54-134, 54-138, 54-140 through 54-142, 54-154.1, 54-154.2 and 58-298, as severally amended, of the Code of Virginia be amended and reenacted, and that the Code of Virginia be amended by adding a section numbered 54-115.1, as follows:

§ 54-113. Meaning of terms.—The following terms used in this chapter, unless the context otherwise requires, are for the purposes hereof defined as given below:

(1) "Board" shall mean the State Registration Board for Contractors.

(2) "General contractor" or "subcontractor" shall mean any person \* *who for a fixed price, commission, fee or percentage undertakes to bid upon, or accepts, or offers to accept, orders or contracts for performing or superintending \* in whole or in part, the construction, removal, repair or improvement of any building or structure permanently annexed to real property owned, controlled or leased by another person or any other improvements to such real property when either (a) the total value of all such construction, removal, repair or improvements referred to in a single contract or project is twenty thousand dollars or more, or (b) the total value of all such construction, removal, repair or improvements undertaken by such person within any twelve month period is one hundred thousand dollars or more, or (c) such person constructs two or more single family residences within any twelve month period.*

(2a) "Owner-developer" shall mean any person who performs or supervises the construction, removal, repair or improvements of any building or structure permanently annexed to real property owned, controlled or leased by him or any other improvements to such property when either (a) the total value of all such improvements to or upon any single parcel of land is twenty thousand dollars or more, or (b) the total value of all such improvements to or upon all real property undertaken by him within any twelve month period is fifty thousand dollars or more, but shall not include a person who performs or supervises the construction, removal, repair or improvement of not more than one building upon his own real property and for his own use during any twenty-four month period.

(3) "Person" shall mean any person, firm, corporation, association, partnership, joint venture or other legal entity.

(4) The singular personal pronoun shall be taken to include any person, firm, association, corporation, partnership, joint venture or other legal entity.

(5) "Value" shall mean fair market value. When improvements are performed or supervised by a general contractor or subcontractor, the contract price shall be prima facie evidence of value.

§ 54-115. Appointment, qualifications and terms of members.—The Board shall consist of \* *seven* members to be appointed by the Governor for terms of five years from June thirtieth, *at least one* appointment to be made annually as the terms of the members respectively expire; and all vacancies occurring on the Board shall be filled by the Governor.

At least one member of the Board shall have as a larger part of his business *either* the construction of highways or \* the construction of

public utilities; at least one shall have as a larger part of his business the construction of *commercial and industrial buildings*; at least one shall have as a larger part of his business the construction of *single family residences*; at least one shall have as a larger part of his business the sales of *building materials and supplies*; and at least one shall be a *subcontractor as generally regarded in the building industry*.

Members shall hold over after expiration of terms until their successors are duly appointed and have qualified.

§ 54-115.1. *Compensation of Board and secretary-treasurer; expenses.*—The members of the Board shall receive as compensation *twenty-five dollars per diem for the time spent in attendance at meetings or in conducting other official business, and shall be reimbursed for actual expenses incurred in the performance of their duties under this chapter. The secretary-treasurer of the Board shall receive such salary as may be fixed by the Board, subject to the provisions of Chapter 9 of Title 2.1 (§ 2.1-110 et seq.). The compensation for services and expenses herein provided, however, shall not exceed the amount received as fees from applicants for registration.*

§ 54-119. *Bylaws, rules and regulations.*—The Board shall \* *promulgate* such bylaws, rules and regulations, *not inconsistent with law, as \* may be necessary to promote the ethical practice of contracting and subcontracting and to carry out the provisions, intents and purposes of this chapter.*

§ 54-120. *General and special meetings; quorum.*—The Board shall meet four times each year, once in January, April, July and October, for the purpose of transacting such business as may properly come before it. Special meetings may be held at such times as the Board may provide in its bylaws. Notice of each meeting and the time and place thereof shall be given to each member in such manner as the bylaws may provide. \* *Four* members of the Board shall constitute a quorum.

§ 54-124. *Record of proceedings; funds.*—The secretary-treasurer shall keep a record of the proceedings of the Board and shall receive and account for all moneys derived from the operation of this chapter. All fees collected pursuant to the provisions of this chapter shall be paid into the State treasury and warrants for the expenditure of funds for the proper enforcement and execution of this chapter, including the employment of such clerical assistance as may be necessary and the actual traveling and hotel expenses of members of the Board and its assistants, shall be issued by the Comptroller upon vouchers signed by the chairman of the Board *or the secretary-treasurer*, and shall be paid by the State Treasurer out of such funds.

