

**REPORT OF THE
DEPARTMENT OF PROFESSIONAL AND
OCCUPATIONAL REGULATION**

**Final Report on the Establishment
of a Pilot Program for Local
Assistance with the Investigation of
Complaints and the Implementation
of Final Disciplinary Orders of the
Board for Contractors**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



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COMMONWEALTH OF VIRGINIA
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November 1, 2005

MEMORANDUM

TO: The Honorable Mark R. Warner, Governor of Virginia
Members of the General Assembly

FROM: Louise Fontaine Ware, Director

**RE: FINAL REPORT ON THE ESTABLISHMENT OF A PILOT
PROGRAM PURSUANT TO CHAPTERS 776 AND 789 OF THE
2004 ACTS OF THE GENERAL ASSEMBLY**

Pursuant to House Bill 454 and Senate Bill 285, passed by the Virginia General Assembly in the 2004 Session, the Department of Professional and Occupational Regulation (DPOR) established a pilot program to implement a cooperative agreement with more than one locality to assist in the investigation of complaints and the implementation of final disciplinary orders of the Board for Contractors.

This final report provides information on progress made since developing and implementing the pilot program in 2004. The Executive Summary includes a program summary and plans for future partnership initiatives. As prescribed by the legislation, I offer this report for your consideration.

This final report is available from the Department's website at www.dpor.virginia.gov. A hard copy may be obtained by contacting Eric Olson, Executive Director of the Board for Contractors, at (804) 367-2785 or eric.olson@dpor.virginia.gov.

ACKNOWLEDGMENT

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EXECUTIVE SUMMARY

The purpose of this document is to provide a final report on the pilot program established by the Department of Professional and Occupational Regulation, consisting of cooperative agreements with three local governing bodies. The legislative directive for the program was to authorize local government participants to assist in the investigation of complaints and the implementation of final disciplinary orders of the Board for Contractors (the Board), as required by Senate Bill 285 and House Bill 454 of the 2004 General Assembly Session.

The Board, through the provisions of Chapter 11 of Title 54.1 of the *Code of Virginia*, is tasked with the licensing of contractors and the sanctioning of contractors who violate those statutes or regulations promulgated by the Board. As required by the legislation, the Board entered into formal cooperative agreements with three localities and is in the discussion phase with several others. Although the provisions of the legislation required the implementation of a pilot program with a single locality, the Department sought to involve jurisdictions representing a variety of geographic and demographic areas in order to obtain relevant data on the impact of such a program.

Three localities signed Memorandums of Understanding and participated in a formal agreement of joint cooperation and resource sharing. The pilot program allowed the Department and participating localities to collect and analyze data, review current procedures, improve communication of disciplinary information to responsible parties, and increase direct contact with licensees and consumers.

The Department and participating localities agree the electronic reporting of disciplinary data should continue past the legislation's sunset date of July 1, 2006. The Department and the Board have determined that the Executive Director should continue serving as regulatory and compliance liaison for all localities, essentially extending cooperative agreement provisions to all localities in the Commonwealth. In addition, the Board will continue to provide resources to consumer groups, local governments and trade organizations for educational programs and training sessions. Finally, as a result of the pilot program, the Department will explore additional partnership initiatives to advance cooperative efforts with all local governments.

STATUTORY AUTHORITY

SB 285 and HB 454 (2004) require:

That the Director of the Department of Professional and Occupational Regulation and the Board for Contractors shall establish a pilot program consisting of a cooperative agreement with at least one local governing body that authorizes the building official of such locality to assist in the investigation of complaints and the implementation of final disciplinary orders of the Board. Nothing in this act shall be construed to limit any independent actions of the Director to carry out his responsibilities under Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia and to assure compliance with the laws of the Commonwealth.

The *Code* grants the Board the statutory authority to fine, suspend, or revoke a license; deny renewal for licensure; assign continuing education to contractors; or impose other probationary terms as a result of a violation of the regulations. Investigations and administrative proceedings are conducted by Departmental staff, in accordance with the Administrative Process Act, while the power to levy sanctions through final orders rests solely with the Board.

BACKGROUND

Several geographic regions in the Commonwealth of Virginia have experienced phenomenal rates of growth during the past several years, resulting in the construction of a large number of homes to accommodate that growth. The number of contractors licensed by the Board has kept pace with that growth, experiencing an increase of greater than 25 percent over the past five years. Inherent with that growth is an increase in complaints against contractors and a related increase in disciplinary action taken by the Board.

In Fiscal Year 2004, Prince William County – one of Virginia’s localities experiencing a rapid rate of growth – approached the Department and the Board with a perplexing problem: how to protect a growing number of citizens from licensed contractors who were, perhaps because of the increased workload, not responding to requests to return to new homes to address “punch-list” items (generally, minor defects in home construction found after the owner has moved into the new home). Contractors were reportedly becoming non-respondent to the efforts of both the homeowner and the local government to requests to return to completed homes to address these “punch-list” items.

