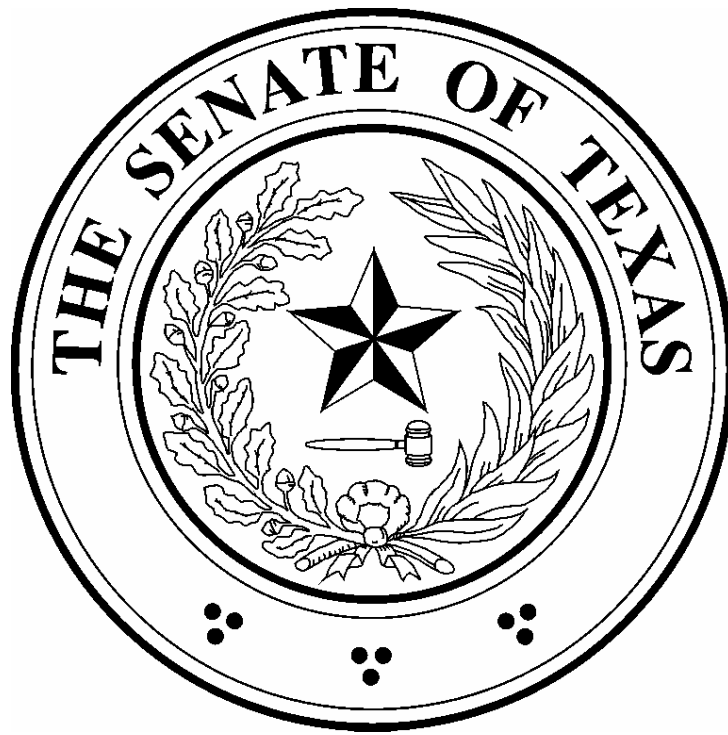

SENATE COMMITTEE
ON
BUSINESS AND COMMERCE

TEXAS RESIDENTIAL
CONSTRUCTION COMMISSION



INTERIM REPORT TO THE
79TH TEXAS LEGISLATURE



Senator Troy Fraser
Chairman
 Senator Kip Averitt
Vice Chairman
 Senator Ken Armbrister
 Senator Kim Brimer

Senator John Carona
 Senator Craig Estes
 Senator Mike Jackson
 Senator Eddie Lucio
 Senator Leticia Van de Putte

The Texas Senate
Business and Commerce Committee

December 1, 2004

The Honorable David Dewhurst
 Lieutenant Governor of Texas
 The Capitol, Second Floor East
 Austin, Texas

Dear Governor Dewhurst:

On behalf of the Senate Committee on Business and Commerce, I hereby submit the interim report on the Texas Residential Construction Commission for consideration by the 79th Texas Legislature.

This report was prepared pursuant to interim committee charge number three to study the creation of the Texas Residential Construction Commission (TRCC) established by HB 730, 78th Legislature, to determine its effectiveness in reducing lawsuits and improving consumer satisfaction with residential construction services. Issues to be covered shall include, but not be limited to, the:


- registration of homebuilders, including the Texas Start Builder designation;
- state-sponsored inspection and dispute resolution process;
- preparation and adoption of new building performance standards;
- voluntary certification of arbitrators and filing of arbitration awards; and
- consumer complaint procedures and public information efforts.

In addition to those issues, the Committee shall study and make recommendations on improving the activities of the three task forces for which the TRCC has oversight responsibilities: The Mold Reduction and Remediation Task Force, the Task Force for Rainwater Harvesting and Water Recycling, and the Task Force for Residential Construction Arbitration.