§ 54-126. *Roster of registered general contractors.*—A roster showing the names and places of business and of residence of all registered general contractors, *subcontractors and owner-developers* shall be prepared by the secretary-treasurer during the month of February of each year. Such roster shall be printed by the Board out of funds of the Board as provided in § 54-124, and a copy mailed to and placed on file by the clerk of each incorporated city, town and county in the State.

§ 54-127. *Annual report; statement of receipts and expenditures; copies to be filed with Secretary of the Commonwealth.*—On or before the first day of March of each year the Board shall submit to the Governor a report of its transactions for the preceding year, together with a complete statement of the receipts and expenditures of the Board,



attested by the affidavits of the chairman and the secretary-treasurer, and a copy of the roster of registered general contractors, *subcontractors and owner-developers*. A copy of the report, statement and roster shall at the same time be filed with the Secretary of the Commonwealth.

§ 54-128. Necessity for license and certificate of registration.—It shall be unlawful for any person to engage in, or offer to engage in, general contracting or subcontracting *or to act as an owner-developer* in this State, unless he has been duly licensed and issued a certificate of registration under the provisions of this chapter.

§ 54-129. Application for registration; fees; examination and issuance of certificate.—Any person desiring to be registered as a general contractor, \* subcontractor or *owner-developer* in this State shall make and file with the Board thirty days prior to any regular or special meeting thereof a written application on such form as may then be by the Board prescribed for examination by the Board, which application shall be accompanied by \* fifty dollars. *If more than one person is designated by a business applicant to take an examination, there shall be an additional fifty dollars fee required for each such additional person.* The Board \* shall, require the applicant to furnish evidence of his ability, character and financial responsibility, and *a statement of the applicant's reasonably current financial position on a form prescribed by the Board which will include an affidavit regarding the correctness of such statement.* If the application is satisfactory to the Board, then the applicant shall be entitled to an examination to determine his qualifications. If the result of the examination of any applicant shall be satisfactory to the Board, the Board shall issue to the applicant a certificate to engage as a general contractor, \* subcontractor *or owner-developer* in this State as provided in the certificate. The Board may grant an unclassified certificate, or limit the certificate granted to any applicant to any of four classifications, namely, (1) building contractor, (2) highway contractor, (3) public utilities contractor, or (4) specialty contractor, as the common use of the terms is known, and it shall be the responsibility of the Board, or the members thereof to ascertain from reliable sources whether or not the past performance record of an applicant is good, whether or not he has the reputation of paying his labor and material bills, as well as carrying out other contracts that he may have entered into. Before the issuance of a certificate, it shall be the further duty of the Board or the members thereof to ascertain from reliable sources whether or not the applicant has complied with the laws of the Commonwealth pertaining to the domestication of foreign corporations and all others laws in any manner affecting persons, firms, associations or corporations engaged in the practice of general contracting, \* subcontracting *or owner-developing* as set forth in this chapter.

The Executive Secretary of the Board may issue a temporary certificate to engage as a general contractor, \* subcontractor *or owner-developer* in this State as provided in the certificate to any person who is a resident of the Commonwealth of Virginia or is a domestic corporation of the Commonwealth of Virginia who has not theretofore made application for examination, provided that:

(1) Such person file with the Board the application and evidence of ability, character and financial responsibility *and the financial statement* as hereinabove referred to; and \*

(2) *If the application is for registration as a general contractor or subcontractor, he* \* give bond in sufficient amount with an approved

corporate surety \* conditioned upon the faithful performance of the work in strict conformity with the plans, specifications and conditions, and the payment of all persons who fulfill contracts with the applicant for performing labor or furnishing materials; and

(3) If the application is for registration as an owner-developer, he give bond in sufficient amount with an approved corporate surety conditioned upon the payment of all persons who fulfill contracts with the applicant for performing labor or furnishing materials; and \*

(4) The \* value of the work to be undertaken thereunder does not exceed one hundred thousand dollars.

Such temporary certificate shall be valid and deemed to comply with the requirements of this chapter until the next meeting of the Board, at which time the holder thereof shall submit himself to the examination required by this section and shall comply with all other requirements for the issuance of a certificate imposed by this chapter; provided that if either the application or the result of the examination of such person is not satisfactory to the Board and the Board does not issue a certificate to the person, the temporary certificate shall permit the person to complete any work upon which he has been awarded a contract or is performing, so long as the required bond is in force.