As a result of contact between the staffs of the Department and the Board with representatives of Prince William County, HB 454 and SB 285 were introduced and passed during the 2004 General Assembly Session, directing the Department to establish a pilot program for local enforcement of licensure. In developing the program, the Department sought participation from several localities in a variety of geographic regions with a wide variance in population.

Although the *Code* imposes limitations on the scope of authority that may be granted to individual localities, the agreements initiated by the Department emphasize those areas that, upon implementation, should result in less consumer exposure to financial damage caused by licensed contractors. With a concentrated emphasis on communication and education, these pilot agreements provide numerous opportunities for the participating localities and the Department to better protect and serve those citizens most vulnerable to harm caused by licensed contractors.

IMPLEMENTATION

Several localities were invited to participate with the Department and the Board in the pilot program, with optimal representation consisting of localities with a wide range of populations, use groups, licensing populations and other demographic differences. Three localities agreed to participate: Prince William County, Nelson County and the Town of Bluefield. The Department executed a memorandum of agreement with each locality to implement the plan.

The Department tailored the pilot agreements for each participating locality based on a variety of factors such as population, geographic location and specific needs. For example, a locality situated on the state border likely experiences difficulties with contractors performing work in the area without holding an appropriate Virginia license, while a jurisdiction located in the central portion of the faces challenges of a different nature.

The core of the cooperative agreements featured seven basic premises:

- 1) Electronic notification by the Department to participating localities of administrative or disciplinary action taken by the Board against licensees within 15 days of that action;
- 2) Assignment by the Department of a “Regulatory Liaison” and a “Compliance Liaison” to each participating locality for the purpose of providing technical assistance and responding to requests for assistance within 24 hours;

- 3) Development by the Department of a consumer education program for the general public and a staff training class to be provided in participating localities;
- 4) Notification by participating localities to the Department in every instance where a contractor failed to correct a defect noted by the local building official;
- 5) Completion of a cooperative investigation into any incidents reported in item #4, with participation by representatives of the locality in the informal fact-finding conference (administrative hearing) and subsequent Board action;
- 6) Provision by participating localities of a location on a quarterly basis, at no charge to the Department, in order for staff of the Board for Contractors to conduct consumer outreach in the participating localities; and
- 7) Provision by participating localities of a location on an annual basis, at no charge to the Department, in order for the staff of the Board for Contractors to conduct special training for the employees of the locality on licensing eligibility.

At the commencement of the pilot program, the Board developed a procedure for producing electronic copies of all orders relating to disciplinary actions taken against licensees. Incorporated as part of these orders was the summary of the informal fact-finding conference, which provides a narrative of the circumstances and facts surrounding the complaint and investigation. Also included was a summary of the board meeting, including other administrative actions taken by the board relative to regulatory issues, interpretations of statutes and regulations pertaining to licensure, and other relevant data.

In accordance with the terms of the agreements, the Department appointed Eric Olson, Executive Director of the Board for Contractors, to serve as Regulatory Liaison and Compliance Liaison to participating localities. The Board modified its existing consumer education programs and licensing eligibility training modules for each participating locality. Throughout the duration of the pilot program, the Department and the participating localities were in regular, productive communication.

PROGRAM SUMMARY

The primary provisions of the agreements entail communication of disciplinary action and potential violations of the Board's regulations, as well as a concerted joint effort to provide education to both consumers and locality staff members. Tantamount is the implementation of a notification system that provides a rapid dissemination of Board disciplinary action to the localities, and a cooperative effort by the locality to identify licensed contractors who are not

adhering to provisions of the Virginia Uniform Statewide Building Code (especially in administrative areas such as permit applications and inspection requirements).

For the purpose of this report, data collected for this study cover the period from September 1, 2004, through August 30, 2005. While there is some variation in the precise date each locality formally entered into the pilot program, the provisions of the Memorandums of Agreement were honored during that time period.

During the pilot program reporting period, the Department received 3,535 complaints against licensees of the Board for Contractors. Participants in the program submitted a total of 33 complaints (almost one percent of all complaints received). This low percentage should be considered in light of the specific terms of the agreements (#4), which narrowed the scope of complaints received by participating localities to those involving a situation where a contractor failed to correct a defect noted by the Building Official. Based on historical data of the Board's disciplinary actions, complaints of that nature regarding building code deficiencies account for approximately 15 percent of the Board's total caseload.

The Department and the Board believe strongly that a well informed public – educated in contractor licensing requirements and given adequate tools to identify potential fraudulent situations – is the most effective means to achieving a decrease in complaints, as those contractors prone to questionable activity would be forced out of business due to an inability to locate an adequate customer (victim) base.

Increased education for local personnel – such as permitting clerks, inspectors, and business license staff – in the Board's licensing requirements adds an additional layer of consumer protection, as a cadre of knowledgeable individuals is placed strategically in those local government offices most frequented by contractors and, to a lesser extent, consumers.

