

REPORT OF THE
DEPARTMENT OF COMMERCE
AND THE
BOARD OF COMMERCE
ON THE
CERTIFICATION AND REGULATION OF
HOME IMPROVEMENT AND HOME BUILDING CONTRACTORS
TO THE
GENERAL ASSEMBLY OF VIRGINIA



SENATE DOCUMENT NO. 5

COMMONWEALTH OF VIRGINIA
Richmond, Virginia
1981

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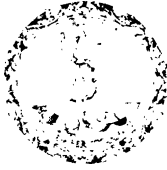
Response to Senate Joint Resolution No. 147
Requesting the Department of Commerce to
Study the Certification and
Regulation of Home Improvement and Home Building Contractors

REPORT IN RESPONSE TO SENATE JOINT RESOLUTION 147 OF THE
GENERAL ASSEMBLY

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- C. Building Officials' Questionnaires



COMMONWEALTH of VIRGINIA

RUTH J. HERRINK
Director

Department of Commerce
2 SOUTH NINTH STREET, RICHMOND VIRGINIA 23219

December 1, 1980

TO: The Honorable John N. Dalton
Governor of Virginia

and

The General Assembly of Virginia

I herein transmit to you the report of the Department of Commerce and the Board of Commerce on the regulation and licensure of Home Building and Home Improvement Contractors. This study was, in part, authorized by SJR 147 of the 1979 session of the General Assembly.

The report concludes that the action of the 1980 General Assembly, in passing House Bill 939 (a Contractor regulatory bill), and House Bill 940 (the Contractor Recovery Bill), have addressed some of the problems found in the study.

There are recommendations concerning the education of consumers, contractors and building inspectors contained in the report, which will be of interest to all.

Sincerely,


Ruth J. Herrink

Attachments

SENATE JOINT RESOLUTION NO. 147

Requesting the Virginia Department of Commerce to study the certification and regulation of Home Improvement Contractors.

Agreed to by the Senate, February 23, 1979

Agreed to by the House of Delegates, February 21, 1979

WHEREAS, the Virginia Housing Study Commission, during the conduct of its 1978 study of housing problems in Virginia, was constantly requested by citizens, elected officials and local administrators to assist in the prevention of misleading and often illegal practices of Home Improvement Contractors; and

WHEREAS, complaints against Home Improvement Contractors have consistently resulted in such contractors being rated near the top on the problem lists of numerous consumer assistance-oriented organizations, including the State's Office of Consumer Affairs; and

WHEREAS, the prey of such contractors are most often persons on fixed incomes who can least absorb the resulting monetary losses without undue hardship; and

WHEREAS, the registration of Home Improvement Contractors was a final recommendation of the 1978 Virginia Housing Study Commission Report and such report further concluded that an in depth study of the possible certification and regulation of Home Improvement Contractors should be conducted; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the Virginia Department of Commerce is hereby requested to study all activities of Home Improvement Contractors and determine whether the interests of the State can best be served by the certification and regulation of such Home Improvement Contractors conducting business in the Commonwealth. All agencies of the Commonwealth shall cooperate with the Department of Commerce in its study.

The Department shall make its recommendations and report to the Governor and the General Assembly on or before December one, nineteen hundred eighty.

SUMMARY

The study identified four areas of concern in the relationship between the consumer and the home building and home construction contractor. They are:

1. Financial irresponsibility.
2. Lack of competence and good workmanship.
3. Breakdown of communications between owner and contractor.
4. Inadequate enforcement of the existing building code and a misunderstanding by the consumer as to the degree of protection afforded him under the building code.

The Board of Commerce and Department of Commerce recommend the following:

1. Creating a consumer education program addressing the above problems.
2. Setting up an educational program aimed at explaining and clarifying the building code for the benefit of Virginia's building inspectors and contractors.
3. Removal of the owner-developer exemption.
4. Monitoring by the Board of Commerce and the Department of Commerce of the effectiveness of the implied warranty law, the contractor recovery fund and the present contractor regulatory system.