§ 54-130. Reexamination.—An applicant failing to pass such examination may be reexamined at any regular meeting of the Board held within one year following such examination without additional fee.

§ 54-131. Expiration and renewal of certificate.—A certificate of registration shall expire on the last day of December following its issuance or renewal and shall become invalid on that date unless renewed, subject to the approval of the Board. Application for renewal may be \* made any time during the month of January \*. Such application shall be accompanied with \* a fee of \* twenty-five dollars to the secretary-treasurer and a reasonably current statement of the applicant's financial position on a form prescribed by the Board which includes an affidavit regarding the correctness of such statement.

§ 54-132. Grounds for revocation of certificate.—The Board shall have the power to revoke the certificate of registration of any general contractor, \* subcontractor or owner-developer registered hereunder who is found guilty of any fraud or deceit in obtaining the registration or the furnishing of substantially inaccurate or incomplete financial information, or gross negligence, incompetence or misconduct in the practice of his profession, or willful violation of any provision of this chapter.

§ 54-133. Filing and hearing of charges.—Any person may prefer charges of such fraud, deceit, negligence, misconduct or furnishing inaccurate or incomplete financial information against any general contractor, \* subcontractor or owner-developer registered hereunder. Such charges shall be in writing and sworn to by the complainant and submitted to the Board. Such charges, unless dismissed without hearing by the Board as unfounded or trivial, shall be heard and determined within three months after the date on which they were preferred. A time and place for such hearing shall be fixed by the Board and the hearing shall be held in the county in which the cause of such charges originated. A copy of the charges together with the notice of the time and place of hearing, shall be legally served on the accused at least thirty days before the fixed date for the hearing, and in the event that such service cannot be effected thirty days before such hearing, then

the date of hearing and determination shall be postponed as may be necessary to permit the carrying out of this condition. At the hearing the accused shall have the right to appear personally and by counsel and to cross-examine witnesses against him, and to produce evidence of witnesses in his defense. In connection with any such hearing, the Board shall have the power to issue subpoenas requiring the attendance of witnesses and the production of records, papers and other documents. If after such hearing the Board shall unanimously vote in favor of finding the accused guilty of any fraud or deceit in obtaining a certificate of registration, or of gross negligence, incompetency or misconduct in practice, the Board shall revoke the registration of the accused; provided, however, that the right of appeal shall be from the decision of the Board in all cases to either the corporation or circuit court having jurisdiction where the contract is to be performed, or where the cause of the charges originated, and pending such appeal such contractor may continue to operate until final adjudication.

§ 54-134. Reissuance of certificate.—The Board may at any time reissue a certificate of registration to any person whose certificate has been revoked, provided \* *four* or more members of the Board vote in favor of such reissuance.

§ 54-138. Prerequisites to obtaining building, etc., permit.—Any person upon making application to the building inspector or such other authority of any incorporated city, town, \* or other political subdivision in this State, charged with the duty of issuing building or other permits for the construction *or renewal* of any building, highway, sewer, grading or any improvement or structure \* shall, before he be entitled to the issuance of such permit, *either* furnish satisfactory proof to such inspector or authority that he is duly registered under the terms of this chapter to carry out or superintend the same \* *or file a written statement, supported by an affidavit, that he is not a contractor, subcontractor or owner-developer as defined in § 54-113 of this chapter. He shall also furnish satisfactory proof* that he has paid the taxes or license required by the laws of this State, and of any city, county, town, or other political subdivision thereof, then in force so as to be qualified to bid upon or contract for the work for which the permit has been applied.

It shall be unlawful for such building inspector or other authority to issue or allow the issuance of such building permit unless the applicant has furnished evidence that he is either exempt from the provisions of this chapter or is duly registered under this chapter to carry out or superintend the work for which such permit has been applied and further that the applicant has paid the license then in force so as to be qualified to bid upon or contract for the work covered by the permit.

Such building inspector, or other such authority, violating the terms of this section shall be guilty of a misdemeanor.