Respectfully Submitted,



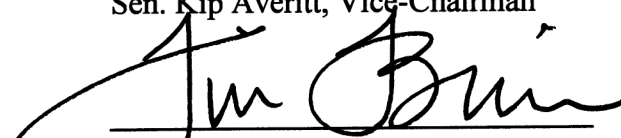
 Sen. Troy Fraser, Chairman



 Sen. Kip Averitt, Vice-Chairman



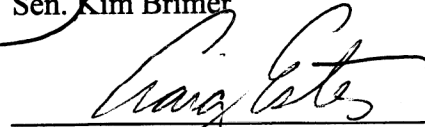
 Sen. Ken Armbrister



 Sen. Kim Brimer



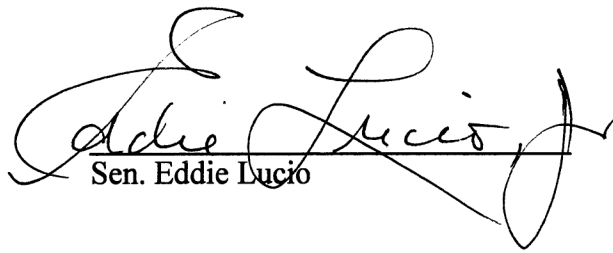
 Sen. John Carona



 Sen. Craig Estes



Sen. Mike Jackson



Sen. Eddie Lucio



Sen. Jeticia Van de Putte

Interim Charge Number Three

Study the creation of the Texas Residential Construction Commission (TRCC) established by HB 730, 78th Legislature, to determine its effectiveness in reducing lawsuits and improving consumer satisfaction with residential construction services. Issues to be covered shall include, but not be limited to, the:

1. registration of homebuilders, including the Texas Star Builder designation;
2. state-sponsored inspection and dispute resolution process;
3. preparation and adoption of new building performance standards;
4. voluntary certification of arbitrators and filing of arbitration awards; and
5. consumer complaint procedures and public information efforts.

In addition to those issues, the committee shall study and make recommendations on improving the activities of the three task forces for which the TRCC has oversight responsibilities: the Mold Reduction and Remediation Task Force, the Task Force for Rainwater Harvesting and Water Recycling, and the Task Force for Residential Construction Arbitration.

Executive Summary

The Business and Commerce Committee was charged to study the creation of the Texas Residential Construction Commission (the Commission) established by House Bill 730, 78th Legislature. The committee was to determine if the creation of the Commission was effective in reducing lawsuits and improving consumer satisfaction with residential construction services.

In order to explore the issues in the interim charge, Chairman Troy Fraser held a hearing of the full committee on May 11, 2004 in Austin. During this hearing, information was presented regarding the status of the creation of the Commission and its effectiveness.

The Commission spent much of the interim handling the necessary administrative activities to start a newly created commission including hiring staff, locating a facility, and purchasing equipment and other supplies.

After these initial steps were taken, the Commission began the process of registering homebuilders and homes. The building and performance standards are not expected to be finally adopted until January 2005 and the state-sponsored inspection and dispute resolution process (which is heavily dependent upon these standards) has only been in existence since July 2004. Accordingly, there is very little empirical data upon which sound legislative recommendations could be made and it is, therefore, the conclusion of this committee that no recommendations be made on this interim charge at this time.

Background

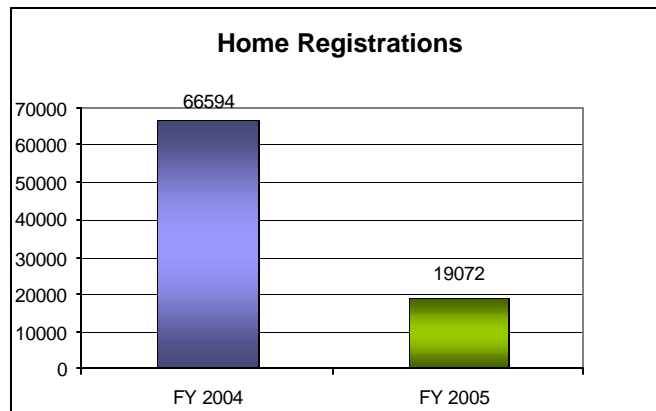
House Bill 730 by Ritter, King, Edwards / Fraser created the Texas Residential Construction Commission (the Commission) in order to administer the registration of builders and remodelers; to administer a state-sponsored inspection and dispute resolution process; and to create and administer limited statutory warranty and building and performance standards.

The Commission is a nine-member panel appointed by the Governor, with the advice and consent of the Senate. Four members are representatives of the building-industry, three members are representatives of the general public, one member must be a professional engineer, and the final member may be either an architect or a third-party inspector. Governor Rick Perry appointed seven members of the Commission on September 8, 2003 and the remaining two members on September 12, 2003. The Commission held its first meeting on September 17, 2003 and hired its executive director in November 2003.