LEGISLATIVE AND ADMINISTRATIVE RECOMMENDATIONS

The Board of Commerce, as a result of this study, recommends that the owner-developer exemption under Sect. 54-113(2) be removed. The Board feels that, before any changes are proposed, there should be an evaluation of the effectiveness of the Implied Warranty Law (Sect. 55-70.1); as well as House Bill 939, dealing with the regulation of contractors; and House Bill 940 (the Contractor Recovery Act) - both of which the General Assembly passed in the 1980 session. The State Board for Contractors has recently developed new rules and regulations required by the new legislation, which also address problems mentioned in the study.

BACKGROUND

In November of 1978 the Board of Commerce, as a result of problems perceived in the area of architecture, engineering and contracting, began a study that dealt with the design-construct aspect of the building industries. The overlapping of the role of the architect, the engineer and the contractor were the main thrust of the study.

The 1979 session of the General Assembly passed Senate Joint Resolution 147 requesting the Department of Commerce study the licensure of the home improvement contractors, and Senate Bill 807 of the same session, requiring the registration of home improvement contractors for a two-year period through July 1, 1981 was also enrolled. Both of these bills gave added impetus to the study.

The Board formed a second Study Committee charged with receiving and evaluating data on problem areas in the home building-home improvement field. The Study Committee invited a broad spectrum of citizen consumer affairs groups and industry trade associations to offer testimony, comments and position papers. (See Appendix A). The Study Committee held three general meetings with a large number of participants and one smaller meeting with building officials.

The first general meeting produced a variety of general position statements, but little hard data tending to identify particular threats to public health, safety or welfare. Subsequent meetings, coupled with extensive documentation from several consumer groups, identified areas of real and substantial concern. Two surveys of building officials were most helpful in detailing specific problems as well as providing constructive suggestions for reform.

FINDINGS

The broad array of problems in the home building-home improvement industry, as described to the Board's Study Committee, may be categorized as follows:

- I. Financial Responsibility
- II. Competence and Workmanship
- III. Consumer/Contractor Communication
- IV. Building Code Enforcement

A discussion of each of these areas, together with the Board's conclusions and recommendations, is set out below.

I. Financial Responsibility

A contractor's financial irresponsibility may be exhibited in three ways:

- a. He cannot pay his creditors, especially his laborers and materialmen;
- b. He fails to perform work for which he has received advance payment; and
- c. He fails to fulfill his duty under expressed or implied warranties.

His reasons for financial irresponsibility range from outright fraud to laziness and include management incompetence of an almost infinite variety. Instances of fraud were reported, but relatively few compared to the number of contracts performed. Instances of fraud, however, are a vexatious social problem, particularly in the home improvement industry. House Bill 940, passed by the 1980 General Assembly, creates a contractor recovery fund to indemnify judgment creditors of contractors whose conduct is improper or dishonest, which includes violation of Board of Contractors regulations respecting negligence. This Bill has shortcomings; for example, recovery is conditioned upon obtaining court judgment, which in turn requires valid service of process (not always available against "gypsy" contractors), and the amount of recovery per transaction is limited to \$10,000 for one creditor and \$20,000 for all creditors in one license period. The Board, however, believes that this recovery fund is a good first step, but it should be monitored for several years to determine its effectiveness.

The Board does not endorse testing of contractor license applicants to determine the adequacy of their financial management skills. Such regulation is beyond the scope of effective administration and runs counter to the view that the State's intrusion into a businessman's affairs should be as minimal as possible, consistent with public health, safety and welfare.

The implied warranty law, §55-70.1, enacted in response to Bruce Farms, Inc. v. Coup, 219 Va. 287, represents a well-considered response to caveat emptor, and though criticized by some commentators as insufficiently broad, deserves a thorough trial period. We have no present recommendations for its amendment.

The Board of Commerce endorses the concept of the home owner's warranty, such as promoted by the Home Builders Association of America, and similar insured express warranties. We believe that the owner and the contractor should be encouraged to bargain for a warranty package in the market place, but we do not endorse codification of such a comprehensive warranty as a requirement of all residential building contracts.