§ 54-140. Nonresident bidders must appoint statutory agent for service of process.—Before any nonresident person or any foreign corporation, shall bid on any work in this State, such nonresident person or any foreign corporation shall, by written power of attorney, appoint the Secretary of the Commonwealth and his successor in office the agent of such nonresident person or any foreign corporation upon whom all lawful process against or notice to such nonresident person or any foreign corporation may be served, and who shall be authorized to enter an appearance in behalf of such nonresident person or any

foreign corporation. Upon the filing of such power of attorney the provisions of §§ \* 13.1-109 through 13.1-111, with reference to service of process and notice, and judgments, decrees and orders entered therein, shall be applicable as to such nonresident person or any foreign corporation.

§ 54-141. Exemptions from chapter.—The provisions of this chapter shall not apply to: \*

- (1) *any governmental agency performing work with its own forces;*
- (2) *work bid upon or undertaken for the Armed Services of the United States under the Armed Services Procurement Act;*
- (3) *work bid upon or undertaken for the United States government on land under the exclusive jurisdiction of the federal government either by statute or deed of cession;*
- (4) *work bid upon or undertaken for the State Highway Commission on the construction, reconstruction, repair or improvement of any highway or bridge; and*
- (5) *any other persons who may be specifically excluded by other laws but only to such an extent as such laws provide.*

*All other contractors or subcontractors performing work for any government or for any governmental agency are subject to the provisions of this chapter and are required to register as provided therein.*

§ 54-142. Penalty for violation of chapter.—Any person not being duly authorized who shall contract for or bid upon the construction \*, *removal, repair or other improvements to or upon real property* without having first complied with the provisions hereof, or who shall attempt to practice general contracting, \* *subcontracting or owner-developing* in this State, except as provided for in this chapter, and any person presenting or attempting to file as his own the registration certificate of another or who shall give false or forged evidence of any kind to the Board or to any member thereof in maintaining a certificate of registration or who falsely shall impersonate another or who shall use an expired or revoked certificate, and any awarding authority, who knowingly receives or considers a bid from anyone not properly registered under this chapter, shall be deemed guilty of a misdemeanor.

*Any person who undertakes any work without a valid registration when such a registration is required by this chapter may, in addition to the authorized penalties for the commission of misdemeanors, be fined an amount not to exceed one thousand dollars per day for each day that such person is in violation.*

Provided that no person shall be entitled to assert this section as a defense to any action at law or suit in equity \* *if the party who seeks to recover from such person gives substantial performance within the terms of the contract in good faith and without actual knowledge of this section.*

\* \* \*

§ 54-145.1. Enjoining violation of chapter.—Notwithstanding the \* *penalties* provided in § 54-142, the courts of record having equity jurisdiction shall have jurisdiction to enjoin any person, firm, association or corporation violating the provisions of Chapter 7 (§ 54-113, et seq.), Title 54 of the Code.

§ 54-145.2. Licensing of certain contractors by counties, cities and towns; qualifications and procedure.—The governing body of every county, city or town shall have the power and authority to adopt ordinances, not inconsistent with the provisions of this chapter, requiring every person who engages in, or offers to engage in, the business of home improvement, electrical, plumbing or heating contracting in such county, city, or town, to obtain a license from such county, city or town, except, however, such contractors examined and currently \* *registered* under the provisions of § 54-129.

The governing body of every county, city or town adopting ordinances pursuant to this section may require every applicant for such license, *other than those currently registered under the provisions of § 54-129*, to furnish evidence of his ability and proficiency; may require the examination of every such applicant, *other than those currently registered under the provisions of § 54-129*, to determine his qualifications; may designate or establish an agent or board for the county, and prescribe the procedures therefor, to examine and determine, according to the standards set forth in this chapter and such standards as may be established by the State Registration Board for Contractors pursuant to the provisions of this chapter; may refuse to grant a license to any person, *other than those currently registered under the provisions of § 54-129*, found not to be qualified; and may provide for the punishment of violations of such ordinances, provided, that no such punishment shall exceed that provided for misdemeanors generally.

For the purpose of this section the business of home improvement shall mean the contracting for and/or providing material and labor for repairs, improvements, and additions to and construction of residential buildings and structures accessory thereto where any payment of money or other thing of value is required prior to the completion of the work to be performed.

§ 58-298. License required of contractors, etc.—Every contractor, every electrical contractor and every plumber and steam fitter shall, on the first day of January in each year, procure from the commissioner of the revenue for the city or county in which he has his office a license to carry on the business of a contractor, electrical contractor, plumber or steam fitter; provided, that if such contractor, electrical contractor, plumber or steam fitter has no office in this State, then he shall procure such license from the commissioner of the revenue for the city or county where he conducts his business.

*Such commissioner of the revenue shall require that every applicant for such license furnish proof that he is registered as a contractor, subcontractor or owner-developer under the provision of Chapter 7, Title 54 of this Code or submit a written statement, supported by an affidavit, that he is not a contractor, subcontractor or owner-developer as defined in § 54-113 of this Code.*

## APPENDIX B

### EXPLANATORY STATEMENT

This statement is presented in order to explain the changes which would be effected by enactment of the recommended legislation.

§ 54-113. In order to clean up the definition of “general contractors” and “subcontractors”, reference to specific types of work has been

deleted and a bond statement to include all types has been substituted. It is difficult to visualize any type of work that would not be desirable or practical to control.

“Owner-developers” is defined so that such persons can be required to obtain a registration.

Definitions are broadened to include contractors and subcontractors who do a gross business of one hundred thousand dollars or more per year or build two or more houses per year and owner-developers who do fifty thousand dollars or more in construction or improvements per year.

“Value” is defined and is used later in the chapter in substitution for “cost.” Since the law will be dealing with owner-developers, contracts are not always involved and, therefore, the contract price cannot always be used to define the value of construction or improvements.

The definition of “person” is broadened to include any legal entity.

§ 54-115. The size of the Registration Board for Contractors is increased from five to seven members to insure representation of more segments of the industry.

§ 54-115.1. This is a new section. At present, members of the Board receive actual expenses but no compensation. This section authorizes \$25 per day compensation for time spent on official duties, which is in line with compensation paid to members of other professional and occupational boards.

The salary of the Secretary-Treasurer of the Board is set by the Board subject to the Virginia Personnel Act.

§ 54-119. The Board is required to promulgate bylaws, rules and regulations to carry out the provisions, intent and purposes of the chapter rather than merely permitted to do so.

§ 54-120. A quorum for the Board is increased from three to four members because of the increased size of the Board.

§ 54-124. The Secretary-Treasurer is authorized to authenticate vouchers for payments of expenses of the Board.

§ 54-126. The roster of contractors is expanded to include subcontractors and owner-developers.

§ 54-127. This change conforms with additional requirements of the roster. (see § 54-126)

§ 54-128. Owner-developers are required to obtain a license and certificate of registration.

§ 54-129. The application fee is raised from thirty to fifty dollars. A fee is required for each employee of a business applicant who takes the examination.

An applicant is required to furnish evidence of his ability, character and financial condition. A current financial statement supported by an affidavit is required.

Contractors and subcontractors are required to give a payment bond as well as a performance bond when applying for a temporary certificate.

The term "value" is substituted for cost.

§ 54-130. A restriction of one year is imposed on applicants being reexamined after failing to pass an examination without paying an additional fee.

§ 54-131. The renewal fee is increased from fifteen to twenty-five dollars. An annual financial statement is required.

§ 54-132. The furnishing of substantially inaccurate financial information is made an additional ground for revocation of a certificate of registration.

§ 54-133. Charges may be preferred for furnishing inaccurate financial information.

§ 54-134. The number of members of the Board required to vote in favor of reissuance of a certificate of registration is increased from three to four.

§ 54-138. An applicant for a building permit is required to make a statement, supported by an affidavit, that he is exempt from the provision of the chapter or to show that he is duly registered thereunder.

§ 54-140. References to sections in the Code that deal with foreign corporations is corrected.

§ 54-141. Unnecessary language is deleted and a statement is added to make it clear that persons performing work for the State or federal governments are not excluded from registration unless specifically excluded by law.

§ 54-142. A per diem fine is authorized as an additional penalty in cases where work is begun without a valid registration when one is required.

This section cannot be used as a defense in an action at law, or suit in equity if the opposite party performs in good faith and is without actual knowledge of this section. The present provisions require actual notice to be given by the defendant prior to or upon execution of the contract, before such defense is valid.

Exemptions from the provision of the section for contracts entered into prior to July 1, 1956, is deleted.

§ 54-145.1. This section is amended to refer to the additional penalties in § 54-142.

§ 54-145.2. Language is added to make it clear that persons registered at State level shall not be required to submit to an examination in every locality where they conduct business.

The word "licensed" is changed to "registered" to conform to prior language.

§ 58-298. This section of the tax laws is amended to insure that no contractor or subcontractor is issued a business license unless he complies with the contractors' registration laws.