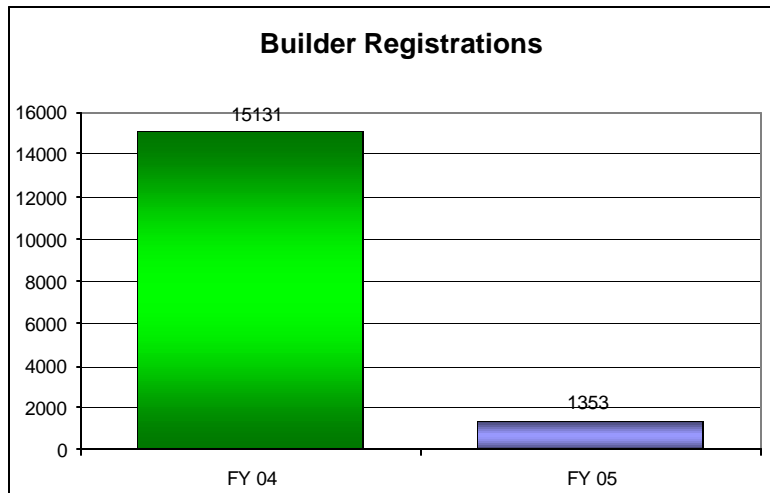
Registration

The first order of business of the Commission was to adopt emergency rules regarding the registration of new homes and large renovation projects as required by Property Code §426.003. The registration of homes is the first step in allowing newly constructed or remodeled homes to fall under the warranty and building performance standards that are being developed by the Commission.

The first set of emergency rules were adopted on December 18, 2003, and became effective on December 19, 2003. The rules required all home builders in the state to register new homes and certain large renovations and to remit a \$30 registration fee. For a new home, the submission of the registration and fee must occur within 15 days following the end of the month in which the home closes if a title transfer is involved. If no title transfer is involved, the registration must occur within 15 days after the homeowner and the builder enter into an agreement or when the builder first starts work, whichever comes first. For home renovations, the registration and fee must be submitted within 15 days following either the date of the agreement or the commencement of the work, which ever occurs first. Similar rules were permanently adopted on May 20, 2004 and became effective on June 10, 2004.



Through the end of October 2004, the Commission had received over 86,000 home registrations. The Commission then adopted emergency rules regarding the registration of builders on December 18, 2003 which took effect on December 19, 2003 in accordance with Chapter 416 of the Property Code. The rules required all existing home builders, contractors, and re-modelers to register with the Commission and remit a filing fee of \$125 on or before March 1, 2004. Under the law, no person or company can operate as a builder in Texas without a certificate of registration from the Commission. Through the end of April 2004, the Commission had received over 12,000 builder registrations. Since April, the Commission has received 4,484 additional registrations.



The Commission has adopted a fee schedule that requires late filers to pay double the registration fee. After an applicant is more than 60 days late, an administrative action beyond the increased fee payment will be required.

The Commission has the authority to assess administrative penalties, including a loss of registration and a fine of up to \$5,000 per violation, to registered builders who fail to comply with provisions of the law. Those administrative penalties are established by statute and the Commission adopted rules for disciplinary action procedures for registered builders at its October 5, 2004 Open Meeting. Additionally, the Commission asked the Office of the Attorney General (OAG) for an opinion as to whether or not the OAG may seek an injunction against someone who has not complied with an agency rule. The OAG issued an opinion (Tex. Att Gen. Op. GA-0233) affirming that the Commission could ask the OAG to seek injunctive relief against someone acting as a builder without registration.

Since the registration rules were adopted, the Commission has been aggressively attempting to get all builders and re-modelers to comply with the registration requirements of the bill. Some of the actions taken by the Commission to publicize the new regulations and the deadlines associated with those regulations include mailing a postcard mailer to 9,500 rural builders and sending letters to the editor to all daily and weekly newspapers. Additionally, the Texas Association of Builders reported during the meeting that it had done extensive publicity through

town hall meetings and mailings to ensure that its members were aware of the new regulations.

During the hearing, questions were raised regarding builders who failed to comply with the registration requirements. It is assumed that builders and re-modelers will voluntarily comply with this rule because financial institutions and local building inspectors will ask for proof of registration before authorizing a loan or granting required local approval of building codes. Also, because the Commission has aggressively marketed these rules and because the new registration requirements are quickly permeating the industry, many in the industry believe that Texas consumers will begin asking for proof of registration before they hire a contractor or a re-modeler. A builder's failure to register could mean that the builder loses out on a job in favor of a builder who has registered with the Commission.

The Commission proposed a rule to create the "Texas Star Builder" program in September 2004. A builder who meets the qualifications established by rule will be allowed to represent to the public that they are a "Texas Star Builder." Proposed program criteria includes such things as years of experience, annual continuing education, and number of state-sponsored inspection and dispute resolution (SIRP) requests filed with the Commission. The Commission withdrew the proposed rule and proposed a new rule for the Texas Star Builder program at the November 17, 2004 Open Meeting.

Inspection and Dispute Resolution Process

At the January 6, 2004 meeting, the Commission adopted emergency rules regarding the SIRP. This process allows the homeowner and the homebuilder to have a neutral third-party inspector review a construction defect dispute and determine whether the home was built in accordance with the applicable building and performance standards.

Either the homeowner or the homebuilder can initiate this process to have the Commission appoint a commission-certified third-party inspector to conduct an investigation. The inspector will report whether the home performs in accordance with the performance standards established by the Commission. The decision may be appealed to an independent three-person panel that is also appointed by the Commission. After this process, either party may seek redress in court under the provisions established by the Residential Construction Liability Act.

The Commission began accepting applications for third-party inspectors in February and through end of October 2004, 63 people had been certified as third-party inspectors. According to the Commission, the registration of third-party inspectors has been slow, and the Commission has contracted with private third-party inspectors to insure statewide coverage. This area will continue to be a focus of Commission efforts, as it works with the International Code Council to get more people certified in Texas.

Statutory Warranty and Performance Standards

HB 730 also requires the Commission to create a statutory warranty, through its rule-making authority, that will apply to each new home and significant remodel in the State of Texas. This warranty will provide certainty to both the homeowner and the builder. With clear and objective criteria, the homeowner will know what to expect of the builder and the builder will know what is expected.

Additionally, the Commission is required to adopt unified building and performance standards to apply throughout the state. Those standards will have three components: 1) based on the International Residential Code; 2) contain guidelines for reducing mold; and 3) as stringent as the standards required under the US Department of Housing and Urban Development for FHA programs.

In May 2004, the Commission released a rough working draft of the statutory warranty and the building and performance standards rules as a way to allow all interested parties to participate from the first stage to the final product.

The Commission entered into an interagency agreement with the construction sciences department of Texas A&M University to help develop the construction standards and warranties. The Commission gathered information from all sources, compiled it and sent it to Texas A&M for review and development. After the publication of a second draft, the Commission held town hall meetings around the state to garner public input.

The rules were published in the Texas Register on October 22, 2004 and a public hearing was held on November 9, 2004. The Commission intends to have the standards adopted and effective by January 1, 2005.

Arbitration

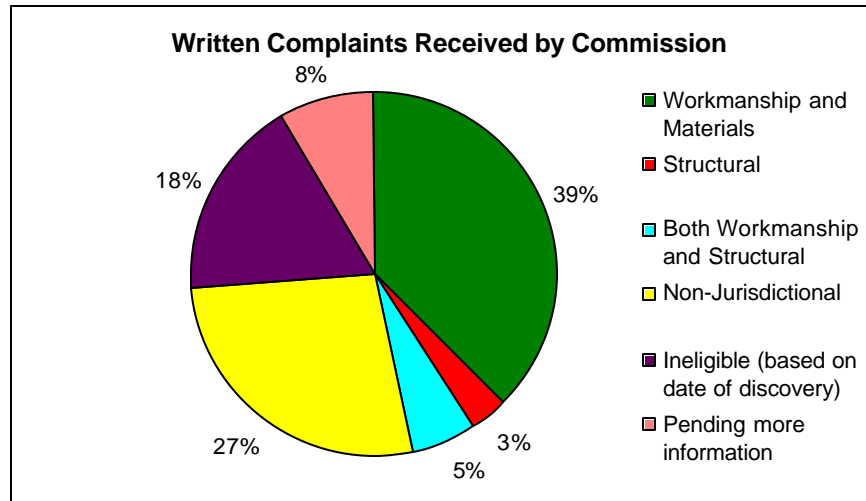
During the debate on HB 730, some legislators raised concerns over the lack of rules and notification regarding residential arbitration. Therefore, HB 730 requires a party who files an arbitration award in a dispute between a homeowner and a homebuilder that involves a construction defect with a state district court to also file the award with the Commission.

In April 2004, the Commission adopted a rule creating eligibility requirements and procedures for a person to be certified as a residential construction arbitrator. To be certified by the Commission, the applicant must demonstrate that he or she is knowledgeable and experienced in the field of residential construction litigation, especially with respect to construction defects. The rules provide that the applicant must allow the public to file written comments on such person's suitability to be a certified residential construction arbitrator.

As of October 2004, the Commission had issued four certificates of registration and had received no arbitration award filings.

Consumer Complaints and Public Information

Through the end of October 2004, the Commission had received 335 complaints. Of these complaints, the Commission had determined that 155 or 46% were eligible for participation in the state-sponsored inspection and dispute resolution process (and, of these 155 complaints, 126 focused on workmanship issues, 11 focused on structural issues and 18 focused on both). The Commission has mailed information regarding the state-sponsored inspection and dispute resolution process to the affected parties.



The other 53% or 180 complaints received by the Commission are either outside of the Commission's jurisdiction (project abandonment, contract or earnest money issues); ineligible for the SIRP based on a discovery date prior to Sept. 1, 2003 (the effective date of the Commission); or the Commission is awaiting more information from the complainant in order to determine eligibility for the SIRP.

Task Forces

As required by HB 730, the Commission has established three task forces to study issues related to the homebuilding industry.

The Mold Reduction and Remediation Task Force is advising the Commission regarding the adoption of standards to reduce the general population's exposure to mold formed in indoor environments. The Task Force for Rainwater Harvesting and Water Recycling is developing design recommendations for residential construction that encourage rain harvesting and water recycling. The Task Force for Residential Construction Arbitration is advising the Commission on residential arbitration and arbitrators. Also, this particular task force must report its recommendations to the 79th and 80th Legislatures.

Recommendation

Only one year into the creation of the agency and without the necessary rules on statutory warranties and performance standards (which are scheduled to be adopted in January 2005) it is impossible to determine whether the Commission has been effective in reducing lawsuits and improving consumer satisfaction with residential construction services. However, based on the number of complaints that were resolved just because the agency was created, we can make a reasonable guess that the industry will continue to respond to complaints by home buyers in a reasonable and quick manner.

Therefore, it is the conclusion of this committee that no legislative recommendations be made on this interim charge at this time, but that the committee continue to monitor the on-going implementation of HB 730.

Appendix A

Committee Minutes

MINUTES

SENATE COMMITTEE ON BUSINESS & COMMERCE

Tuesday, May 11, 2004

9:00 a.m.

Betty King Committee Hearing Room, 2E.20

Pursuant to a notice posted in accordance with Senate Rule 11.18, a public hearing of the Senate Committee on Business & Commerce was held on Tuesday, May 11, 2004, in the Betty King Committee Hearing Room, 2E.20, at Austin, Texas.

MEMBERS PRESENT:

Senator Troy Fraser, Chairman
Senator Kip Averitt, Vice Chairman
Senator Kenneth Armbrister
Senator Kim Brimer
Senator John Carona
Senator Craig Estes
Senator Mike Jackson
Senator Eddie Lucio, Jr.
Senator Leticia Van de Putte

MEMBERS ABSENT:

None

The chair called the meeting to order at 9:00 a.m. There being a quorum present, the following business was transacted:

Chairman Fraser made brief opening remarks and advised that the Committee would be hearing testimony on Interim Charge #3, regarding the Texas Residential Construction Commission which was established by HB 730 in the 78th Legislative Session. The Committee would also discuss and hear testimony on Interim Charge #6, relating to improving the potential for further renewable energy development and the current status of policies encouraging the use of the renewable energy sources.

The Chairman called invited witness Stephen Thomas, Texas Residential Construction Commission, to present his testimony on Interim Charge #3. Mr. Thomas gave a brief update on home builder registration; state-sponsored inspection and dispute resolution process; limited warranties and building and performance standards; industry task forces; Texas Star Builder

Program; voluntary certification of arbitrators and filing of arbitration awards; Commission infrastructure; and public information efforts.

Following Mr. Thomas' testimony, Chairman Fraser called for public testimony. Chairman Fraser called Scott Norman, Texas Association of Builders, to present his testimony and respond to members' questions. Mr. Norman was the only public witness to testify, although Ray Tonjes and Jim Frankel had filled out cards to testify if committee members had questions of the industry. Chairman Fraser then closed public testimony on Interim Charge #3.

The Chairman then advised the Committee and those present that the Committee would now begin testimony on Charge #6. Chairman Fraser called Julie Parsley, Commissioner, Public Utility Commission of Texas, to present her testimony. Commissioner Parsley testified on the status of renewable energy in Texas; effectiveness of current policies; economics associated with renewable energy; and potential for renewable energy development. Before completion of Commissioner Parsley's testimony, Chairman Fraser moved at 10:13 a.m. that the Committee stand recessed until after adjournment of the Senate; without objection, it was so ordered.

At 11:48 a.m. the Committee reconvened. Chairman Fraser called Commissioner Parsley to complete her testimony and respond to members' questions.

Following Commissioner Parsley's testimony, the Chairman called Dub Taylor, Director of the State Energy Conservation Office (SECO). Mr. Taylor gave an overview of SECO; energy in Texas; purchasing renewable energy; and renewable energy projects.

Upon completion of Mr. Taylor's testimony, Senator Averitt assumed the Chair and called Adan Martinez, General Land Office (GLO), to present his testimony. Mr. Martinez testified on past efforts by the GLO to develop renewable energy on state lands and current efforts by the GLO to commercialize wind generation on state lands.

Chairman Fraser resumed the Chair and called John Fainter, President of the Association of Electric Companies of Texas. Mr. Fainter presented his testimony and responded to members' questions.

Upon completion of Mr. Fainter's testimony, Chairman Fraser called Walt Hornaday, President of Cielo Wind Power. Mr. Hornaday presented his testimony and responded to members' questions.

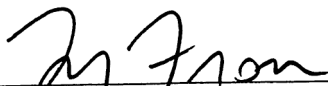
Chairman Fraser then called Tom "Smitty" Smith, Director of Public Citizen's Texas Office. Mr. Smith presented his testimony and responded to members' questions.

Upon completion of Mr. Smith's testimony, Chairman Fraser called the final invited witness, Mike Sloan, Consultant representing The Wind Coalition. Mr. Sloan provided information on the status of the Texas wind industry and described policy needs.

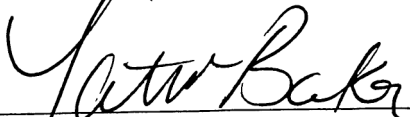
Following Mr. Sloan's testimony, the Chairman called for public testimony. Chairman Fraser called Bob King, Engineer, representing Ridge Energy Group. Mr. King presented his testimony and responded to members' questions. Mr. King was the only public witness to testify.

Upon completion of Mr. King's testimony, Chairman Fraser moved that public testimony be closed; without objection, it was so ordered.

There being no further business, at 2:04 p.m. Senator Fraser moved that the Committee stand recessed subject to the call of the Chairman. Without objection, it was so ordered.



Senator Troy Fraser, Chairman



Tatum Baker, Clerk

WITNESS LIST

Business & Commerce Committee
May 11, 2004 - 9:00 A.M.

Interim Charge #3

ON: Norman, Scott General Counsel (Texas Association of Builders), Austin, TX
Thomas, Stephen Executive Director (Texas Residential Construction), Austin, TX

Registering, but not testifying:

For: Frankel, Jim Home Builder (Self), Houston, TX
Tonjes, Ray Home Builder (Self), Austin, TX

Interim Charge #6

FOR: Smith, Tom "Smitty" Director (Public Citizen Texas), Austin, TX

ON: Fainter Jr., John President (Association of Electric Companies of Texas), Austin, TX
Hornaday, Walt President (Cielo Wind Power), Austin, TX
King, Robert Engineer (Ridge Energy Group), Austin, TX
Martinez, Adan (Texas General Land Office), Austin, TX
Parsley, Julie Commissioner (Public Utility Commission of Texas), Austin, TX
Sloan, Mike Consultant (The Wind Coalition), Austin, TX
Taylor, Dub Director (State Energy Conservation Office), Austin, TX