The staff of the Board for Contractors actively participates in consumer education seminars and training opportunities for permitting clerks and inspectors. During the pilot program reporting period, Board staff conducted twenty (20) educational offerings throughout the Commonwealth and, at the time of this report, six additional training sessions have been scheduled through the end of January with several others in various stages of planning.

Seminars already complete included training classes for permitting clerks and inspectors in five different localities and seminars dedicated to consumer education in six different localities. A large number of the programs were provided to contractor-related trade organizations in an effort to educate members about Board rules and regulations, which can lead to an increased level of consumer protection and a related drop in administrative complaints (i.e. failure to use a contract; improper change orders; failure to pull a permit). One of those programs, a first-time

homebuyers' educational fair, was located within a participating locality (Prince William). Scheduling constraints and workload issues precluded other presentations in participating localities.

CONCLUSION

Over the past decade the Board for Contractors has made a concerted effort to provide outreach services to individual localities and to partner with the Virginia Building and Code Officials Association (VBCOA), which represents each jurisdiction with a Building Official in the Commonwealth. Individual localities have, in turn, become active and willing partners in promoting the Board's philosophy of consumer education and protection.

Three localities signed Memorandums of Understanding and participated in a formal agreement of joint cooperation and resource sharing. The pilot program allowed the Department and participating localities to collect and analyze data, review current procedures, improve communication of disciplinary information to responsible parties, and increase direct contact with licensees and consumers.

As a result of the pilot program, the following partnership initiatives will be explored to advance cooperative efforts with all local governments:

- 1) The Department will work with the Virginia Information Technologies Agency (VITA) to compile Board for Contractors disciplinary orders against licensees in a simplified format, sorted by meeting date, made available on the Department's website to local building officials and the public within 15 days of a Board meeting.
- 2) The Board will gauge interest in and explore the feasibility of organizing a two-day licensing seminar for building officials and their staffs in Richmond. This seminar would provide a valuable opportunity for a large number of localities to receive training simultaneously and the chance to share permitting issues and other relevant information.
- 3) The Board will research the development of an online training program accessible to individual localities, on-demand, as a training and reference aid.

The Department and participating localities agree the shared reporting of disciplinary data should continue past the legislation's sunset date of July 1, 2006. The Department and the Board have determined that the Executive Director should continue serving as regulatory and compliance liaison for all localities, essentially extending cooperative agreement provisions to all localities

in the Commonwealth. In addition, the Board will continue to provide resources to consumer groups, local governments and trade organizations for educational programs and training sessions.

APPENDIX

2004 ACTS OF THE GENERAL ASSEMBLY - CHAPTER 776

An Act to direct the Director of the Department of Professional and Occupational Regulation and the Board for Contractors to establish a pilot program for local enforcement of licensure.

[S 285]

Approved April 14, 2004

Be it enacted by the General Assembly of Virginia:

1. § 1. *That the Director of the Department of Professional and Occupational Regulation and the Board for Contractors shall establish a pilot program consisting of a cooperative agreement with at least one local governing body that authorizes the building official of such locality to assist in the investigation of complaints and the implementation of final disciplinary orders of the Board. Nothing in this act shall be construed to limit any independent actions of the Director to carry out his responsibilities under Chapter 11 (§ [54.1-1100](#) et seq.) of Title 54.1 of the Code of Virginia and to assure compliance with the laws of the Commonwealth.*

§ 2. *The Director of the Department of Professional and Occupational Regulation and the Board for Contractors shall submit a report on or before November 1, 2004, and on or before November 1, 2005, to the Governor and the General Assembly on progress made in the development and implementation of any pilot program established pursuant to this act.*

2. That the provisions of this act shall expire on July 1, 2006.

2004 ACTS OF THE GENERAL ASSEMBLY - CHAPTER 789

An Act to direct the Director of the Department of Professional and Occupational Regulation and the Board for Contractors to establish a pilot program for local enforcement of licensure.

[H 454]

Approved April 14, 2004

Be it enacted by the General Assembly of Virginia:

1. § 1. *That the Director of the Department of Professional and Occupational Regulation and the Board for Contractors shall establish a pilot program consisting of a cooperative agreement with at least one local governing body that authorizes the building official of such locality, to assist in the investigation of complaints and the implementation of final disciplinary orders of the Board. Nothing in this act shall be construed to limit any independent actions of the Director to carry out his responsibilities under Chapter 11 (§ [54.1-1100](#) et seq.) of Title 54.1 of the Code of Virginia and to assure compliance with the laws of the Commonwealth.*

§ 2. *The Director of the Department of Professional and Occupational Regulation and the Board for Contractors shall submit a report on or before November 1, 2004, and on or before November 1, 2005, to the Governor and the General Assembly on progress made in the development and implementation of any pilot program established pursuant to this act.*

2. That the provisions of this act shall expire on July 1, 2006.