We affirm that the market place is the most valid test of a contractor's financial responsibility. We do not believe, however, that the public is adequately informed as to how to judge a contractor's financial responsibility. We believe that the State Board for Contractors and the Department of Agriculture and Consumer Services should be encouraged, through fully adequate funding, to sponsor a comprehensive program to advise Virginians who deal with home building and improvement contractors that they should satisfy themselves as to the contractor's business reputation and financial standing.

II. Competence and Workmanship

Proposals for regulating competence ranged from structuring elaborate testing of license applicants in the most minute details of job skills, plans reading, and personnel and financial management in every contracting specialty, to no testing at all beyond those specialties now tested for competence. We find that electrical and plumbing specialties are so standardized that competency testing is appropriate; but such is not the case for most categories such as carpentering, bricklaying, roofing, excavating, and the like. Under present regulation, the State Board for Contractors has the power to decide which categories of contractors should be tested. This is appropriate and should not be changed.

A contractor's previous job performance record and community reputation is a better guarantee of competence than batteries of tests written by theorists and administered by bureaucrats. Virginians should be encouraged to seek out workmen of proven ability in the free market. We see no rationale consistent with protection of the public interest in which owner-developers are exempted from our present moderate degree of regulation. Once the decision is made that the public welfare requires the licensing of those who bargain to build or improve a home for another on another's land, it is inconsistent to deny a person who buys a newly-constructed house the same protection. We do not believe the public is even aware that such an exemption exists; many people apparently think that every substantially large builder is licensed by the State.

III. Consumer/Contractor Communications

We believe that the great majority of disputes over residential building and improvement jobs is caused by a breakdown in communications between the builder and his consumer. The parties contract orally, without reference to detailed plans and specifications. Change orders are often misunderstood and not written. Estimates are mistaken for firm prices. Written contracts are often vague or contradictory.

We do not endorse the proposal that all contracts of this nature be in writing and contain specific provisions. We feel strongly, however, that as a part of the consumer awareness program suggested above, the public be told how important it is that the parties clearly understand exactly what work is to be done, for what price, with what materials and by when. We further feel that consumers should be encouraged to seek professional advice before entering into a contract. Such advice can be extremely helpful and save the consumer many problems.

IV. Building Code Enforcement

The building inspection program of the many political subdivisions was found in the study to range from adequate to non-existent. In many areas of the State this is a major problem for contractors and consumers. The two questionnaires sent to all building inspector officials in Virginia indicate a real need for additional staff, as well as better training of existing staff. All too often, building inspectors are expected to inspect and sign off construction in a period of as little as eight minutes per job, including travel time. This is an impossible task and leads to inadequate enforcement of local building codes.

Adequate staffing and training of building officials is more a problem in urban areas because of the high volume of building permits and inspections required.

In rural areas, the average building inspector is less well trained, less well paid, and receives less support from his local government.

Far too often, the consumer believes that the building official's inspection assures complete quality control of workmanship and full performance of the contract. This, of course, is not the case at all. The building inspector is looking for minimum compliance with the BOCA Code. This does not include the quality of work, nor compliance with the contract between the individual and the contractor.

When complaints about the job arise, the building inspector and/or his office in the political subdivision frequently share the blame with the contractor in the mind of the consumer. It is hoped this situation can be rectified by our recommended education program, which would highlight to the consumer, the limited role of the building inspector.

We did learn that, while complaints appear in approximately 15% of all contractor/home improvement projects, almost all are satisfactorily resolved between the purchaser and the contractor without having to use the courts. The building officials indicated that less than 1% ever reach the court system. As a result of this, we feel that there is no need legislatively to attempt to resolve a 1% problem.

(APPENDIX A)

MEMBERS OF THE BOARD OF COMMERCE STUDY COMMITTEE

David J. Hatmaker, Chairman of the Study Committee
Knox R. Burchett
Polly Y. Campbell
Alan McCullough, Jr.
Zack T. Perdue, Jr.
Rosalie B. Whitehead

PARTICIPANTS OF THE STUDY

ABRAHAM, M.	LaVECCHIA, William
BARGAMIN, Jack	LEHNER, William
BITTERS, Barbara	LIONBERGER, Samuel L., Jr.
BLOOMFIELD, Thomas W.	LORING, Alan G.
BOWLING, Lew	McINTOSH, Sara
BULLARD, Larkin E.	MARKOW, Theodore J.
BYRD, John H.	MIDDLETON, Beverly
CRAIG, William H., Jr.	MOORE, Garland
DRYMALSKI, Peter	MULLEN, C. S.
EWELL, L. Page, Jr.	NOLLEY, William T.
FRITH, Douglas K.	PRILLAMAN, Richard A.
FARMER, Roy L.	QUITMEYER, Lin
GARDNER, Shockley D., Jr.	ROGERS, Roy, III
GEHRES, Robert R.	SELDON, Wendell L.
GREENWALL, Martin D.	SINGER, Mark I.
GUZA, Joseph F.	TUSING, Ellis
HERNDON, Betty	WEST, Eugene B., Jr.
HODDER, Robert S.	WOODING, James B.
JACOBS, Norman F., Jr.	

APPENDIX A

ASSOCIATIONS AND GROUPS WHO HAVE
PRESENTED COMMENTS AND/OR
POSITIONS TO THE CONTRACTORS' STUDY COMMITTEE

Tidewater Home Improvement Business Association
Virginia Retail Merchants' Association
Associated General Contractors of America, Inc.
American Subcontractors Association of Virginia, Inc.
Virginia Housing Study Commission
Virginia Building Officials' Association
Virginia Department of Housing and Community Development
Virginia Association of Plumbing-Heating-Cooling Contractors
Fairfax Department of Consumer Affairs
Alexandria Office of Consumer Affairs
National Electrical Contractors' Association
Virginia Office of Consumer Affairs
Western Virginia Plumbing- Heating-Cooling Contractors
Metro Washington Chapter, National Home Improvement Council
Virginia Road & Transportation Builders' Association
Virginia Association Consumer Agency Administrators
National Remodelers of Virginia
Attorney, Douglas K. Frith and Associates
Homebuilders' Association of Virginia
Division of Consumer Protection
Virginia State Board for Contractors
Construction Specifications Institute
Deputy Manager - Planning and Building, County of Henrico
Richmond Metropolitan Business League
Virginia Manufacturers' Association
Building Officials: Chesterfield County, City of Harrisonburg
Henrico County, City of Winchester
Richmond Area Municipal Contractors' Association
Virginia Citizens Consumer Council

LIST OF MEETINGS HELD

February 17, 1979

Ingleside
Staunton, Va.

Board of Commerce
State Board for Contractors
11 representatives from associations

March 24, 1979

Hospitality House
Williamsburg, Va.

Board of Commerce
State Board for Contractors
17 representatives from associations

May 4, 1979

State Capitol
Richmond, Va.

Board of Commerce
State Board for Contractors
16 representatives from associations

August 17, 1979

Department of Commerce
Richmond, Va.

Board of Commerce
State Board for Contractors

August 22, 1979

Department of Commerce
Richmond, Va.

Board of Commerce
State Board for Contractors

September 7, 1979

State Capitol
Richmond, Va.

Board of Commerce
State Board for Contractors
18 representatives from associations

September 16, 1979

Holiday Inn
Richmond, Va.

Board of Commerce
State Board for Contractors

September 30, 1979

Mariner
Virginia Beach, Va.

Board of Commerce
State Board for Contractors

November 16, 1979

Holiday Inn
Richmond, Va.

Board of Commerce

March 24, 1980

Ingleside
Staunton, Va.

Board of Commerce
State Board for Contractors
7 Building Officials

1. Please indicate how many telephone or written complaints against contractors you receive in the average month.

None	<u>20</u>	10 - 20	<u>4</u>
1 - 5	<u>76</u>	Over 20	<u>5</u>
5 - 10	<u>1</u>		

2. What would you consider the dollar amount needed to satisfy the average complaint?

\$0 - \$200	<u>39</u>	Over \$1,000	<u>1</u>
\$200-\$500	<u>22</u>	Don't know	<u>20</u>
\$500-\$1,000	<u>13</u>		

3. What is the most often cited in your complaints? (Please check)

Roof(s)	<u>9</u>	HVAC	<u>1</u>
Exterior	<u>10</u>	Plumbing	<u>9</u>
Basement	<u>19</u>	Appliances	<u>0</u>
Interior finishing	<u>31</u>	Driveway & Walks	<u>3</u>
Late completion of job	<u>34</u>	Windows & Doors	<u>8</u>
		Other	<u>13</u>

4. Is the average complaint usually satisfactorily resolved?

Yes 91 No 5

5. What steps do you see as being most beneficial to the new home owner(s)? Please check.

More inspections 15

Thorough inspection by purchaser prior to acceptance 77

More regulation of contractors (both local and statewide) 36

Better statewide building code 8

6. Do you feel the average new homeowner is unrealistic in what he/she expects from a builder?

Yes 37 No 56

7. We welcome your comments and suggestions. (These will be held confidential)

In our original questionnaire, many of you expressed concern about the training of building inspectors and about political interference with code enforcement.

In your view, are building inspectors sufficiently trained in your area?

YES 57 NO 40

Should the State set up minimum qualifications of building inspectors?

YES 92 NO 7

Do you favor requiring building inspectors to pass a competency test administered on the state level?

YES 76 NO 21

In your view, are there enough building inspectors to enforce the building codes in your area?

YES 51 NO 42

Do you believe there is a substantial need for the following educational opportunities?

- 1. Community College courses YES 52 NO 22
- 2. Seminars. YES 86 NO 4
- 3. Regional meetings of building inspectors YES 84 NO 3
- 4. Statewide meetings of building officials. YES 49 NO 15

Are such educational opportunities supported by your jurisdiction?

YES 79 NO 10

Would building inspectors be able to do their jobs better if they were State employees rather than being employed by the various localities?

YES 51 NO 39

Does local political pressure interfere with code enforcement in:

	Often	Sometimes	Seldom	Never
1. Issuance of citations for code violations	9	21	15	51
2. Issuance of occupancy permits	4	19	18	47
3. Prosecuting code violations	10	18	15	46
4. Other (list)	1	1	0	2

Do you believe that building code enforcement would be substantially aided if banks and savings and loans were required to have an occupancy permit for the dwelling in question before closing the permanent loan financing?

YES 85

NO 9

Which category of builder do you find generates the larger number of building code violations -- owner-developer or contractor builders?

OWNER-DEVELOPER 50 CONTRACTOR 10 ABOUT THE SAME 34

Considering different-size jobs (both general and sub-contracting), what size job produces what share of building code violations? (Check one in each "size-of-job" category).

SIZE OF JOB	MANY VIOLATIONS		SOME VIO.		FEW VIO.		NO VIOLATIONS	
	Gen.	Sub.	Gen.	Sub.	Gen.	Sub.	Gen.	Sub.
\$0-10,000	19	21	28	20	22	22	4	0
\$10,000-25,000	6	7	30	41	23	18	4	0
\$25,000-40,000	3	1	30	38	24	19	3	0
\$40,000-60,000	3	3	21	19	25	23	4	0
Over \$60,000	2	4	13	12	43	27	4	0

In your view, should contractors be regulated? YES 67 or NO 17; and, if so, at what dollar value per job and aggregate gross income from jobs per year should the minimum be set?

PER JOB (Check One)

AGGREGATE PER YEAR (Check One)

Over \$500 32
 Over \$10,000 13
 Over \$25,000 10
 Over \$40,000 10
 Over \$60,000 8
 Over \$75,000 0

\$15,000 23
 \$25,000 11
 \$100,000 18
 \$250,000 10
 \$300,000 3
 \$400,000 7
 \$500,000 0

Considering your answer to the above, do you recommend setting a lower dollar limit on subcontractors than on general contractors?

YES 35

NO 38

If YES, what should limits be?

COMMENTS:
