

SENATE AMENDMENTS

2nd Printing

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H.B. No. 1038

A BILL TO BE ENTITLED

AN ACT

relating to the operation of the Texas Residential Construction Commission; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter A, Chapter 5, Property Code, is amended by adding Section 5.016 to read as follows:

Sec. 5.016. DISCLOSURE OF ABSENCE OF CERTAIN WARRANTIES.

(a) A seller of residential real property that is exempt from Title 16 under Section 401.005 shall give to the purchaser of the property a written notice that reads substantially similar to the following:

NOTICE OF NONAPPLICABILITY OF CERTAIN WARRANTIES

AND BUILDING AND PERFORMANCE STANDARDS

The property that is subject to this contract is exempt from Title 16, Property Code, including the provisions of that title that provide statutory warranties and building and performance standards.

(b) A notice required by this section shall be delivered by the seller to the purchaser on or before the effective date of an executory contract binding the purchaser to purchase the property. If a contract is entered into without the seller providing the notice, the purchaser may terminate the contract for any reason on or before the seventh day after the date the purchaser receives the notice.

(c) This section does not apply to a transfer:

- 1 (1) under a court order or foreclosure sale;
2 (2) by a trustee in bankruptcy;
3 (3) to a mortgagee by a mortgagor or successor in
4 interest or to a beneficiary of a deed of trust by a trustor or
5 successor in interest;
6 (4) by a mortgagee or a beneficiary under a deed of
7 trust who has acquired the land at a sale conducted under a power of
8 sale under a deed of trust or a sale under a court-ordered
9 foreclosure or has acquired the land by a deed in lieu of
10 foreclosure;
11 (5) by a fiduciary in the course of the administration
12 of a decedent's estate, guardianship, conservatorship, or trust;
13 (6) from one co-owner to another co-owner of an
14 undivided interest in the real property;
15 (7) to a spouse or a person in the lineal line of
16 consanguinity of the seller;
17 (8) to or from a governmental entity; or
18 (9) of only a mineral interest, leasehold interest, or
19 security interest.

20 SECTION 2. Section 27.002(b), Property Code, is amended to
21 read as follows:

22 (b) Except as provided by this subsection, to [To] the
23 extent of conflict between this chapter and any other law,
24 including the Deceptive Trade Practices-Consumer Protection Act
25 (Subchapter E, Chapter 17, Business & Commerce Code) or a common law
26 cause of action, this chapter prevails. To the extent of conflict
27 between this chapter and Title 16, Title 16 prevails.

SECTION 3. Section 27.004(d), Property Code, is amended to read as follows:

(d) The court or arbitration tribunal shall abate ~~[dismiss]~~ an action governed by this chapter if Subsection (c) does not apply and the court or tribunal, after a hearing, finds that the contractor is entitled to abatement ~~[dismissal]~~ because the claimant failed to comply with the requirements of Subtitle D, Title 16, if applicable, failed to provide the notice or failed to give the contractor a reasonable opportunity to inspect the property as required by Subsection (a), or failed to follow the procedures specified by Subsection (b). An action is automatically abated ~~[dismissed]~~ without the order of the court or tribunal beginning on the 11th day after the date a motion to abate ~~[dismiss]~~ is filed if the motion:

(1) is verified and alleges that the person against whom the action is pending did not receive the written notice required by Subsection (a), the person against whom the action is pending was not given a reasonable opportunity to inspect the property as required by Subsection (a), or the claimant failed to follow the procedures specified by Subsection (b) or Subtitle D, Title 16; and

(2) is not controverted by an affidavit filed by the claimant before the 11th day after the date on which the motion to abate ~~[dismiss]~~ is filed.

SECTION 4. Section 41.007, Property Code, is amended by amending Subsection (a) and adding Subsections (c) and (d) to read as follows:

(a) A contract described by Section 41.001(b)(3) must contain:

(1) the contractor's certificate of registration number from the Texas Residential Construction Commission if the contractor is required to register as a builder with the commission;

(2) the address and telephone number at which the owner may file a complaint with the Texas Residential Construction Commission about the conduct of the contractor if the contractor is required to register as a builder with the commission; and

(3) the following warning conspicuously printed, stamped, or typed in a size equal to at least 10-point bold type or computer equivalent, next to the owner's signature line on the contract:

"IMPORTANT NOTICE: You and your contractor are responsible for meeting the terms and conditions of this contract. If you sign this contract and you fail to meet the terms and conditions of this contract, you may lose your legal ownership rights in your home. KNOW YOUR RIGHTS AND DUTIES UNDER THE LAW."

(c) A provision of a contract described by Section 41.001(b)(3) that requires the parties to submit a dispute arising under the contract to binding arbitration must:

(1) be conspicuously printed or typed in a size equal to at least 14-point bold type or the computer equivalent; and

(2) provide a space immediately adjacent to the provision for the owner's signature to indicate acknowledgment of notice of the provision.

1 (d) A provision described by Subsection (c) is not
2 enforceable against the owner unless the requirements of Subsection
3 (c) are met and the owner signs the space acknowledging notice of
4 the provision.

5 SECTION 5. Subchapter K, Chapter 53, Property Code, is
6 amended by adding Section 53.2555 to read as follows:

7 Sec. 53.2555. CERTIFICATE OF REGISTRATION NUMBER. (a) A
8 contractor who is required to register as a builder with the Texas
9 Residential Construction Commission shall include, in a clear and
10 conspicuous manner, the contractor's certificate of registration
11 number on each residential construction contract.

12 (b) The failure of a contractor to comply with Subsection
13 (a) makes void any mechanic's or materialman's lien by the
14 contractor or a subcontractor.

15 SECTION 6. Section 401.002(7), Property Code, is amended to
16 read as follows:

17 (7) "Homeowner" means an individual [~~a person~~] who
18 owns a home and who contracts with a builder for the construction of
19 a new home or an improvement to an existing home. The term includes
20 an attorney-in-fact or legal representative of the individual or
21 the individual's estate or a subrogee or assignee of the individual
22 [~~a person who owns a home~~].

23 SECTION 7. Section 162.003, Property Code, is amended to
24 read as follows:

25 Sec. 162.003. BENEFICIARIES OF TRUST FUNDS. (a) An
26 artisan, laborer, mechanic, contractor, subcontractor, or
27 materialman who labors or who furnishes labor or material for the

1 construction or repair of an improvement on specific real property
2 in this state is a beneficiary of any trust funds paid or received
3 in connection with the improvement.

4 (b) A homeowner, as defined by Section 401.002, is a
5 beneficiary of trust funds paid in connection with a residential
6 construction contract governed by Title 16 and held for the purpose
7 of satisfying the cost of materials and workmanship for labor and
8 materials provided by persons described by Subsection (a) for the
9 homeowner under the contract.

10 SECTION 8. Section 162.006(a), Property Code, is amended to
11 read as follows:

12 (a) A contractor who enters into a written contract with a
13 property owner or homeowner, as defined by Section 401.002, to
14 construct improvements to ~~[a]~~ residential property ~~[homestead]~~ for
15 an amount exceeding \$5,000 shall deposit the trust funds in a
16 construction account in a financial institution.

17 SECTION 9. Section 401.002, Property Code, is amended by
18 adding Subdivisions (7-a) and (8-a) to read as follows:

19 (7-a) "Improvement to the interior of an existing
20 home" means any modification to the interior living space of a home,
21 which includes the addition or installation of permanent fixtures
22 inside the home. An improvement to the interior of an existing home
23 does not include improvements to an existing home if the
24 improvements are designed primarily to repair or replace the home's
25 component parts.

26 (8-a) "Material improvement" means a modification to
27 an existing home that either increases or decreases the home's

1 total square footage of living space that also modifies the home's
2 foundation, perimeter walls, or roof. A material improvement does
3 not include modifications to an existing home if the modifications
4 are designed primarily to repair or replace the home's component
5 parts.

6 SECTION 10. Section 401.003, Property Code, is amended to
7 read as follows:

8 Sec. 401.003. DEFINITION OF BUILDER. (a) In this title,
9 "builder" means any person [~~business entity or individual~~] who, for
10 a fixed price, commission, fee, wage, or other compensation, sells,
11 constructs, or supervises or manages the construction of, or
12 contracts for the construction of or the supervision or management
13 of the construction of:

14 (1) a new home;

15 (2) a material improvement to a home, other than an
16 improvement solely to replace or repair a roof of an existing home;
17 or

18 (3) an improvement to the interior of an existing home
19 when the cost of the work exceeds \$10,000 [~~\$20,000~~].

20 (b) The term includes:

21 (1) an owner, officer, director, shareholder,
22 partner, affiliate, subsidiary, or employee of the builder;

23 (2) a risk retention group governed by Article 21.54,
24 Insurance Code, that insures all or any part of a builder's
25 liability for the cost to repair a residential construction defect;
26 and

27 (3) a third-party warranty company and its

1 administrator.

2 (c) The term does not include any person [~~business entity or~~
3 ~~individual~~] who:

4 (1) has been issued a license by this state or an
5 agency [~~or political subdivision~~] of this state to practice a trade
6 or profession related to or affiliated with residential
7 construction if the work being done by the entity or individual to
8 the home is solely for the purpose for which the license was issued;
9 or

10 (2) sells a new home and:

11 (A) does not construct or supervise or manage the
12 construction of the home; and

13 (B) holds a license issued under Chapter 1101,
14 Occupations Code, or is exempt from that chapter under Section
15 1101.005, Occupations Code.

16 SECTION 11. Section 401.005, Property Code, is amended by
17 amending Subsection (b) and adding Subsection (c) to read as
18 follows:

19 (b) This title does not apply to a homeowner or to a
20 homeowner's real estate broker, agent, interior designer
21 registered under Chapter 1053, Occupations Code, or property
22 manager who supervises or arranges for the construction of an
23 improvement to a home owned by the homeowner.

24 (c) An individual who builds a home or a material
25 improvement to a home and sells the home immediately following
26 completion of the building or remodeling and does not live in the
27 home for at least one year following completion of the building or

1 remodeling is liable as a builder under the warranty obligation
2 created by this title for work completed by the individual.
3 Liability under this subsection does not automatically require an
4 individual to register under Section 416.001.

5 SECTION 12. Chapter 401, Property Code, is amended by
6 adding Section 401.007 to read as follows:

7 Sec. 401.007. INJUNCTION; APPEAL. (a) If the commission
8 has reasonable cause to believe that a person is violating a statute
9 to which this chapter applies, the commission, in addition to any
10 other authorized action, may issue an order to cease and desist from
11 the violation or an order to take affirmative action, or both, to
12 enforce compliance. A person may appeal the order directly to
13 district court in accordance with Chapter 2001, Government Code.

14 (b) Before issuing an order under this section, the
15 commission shall set and give notice of a hearing before a hearings
16 officer. The hearing is governed by Chapter 2001, Government Code.
17 Based on the findings of fact, conclusions of law, and
18 recommendations of the hearings officer, the commission by order
19 may find whether a violation has occurred.

20 (c) The commission, after providing notice and an
21 opportunity to appear for a hearing, may impose against a person who
22 violates a cease and desist order an administrative penalty in an
23 amount not to exceed \$1,000 for each day of violation. In addition
24 to any other remedy provided by law, the attorney general or the
25 commission may institute in district court a suit for injunctive
26 relief and to collect an administrative penalty. A bond is not
27 required of the commission with respect to injunctive relief

1 granted under this section. In the action, the court may enter as
2 proper an order awarding a preliminary or final injunction.

3 (d) A suit under this section must be brought in Travis
4 County.

5 (e) The attorney general and the commission may recover
6 reasonable expenses incurred in obtaining injunctive relief under
7 this section, including court costs, reasonable attorney's fees,
8 investigative costs, witness fees, and deposition costs.

9 (f) If a party seeks review of the order by the commission,
10 the party shall file a petition initiating judicial review not
11 later than the 30th day after the date of the issuance of the
12 decision.

13 SECTION 13. Section 406.001, Property Code, is amended by
14 amending Subsection (a) and adding Subsections (c), (d), (e), and
15 (f) to read as follows:

16 (a) The Texas Residential Construction Commission consists
17 of nine members appointed by the governor with the advice and
18 consent of the senate as follows:

19 (1) four members must be builders who each hold a
20 certificate of registration under Chapter 416;

21 (2) three members must be representatives of the
22 general public, each of whom has demonstrated a continued interest
23 in consumer protection;

24 (3) one member must be a licensed professional
25 engineer who practices in the area of residential construction; and

26 (4) one member must be either a licensed architect who
27 practices in the area of residential construction or a building

1 inspector who meets the requirements set forth in Chapter 427 and
2 practices in the area of residential construction.

3 (c) A person may not be a public member of the commission if
4 the person or the person's spouse:

5 (1) is a builder registered with the commission, or is
6 otherwise registered, certified, or licensed by a regulatory agency
7 in the field of residential construction;

8 (2) is employed by or participates in the management
9 of a business entity or other organization regulated by or
10 receiving money from the commission;

11 (3) owns or controls, directly or indirectly, more
12 than a 10 percent interest in a business entity or other
13 organization regulated by or receiving money from the commission;
14 or

15 (4) uses or receives a substantial amount of tangible
16 goods, services, or money from the commission other than
17 compensation or reimbursement authorized by law for commission
18 membership, attendance, or expenses.

19 (d) A person may not be a member of the commission and may
20 not be a commission employee employed in a "bona fide executive,
21 administrative, or professional capacity," as that phrase is used
22 for purposes of establishing an exemption to the overtime
23 provisions of the federal Fair Labor Standards Act of 1938 (29
24 U.S.C. Section 201 et seq.) if:

25 (1) the person is an officer, employee, manager, or
26 paid consultant of a Texas trade association in the field of
27 residential construction; or

1 (2) the person's spouse is an officer, manager, or paid
2 consultant of a Texas trade association in the field of residential
3 construction.

4 (e) A person may not be a member of the commission or act as
5 general counsel to the commission if the person is required to
6 register as a lobbyist under Chapter 305, Government Code, because
7 of the person's activities for compensation on behalf of a
8 profession related to the operation of the commission.

9 (f) In this section, "Texas trade association" means a
10 cooperative and voluntarily joined statewide association of
11 business or professional competitors in this state designed to
12 assist its members and its industry or profession in dealing with
13 mutual business or professional problems and in promoting their
14 common interest.

15 SECTION 14. Section 406.004(b), Property Code, is amended
16 to read as follows:

17 (b) A person may not be a member of the commission and may
18 not be a commission employee employed in a "bona fide executive,
19 administrative, or professional capacity," as that phrase is used
20 for purposes of establishing an exemption to the overtime
21 provisions of the federal Fair Labor Standards Act of 1938 (29
22 U.S.C. Section 201 et seq.) and its subsequent amendments, if:

23 (1) the person is an officer, employee, or paid
24 consultant of a Texas trade association in the field of residential
25 construction; or

26 (2) the person's spouse is an officer, ~~[a]~~ manager, or
27 paid consultant of a Texas trade association in the field of

1 residential construction.

2 SECTION 15. Section 408.002, Property Code, is amended to
3 read as follows:

4 Sec. 408.002. FEES. (a) The commission shall adopt fees as
5 required by this title in amounts that are reasonable and necessary
6 to provide sufficient revenue to cover the costs of administering
7 this title.

8 (b) The commission may charge a late fee for late payment of
9 any fee due to the commission. The late fee may be any amount that
10 does not exceed the amount of the fee due.

11 (c) The commission may charge a reasonable fee for:

12 (1) a homeowner to submit a request for
13 state-sponsored inspection under Subtitle D;

14 (2) providing public information requested under
15 Chapter 552, Government Code, excluding information requested from
16 the commission under Section 409.001; or

17 (3) producing, mailing, and distributing special
18 printed materials and publications generated in bulk by the
19 commission for use and distribution by builders.

20 (d) Fees paid to the commission under Subsections (b) and
21 (c) are nonrefundable.

22 (e) The commission may waive or reduce the fee for an
23 inspection under Subtitle D for a homeowner who demonstrates an
24 inability to pay the fee.

25 SECTION 16. Section 408.003, Property Code, is amended by
26 adding Subsection (c) to read as follows:

27 (c) The commission may procure and distribute to consumers

1 informational materials and promotional items that contain
2 commission contact details and outreach information.

3 SECTION 17. Chapter 408, Property Code, is amended by
4 adding Section 408.005 to read as follows:

5 Sec. 408.005. COLLECTION OF AMOUNTS DUE. The commission
6 may seek reimbursement of any amounts due to the commission and
7 restitution for any dishonored payment instrument presented for
8 payment to the commission.

9 SECTION 18. Chapter 409, Property Code, is amended by
10 adding Section 409.0011 to read as follows:

11 Sec. 409.0011. BUILDER LIST. (a) In this section, "volume
12 builder" means a builder who registers at least 100 homes each year
13 as provided by Section 426.003.

14 (b) The commission shall create and make accessible to the
15 public an electronic list and a hard-copy list of builders who:

16 (1) are registered with the commission; and

17 (2) provide in this state building services, including
18 accessible floor plans, to persons with mobility-related special
19 needs.

20 (c) The electronic list required under Subsection (b) shall
21 provide, if available, the following information with respect to
22 each listed builder:

23 (1) a link to the builder's website; and

24 (2) contact information for the builder, including the
25 municipalities where the builder provides building services
26 described by Subsection (b)(2).

27 (d) The commission shall contact all volume builders in this

1 state who do not provide building services to persons with
2 mobility-related special needs as described by Subsection (b)(2)
3 and encourage those builders to develop floor plans that are
4 designed to be accessible for persons with mobility-related special
5 needs.

6 (e) Before a volume builder is included on the electronic or
7 hard-copy list described by Subsection (b), the commission must
8 certify the builder's floor plans designed for persons with
9 mobility-related special needs. The commission shall establish
10 rules, procedures, and fees necessary to certify floor plans as
11 required by this subsection.

12 (f) The Veterans' Land Board shall make accessible to the
13 public on its Internet website and in hard-copy format the
14 electronic list required under Subsection (b).

15 SECTION 19. Section 409.003, Property Code, is amended by
16 adding Subsections (d), (e), and (f) to read as follows:

17 (d) The commission shall make available to the public
18 information about each complaint that resulted in disciplinary
19 action by the commission.

20 (e) The commission may not disclose the address of any
21 individual home registered with the commission when making
22 information available to the public under this title, except as
23 necessary to implement this title.

24 (f) Notwithstanding Subsections (d) and (e), the commission
25 may not disclose the address of an individual home registered with
26 the commission:

27 (1) on the commission's Internet website; or

1 (2) in connection with an open records request under
2 Chapter 552, Government Code.

3 SECTION 20. Chapter 409, Property Code, is amended by
4 adding Section 409.004 to read as follows:

5 Sec. 409.004. DIRECTORY OF BUILDERS. The commission shall
6 make available to the public a list of each builder who holds a
7 certificate of registration issued under Chapter 416.

8 SECTION 21. Section 416.001, Property Code, is amended to
9 read as follows:

10 Sec. 416.001. REGISTRATION REQUIRED. (a) A person may not
11 act as a builder unless the person holds a certificate of
12 registration under this chapter.

13 (b) A person commits an offense if the person violates
14 Subsection (a). An offense under this section is a Class A
15 misdemeanor.

16 SECTION 22. Section 416.002, Property Code, is amended by
17 adding Subsection (e) to read as follows:

18 (e) Based on a commission investigation of an alleged
19 violation of Sections 418.001(a)(14)-(20), the commission may
20 require an applicant for renewal of a certificate of registration
21 to disclose to the commission every person with a financial or
22 management interest in the applicant's business as a builder. This
23 subsection does not apply to a publicly traded company.

24 SECTION 23. Section 416.004, Property Code, is amended by
25 amending Subsection (a) and adding Subsections (c) and (d) to read
26 as follows:

27 (a) The commission shall charge and collect:

1 (1) a filing fee for an application for an original
2 certificate of registration that does not exceed \$500; ~~and~~

3 (2) a fee for renewal of a certificate of registration
4 that does not exceed \$300; and

5 (3) a late fee that does not exceed the amount of the
6 fee due if payment of a registration application or renewal fee due
7 under this title is late.

8 (c) All fees paid to the commission under this section are
9 nonrefundable.

10 (d) The fees in Subsection (a) apply to each builder,
11 including each sole proprietor, corporation, limited liability
12 company, partnership, limited partnership, limited liability
13 partnership, and subsidiary.

14 SECTION 24. Sections 416.008(d) and (e), Property Code, are
15 amended to read as follows:

16 (d) The hearing officer may grant a motion for continuance
17 of the hearing on the request of the commission or the applicant
18 ~~[may be continued from time to time with the consent of the~~
19 ~~applicant].~~

20 (e) The hearing shall be held before a hearings officer
21 appointed by the commission. After the hearing, the hearings
22 officer shall enter an appropriate order. ~~[The order of the~~
23 ~~hearings officer under this subsection is a final decision.]~~

24 SECTION 25. Section 416.010, Property Code, is amended by
25 adding Subsection (e) to read as follows:

26 (e) A builder may designate a United States Postal Service
27 postal box for use in correspondence. The builder may not use the

1 box as the builder's principal place of business for purposes of
2 this section.

3 SECTION 26. Section 416.011(d), Property Code, is amended
4 to read as follows:

5 (d) The certification issued by the commission as a "Texas
6 Star Builder" is valid for at most one year and renewable on a date
7 to be determined at the commission's discretion [~~shall be for the~~
8 ~~same period of time as the builder's registration under this~~
9 ~~chapter~~].

10 SECTION 27. Chapter 416, Property Code, is amended by
11 adding Sections 416.012 and 416.013 to read as follows:

12 Sec. 416.012. REGISTRATION REQUIRED TO ENFORCE CONTRACT. A
13 builder may not sue to enforce a residential construction contract
14 with a homeowner or collect fees or damages under a contract with a
15 homeowner unless the builder, at the time the builder entered into
16 the contract and performed work under the contract for the
17 homeowner, held a certificate of registration issued under this
18 chapter.

19 Sec. 416.013. CONTINUING EDUCATION. (a) During the first
20 year a builder is registered with the commission, the builder must
21 complete five hours of continuing education, one hour of which must
22 address ethics.

23 (b) After satisfying the requirements of Subsection (a), a
24 builder must complete five hours of continuing education, one hour
25 of which must address ethics, once every five years.

26 (c) Continuing education courses that satisfy the
27 requirements of this section must address the International

1 Residential Code for One- and Two-Family Dwellings adopted under
2 Section 430.001 and state laws and rules that apply to builders
3 under this chapter.

4 (d) The commission by rule shall approve continuing
5 education courses, course content, and course providers. This
6 subsection does not prohibit the commission from providing
7 continuing education courses for a reasonable fee.

8 SECTION 28. Section 417.003, Property Code, is amended to
9 read as follows:

10 Sec. 417.003. FEES. (a) The commission shall charge and
11 collect:

12 (1) a filing fee for an application for certification
13 under this chapter that does not exceed \$100; ~~and~~

14 (2) a fee for renewal of a certification under this
15 chapter that does not exceed \$50; and

16 (3) a late fee that does not exceed the amount of the
17 fee due if payment of a registration or application fee due under
18 this title is late.

19 (b) All fees paid to the commission under this section are
20 nonrefundable.

21 SECTION 29. Sections 418.001 and 418.002, Property Code,
22 are amended to read as follows:

23 Sec. 418.001. GROUNDS FOR DISCIPLINARY ACTION. (a) A
24 person, including a builder, a person who is designated as a
25 builder's agent under Section 416.006, or a person who owns or
26 controls a majority ownership interest in the builder, is subject
27 to disciplinary action under this chapter for:

1 (1) fraud or deceit in obtaining a registration or
2 certification under this subtitle;

3 (2) misappropriation or misapplication of trust funds
4 in the practice of residential construction, including a violation
5 of Chapter 32, Penal Code, or Chapter 162, if found by a final
6 nonappealable court judgment;

7 (3) naming false consideration in a contract to sell a
8 new home or in a construction contract;

9 (4) discriminating on the basis of race, color,
10 religion, sex, national origin, or ancestry;

11 (5) publishing a false or misleading advertisement;

12 (6) failure to honor, within a reasonable time, a
13 check issued to the commission, or any other instrument of payment,
14 including a credit or debit card or electronic fund transfer, after
15 the commission has sent by certified mail a request for payment to
16 the person's last known business address, according to commission
17 records;

18 (7) failure to pay an administrative penalty assessed
19 by the commission under Chapter 419 or a fee due under Chapter 426;

20 (8) failure to pay [~~nonpayment of~~] a final
21 nonappealable judgment arising from a construction defect or other
22 transaction between the person and a homeowner;

23 (9) failure to register a home as required by Section
24 426.003;

25 (10) failure to remit the fee for registration of a
26 home under Section 426.003; [~~or~~]

27 (11) failure to reimburse a homeowner the amount

ordered by the commission as provided by [in] Section 428.004(d);

(12) engaging in statutory or common law fraud or misappropriation of funds, as determined by the commission after a hearing under Section 418.003;

(13) failure to participate in the state-sponsored inspection and dispute resolution process if required by this title;

(14) failure to register as a builder as required under Chapter 416;

(15) using or attempting to use a certificate of registration that has expired or that has been revoked;

(16) falsely representing that the person holds a certificate of registration issued under Chapter 416;

(17) acting as a builder using a name other than the name listed on the person's certificate of registration;

(18) aiding, abetting, or conspiring with a person who does not hold a certificate of registration to evade the provisions of this title or rules adopted under this title, if found by a final nonappealable court judgment;

(19) allowing the person's certificate of registration to be used by another person;

(20) acting as an agent, partner, or associate of a person who does not hold a certificate of registration with the intent to evade the provisions of this title or rules adopted under this title;

(21) a failure to reasonably perform on an accepted offer to repair or a repeated failure to make an offer to repair

1 based on:

2 (A) the recommendation of a third-party
3 inspector under Section 428.004; or

4 (B) the final holding of an appeal under Chapter
5 429;

6 (22) failure to participate in commission efforts to
7 resolve a complaint that arises during the construction or
8 renovation of a home;

9 (23) failure to respond to a commission request for
10 information;

11 (24) otherwise violating this title or a commission
12 rule adopted under this title;

13 (25) failure to substantially complete all the
14 obligations under an express contract for construction without
15 reasonable grounds for the failure, if found by a final
16 nonappealable court judgment;

17 (26) failure to obtain a permit required by a
18 political subdivision before constructing a new home or an
19 improvement to an existing home; or

20 (27) abandoning or wilfully failing to perform,
21 without justification, any home improvement contract or
22 residential construction project engaged in or undertaken by the
23 person, if found to have done so by a final, nonappealable judgment
24 of a court.

25 (b) For the purposes of Subsection (a)(12), the commission
26 may not revoke a registration or certification unless the
27 determination of statutory or common law fraud or misappropriation

1 of funds has been made in a final nonappealable judgment by a court.

2 Sec. 418.002. DISCIPLINARY POWERS OF COMMISSION. (a)
3 Except as provided by Subsection (b), on ~~On~~ a determination that a
4 ground for disciplinary action under Section 418.001 exists, the
5 commission may:

6 (1) revoke or suspend a registration or certification;

7 (2) probate the suspension of a registration or
8 certification; ~~or~~

9 (3) formally or informally reprimand a registered or
10 certified person; or

11 (4) impose an administrative penalty under Chapter
12 419.

13 (b) The commission must consider the factors described by
14 Section 419.002(b) before taking disciplinary action under this
15 chapter.

16 SECTION 30. Section 418.004, Property Code, is amended by
17 adding Subsection (c) to read as follows:

18 (c) An appeal to a district court of a final decision of the
19 commission under this section regarding a revocation or suspension
20 of a registration or certification is determined by a preponderance
21 of the evidence.

22 SECTION 31. Chapter 418, Property Code, is amended by
23 adding Section 418.005 to read as follows:

24 Sec. 418.005. JOINT AND SEVERAL LIABILITY OF BUILDER AND
25 AGENT. (a) The commission may simultaneously take administrative
26 action under this chapter against:

27 (1) a builder; and

1 (2) a person who:

2 (A) is designated as the builder's agent under
3 Section 416.006; or

4 (B) owns or controls a majority ownership
5 interest in the builder.

6 (b) A builder and a person who is designated as a builder's
7 agent under Section 416.006 or owns or controls a majority
8 ownership interest in the builder are jointly and severally liable
9 for any amounts due to the commission under this title.

10 SECTION 32. Section 419.001, Property Code, is amended to
11 read as follows:

12 Sec. 419.001. IMPOSITION OF ADMINISTRATIVE PENALTY. The
13 ~~[In a contested case involving disciplinary action, the]~~ commission
14 may~~[, as part of the commission's order,]~~ impose an administrative
15 penalty on a ~~[registered or certified]~~ person who violates this
16 title or a rule adopted or order issued by the commission under this
17 title.

18 SECTION 33. Section 419.002, Property Code, is amended by
19 amending Subsections (a) and (b) and adding Subsection (c) to read
20 as follows:

21 (a) Except as provided by Subsection (c), an ~~[An]~~
22 administrative penalty imposed under this chapter may not exceed
23 \$10,000 ~~[\$5,000]~~ for each violation.

24 (b) In determining the amount of an administrative penalty,
25 the hearings officer or commission shall consider:

26 (1) the seriousness of the violation, including the
27 nature, circumstances, extent, and gravity of the prohibited acts;

- (2) the history of previous violations;
- (3) the amount necessary to deter a future violation;
- (4) efforts to correct the violation; ~~[and]~~
- (5) the deterrent effect on others in the industry;
- (6) the economic harm to the homeowner; and
- (7) any other matter justice may require.

(c) A violation of Section 418.001(a)(2) or (12) is punishable by a penalty not to exceed \$100,000.

SECTION 34. Subtitle C, Title 16, Property Code, is amended by adding Chapter 420 to read as follows:

CHAPTER 420. BUILDING CONTRACT PROVISIONS

Sec. 420.001. REQUIRED WRITTEN DISCLOSURE. Before beginning work on a project to construct a new home or an improvement to an existing home when the cost of the work exceeds \$10,000, a builder must provide a notice to the homeowner in at least 14-point bold type that gives the telephone number of the commission and states:

STATE LAW REQUIRES THAT A PERSON HOLD A CERTIFICATE OF REGISTRATION FROM THE TEXAS RESIDENTIAL CONSTRUCTION COMMISSION IF THE PERSON CONTRACTS TO CONSTRUCT A NEW HOME OR IF THE PERSON CONTRACTS TO CONSTRUCT AN IMPROVEMENT TO AN EXISTING HOME AND THE TOTAL COST OF THE IMPROVEMENT IS \$10,000 OR MORE (INCLUDING LABOR AND MATERIALS).

BUILDERS ARE REGULATED BY LAWS DESIGNED TO PROTECT THE PUBLIC. YOU MAY CONTACT THE COMMISSION AT [insert commission's telephone number] TO FIND OUT WHETHER THE BUILDER HAS A VALID CERTIFICATE OF REGISTRATION. THE COMMISSION HAS COMPLETE

1 INFORMATION ON THE HISTORY OF BUILDERS, INCLUDING ANY SUSPENSION,
2 REVOCATION, COMPLAINT, AND RESOLUTION OF COMPLAINT.

3 IF YOU HAVE A COMPLAINT AGAINST A BUILDER, YOU MAY CONTACT THE
4 TOLL-FREE TELEPHONE NUMBER TO OBTAIN A COMPLAINT FORM AND FURTHER
5 INFORMATION.

6 IF THE BUILDER FAILED TO COMPLETE THE WORK OR PERFORMED POOR
7 QUALITY WORK, YOU MAY FILE A COMPLAINT WITH THE COMMISSION BY
8 CONTACTING THE TOLL-FREE TELEPHONE NUMBER. YOU MUST FILE ALL
9 COMPLAINTS WITHIN TWO YEARS OF THE DATE THE BUILDER ABANDONED THE
10 PROJECT OR PERFORMED THE POOR QUALITY WORK.

11 Sec. 420.002. REQUIRED CONTRACT PROVISIONS. A contract for
12 the construction of a new home or an improvement to an existing home
13 when the cost of the work exceeds \$10,000 is not enforceable against
14 a homeowner unless the contract:

15 (1) contains the builder's name, physical address, and
16 certificate of registration number; and

17 (2) contains the notice required by Section 420.001.

18 Sec. 420.003. BINDING ARBITRATION CONTRACT PROVISION. (a)
19 A provision in a contract for the construction of a new home, or the
20 improvement of an existing home in which the value of the work
21 exceeds \$10,000, that requires the parties to submit a dispute
22 arising under the contract to binding arbitration must:

23 (1) be conspicuously printed or typed in a size equal
24 to at least 14-point bold type or the computer equivalent; and

25 (2) provide a space immediately adjacent to the
26 provision for the homeowner's signature to indicate acceptance of
27 the provision.

1 (b) A provision described by Subsection (a) is not
2 enforceable against the homeowner unless the requirements of
3 Subsection (a) are met and the homeowner signs the space accepting
4 the provision.

5 SECTION 35. Section 426.003(b), Property Code, is amended
6 to read as follows:

7 (b) A builder who enters into a contract for the
8 construction of a new home or an improvement to an existing home in
9 which the value of the work exceeds \$20,000 [~~transaction governed~~
10 ~~by this title, other than the transfer of title of a new home from~~
11 ~~the builder to the seller,~~] shall register the home involved in the
12 transaction with the commission. The registration must:

13 (1) include the information required by the commission
14 by rule;

15 (2) be accompanied by the fee required by Subsection
16 (c); and

17 (3) be delivered to the commission not later than the
18 15th day after the earlier of:

19 (A) the date the construction is substantially
20 completed [~~of the agreement that describes the transaction between~~
21 ~~the homeowner and the builder~~]; or

22 (B) the date the new home is occupied, if the
23 contract is for the construction of a new home [~~commencement of the~~
24 ~~work on the home~~].

25 SECTION 36. Chapter 419, Property Code, is amended by
26 adding Section 419.0031 to read as follows:

27 Sec. 419.0031. INTEREST ON UNPAID PENALTY. Interest

1 accrues on an unpaid administrative penalty at a rate of 18 percent
2 compounded annually beginning on the day after the date specified
3 for payment under Section 419.003.

4 SECTION 37. Section 426.001(a), Property Code, is amended
5 to read as follows:

6 (a) This subtitle applies to a dispute between a builder and
7 a homeowner if:

8 (1) the dispute arises out of an alleged construction
9 defect, other than a claim solely for:

10 (A) personal injury, survival, or wrongful
11 death; or

12 (B) damage to goods; and

13 (2) a request is submitted to the commission not later
14 than the 30th day after ~~[on or before]~~ the 10th anniversary of:

15 (A) the date of the initial transfer of title
16 from the builder to the first homeowner to own ~~[initial owner of]~~
17 the home or the improvement that is the subject of the dispute; or

18 (B) ~~[7]~~ if there is not a closing in which title is
19 transferred, the date on which the ~~[contract for]~~ construction of
20 the improvement was substantially completed ~~[entered into]~~.

21 SECTION 38. Section 426.004, Property Code, is amended by
22 amending Subsection (c) and adding Subsection (d) to read as
23 follows:

24 (c) If the transfer of the title of the home from the builder
25 to the initial homeowner occurred before January 1, 2004, or if the
26 contract for improvements or additions between the builder and
27 homeowner was entered into before January 1, 2004, the commission

1 shall register the home and the builder ~~[the person who submits a~~
2 ~~request involving the home]~~ shall pay~~[, in addition to the~~
3 ~~inspection expenses required by this section,]~~ the registration fee
4 required by Section 426.003.

5 (d) The commission may reimburse an inspector for travel
6 expenses incurred to complete an inspection regardless of whether
7 the expenses exceed the amount collected under this section.

8 SECTION 39. Section 426.005, Property Code, is amended by
9 amending Subsection (a) and adding Subsection (f) to read as
10 follows:

11 (a) A homeowner or builder must comply with this subtitle
12 before initiating an action for damages or other relief arising
13 from an alleged construction defect.

14 (f) A homeowner is not required to comply with this subtitle
15 if, at the time of a homeowner's requests for an inspection:

16 (1) the builder is not registered; or

17 (2) the certificate of registration of the builder has
18 been revoked or is inactive.

19 SECTION 40. Section 426.006, Property Code, is amended to
20 read as follows:

21 Sec. 426.006. TIME FOR REQUESTING INSPECTION AND DISPUTE
22 RESOLUTION. (a) For an alleged defect discovered during an
23 applicable warranty period, the ~~[The]~~ state-sponsored inspection
24 and dispute resolution process must be requested on or before the
25 second anniversary of the date of discovery of the conditions
26 claimed to be evidence of the construction defect but not later than
27 the 90th ~~[30th]~~ day after the date the applicable warranty period

1 expires.

2 **(b) If the alleged defect would violate the statutory**
3 **warranty of habitability and was not discoverable by a reasonable,**
4 **prudent inspection or examination of the home or improvement within**
5 **the applicable warranty period, the state-sponsored inspection and**
6 **dispute resolution process must be requested:**

7 **(1) on or before the second anniversary of the date of**
8 **discovery of the conditions claimed to be evidence of the**
9 **construction defect; and**

10 **(2) not later than the 10th anniversary of the date of**
11 **the initial transfer of title from the builder to the initial owner**
12 **of the home or improvement that is the subject of the dispute or, if**
13 **there is not a closing, the date on which the contract for**
14 **construction of the improvement is entered into.**

15 SECTION 41. Section 426.007, Property Code, is amended to
16 read as follows:

17 Sec. 426.007. ADMISSIBILITY OF CERTAIN EVIDENCE. A person
18 who submits a request for state-sponsored inspection and dispute
19 resolution or responds to a request under Chapter 428 must disclose
20 in the request or response the name of any person who, before the
21 request is submitted, inspected the home on behalf of the requestor
22 or respondent in connection with the construction defect alleged in
23 the request or response. If a person's name is known to the
24 requestor or respondent at the time of the request or response and
25 is not disclosed as required by this section, the requestor or
26 respondent may not designate the person as a witness [~~an expert~~] or
27 use materials prepared by that person in:

1 (1) the state-sponsored inspection and dispute
2 resolution process arising out of the request; or

3 (2) any action arising out of the construction defect
4 that is the subject of the request or response.

5 SECTION 42. Section 426.008, Property Code, is amended by
6 adding Subsection (c) to read as follows:

7 (c) For the purposes of admissibility of a third-party
8 inspector's recommendation or a ruling by a panel of state
9 inspectors, the recommendation or ruling shall be considered a
10 business record under Rule 902, Texas Rules of Evidence.

11 SECTION 43. Section 427.001, Property Code, is amended by
12 amending Subsections (b), (c), and (d) and adding Subsection (c-1)
13 to read as follows:

14 (b) A third-party inspector who inspects an issue involving
15 workmanship and materials must:

16 (1) have a minimum of three [~~five~~] years' experience in
17 the residential construction industry; and

18 (2) be certified as a residential combination
19 inspector by the International Code Council.

20 (c) A third-party inspector who inspects an issue involving
21 a structural matter or involving workmanship, materials, and a
22 structural matter must:

23 (1) be an approved structural engineer or approved
24 architect; and

25 (2) have a minimum of five [~~10~~] years' experience in
26 residential construction.

27 (c-1) A third-party inspector who inspects an issue

1 involving a structural matter and an unrelated issue involving
2 workmanship and materials matters must meet the requirements of
3 Subsections (b) and (c).

4 (d) Each third-party inspector [~~who inspects an issue~~
5 ~~involving a structural matter~~] must receive, in accordance with
6 commission rules:

7 (1) initial training regarding the state-sponsored
8 inspection and dispute resolution process and this subtitle; and

9 (2) annual continuing education in the inspector's
10 area of practice.

11 SECTION 44. Chapter 427, Property Code, is amended by
12 adding Section 427.003 to read as follows:

13 Sec. 427.003. NO CIVIL LIABILITY. (a) A person who
14 performs services for the commission as a third-party inspector or
15 a state inspector who does not act with wanton and wilful disregard
16 for the rights, safety, or property of another is not liable for
17 civil damages for any act or omission within the course and scope of
18 carrying out the person's duties or functions as a third-party
19 inspector or state inspector.

20 (b) This section does not apply to an intentional act of
21 misconduct or gross negligence.

22 SECTION 45. Sections 428.001(d) and (g), Property Code, are
23 amended to read as follows:

24 (d) At the time a [A] person [who] submits a request under
25 this section, the person must send by certified mail, return
26 receipt requested, a copy of the request, including evidence
27 submitted with the request, to each other party involved in the

1 dispute.

2 (g) The commission by rule shall establish a standard form
3 for submitting a request under this section [~~and provide a means to~~
4 ~~submit a request electronically~~].

5 SECTION 46. Section 428.003(a), Property Code, is amended
6 to read as follows:

7 (a) On or before the 30th [~~15th~~] day after the date the
8 commission receives a request, the commission shall appoint the
9 next available third-party inspector from the applicable lists of
10 third-party inspectors maintained by the commission under
11 Subsection (c).

12 SECTION 47. Section 428.004, Property Code, is amended by
13 amending Subsection (a) and adding Subsections (e) and (f) to read
14 as follows:

15 (a) If the dispute involves workmanship and materials in the
16 home of a nonstructural matter, the third-party inspector shall
17 issue a recommendation not later than the 30th [~~15th~~] day after the
18 date the third-party inspector receives the appointment from the
19 commission.

20 (e) The commission may not require a builder to reimburse
21 fees or inspection expenses under this section if, before the
22 inspection, the builder offered to make repairs or have repairs
23 made substantially equivalent to those required by the findings of
24 the final report confirming the defect requiring repair.

25 (f) If, before or after the inspection, the builder has made
26 or offered to make repairs substantially equivalent to those
27 required by the findings of the final report confirming the defect,

1 the agency may not report the finding against the builder.

2 SECTION 48. Chapter 428, Property Code, is amended by
3 adding Section 428.006 to read as follows:

4 Sec. 428.006. RESPONSE TO REQUEST. (a) If a request for
5 state-sponsored inspection and dispute resolution is filed under
6 this chapter and accepted by the commission, a party to the dispute
7 who did not file the request, including a third-party warranty
8 company, may submit a written response to the allegations specified
9 in the request and present evidence in support of the response not
10 later than the 15th day after the date the person received a copy of
11 the request under Section 428.001(d).

12 (b) If the response alleges the existence of a construction
13 defect not alleged in the original request, the third-party
14 inspector shall inspect and issue a determination regarding that
15 defect and any other defect alleged in the response.

16 SECTION 49. Section 429.001(c), Property Code, is amended
17 to read as follows:

18 (c) The panel shall:

19 (1) review the recommendation for compliance with this
20 title as [~~without a hearing unless a hearing is otherwise~~] required
21 by rules adopted by the commission;

22 (2) approve, reject, or modify the recommendation of
23 the third-party inspector or remand the dispute for further action
24 by the third-party inspector; and

25 (3) issue written findings of fact and a ruling on the
26 appeal not later than the 30th day after the date the notice of
27 appeal is filed with the commission.

SECTION 50. Chapter 430, Property Code, is amended by adding Section 430.0015 to read as follows:

Sec. 430.0015. USE OF CERTAIN MATERIALS PROHIBITED. In adopting building and performance standards under Section 430.001, the commission shall require the use of graded rebar in accordance with the requirements of the building code in effect in the political subdivision in which the residential construction occurs.

SECTION 51. Section 430.005, Property Code, is amended to read as follows:

Sec. 430.005. ALTERNATIVE STANDARDS FOR CERTAIN CONSTRUCTION. (a) For the purpose of this title, the only statutory warranty and building and performance standards that apply to residential construction in unincorporated areas of counties that are considered economically distressed areas as defined by Section 15.001(11) of the Water Code and located within 50 miles of an international border are the standards established for colonia housing programs administered by the Texas Department of Housing and Community Affairs, unless a county commissioners court has adopted other building and performance standards authorized by statute.

(b) This section does not exempt a builder in an area described by Subsection (a) from the registration requirements imposed by this title, including the requirements of Sections 416.001 and 426.003.

(c) An allegation of a postconstruction defect in a construction project in an area described by Subsection (a) is

1 subject to the state-sponsored inspection and dispute resolution
2 process described by this subtitle.

3 SECTION 52. Section 430.006, Property Code, is amended to
4 read as follows:

5 Sec. 430.006. STATUTORY WARRANTIES EXCLUSIVE. The
6 warranties established under this chapter supersede all implied
7 warranties. The only warranties that exist for residential
8 construction or residential improvements are:

9 (1) warranties created by this chapter;

10 (2) warranties created [~~or~~] by other statutes
11 expressly referring to residential construction or residential
12 improvements;

13 (3) [~~or~~] any express, written warranty acknowledged
14 by the homeowner and the builder; and

15 (4) warranties that apply to an area described by
16 Section 430.005(a) as described by that section.

17 SECTION 53. Subchapter Z, Chapter 214, Local Government
18 Code, is amended by adding Section 214.906 to read as follows:

19 Sec. 214.906. VERIFICATION OF BUILDER REGISTRATION. A
20 municipality may not issue a building permit to a builder, as
21 defined by Section 401.003, Property Code, for construction
22 described by Section 401.003(a) of that code, unless the
23 municipality has determined that the builder is registered with the
24 Texas Residential Construction Commission under Chapter 416 of that
25 code or is exempt from registration under Section 401.005, Property
26 Code. A municipality shall verify that the builder's registration
27 number is both current and valid and make a record of that

1 registration number.

2 SECTION 54. (a) The House Committee on State Affairs shall
3 conduct an interim study regarding the feasibility of creating a
4 fund designed to reimburse aggrieved persons who experience actual
5 damages from a builder's actions in violation of Title 16, Property
6 Code. The speaker of the house of representatives shall appoint two
7 additional members of the house of representatives who have
8 expressed an interest in this issue as voting adjunct members of the
9 committee for the purpose of participating in the study.

10 (b) The committee shall investigate:

11 (1) potential methods for payments into the fund,
12 procedures for managing the fund, and methods for making claims to
13 the fund; and

14 (2) similar funds created by other states and
15 jurisdictions of the United States and the relative successes or
16 failures of those funds.

17 (c) Not later than September 1, 2008, the committee shall
18 submit to the speaker of the house of representatives and the
19 members of the house of representatives:

20 (1) the results of the study; and

21 (2) any recommendations for statutory changes
22 resulting from the findings of the study.

23 (d) This section expires October 1, 2008.

24 SECTION 55. (a) This Act applies only to the following that
25 are filed on or after the effective date of this Act:

26 (1) an application for a building permit or
27 certification as a builder or a Texas Star Builder; or

1 (2) a request for state-sponsored inspection and
2 dispute resolution.

3 (b) An application for a building permit or for
4 certification as a builder or a Texas Star Builder or a request for
5 state-sponsored inspection and dispute resolution that was filed
6 before the effective date of this Act is governed by the law as it
7 existed immediately before the effective date of this Act, and that
8 law is continued in effect for that purpose.

9 SECTION 56. The changes in law made by this Act to Section
10 416.001, Property Code, apply only to an offense committed on or
11 after the effective date of this Act. An offense committed before
12 the effective date of this Act is governed by the law in effect at
13 the time the offense was committed, and the former law is continued
14 in effect for that purpose. For the purposes of this section, an
15 offense was committed before the effective date of this Act if any
16 element of the offense occurred before that date.

17 SECTION 57. Section 416.012, Property Code, as added by
18 this Act, applies only to work performed by a builder on or after
19 the effective date of this Act. Work performed by a builder before
20 that date is governed by the law in effect when the work is
21 performed, and the former law is continued in effect for that
22 purpose.

23 SECTION 58. The change in law made by Section 419.0031,
24 Property Code, as added by this Act, applies only to an
25 administrative penalty assessed on or after the effective date of
26 this Act. A penalty assessed before the effective date of this Act
27 is subject to the law in effect immediately before that date, and

1 that law is continued in effect for that purpose.

2 SECTION 59. The changes in law made by this Act by the
3 amendment of Section 418.001, Property Code, apply only to conduct
4 that occurs on or after the effective date of this Act. Conduct that
5 occurs before that date is governed by the law in effect when the
6 conduct occurs, and the former law is continued in effect for that
7 purpose.

8 SECTION 60. This Act takes effect September 1, 2007.

ADOPTED

MAY 21 2007

Leroy Spaul
Secretary of the Senate

By: Ritter (Fraser)

H.B. No. 1038

Substitute the following for H.B. No. 1038:

By: Fraser

C.S.H.B. No. 1038

A BILL TO BE ENTITLED

AN ACT

relating to the operation of the Texas Residential Construction Commission; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter A, Chapter 5, Property Code, is amended by adding Section 5.016 to read as follows:

Sec. 5.016. DISCLOSURE OF ABSENCE OF CERTAIN WARRANTIES. (a)

A seller of residential real property that is exempt from Title 16 under Section 401.005 shall give to the purchaser of the property a written notice that reads substantially similar to the following:

NOTICE OF NONAPPLICABILITY OF CERTAIN WARRANTIES

AND BUILDING AND PERFORMANCE STANDARDS

The property that is subject to this contract is exempt from Title 16, Property Code, including the provisions of that title that provide statutory warranties and building and performance standards.

(b) A notice required by this section shall be delivered by the seller to the purchaser on or before the effective date of an executory contract binding the purchaser to purchase the property.

If a contract is entered into without the seller providing the notice, the purchaser may terminate the contract for any reason on

1 or before the seventh day after the date the purchaser receives the
2 notice.

3 (c) This section does not apply to a transfer:

4 (1) under a court order or foreclosure sale;

5 (2) by a trustee in bankruptcy;

6 (3) to a mortgagee by a mortgagor or successor in
7 interest or to a beneficiary of a deed of trust by a trustor or
8 successor in interest;

9 (4) by a mortgagee or a beneficiary under a deed of
10 trust who has acquired the land at a sale conducted under a power
11 of sale under a deed of trust or a sale under a court-ordered
12 foreclosure or has acquired the land by a deed in lieu of
13 foreclosure;

14 (5) by a fiduciary in the course of the administration
15 of a decedent's estate, guardianship, conservatorship, or trust;

16 (6) from one co-owner to another co-owner of an
17 undivided interest in the real property;

18 (7) to a spouse or a person in the lineal line of
19 consanguinity of the seller;

20 (8) to or from a governmental entity; or

21 (9) of only a mineral interest, leasehold interest, or
22 security interest.

23 SECTION 2. Section 27.002(b), Property Code, is amended to
24 read as follows:

25 (b) Except as provided by this subsection, to [Tø] the extent

1 of conflict between this chapter and any other law, including the
2 Deceptive Trade Practices-Consumer Protection Act (Subchapter E,
3 Chapter 17, Business & Commerce Code) or a common law cause of
4 action, this chapter prevails. To the extent of conflict between
5 this chapter and Title 16, Title 16 prevails.

6 SECTION 3. Section 27.004(d), Property Code, is amended to
7 read as follows:

8 (d) The court or arbitration tribunal shall abate [~~dismiss~~]
9 an action governed by this chapter if Subsection (c) does not apply
10 and the court or tribunal, after a hearing, finds that the
11 contractor is entitled to abatement [~~dismissal~~] because the
12 claimant failed to comply with the requirements of Subtitle D,
13 Title 16, if applicable, failed to provide the notice or failed to
14 give the contractor a reasonable opportunity to inspect the
15 property as required by Subsection (a), or failed to follow the
16 procedures specified by Subsection (b). An action is automatically
17 abated [~~dismissed~~] without the order of the court or tribunal
18 beginning on the 11th day after the date a motion to abate
19 [~~dismiss~~] is filed if the motion:

20 (1) is verified and alleges that the person against whom
21 the action is pending did not receive the written notice required
22 by Subsection (a), the person against whom the action is pending
23 was not given a reasonable opportunity to inspect the property as
24 required by Subsection (a), or the claimant failed to follow the
25 procedures specified by Subsection (b) or Subtitle D, Title 16;

1 and

2 (2) is not controverted by an affidavit filed by the
3 claimant before the 11th day after the date on which the motion to
4 abate [~~dismiss~~] is filed.

5 SECTION 4. Section 27.007, Property Code, is amended by
6 adding Subsection (c) to read as follows:

7 (c) This section does not apply to a contract relating to a
8 home required to be registered under Section 426.003.

9 SECTION 5. Section 41.007, Property Code, is amended by
10 amending Subsection (a) and adding Subsections (c) and (d) to read
11 as follows:

12 (a) A contract for improvements to an existing residence
13 described by Section 41.001(b)(3) must contain:

14 (1) the contractor's certificate of registration number
15 from the Texas Residential Construction Commission if the
16 contractor is required to register as a builder with the
17 commission;

18 (2) the address and telephone number at which the owner
19 may file a complaint with the Texas Residential Construction
20 Commission about the conduct of the contractor if the contractor is
21 required to register as a builder with the commission; and

22 (3) the following warning conspicuously printed,
23 stamped, or typed in a size equal to at least 10-point bold type or
24 computer equivalent[~~, next to the owner's signature line on the~~
25 contract]:

1 "IMPORTANT NOTICE: You and your contractor are responsible
2 for meeting the terms and conditions of this contract. If you sign
3 this contract and you fail to meet the terms and conditions of this
4 contract, you may lose your legal ownership rights in your home.
5 KNOW YOUR RIGHTS AND DUTIES UNDER THE LAW."

6 (c) A provision of a contract for improvements to an existing
7 residence described by Section 41.001(b)(3) that requires the
8 parties to submit a dispute arising under the contract to binding
9 arbitration must be conspicuously printed or typed in a size equal
10 to at least 10-point bold type or the computer equivalent.

11 (d) A provision described by Subsection (c) is not
12 enforceable against the owner unless the requirements of Subsection
13 (c) are met.

14 SECTION 6. Section 401.002, Property Code, is amended by
15 adding Subdivisions (7-a) and (8-a) to read as follows:

16 (7-a) "Improvement to the interior of an existing home"
17 means any modification to the interior living space of a home,
18 which includes the addition or installation of permanent fixtures
19 inside the home. An improvement to the interior of an existing
20 home does not include improvements to an existing home if the
21 improvements are designed primarily to repair or replace the home's
22 component parts.

23 (8-a) "Material improvement" means a modification to an
24 existing home that either increases or decreases the home's total
25 square footage of living space that also modifies the home's

1 foundation, perimeter walls, or roof. A material improvement does
2 not include modifications to an existing home if the modifications
3 are designed primarily to repair or replace the home's component
4 parts.

5 SECTION 7. Section 401.003, Property Code, is amended to read
6 as follows:

7 Sec. 401.003. DEFINITION OF BUILDER. (a) In this title,
8 "builder" means any person [~~business entity or individual~~] who, for
9 a fixed price, commission, fee, wage, or other compensation, sells,
10 constructs, or supervises or manages the construction of, or
11 contracts for the construction of or the supervision or management
12 of the construction of:

13 (1) a new home;

14 (2) a material improvement to a home, other than an
15 improvement solely to replace or repair a roof of an existing home;
16 or

17 (3) an improvement to the interior of an existing home
18 when the cost of the work exceeds \$10,000 [~~\$20,000~~].

19 (b) The term includes:

20 (1) an owner, officer, director, shareholder, partner,
21 affiliate, subsidiary, or employee of the builder;

22 (2) a risk retention group governed by Article 21.54,
23 Insurance Code, that insures all or any part of a builder's
24 liability for the cost to repair a residential construction defect;
25 and

1 (3) a third-party warranty company and its
2 administrator.

3 (c) The term does not include any person [~~business entity or~~
4 ~~individual~~] who:

5 (1) has been issued a license by this state or an agency
6 [~~or political subdivision~~] of this state to practice a trade or
7 profession related to or affiliated with residential construction
8 if the work being done by the entity or individual to the home is
9 solely for the purpose for which the license was issued; or

10 (2) sells a new home and:

11 (A) does not construct or supervise or manage the
12 construction of the home; and

13 (B) holds a license issued under Chapter 1101,
14 Occupations Code, or is exempt from that chapter under Section
15 1101.005, Occupations Code.

16 SECTION 8. Section 401.005, Property Code, is amended by
17 amending Subsection (b) and adding Subsection (c) to read as
18 follows:

19 (b) This title does not apply to a homeowner or to a
20 homeowner's real estate broker, agent, interior designer registered
21 under Chapter 1053, Occupations Code, interior decorator, or
22 property manager who supervises or arranges for the construction of
23 an improvement to a home owned by the homeowner.

24 (c) An individual who builds a home or a material improvement
25 to a home and sells the home immediately following completion of

1 the building or remodeling and does not live in the home for at
2 least one year following completion of the building or remodeling
3 is responsible as a builder under the warranty obligation created
4 by this title for work completed by the individual. Responsibility
5 under this subsection does not automatically require an individual
6 to register under Section 416.001.

7 SECTION 9. Chapter 401, Property Code, is amended by adding
8 Section 401.007 to read as follows:

9 Sec. 401.007. INJUNCTION; APPEAL. (a) If the commission has
10 reasonable cause to believe that a person is violating a statute to
11 which this chapter applies, the commission, in addition to any
12 other authorized action, may issue an order to cease and desist
13 from the violation or an order to take affirmative action, or both,
14 to enforce compliance. A person may appeal the order directly to
15 district court in accordance with Chapter 2001, Government Code.

16 (b) Before issuing an order under this section, the
17 commission shall set and give notice of a hearing before a hearings
18 officer. The hearing is governed by Chapter 2001, Government Code.
19 Based on the findings of fact, conclusions of law, and
20 recommendations of the hearings officer, the commission by order
21 may find whether a violation has occurred.

22 (c) The commission, after providing notice and an opportunity
23 to appear for a hearing, may impose against a person who violates a
24 cease and desist order an administrative penalty in an amount not
25 to exceed \$1,000 for each day of violation. In addition to any

1 other remedy provided by law, the attorney general or the
2 commission may institute in district court a suit for injunctive
3 relief and to collect an administrative penalty. A bond is not
4 required of the commission with respect to injunctive relief
5 granted under this section. In the action, the court may enter as
6 proper an order awarding a preliminary or final injunction.

7 (d) A suit by the attorney general under this section must be
8 brought in Travis County.

9 (e) The attorney general and the commission may recover
10 reasonable expenses incurred in obtaining injunctive relief under
11 this section, including court costs, reasonable attorney's fees,
12 investigative costs, witness fees, and deposition costs.

13 (e) If a party seeks review of the order by the commission,
14 the party shall file a petition initiating judicial review not
15 later than the 30th day after the date of the issuance of the
16 decision.

17 SECTION 10. Section 406.001, Property Code, is amended by
18 adding Subsections (a-1) and (c) to read as follows:

19 (a-1) In making appointments under Subsection (a)(2), the
20 governor shall consider individuals who can represent the interests
21 of homeowners, including individuals who have experience
22 representing consumer or homeowner interests.

23 (c) A person may not be a public member of the commission if
24 the person or the person's spouse:

25 (1) is a builder registered with the commission, or is

1 otherwise registered, certified, or licensed by a regulatory agency
2 in the field of residential construction;

3 (2) is employed by or participates in the management of
4 a business entity or other organization regulated by or receiving
5 money from the commission;

6 (3) owns or controls, directly or indirectly, more than
7 a 10 percent interest in a business entity or other organization
8 regulated by or receiving money from the commission; or

9 (4) uses or receives a substantial amount of tangible
10 goods, services, or money from the commission other than
11 compensation or reimbursement authorized by law for commission
12 membership, attendance, or expenses.

13 SECTION 11. Sections 406.004(b) and (c), Property Code, are
14 amended to read as follows:

15 (b) A person may not be a member of the commission and may
16 not be a commission employee employed in a "bona fide executive,
17 administrative, or professional capacity," as that phrase is used
18 for purposes of establishing an exemption to the overtime
19 provisions of the federal Fair Labor Standards Act of 1938 (29
20 U.S.C. Section 201 et seq.) and its subsequent amendments, if:

21 (1) the person is an officer, employee, manager, or paid
22 consultant of a Texas trade association or consumer association in
23 the field of residential construction; or

24 (2) the person's spouse is an officer, [a] manager, or
25 paid consultant of a Texas trade association or consumer

1 association in the field of residential construction.

2 (c) A person may not be a member of the commission or act as
3 the general counsel to the commission if the person is required to
4 register as a lobbyist under Chapter 305, Government Code~~[, because~~
5 ~~of the person's activities for compensation on behalf of a~~
6 ~~profession related to the operation of the commission]~~.

7 SECTION 12. Section 408.002, Property Code, is amended to
8 read as follows:

9 Sec. 408.002. FEES. (a) The commission shall adopt fees as
10 required by this title in amounts that are reasonable and necessary
11 to provide sufficient revenue to cover the costs of administering
12 this title.

13 (b) The commission may charge a late fee for late payment of
14 any fee due to the commission. The late fee may be any amount that
15 does not exceed the amount of the fee due.

16 (c) The commission may charge a reasonable fee for:

17 (1) a homeowner to submit a request for state-sponsored
18 inspection under Subtitle D;

19 (2) providing public information requested under Chapter
20 552, Government Code, excluding information requested from the
21 commission under Section 409.001; or

22 (3) producing, mailing, and distributing special printed
23 materials and publications generated in bulk by the commission for
24 use and distribution by builders.

25 (d) The commission may waive or reduce the fee for an

1 inspection under Subtitle D for a homeowner who demonstrates an
2 inability to pay the fee.

3 SECTION 13. Section 408.003, Property Code, is amended by
4 adding Subsection (c) to read as follows:

5 (c) The commission may procure and distribute to consumers
6 informational materials and promotional items that contain
7 commission contact details and outreach information.

8 SECTION 14. Chapter 408, Property Code, is amended by adding
9 Section 408.005 to read as follows:

10 Sec. 408.005. COLLECTION OF AMOUNTS DUE. The commission may
11 seek reimbursement of any amounts due to the commission and
12 restitution for any dishonored payment instrument presented for
13 payment to the commission.

14 SECTION 15. Chapter 409, Property Code, is amended by adding
15 Section 409.0011 to read as follows:

16 Sec. 409.0011. BUILDER LIST. (a) In this section, "volume
17 builder" means a builder who registers at least 100 homes each year
18 as provided by Section 426.003.

19 (b) The commission shall create and make accessible to the
20 public an electronic list and a hard-copy list of builders who:

21 (1) are registered with the commission; and
22 (2) provide in this state building services, including
23 accessible floor plans, to persons with mobility-related special
24 needs.

25 (c) The electronic list required under Subsection (b) shall

1 provide, if available, the following information with respect to
2 each listed builder:

3 (1) a link to the builder's website; and
4 (2) contact information for the builder, including the
5 municipalities where the builder provides building services
6 described by Subsection (b)(2).

7 (d) The commission shall contact all volume builders in this
8 state and encourage those builders to develop floor plans that are
9 designed to be accessible for persons with mobility-related special
10 needs.

11 (e) The Veterans' Land Board shall make accessible to the
12 public on its Internet website and in hard-copy format the
13 electronic list required under Subsection (b).

14 SECTION 16. Section 409.003, Property Code, is amended by
15 adding Subsections (d), (e), and (f) to read as follows:

16 (d) The commission shall make available to the public
17 information about each complaint that resulted in disciplinary
18 action by the commission.

19 (e) The commission may not disclose the address of any
20 individual home registered with the commission when making
21 information available to the public under this title, except as
22 necessary to implement this title.

23 (f) Notwithstanding Subsections (d) and (e), the commission
24 may not disclose the address of an individual home registered with
25 the commission:

1 (1) on the commission's Internet website; or
2 (2) in connection with an open records request under
3 Chapter 552, Government Code.

4 SECTION 17. Chapter 409, Property Code, is amended by adding
5 Section 409.004 to read as follows:

6 Sec. 409.004. DIRECTORY OF BUILDERS. The commission shall
7 make available to the public a list of each builder who holds a
8 certificate of registration issued under Chapter 416.

9 SECTION 18. Section 416.002, Property Code, is amended by
10 adding Subsection (e) to read as follows:

11 (e) Based on a commission investigation of an alleged
12 violation of Sections 418.001(a)(14)-(20), the commission may
13 require an applicant for renewal of a certificate of registration
14 to disclose to the commission every person with an ownership
15 interest in the applicant's business as a builder. This subsection
16 does not apply to a publicly traded company.

17 SECTION 19. Section 416.004, Property Code, is amended by
18 amending Subsection (a) and adding Subsection (c) to read as
19 follows:

20 (a) The commission shall charge and collect:

21 (1) a filing fee for an application for an original
22 certificate of registration that does not exceed \$500; ~~and~~

23 (2) a fee for renewal of a certificate of registration
24 that does not exceed \$300; and

25 (3) a late fee that does not exceed the amount of the

1 fee due if payment of a registration application or renewal fee due
2 under this title is late.

3 (c) All fees paid to the commission under this section are
4 nonrefundable.

5 SECTION 20. Sections 416.008(d) and (e), Property Code, are
6 amended to read as follows:

7 (d) The hearing officer may grant a motion for continuance of
8 the hearing on the request of the commission or either party ~~[may~~
9 ~~be continued from time to time with the consent of the applicant].~~

10 (e) The hearing shall be held before a hearings officer
11 appointed by the commission. After the hearing, the hearings
12 officer shall enter an appropriate order. ~~[The order of the~~
13 ~~hearings officer under this subsection is a final decision.]~~

14 SECTION 21. Section 416.010, Property Code, is amended by
15 adding Subsection (e) to read as follows:

16 (e) A builder may designate a United States Postal Service
17 postal box for use in correspondence. The builder may not use the
18 box as the builder's principal place of business for purposes of
19 this section.

20 SECTION 22. Section 416.011(d), Property Code, is amended to
21 read as follows:

22 (d) The certification issued by the commission as a "Texas
23 Star Builder" is valid for at most one year and renewable on a date
24 to be determined at the commission's discretion ~~[shall be for the~~
25 ~~same period of time as the builder's registration under this~~

chapter].

SECTION 23. Chapter 416, Property Code, is amended by adding Section 416.012 to read as follows:

Sec. 416.012. CONTINUING EDUCATION PROGRAMS. (a) The commission shall recognize or administer continuing education programs for builders registered by the commission. A registered builder must participate in the programs to the extent required by this section to maintain the builder's registration.

(b) A builder who registers for the first time on or after September 1, 2007, must complete, during the first year the builder is registered with the commission, five hours of continuing education, one hour of which must address ethics.

(c) A builder who is registered before September 1, 2007, and all other builders who register for the first time on or after September 1, 2007, and satisfy the requirements of Subsection (b), must complete five hours of continuing education every five years, one hour of which must address ethics.

(d) The commission shall permit a registered builder to receive continuing education credit for educational, technical, ethical, or professional management activities related to the practice of residential construction, including:

(1) successfully completing or auditing a course sponsored by an institution of higher education;

(2) successfully completing a course certified by a professional or trade organization;

1 (3) attending a seminar, tutorial, short course,
2 correspondence course, videotaped course, or televised course on
3 the practice of residential construction;
4 (4) participating in an in-house course sponsored by a
5 corporation or other business entity;
6 (5) teaching a course described by Subdivisions (1)-(4);
7 (6) publishing an article, paper, or book on the
8 practice of residential construction;
9 (7) making or attending a presentation at a meeting of a
10 residential or builder association or organization or writing a
11 paper presented at the meeting;
12 (8) participating in the activities of a residential or
13 builder association, including serving on a committee of the
14 organization; and
15 (9) engaging in self-directed study on the practice of
16 residential construction.
17 (e) A registered builder may not receive more than two
18 continuing education credit hours during each five-year period for
19 engaging in self-directed study.
20 (f) At least two hours of the continuing education
21 requirement under this section must address:
22 (1) limited statutory warranties;
23 (2) building and performance standards; and
24 (3) requirements of the International Residential Code
25 as adopted under Section 430.001 and other statutes and rules that

1 apply to builders under this title.

2 (g) A builder's agent or other designated individual may
3 satisfy the requirements of this section for the builder if the
4 builder is a corporation or other business entity.

5 SECTION 24. Section 417.003, Property Code, is amended to
6 read as follows:

7 Sec. 417.003. FEES. (a) The commission shall charge and
8 collect:

9 (1) a filing fee for an application for certification
10 under this chapter that does not exceed \$100; ~~and~~

11 (2) a fee for renewal of a certification under this
12 chapter that does not exceed \$50; and

13 (3) a late fee that does not exceed the amount of the
14 fee due if payment of a registration or application fee due under
15 this title is late.

16 (b) All fees paid to the commission under this section are
17 nonrefundable.

18 SECTION 25. Sections 418.001 and 418.002, Property Code, are
19 amended to read as follows:

20 Sec. 418.001. GROUNDS FOR DISCIPLINARY ACTION. A person,
21 including a builder or a person who is designated as a builder's
22 agent under Section 416.006, or a person who owns or controls a
23 majority ownership interest in the builder is subject to
24 disciplinary action under this chapter for:

25 (1) fraud or deceit in obtaining a registration or

1 certification under this subtitle;

2 (2) misappropriation or misapplication of trust funds in
3 the practice of residential construction, including a violation of
4 Chapter 32, Penal Code, or Chapter 162, if found by a final
5 nonappealable court judgment;

6 (3) naming false consideration in a contract to sell a
7 new home or in a construction contract;

8 (4) discriminating on the basis of race, color,
9 religion, sex, national origin, or ancestry;

10 (5) publishing a false or misleading advertisement;

11 (6) failure to honor, within a reasonable time, a check
12 issued to the commission, or any other instrument of payment,
13 including a credit or debit card or electronic fund transfer, after
14 the commission has sent by certified mail a request for payment to
15 the person's last known business address, according to commission
16 records;

17 (7) failure to pay an administrative penalty assessed by
18 the commission under Chapter 419 or a fee due under Chapter 426;

19 (8) failure to pay [~~nonpayment of~~] a final nonappealable
20 court judgment arising from a construction defect or other
21 transaction between the person and a homeowner;

22 (9) failure to register a home as required by Section
23 426.003;

24 (10) failure to remit the fee for registration of a home
25 under Section 426.003; [~~or~~]

1 (11) failure to reimburse a homeowner the amount ordered
2 by the commission as provided by [in] Section 428.004(d);

3 (12) engaging in statutory or common-law fraud or
4 misappropriation of funds, as determined by the commission after a
5 hearing under Section 418.003;

6 (13) a repeated failure to participate in the state-
7 sponsored inspection and dispute resolution process if required by
8 this title;

9 (14) failure to register as a builder as required under
10 Chapter 416;

11 (15) using or attempting to use a certificate of
12 registration that has expired or that has been revoked;

13 (16) falsely representing that the person holds a
14 certificate of registration issued under Chapter 416;

15 (17) acting as a builder using a name other than the
16 name or names disclosed to the commission;

17 (18) aiding, abetting, or conspiring with a person who
18 does not hold a certificate of registration to evade the provisions
19 of this title or rules adopted under this title, if found by a
20 final nonappealable court judgment;

21 (19) allowing the person's certificate of registration
22 to be used by another person;

23 (20) acting as an agent, partner, or associate of a
24 person who does not hold a certificate of registration with the
25 intent to evade the provisions of this title or rules adopted under

1 this title;
2 (21) a failure to reasonably perform on an accepted
3 offer to repair or a repeated failure to make an offer to repair
4 based on:
5 (A) the recommendation of a third-party inspector
6 under Section 428.004; or
7 (B) the final holding of an appeal under Chapter
8 429;
9 (22) a repeated failure to respond to a commission
10 request for information;
11 (23) a failure to obtain a building permit required by a
12 political subdivision before constructing a new home or an
13 improvement to an existing home;
14 (24) abandoning, without justification, any home
15 improvement contract or new home construction project engaged in or
16 undertaken by the person, if found to have done so by a final,
17 nonappealable court judgment; or
18 (25) otherwise violating this title or a commission rule
19 adopted under this title.
20 Sec. 418.002. DISCIPLINARY POWERS OF COMMISSION. (a) On a
21 determination that a ground for disciplinary action under Section
22 418.001 exists, the commission may:
23 (1) revoke or suspend a registration or certification in
24 the event of repeated prior violations that have resulted in
25 disciplinary action;

1 (2) probate the suspension of a registration or
2 certification; ~~[or]~~

3 (3) formally or informally reprimand a registered or
4 certified person; or

5 (4) impose an administrative penalty under Chapter 419.

6 (b) The commission must consider the factors described by
7 Section 419.002(b) before taking disciplinary action under this
8 chapter.

9 (c) For purposes of Section 418.001(12), the commission may
10 not conduct a hearing, revoke, or suspend a registration or
11 certification unless the determination of statutory or common-law
12 fraud or misappropriation of funds has been made in a final
13 nonappealable judgment by a court.

14 (d) Prior to imposing disciplinary action under Subsection
15 (a)(1) based upon grounds that involve a transaction between a
16 builder and a homeowner, there must be repeated prior violations
17 that have resulted in disciplinary action that involve the greater
18 of:

19 (1) at least three homes registered by the builder under
20 Section 426.003; or

21 (2) at least one percent of the homes registered by the
22 builder under Section 426.003 during the preceding 12 months.

23 (e) When the commission has information that a matter may be
24 criminal in nature, the commission may refer the matter to a local
25 district attorney or county attorney for investigation.

1 SECTION 26. Section 418.004, Property Code, is amended by
2 adding Subsection (c) to read as follows:

3 (c) An appeal to a district court of a final decision of the
4 commission under this section regarding a revocation or suspension
5 of a registration or certification is determined by substantial
6 evidence.

7 SECTION 27. Chapter 418, Property Code, is amended by adding
8 Section 418.005 to read as follows:

9 Sec. 418.005. RESPONSIBILITY FOR ADMINISTRATIVE ACTIONS. (a)
10 The commission may simultaneously take administrative action under
11 this chapter against:

12 (1) a builder; and

13 (2) a person who owns or controls a majority ownership
14 interest in the builder.

15 (b) A builder and a person who owns or controls a majority
16 ownership interest in the builder are jointly and severally liable
17 for any amounts due to the commission under this title.

18 SECTION 28. Section 419.001, Property Code, is amended to
19 read as follows:

20 Sec. 419.001. IMPOSITION OF ADMINISTRATIVE PENALTY. The [~~In~~
21 ~~a contested case involving disciplinary action, the~~] commission
22 may[~~, as part of the commission's order,~~] impose an administrative
23 penalty on a [~~registered or certified~~] person who violates this
24 title or a rule adopted or order issued by the commission under
25 this title.

1 SECTION 29. Section 419.002, Property Code, is amended by
2 amending Subsection (a) and adding Subsection (c) to read as
3 follows:

4 (a) Except as provided by Subsection (c), an [An]
5 administrative penalty imposed under this chapter may not exceed
6 \$10,000 [~~\$5,000~~] for each violation.

7 (c) A violation of Section 418.001(a)(2) or (12) is
8 punishable by a penalty not to exceed \$100,000.

9 SECTION 30. Subtitle C, Title 16, Property Code, is amended
10 by adding Chapter 420 to read as follows:

11 CHAPTER 420. BUILDING CONTRACT PROVISIONS

12 Sec. 420.001. REQUIRED WRITTEN DISCLOSURE. In a contract for
13 the construction of a new home or an improvement to an existing
14 home required to be registered under Section 426.003, the contract
15 must contain a notice to the consumer in at least 10-point bold
16 type or the computer equivalent that gives the telephone number of
17 the commission and states:

18 STATE LAW REQUIRES THAT A PERSON HOLD A CERTIFICATE OF
19 REGISTRATION FROM THE TEXAS RESIDENTIAL CONSTRUCTION COMMISSION IF
20 THE PERSON CONTRACTS TO CONSTRUCT A NEW HOME OR IF THE PERSON
21 CONTRACTS TO CONSTRUCT A MATERIAL IMPROVEMENT TO AN EXISTING HOME
22 OR CERTAIN IMPROVEMENTS TO THE INTERIOR OF AN EXISTING HOME AND THE
23 TOTAL COST OF THE IMPROVEMENT IS \$10,000 OR MORE (INCLUDING LABOR
24 AND MATERIALS).

25 YOU MAY CONTACT THE COMMISSION AT [insert commission's

1 telephone number] TO FIND OUT WHETHER THE BUILDER HAS A VALID
2 CERTIFICATE OF REGISTRATION. THE COMMISSION HAS INFORMATION
3 AVAILABLE ON THE HISTORY OF BUILDERS, INCLUDING SUSPENSIONS,
4 REVOCATIONS, COMPLAINTS, AND RESOLUTION OF COMPLAINTS.

5 THIS CONTRACT IS SUBJECT TO CHAPTER 426, PROPERTY CODE. THE
6 PROVISIONS OF THAT CHAPTER GOVERN THE PROCESS THAT MUST BE FOLLOWED
7 IN THE EVENT A DISPUTE ARISES OUT OF AN ALLEGED CONSTRUCTION
8 DEFECT. IF YOU HAVE A COMPLAINT CONCERNING A CONSTRUCTION DEFECT
9 YOU MAY CONTACT THE COMMISSION AT THE TOLL-FREE TELEPHONE NUMBER TO
10 LEARN HOW TO PROCEED UNDER THE STATE-SPONSORED INSPECTION AND
11 DISPUTE RESOLUTION PROCESS.

12 Sec. 420.002. REQUIRED CONTRACT PROVISIONS. In a contract for
13 the construction of a new home or an improvement to an existing
14 home required to be registered under Section 426.003, the contract
15 is not enforceable against a homeowner unless the contract:

16 (1) contains the builder's name and certificate of
17 registration number; and

18 (2) contains the notice required by Section 420.001.

19 Sec. 420.003. BINDING ARBITRATION CONTRACT PROVISION. (a)
20 In a contract for the construction of a new home or the improvement
21 of an existing home required to be registered under Section 426.003
22 and that contains a provision requiring the parties to submit a
23 dispute arising under the contract to binding arbitration, the
24 provision must be conspicuously printed or typed in a size equal to
25 at least 10-point bold type or the computer equivalent.

1 (b) A provision described by Subsection (a) is not
2 enforceable against the homeowner unless the requirements of
3 Subsection (a) are met.

4 SECTION 31. Section 426.003(b), Property Code, is amended to
5 read as follows:

6 (b) A builder who enters ~~[into]~~ a transaction governed by
7 this title, other than the transfer of title of a new home from the
8 builder to the seller, shall register the home involved in the
9 transaction with the commission. The registration must:

10 (1) include the information required by the commission
11 by rule;

12 (2) be accompanied by the fee required by Subsection
13 (c); and

14 (3) be delivered to the commission not later than the
15 15th day after the earlier of:

16 (A) the date of the substantial completion of the
17 home or other residential construction project ~~[of the agreement~~
18 ~~that describes the transaction between the homeowner and the~~
19 ~~builder]; [or]~~

20 (B) the date the new home is occupied; or

21 (C) the date of issuance of a certificate of
22 occupancy or a certificate of completion ~~[commencement of the work~~
23 ~~on the home]~~.

24 SECTION 32. Section 426.001(a), Property Code, is amended to
25 read as follows:

1 (a) This subtitle applies to a dispute between a builder and
2 a homeowner if:

3 (1) the dispute arises out of an alleged construction
4 defect, other than a claim solely for:

5 (A) personal injury, survival, or wrongful death;
6 or

7 (B) damage to goods; and

8 (2) a request is submitted to the commission not later
9 than the 30th day after ~~[on or before]~~ the 10th anniversary of:

10 (A) the date of the initial transfer of title from
11 the builder to the initial owner of the home or the improvement
12 that is the subject of the dispute; or

13 (B) ~~[7]~~ if there is not a closing in which title is
14 transferred, the date on which the ~~[contract for]~~ construction of
15 the improvement was substantially completed ~~[entered into]~~.

16 SECTION 33. Section 426.004, Property Code, is amended by
17 amending Subsection (c) and adding Subsection (d) to read as
18 follows:

19 (c) If the transfer of the title of the home from the builder
20 to the initial homeowner occurred before January 1, 2004, or if the
21 contract for improvements or additions between the builder and
22 homeowner was entered into before January 1, 2004, the commission
23 shall register the home and the builder ~~[the person who submits a~~
24 ~~request involving the home]~~ shall pay~~[, in addition to the~~
25 ~~inspection expenses required by this section,~~] the registration fee

1 required by Section 426.003.

2 (d) The commission may reimburse an inspector for travel
3 expenses incurred to complete an inspection regardless of whether
4 the expenses exceed the amount collected under this section.

5 SECTION 34. Section 426.005, Property Code, is amended by
6 amending Subsection (a) and adding Subsection (f) to read as
7 follows:

8 (a) A homeowner or builder must comply with this subtitle
9 before initiating an action for damages or other relief arising
10 from an alleged construction defect.

11 (f) A homeowner is not required to comply with this subtitle
12 if, at the time a homeowner and a builder enter into a contract
13 covered by this title:

14 (1) the builder was not registered; or

15 (2) the certificate of registration of the builder has
16 been revoked.

17 SECTION 35. Section 426.006, Property Code, is amended to
18 read as follows:

19 Sec. 426.006. TIME FOR REQUESTING INSPECTION AND DISPUTE
20 RESOLUTION. (a) For an alleged defect discovered during an
21 applicable warranty period, the [The] state-sponsored inspection
22 and dispute resolution process must be requested on or before the
23 second anniversary of the date of discovery of the conditions
24 claimed to be evidence of the construction defect but not later
25 than the 90th [~~30th~~] day after the date the applicable warranty

1 period expires.

2 (b) If the alleged defect would violate the statutory
3 warranty of habitability and was not discoverable by a reasonable,
4 prudent inspection or examination of the home or improvement within
5 the applicable warranty period, the state-sponsored inspection and
6 dispute resolution process must be requested:

7 (1) on or before the second anniversary of the date of
8 discovery of the conditions claimed to be evidence of the
9 construction defect; and

10 (2) not later than the 10th anniversary of the date of
11 the initial transfer of title from the builder to the initial owner
12 of the home or improvement that is the subject of the dispute or,
13 if there is not a closing, the date on which the contract for
14 construction of the improvement is entered into.

15 SECTION 36. Section 426.007, Property Code, is amended to
16 read as follows:

17 Sec. 426.007. ADMISSIBILITY OF CERTAIN EVIDENCE. A person
18 who submits a request for state-sponsored inspection and dispute
19 resolution or responds to a request under Chapter 428 must disclose
20 in the request or response the name of any expert [~~person~~] who,
21 before the request is submitted, inspected the home on behalf of
22 the requestor or respondent in connection with the construction
23 defect alleged in the request or response. If an expert's [~~a~~
24 ~~person's~~] name is known to the requestor or respondent at the time
25 of the request or response and is not disclosed as required by this

1 section, the requestor or respondent may not designate the person
2 as an expert or use materials prepared by that person in:

3 (1) the state-sponsored inspection and dispute
4 resolution process arising out of the request; or

5 (2) any action arising out of the construction defect
6 that is the subject of the request or response.

7 SECTION 37. Section 426.008, Property Code, is amended by
8 adding Subsection (c) to read as follows:

9 (c) For the purposes of admissibility of a third-party
10 inspector's recommendation or a ruling by a panel of state
11 inspectors, the recommendation or ruling shall be considered a
12 business record under Rule 902, Texas Rules of Evidence.

13 SECTION 38. Section 427.001, Property Code, is amended by
14 amending Subsections (b), (c), and (d) and adding Subsection (c-1)
15 to read as follows:

16 (b) A third-party inspector who inspects an issue involving
17 workmanship and materials must:

18 (1) have a minimum of three [~~five~~] years' experience in
19 the residential construction industry; and

20 (2) be certified as a residential combination inspector
21 by the International Code Council.

22 (c) A third-party inspector who inspects an issue involving a
23 structural matter or involving workmanship, materials, and a
24 structural matter must:

25 (1) be an approved structural engineer or approved

1 architect; and

2 (2) have a minimum of five ~~[10]~~ years' experience in
3 residential construction.

4 (c-1) A third-party inspector who inspects an issue involving
5 a structural matter and an unrelated issue involving workmanship
6 and materials matters must meet the requirements of Subsections (b)
7 and (c).

8 (d) Each third-party inspector ~~[who inspects an issue~~
9 ~~involving a structural matter]~~ must receive, in accordance with
10 commission rules:

11 (1) initial training regarding the state-sponsored
12 inspection and dispute resolution process and this subtitle; and

13 (2) annual continuing education in the inspector's area
14 of practice.

15 SECTION 39. Chapter 427, Property Code, is amended by adding
16 Section 427.003 to read as follows:

17 Sec. 427.003. NO CIVIL LIABILITY. (a) A person who performs
18 services for the commission as a third-party inspector or a state
19 inspector who does not act with wanton and wilful disregard for the
20 rights, safety, or property of another is not liable for civil
21 damages for any act or omission within the course and scope of
22 carrying out the person's duties or functions as a third-party
23 inspector or state inspector.

24 (b) This section does not apply to an intentional act of
25 misconduct or gross negligence.

SECTION 40. Sections 428.001(d) and (g), Property Code, are amended to read as follows:

(d) At the time a [A] person ~~[who]~~ submits a request under this section, the person must send by certified mail, return receipt requested, a copy of the request, including evidence submitted with the request, to each other party involved in the dispute.

(g) The commission by rule shall establish a standard form for submitting a request under this section ~~[and provide a means to submit a request electronically]~~.

SECTION 41. Section 428.003(a), Property Code, is amended to read as follows:

(a) On or before the 30th ~~[15th]~~ day after the date the commission receives a request, the commission shall appoint the next available third-party inspector from the applicable lists of third-party inspectors maintained by the commission under Subsection (c).

SECTION 42. Section 428.004, Property Code, is amended by amending Subsection (a) and adding Subsections (e) and (f) to read as follows:

(a) If the dispute involves workmanship and materials in the home of a nonstructural matter, the third-party inspector shall issue a recommendation not later than the 30th ~~[15th]~~ day after the date the third-party inspector receives the appointment from the commission.

1 (e) The commission may not require a builder to reimburse
2 fees or inspection expenses under this section if, before the
3 inspection, the builder offered to make repairs or have repairs
4 made substantially equivalent to those required by the findings of
5 the final report confirming the defect requiring repair.

6 (f) If, before the inspection, the builder has made or
7 offered to make repairs substantially equivalent to those required
8 by the findings of the final report confirming the defect, the
9 agency may not list the finding on the commission's Internet
10 website.

11 SECTION 43. Section 429.001(c), Property Code, is amended to
12 read as follows:

13 (c) The panel shall:

14 (1) review the recommendation for compliance with this
15 title as ~~[without a hearing unless a hearing is otherwise]~~ required
16 by rules adopted by the commission;

17 (2) approve, reject, or modify the recommendation of the
18 third-party inspector or remand the dispute for further action by
19 the third-party inspector; and

20 (3) issue written findings of fact and a ruling on the
21 appeal not later than the 30th day after the date the notice of
22 appeal is filed with the commission.

23 SECTION 44. Section 430.005, Property Code, is amended to
24 read as follows:

25 Sec. 430.005. ALTERNATIVE STANDARDS FOR CERTAIN CONSTRUCTION.

1 (a) For the purpose of this title, the only statutory warranty
2 and building and performance standards that apply to residential
3 construction in unincorporated areas of counties that are
4 considered economically distressed areas as defined by Section
5 15.001(11) of the Water Code and located within 50 miles of an
6 international border are the standards established for colonia
7 housing programs administered by the Texas Department of Housing
8 and Community Affairs, unless a county commissioners court has
9 adopted other building and performance standards authorized by
10 statute.

11 (b) This section does not exempt a builder in an area
12 described by Subsection (a) from the registration requirements
13 imposed by this title, including the requirements of Sections
14 416.001 and 426.003.

15 (c) An allegation of a postconstruction defect in a
16 construction project in an area described by Subsection (a) is
17 subject to the state-sponsored inspection and dispute resolution
18 process described by this subtitle.

19 SECTION 45. Section 430.006, Property Code, is amended to
20 read as follows:

21 Sec. 430.006. STATUTORY WARRANTIES EXCLUSIVE. The warranties
22 established under this chapter supersede all implied warranties.
23 The only warranties that exist for residential construction or
24 residential improvements are:

25 (1) warranties created by this chapter;

1 (2) warranties created ~~[or]~~ by other statutes expressly
2 referring to residential construction or residential improvements;
3 (3) [or] any express, written warranty acknowledged by
4 the homeowner and the builder; and
5 (4) warranties that apply to an area described by
6 Section 430.005(a) as described by that section.

7 SECTION 46. Subchapter Z, Chapter 214, Local Government Code,
8 is amended by adding Section 214.906 to read as follows:

9 Sec. 214.906. VERIFICATION OF BUILDER REGISTRATION. A
10 municipality may not issue a building permit to a builder, as
11 defined by Section 401.003, Property Code, for construction
12 described by Section 401.003(a), Property Code, unless the
13 municipality has verified that the builder is registered with the
14 Texas Residential Construction Commission under Chapter 416,
15 Property Code, or is exempt from registration under Section
16 401.005, Property Code.

17 SECTION 47. (a) The House Committee on State Affairs shall
18 conduct an interim study regarding the feasibility of creating a
19 fund designed to reimburse aggrieved persons who experience actual
20 damages from a builder's actions in violation of Title 16, Property
21 Code. The speaker of the house of representatives shall appoint
22 two additional members of the house of representatives who have
23 expressed an interest in this issue as voting adjunct members of
24 the committee for the purpose of participating in the study.

25 (b) The committee shall investigate:

1 (1) potential methods for payments into the fund,
2 procedures for managing the fund, and methods for making claims to
3 the fund; and

4 (2) similar funds created by other states and
5 jurisdictions of the United States and the relative successes or
6 failures of those funds.

7 (c) Not later than September 1, 2008, the committee shall
8 submit to the speaker of the house of representatives and the
9 members of the house of representatives:

10 (1) the results of the study; and

11 (2) any recommendations for statutory changes resulting
12 from the findings of the study.

13 (d) This section expires October 1, 2008.

14 SECTION 48. (a) This Act applies only to the following that
15 are filed on or after September 1, 2007:

16 (1) an application for a building permit or
17 certification as a builder or a Texas Star Builder; or

18 (2) a request for state-sponsored inspection and dispute
19 resolution.

20 (b) An application for a building permit or for certification
21 as a builder or a Texas Star Builder or a request for state-
22 sponsored inspection and dispute resolution that was filed before
23 September 1, 2007, is governed by the law as it existed immediately
24 before September 1, 2007, and that law is continued in effect for
25 that purpose.

1 SECTION 49. Section 5.016, Property Code, as added by this
2 Act, applies only to a transfer of residential property in which
3 the improvements to the property commenced on or after September 1,
4 2007. A transfer of residential property in which the improvements
5 commenced before September 1, 2007, is governed by the law in
6 effect at the time the improvements were commenced, and the former
7 law is continued in effect for that purpose.

8 SECTION 50. Section 416.012, Property Code, as added by this
9 Act, applies only to work performed by a builder on or after
10 September 1, 2007. Work performed by a builder before that date is
11 governed by the law in effect when the work is performed, and the
12 former law is continued in effect for that purpose.

13 SECTION 51. The changes in law made by this Act by the
14 amendment of Section 418.001, Property Code, apply only to conduct
15 that occurs on or after September 1, 2007. Conduct that occurs
16 before that date is governed by the law in effect when the conduct
17 occurs, and the former law is continued in effect for that purpose.

18 SECTION 52. This Act takes effect September 1, 2007.

ADOPTED

FLOOR AMENDMENT NO. 1

MAY 21 2007

Debra Daw
Secretary of the Senate

BY:

Fraser
FRASER

1 Amend C.S.H.B. No. 1038 (senate committee printing) in
2 SECTION 34 of the bill by striking added Subsection (f), Section
3 426.005, Property Code (page 11, lines 14-19), and substituting
4 the following:

5 (f) A homeowner is not required to comply with this
6 subtitle if:

7 (1) at the time a homeowner and a builder enter into a
8 contract covered by this title the builder was not registered;
9 or

10 (2) the certificate or registration of the builder has
11 been revoked.


77

ADOPTED

FLOOR AMENDMENT NO. 2

MAY 21 2007

BY: 


Secretary of the Senate

1 Amend C.S.H.B. No. 1038 (senate committee printing) as
2 follows:

3 (1) In SECTION 25 of the bill amend Section 418.001,
4 Property Code (page 8, lines 50-51), by striking "or" at the end
5 of the existing Subsection (24); renumbering the existing
6 Subsection (25) as Subsection (26); and adding a new Subsection
7 (25) as follows:

8 (25) a repeated failure to comply with the requirements of
9 Subtitle F; or

10 (2) Add the appropriately numbered SECTIONS and renumbering
11 existing SECTIONS accordingly:

12 SECTION ____ Title 16, Property Code, is amended by adding
13 Subtitle F to read as follows:

14 SUBTITLE F. INSPECTION OF NEW RESIDENTIAL CONSTRUCTION

15 CHAPTER 446. RESIDENTIAL CONSTRUCTION IN UNINCORPORATED AREAS AND
16 OTHER AREAS NOT SUBJECT TO MUNICIPAL INSPECTIONS

17 Sec. 446.001. APPLICABILITY OF CHAPTER. This chapter applies to
18 residential construction described by Section 401.003(a)(1), (2) and
19 (3) in an unincorporated area and to other areas not subject to
20 municipal inspections.

21 Sec. 446.002. INSPECTION REQUIRED. (a) A builder shall have a
22 new home or other improvement to which this chapter applies inspected
23 by a fee inspector.

24 (b) For new construction subject to this chapter, there shall be
25 a minimum of three inspections performed during the project to ensure
26 code compliance, as applicable, at the following stages of
27 construction:

28 (i) foundation, prior to the placement of concrete;

29 (ii) framing and mechanical systems prior to being covered
30 with sheetrock or other interior wall covering; and

1 (iii) final inspection when the home is completed.

2 (c) For improvements other than new construction, the
3 inspections described in Subsection (b) shall occur as necessary based
4 upon the scope of work of the project.

5 (d) The builder shall be responsible for contracting with a fee
6 inspector authorized by this chapter to perform the inspections
7 required by this section.

8 (e) The commission may establish fees necessary to administer
9 this subtitle. Such fees may be included in the home registration fee
10 required described in Section 426.003(c).

11 Sec. 446.003. ELECTRONIC REPORTING SYSTEM. (a) The commission
12 shall establish an Internet based process to implement this subtitle.
13 The process shall be password protected. Inspectors will use the
14 Internet based process to report the satisfactory completion of the
15 inspections required by Section 446.002 to the commission. Upon
16 reporting of satisfactory completion of the inspections, the
17 commission shall issue a certificate of completion which shall be
18 forwarded to the homeowner within 30 days following the registration
19 of a home, as required by Section 426.003.

20 (b) The commission shall allow for an alternative reporting
21 system for persons who demonstrate to the commission an inability to
22 comply with the electronic reporting requirements of Subsection (a).

23 Sec. 446.004. FEE INSPECTOR. A fee inspector must be either a
24 licensed engineer, a registered architect, a professional inspector
25 licensed by the Texas Real Estate Commission or a third party
26 inspector qualified under Section 427.001(b). A builder may use the
27 same or a different fee inspector for inspections required under this
28 chapter.

29 Sec. 446.005. ELEMENTS OF INSPECTION. The commission by rule
30 shall:

31 (1) establish the elements of the construction that must be
32 inspected under this chapter in accordance with Section 446.002 to
33 ensure compliance with the applicable code provisions as required by

1 Section 430.001(d); and

2 (2) prescribe the form and the manner in which the results of
3 the inspection will be reported in writing.

4 Sec. 446.006. CONSTRUCTION IN CERTAIN AREAS: ELIGIBILITY FOR
5 CERTAIN WINDSTORM AND HAIL INSURANCE. (a) This section applies only
6 to construction in an unincorporated area in which windstorm and hail
7 insurance coverage is available under Chapter 2210, Insurance Code.

8 (b) In addition to an inspection required pursuant to Section
9 446.002, the builder must, if required by statute, obtain a
10 certificate of compliance for the structure in the manner provided
11 under Section 2210.251, Insurance Code.

12 SECTION _____. On or before June 1, 2008, the Texas Residential
13 Construction Commission shall adopt all rules necessary to implement
14 Subtitle F, Title 16, Property Code, as added by this Act.

15 SECTION _____. Subtitle F, Title 16, Property Code, as added by
16 this Act, applies only to construction commenced on or after September
17 1, 2008. For the purposes of Subtitle F, Title 16, Property Code, as
18 added by this Act, construction commenced before September 1, 2008, is
19 governed by the law in effect immediately before the effective date of
20 this Act and the former law is continued in effect for such
21 construction.

ADOPTED

MAY 21 2007

Lataj Spaul
Secretary of the Senate

FLOOR AMENDMENT NO. 3

1 Amend C.S.H.B. No. 1038 (Senate Committee Printing) by adding
2 the following appropriately numbered SECTIONS to the bill and
3 renumbering subsequent SECTIONS accordingly:

4 SECTION ____ Subtitle D, Title 16, Property Code, is
5 amended by adding Chapter 431 to read as follows:

6 CHAPTER 431. ENERGY-EFFICIENT BUILDING ACCREDITATION PROGRAM

7 Sec. 431.001. ENERGY-EFFICIENT BUILDING ACCREDITATION
8 PROGRAM. (a) In this section, "National Housing Act" means
9 Section 203(b), (i), or (k) of the National Housing Act (12 U.S.C.
10 Sections 1709(b), (i), and (k)).

11 (b) The commission, in consultation with the Energy Systems
12 Laboratory at the Texas Engineering Experiment Station of The Texas
13 A&M University System, the Texas Commission on Environmental
14 Quality, and an advisory committee appointed by the commission, may
15 establish an energy-efficient building accreditation program for
16 buildings that exceed the building energy performance standards
17 under Section 388.003, Health and Safety Code, by 15 percent or
18 more.

19 (c) If the commission establishes a program under this
20 chapter, the commission, in consultation with the Energy Systems
21 Laboratory, shall update the program on or before December 1 of each
22 even-numbered year using the best available energy-efficient
23 building practices.

24 (d) If the commission establishes a program under this
25 chapter, the program must include a checklist system to produce an
26 energy-efficient building scorecard to help:

27 (1) home buyers compare potential homes and, by
28 providing a copy of the completed scorecard to a mortgage lender,
29 qualify for energy-efficient mortgages under the National Housing

1 Act; and

2 (2) communities qualify for emissions reduction
3 credits by adopting codes that meet or exceed the energy-efficient
4 building or energy performance standards established under Chapter
5 388, Health and Safety Code.

6 Sec. 431.002. PUBLIC INFORMATION PROGRAM. The commission
7 may establish a public information program to inform homeowners,
8 sellers, buyers, and others regarding energy-efficient building
9 ratings.

10 Sec. 431.003. MEASUREMENT SYSTEM FOR REDUCTION IN ENERGY
11 AND EMISSIONS. If the commission establishes a program under this
12 chapter, the Energy Systems Laboratory shall establish a system to
13 measure the reduction in energy and emissions produced under the
14 energy-efficient building program and report those savings to the
15 commission.

16 Sec. 431.004. CERTIFICATION FEE. If the commission
17 establishes a program under this chapter, the commission may set a
18 certification fee sufficient to cover the cost of administering the
19 program and pay for any education efforts conducted under this
20 chapter.

21 SECTION ____. Section 388.009, Health and Safety Code, is
22 repealed.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

May 15, 2007

TO: Honorable Troy Fraser, Chair, Senate Committee on Business & Commerce

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB1038 by Ritter (relating to the operation of the Texas Residential Construction Commission; providing penalties.), **Committee Report 2nd House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for HB1038, Committee Report 2nd House, Substituted: an impact of \$0 through the biennium ending August 31, 2009.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2008	\$0
2009	\$0
2010	\$0
2011	\$0
2012	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable (Cost) from GENERAL REVENUE FUND 1	Probable Revenue Gain from GENERAL REVENUE FUND 1
2008	(\$6,708,978)	\$6,708,978
2009	(\$6,587,978)	\$6,587,978
2010	(\$6,587,978)	\$6,587,978
2011	(\$6,587,978)	\$6,587,978
2012	(\$6,587,978)	\$6,587,978

Fiscal Year	Change in Number of State Employees from FY 2007
2008	38.0
2009	38.0
2010	38.0
2011	38.0
2012	38.0

Fiscal Analysis

The bill would amend various sections of the Property Code and the Local Government Code, relating to the functions of the Texas Residential Construction Commission (TRCC). The bill would include in the definition of "builder" a person who had been issued a license by a political subdivision, but not by the state, to practice a trade or profession related to or affiliated with residential construction and persons who perform improvements to the interior of a home when the cost of the work exceeds \$10,000 (current threshold is \$20,000). Under the provisions of the bill, an individual who builds a home or makes a material improvement to the home with the intent to immediately sell the home and not live in it for at least a year after completion of the work would be liable as a builder under the warranty obligation for the work performed. The bill would authorize TRCC to charge late fees for late payment of any fee due to TRCC in any amount up to the amount of the fee due. The bill would specify that the Texas Star Builder certification is valid for one year and renewable on a date determined by TRCC. The bill would allow TRCC or the Attorney General to pursue injunctive relief against non-registered builders and remodelers and would increase the grounds for disciplinary action and the disciplinary powers of the commission. The bill would authorize TRCC to issue an order to cease and desist and would allow a person to appeal the order directly to a district court. The bill would authorize TRCC to reimburse a third-party inspector for travel expenses incurred to complete an inspection regardless of whether the expenses exceed the inspection fees collected from the party requesting the inspection. The bill would require a builder to comply to follow the state-sponsored inspection and dispute resolution process prior to initiating an action for damages or other relief arising from an alleged construction defect. The bill would decrease the number of years of experience required for a person to register as a third-party inspector. The bill would prohibit TRCC from requiring a builder to reimburse fees or inspection expenses if, before the inspection, the builder made or offered to make repairs similar to those identified in the third-party inspection report. The bill would specify that builders in economically distressed areas, as defined by Water Code Section 15.001 (11), and any allegations of postconstruction defects are not exempt from TRCC's state-sponsored inspection and dispute resolution process. The bill would prohibit municipalities from issuing building permits to builders not registered with TRCC. The bill would authorize TRCC to require an applicant for a registration renewal to disclose to TRCC every person with an ownership interest in the applicant's business as a builder. The bill would allow a builder to designate a United State Postal Service postal box for use in correspondence with TRCC. The bill would establish continuing education requirements and require TRCC to approve courses and course providers. The bill would expand the time period in which a person may request an inspection and dispute resolution. The bill would amend the Natural Resources Code to require the Veteran's Land Board and TRCC to maintain an electronic list and hard-copy list of registered builders who provide certain types of building services in Texas, as specified by the bill. The bill would require TRCC to contact all volume builders in Texas and encourage those builders to develop floor plans that are designed to be accessible for persons with mobility-related special needs. The bill would require TRCC to establish rules, procedures, and fees necessary to certify floor plans. The bill would require the Veteran's Land Board to make the electronic list available to the public on its Internet website.

The bill would also require the House Committee on State Affairs to conduct an interim study regarding the feasibility of creating a fund designed to reimburse aggrieved persons who experience actual damages from a builder's actions in violation of Title 16 of the Property Code.

The bill would take effect on September 1, 2007.

Methodology

Based on the analysis of TRCC, it is assumed the increased grounds for disciplinary action and disciplinary powers, authority to pursue injunctive relief, and cease and desist orders under the provisions of the bill would require additional staff and resources for enforcement including four Attorney IV positions (4.0 FTEs; \$71,284/year); one Attorney II (1.0 FTE; \$53,596/year); one Inspector VI (1.0 FTE; \$47,382/year); seven Investigator VII positions (7.0 FTEs; \$56,983/year); an Investigator IV (1.0 FTE; \$42,754/year); three Legal Assistant II positions (3.0 FTEs; \$40,267/year); two Program Specialist II positions (2.0 FTEs; \$47,382/year); one Administrative Assistant III (1.0 FTE; \$33,416/year); and an additional \$570,000 for costs associated with hearings and judicial actions.

Based on the analysis of TRCC, it is assumed the reduced experience requirements for third-party inspectors under the provisions of the bill would increase the number of third-party inspector applications received and would require one additional Customer Service Representative IV (1.0 FTE; \$37,596) to accommodate the increased duties.

Based on the analysis of TRCC, it is assumed the new registration requirements for builders/remodelers and projects in economically distressed areas, new requirement for builders to follow the state-sponsored inspection and dispute resolution process, and lower project cost threshold for registration of remodelers and remodeling projects would increase the number of registrations processed and the number of inspection requests received, which would require two additional Program Specialist I positions (2.0 FTEs; \$42,754/year); one Program Specialist II (1.0 FTE; \$47,382/year); eight Customer Service Representative IV positions (8.0 FTE; \$37,596/year); one Customer Service Representative II (1.0 FTE; \$29,779/year); one Legal Assistant II (1.0 FTE; \$40,267/year); and three Administrative Assistant III positions (3.0 FTEs; \$33,416/year).

Based on the analysis of TRCC, it is assumed two additional Program Specialist I positions (2.0 FTEs; \$42,754/year) would be required to process information and evidence received with a response to a request for inspection of an alleged construction defect and to accommodate increased disclosure requirements for the state-sponsored inspection and dispute resolution process. Based on the analysis of TRCC, it is assumed the commission would incur costs of \$25,000 in fiscal year 2008 for programming and enhancements to the commission's builder database and an additional \$4,000 each year thereafter for increased database maintenance to develop and maintain a database of builders providing services to persons with mobility-related special needs.

Employee benefits costs associated with the 38 new positions are estimated to be \$498,196 each year (28.29 percent of salaries). Based on the analysis of TRCC, it is assumed additional costs for leasing computer equipment, software, technical support, and enhancements to the commission's database would be \$176,000 in 2008 and \$76,000 each year thereafter. It is also assumed the agency would require leased office space to accommodate the additional staff at an estimated cost of \$45,000 per year.

Based on the analysis of TRCC, it is assumed the agency would incur increased costs of \$53,000 per year for reimbursing inspector's travel expenses under the provisions of the bill. Other costs related to personnel, professional fees, reproduction charges, certified mail, TexasOnline fees, background checks, and consumables are estimated to be \$3,580,750 each year. It is assumed TRCC would assess or increase fees sufficient to recover any additional costs associated with implementing the provisions of the bill.

Based on the analysis of the Office of the Attorney General (OAG), it is assumed the provisions of the bill would result in an increased number of administrative hearings, injunction actions, and appeals handled by the OAG's Administrative Law Division, which would require approximately five FTEs and \$400,000 each year for salaries and operating expenses. It is assumed the costs could be absorbed within the agency's existing resources.

Technology

Technology costs associated with the implementation of the bill are estimated to be \$201,000 in 2008 and \$80,000 each year thereafter for leasing computer equipment, software, technical support, and enhancements to the commission's database.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 370 Residential Construction Commission, 302 Office of the Attorney General, 304 Comptroller of Public Accounts

LBB Staff: JOB, TG, JRO, KJG, MW

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

May 7, 2007

TO: Honorable Troy Fraser, Chair, Senate Committee on Business & Commerce

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB1038 by Ritter (Relating to the operation of the Texas Residential Construction Commission; providing penalties.), **As Engrossed**

Estimated Two-year Net Impact to General Revenue Related Funds for HB1038, As Engrossed: an impact of \$0 through the biennium ending August 31, 2009.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2008	\$0
2009	\$0
2010	\$0
2011	\$0
2012	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable (Cost) from GENERAL REVENUE FUND 1	Probable Revenue Gain from GENERAL REVENUE FUND 1
2008	(\$6,887,576)	\$6,887,576
2009	(\$6,766,576)	\$6,766,576
2010	(\$6,766,576)	\$6,766,576
2011	(\$6,766,576)	\$6,766,576
2012	(\$6,766,576)	\$6,766,576

Fiscal Year	Change in Number of State Employees from FY 2007
2008	40.0
2009	40.0
2010	40.0
2011	40.0
2012	40.0

Fiscal Analysis

The bill would amend various sections of the Property Code and the Local Government Code, relating to the functions of the Texas Residential Construction Commission (TRCC). The bill would include in the definition of "builder" a person who had been issued a license by a political subdivision, but not by the state, to practice a trade or profession related to or affiliated with residential construction and persons who perform improvements to the interior of a home when the cost of the work exceeds \$10,000 (current threshold is \$20,000). Under the provisions of the bill, an individual who builds a home or makes a material improvement to the home with the intent to immediately sell the home and not live in it for at least a year after completion of the work would be liable as a builder under the warranty obligation for the work performed. The bill would authorize TRCC to charge late fees for late payment of any fee due to TRCC in any amount up to the amount of the fee due. The bill would specify that the Texas Star Builder certification is valid for one year and renewable on a date determined by TRCC. The bill would allow TRCC or the Attorney General to pursue injunctive relief against non-registered builders and remodelers and would increase the grounds for disciplinary action and the disciplinary powers of the commission. The bill would authorize TRCC to issue an order to cease and desist and would allow a person to appeal the order directly to a district court. The bill would authorize TRCC to reimburse a third-party inspector for travel expenses incurred to complete an inspection regardless of whether the expenses exceed the inspection fees collected from the party requesting the inspection. The bill would require a builder to comply to follow the state-sponsored inspection and dispute resolution process prior to initiating an action for damages or other relief arising from an alleged construction defect. The bill would decrease the number of years of experience required for a person to register as a third-party inspector. The bill would authorize a party to a dispute who did not file an inspection and dispute resolution request to submit a written response to the allegations in the request and submit evidence to TRCC. The bill would prohibit TRCC from requiring a builder to reimburse fees or inspection expenses if, before the inspection, the builder made or offered to make repairs similar to those identified in the third-party inspection report. The bill would specify that builders in economically distressed areas, as defined by Water Code Section 15.001 (11), and any allegations of postconstruction defects are not exempt from TRCC's state-sponsored inspection and dispute resolution process. The bill would prohibit municipalities from issuing building permits to builders not registered with TRCC. The bill would authorize TRCC to require an applicant for a registration renewal to disclose to TRCC every person with financial or management interest in the applicant's business as a builder. The bill would allow a builder to designate a United State Postal Service postal box for use in correspondence with TRCC. The bill would establish continuing education requirements and require TRCC to approve courses and course providers. The bill would expand the time period in which a person may request an inspection and dispute resolution. The bill would amend the Natural Resources Code to require the Veteran's Land Board and TRCC to maintain an electronic list and hard-copy list of registered builders who provide certain types of building services in Texas, as specified by the bill. The bill would require TRCC to contact all volume builders in Texas who do not provide building services to persons with mobility-related special needs, as specified in the bill, and encourage those builders to develop floor plans that are designed to be accessible for persons with mobility-related special needs. The bill would specify that TRCC must certify a builder's floor plans before the builder is included on the electronic or hard-copy list prescribed by the bill and would require TRCC to establish rules, procedures, and fees necessary to certify floor plans. The bill would require the Veteran's Land Board to make the electronic list available to the public on its Internet website.

The bill would also require the House Committee on State Affairs to conduct an interim study regarding the feasibility of creating a fund designed to reimburse aggrieved persons who experience actual damages from a builder's actions in violation of Title 16 of the Property Code.

The bill would take effect on September 1, 2007.

Methodology

Based on the analysis of TRCC, it is assumed the increased grounds for disciplinary action and disciplinary powers, authority to pursue injunctive relief, and cease and desist orders under the provisions of the bill would require additional staff and resources for enforcement including five Attorney IV positions (5.0 FTEs; \$71,284/year); one Attorney II (1.0 FTE; \$53,596/year); one

Inspector VI (1.0 FTE; \$47,382/year); eight Investigator VII positions (8.0 FTEs; \$56,983/year); an Investigator IV (1.0 FTE; \$42,754/year); three Legal Assistant II positions (3.0 FTEs; \$40,267/year); two Program Specialist II positions (2.0 FTEs; \$47,382/year); one Administrative Assistant III (1.0 FTE; \$33,416/year); and an additional \$570,000 for costs associated with hearings and judicial actions.

Based on the analysis of TRCC, it is assumed the reduced experience requirements for third-party inspectors under the provisions of the bill would increase the number of third-party inspector applications received and would require one additional Customer Service Representative IV (1.0 FTE; \$37,596) to accommodate the increased duties.

Based on the analysis of TRCC, it is assumed the new registration requirements for builders/remodelers and projects in economically distressed areas, new requirement for builders to follow the state-sponsored inspection and dispute resolution process, and lower project cost threshold for registration of remodelers and remodeling projects would increase the number of registrations processed and the number of inspection requests received, which would require two additional Program Specialist I positions (2.0 FTEs; \$42,754/year); one Program Specialist II (1.0 FTE; \$47,382/year); six Customer Service Representative IV positions (6.0 FTE; \$37,596/year); one Customer Service Representative II (1.0 FTE; \$29,779/year); one Legal Assistant II (1.0 FTE; \$40,267/year); and three Administrative Assistant III positions (3.0 FTEs; \$33,416/year).

Based on the analysis of TRCC, it is assumed two additional Program Specialist I positions (2.0 FTEs; \$42,754/year) would be required to process information and evidence received with a response to a request for inspection of an alleged construction defect and to accommodate increased disclosure requirements for the state-sponsored inspection and dispute resolution process.

Based on the analysis of TRCC, it is assumed the commission would incur costs of \$25,000 in fiscal year 2008 for programming and enhancements to the commission's builder database and an additional \$4,000 each year thereafter for increased database maintenance to develop and maintain a database of builders providing services to persons with mobility-related special needs. Also based on the analysis of TRCC, it is assumed an additional Inspector V position (1.0 FTE; \$40,267/year) would be required to review and certify builders' floor plans.

Employee benefits costs associated with the 40 new positions are estimated to be \$536,698 each year (28.29 percent of salaries). Based on the analysis of TRCC, it is assumed additional costs for leasing computer equipment, software, technical support, and enhancements to the commission's database would be \$180,000 in 2008 and \$80,000 each year thereafter. It is also assumed the agency would require leased office space to accommodate the additional staff at an estimated cost of \$45,000 per year.

Based on the analysis of TRCC, it is assumed the agency would incur increased costs of \$53,000 per year for reimbursing inspector's travel expenses under the provisions of the bill. Other costs related to personnel, professional fees, reproduction charges, certified mail, TexasOnline fees, background checks, and consumables are estimated to be \$3,580,750 each year.

It is assumed TRCC would assess or increase fees sufficient to recover any additional costs associated with implementing the provisions of the bill.

Based on the analysis of the Office of the Attorney General (OAG), it is assumed the provisions of the bill would result in an increased number of administrative hearings, injunction actions, and appeals handled by the OAG's Administrative Law Division, which would require approximately five FTEs and \$400,000 each year for salaries and operating expenses. It is assumed the costs could be absorbed within the agency's existing resources.

Technology

Technology costs associated with the implementation of the bill are estimated to be \$205,000 in 2008 and \$84,000 each year thereafter for leasing computer equipment, software, technical support, and enhancements to the commission's database.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 302 Office of the Attorney General, 370 Residential Construction Commission, 304
Comptroller of Public Accounts

LBB Staff: JOB, JRO, KJG, MW, TG

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION
Revision 1

April 15, 2007

TO: Honorable David Swinford, Chair, House Committee on State Affairs

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB1038 by Ritter (Relating to the operation of the Texas Residential Construction Commission; providing penalties.), **Committee Report 1st House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for HB1038, Committee Report 1st House, Substituted: an impact of \$0 through the biennium ending August 31, 2009.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2008	\$0
2009	\$0
2010	\$0
2011	\$0
2012	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable (Cost) from GENERAL REVENUE FUND 1	Probable Revenue Gain from GENERAL REVENUE FUND 1
2008	(\$5,012,360)	\$5,012,360
2009	(\$4,912,360)	\$4,912,360
2010	(\$4,912,360)	\$4,912,360
2011	(\$4,912,360)	\$4,912,360
2012	(\$4,912,360)	\$4,912,360

Fiscal Year	Change in Number of State Employees from FY 2007
2008	30.0
2009	30.0
2010	30.0
2011	30.0
2012	30.0

Fiscal Analysis

The bill would amend various sections of the Property Code and the Local Government Code, relating to the functions of the Texas Residential Construction Commission (TRCC). The bill would include in the definition of "builder" a person who had been issued a license by a political subdivision, but not by the state, to practice a trade or profession related to or affiliated with residential construction and persons who perform improvements to the interior of a home when the cost of the work exceeds \$10,000 (current threshold is \$20,000). Under the provisions of the bill, an individual who builds a home or makes a material improvement to the home with the intent to immediately sell the home and not live in it for at least a year after completion of the work would be liable as a builder under the warranty obligation for the work performed. The bill would authorize TRCC to charge late fees for late payment of any fee due to TRCC in any amount up to the amount of the fee due. The bill would specify that the Texas Star Builder certification is valid for one year and renewable on a date determined by TRCC. The bill would allow TRCC to pursue injunctive relief against non-registered builders and remodelers and would increase the grounds for disciplinary action and the disciplinary powers of the commission. The bill would authorize TRCC to issue an order to cease and desist and would allow a person to appeal the order directly to a district court. The bill would authorize TRCC to reimburse a third-party inspector for travel expenses incurred to complete an inspection regardless of whether the expenses exceed the inspection fees collected from the party requesting the inspection. The bill would require a builder to comply to follow the state-sponsored inspection and dispute resolution process prior to initiating an action for damages or other relief arising from an alleged construction defect. The bill would decrease the number of years of experience required for a person to register as a third-party inspector. The bill would authorize a party to a dispute who did not file an inspection and dispute resolution request to submit a written response to the allegations in the request and submit evidence to TRCC. The bill would prohibit TRCC from requiring a builder to reimburse fees or inspection expenses if, before the inspection, the builder made or offered to make repairs similar to those identified in the third-party inspection report. The bill would specify that builders in economically distressed areas, as defined by Water Code Section 15.001 (11), and any allegations of postconstruction defects are not exempt from TRCC's state-sponsored inspection and dispute resolution process. The bill would prohibit municipalities from issuing building permits to builders not registered with TRCC.

The bill would also require the House Committee on State Affairs to conduct an interim study regarding the feasibility of creating a fund designed to reimburse aggrieved persons who experience actual damages from a builder's actions in violation of Title 16 of the Property Code.

The bill would take effect on September 1, 2007.

Methodology

Based on the analysis of TRCC, it is assumed the increased grounds for disciplinary action and disciplinary powers, authority to pursue injunctive relief, and cease and desist orders under the provisions of the bill would require additional staff and resources for enforcement including three Attorney IV positions (3.0 FTEs; \$71,284/year); one Attorney II (1.0 FTE; \$53,596/year); one Inspector VI (1.0 FTE; \$47,382/year); seven Investigator VII positions (7.0 FTEs; \$56,983/year); three Legal Assistant II positions (3.0 FTEs; \$47,381/year); one Administrative Assistant III (1.0 FTE; \$33,416/year); and an additional \$570,000 for costs associated with hearings and judicial actions.

Based on the analysis of TRCC, it is assumed the reduced experience requirements for third-party inspectors under the provisions of the bill would increase the number of third-party inspector applications received and would require one additional Customer Service Representative IV (1.0 FTE; \$37,596) to accommodate the increased duties.

Based on the analysis of TRCC, it is assumed the new registration requirements for builders/remodelers and projects in economically distressed areas, new requirement for builders to follow the state-sponsored inspection and dispute resolution process, and lower project cost threshold for registration of remodelers and remodeling projects would increase the number of registrations processed and the number of inspection requests received, which would require two additional Program Specialist I positions (2.0 FTEs; \$42,754/year); five Customer Service Representative IV positions (5.0 FTE; \$37,596/year); one Customer Service Representative II (1.0 FTE; \$29,779/year); one Legal Assistant II (1.0 FTE; \$47,381/year); and two Administrative Assistant III positions (2.0 FTEs; \$33,416/year).

Based on the analysis of TRCC, it is assumed two additional Program Specialist I positions (2.0 FTEs; \$42,754/year) would be required to process information and evidence received with a response to a request for inspection of an alleged construction defect and to accommodate increased disclosure requirements for the state-sponsored inspection and dispute resolution process.

Employee benefits costs associated with the 30 new positions are estimated to be \$404,506 each year (28.29 percent of salaries). Based on the analysis of TRCC, it is assumed additional costs for leasing computer equipment, software, technical support, and enhancements to the commission's database would be \$160,000 in 2008 and \$60,000 each year thereafter. It is also assumed the agency would require leased office space to accommodate the additional staff at an estimated cost of \$40,000 per year.

Based on the analysis of TRCC, it is assumed the agency would incur increased costs of \$53,000 per year for reimbursing inspector's travel expenses under the provisions of the bill. Other costs related to personnel, professional fees, reproduction charges, certified mail, TexasOnline fees, background checks, and consumables are estimated to be \$2,355,000 each year.

It is assumed TRCC would assess or increase fees sufficient to recover any additional costs associated with implementing the provisions of the bill.

Technology

Technology costs associated with the implementation of the bill are estimated to be \$160,000 in 2008 and \$60,000 each year thereafter for leasing computer equipment, software, technical support, and enhancements to the commission's database.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 370 Residential Construction Commission

LBB Staff: JOB, KJG, MW, TG

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

April 11, 2007

TO: Honorable David Swinford, Chair, House Committee on State Affairs

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB1038 by Ritter (Relating to the operation of the Texas Residential Construction Commission; providing penalties.), **Committee Report 1st House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for HB1038, Committee Report 1st House, Substituted: an impact of \$0 through the biennium ending August 31, 2009.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2008	\$0
2009	\$0
2010	\$0
2011	\$0
2012	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable (Cost) from GENERAL REVENUE FUND 1	Probable Revenue Gain from GENERAL REVENUE FUND 1
2008	(\$1,484,942)	\$1,484,942
2009	(\$1,384,942)	\$1,384,942
2010	(\$1,384,942)	\$1,384,942
2011	(\$1,384,942)	\$1,384,942
2012	(\$1,384,942)	\$1,384,942

Fiscal Year	Change in Number of State Employees from FY 2007
2008	13.0
2009	13.0
2010	13.0
2011	13.0
2012	13.0

Fiscal Analysis

The bill would amend various sections of the Property Code and the Local Government Code, relating to the functions of the Texas Residential Construction Commission (TRCC). The bill would include in the definition of "builder" a person who had been issued a license by a political subdivision, but not by the state, to practice a trade or profession related to or affiliated with residential construction. Under the provisions of the bill, an individual who builds a home or makes a material improvement to the home with the intent to immediately sell the home and not live in it for at least a year after completion of the work would be liable as a builder under the warranty obligation for the work performed. The bill would authorize TRCC to charge late fees for late payment of any fee due to TRCC in any amount up to the amount of the fee due. The bill would specify that the Texas Star Builder certification is valid for one year and renewable on a date determined by TRCC. The bill would allow TRCC to pursue injunctive relief against non-registered builders and remodelers and would increase the disciplinary powers of the commission. The bill would authorize TRCC to issue an order to cease and desist and would allow a person to appeal the order directly to a district court. The bill would authorize TRCC to reimburse a third-party inspector for travel expenses incurred to complete an inspection regardless of whether the expenses exceed the inspection fees collected from the party requesting the inspection. The bill would require a builder to comply to follow the state-sponsored inspection and dispute resolution process prior to initiating an action for damages or other relief arising from an alleged construction defect. The bill would decrease the number of years of experience required for a person to register as a third-party inspector. The bill would authorize a party to a dispute who did not file an inspection and dispute resolution request to submit a written response to the allegations in the request and submit evidence to TRCC. The bill would prohibit TRCC from requiring a builder to reimburse fees or inspection expenses if, before the inspection, the builder made or offered to make repairs similar to those identified in the third-party inspection report. The bill would specify that builders in economically distressed areas, as defined by Water Code § 15.001 (11), and any allegations of postconstruction defects are not exempt from TRCC's state-sponsored inspection and dispute resolution process. The bill would prohibit municipalities from issuing building permits to builders not registered with TRCC.

The bill would take effect on September 1, 2007.

Methodology

Based on the analysis of TRCC, it is assumed the increased disciplinary powers, authority to pursue injunctive relief, and cease and desist orders under the provisions of the bill would require additional staff and resources for enforcement including one Attorney IV (1.0 FTE; \$71,284/year); one Attorney II (1.0 FTE; \$53,596/year); four Investigator VII positions (4.0 FTE; \$56,983/year); one Legal Assistant II (1.0 FTE; \$47,381/year); and an additional \$70,000 for costs associated with hearings and judicial actions.

Based on the analysis of TRCC, it is assumed the reduced experience requirements for third-party inspectors under the provisions of the bill would increase the number of third-party inspector applications received and would require one additional Customer Service Representative IV (1.0 FTE; \$37,596) to accommodate the increased duties.

Based on the analysis of TRCC, it is assumed the new registration requirements for builders/remodelers and projects in economically distressed areas and new requirement for builders to follow the state-sponsored inspection and dispute resolution process would increase the number of registrations processed and the number of inspection requests received, which would require an additional Program Specialist position (1.0 FTE; \$42,754/year); one Customer Service Representative IV (1.0 FTE; \$37,596/year); one Customer Service Representative II position (1.0 FTE; \$29,779/year); and one Administrative Assistant III (1.0 FTE; \$33,416/year).

Based on the analysis of TRCC, it is assumed one additional Program Specialist I (1.0 FTE; \$42,754/year) to process information and evidence received with a response to a request for inspection of an alleged construction defect.

Employee benefits costs associated with the 13 new positions is estimated to be \$176,554 each year (28.29 percent of salaries). Based on the analysis of TRCC, it is assumed additional costs for leasing computer equipment, software, technical support, and enhancements to the commission's database would be \$126,000 in 2008 and 26,000 each year thereafter.

Based on the analysis of TRCC, it is assumed the agency would incur increased costs of \$53,000 per year for reimbursing inspector's travel expenses under the provisions of the bill. Other costs related to personnel, professional fees, certified mail, TexasOnline fees, background checks, and consumables are estimated to be \$435,300 each year.

It is assumed TRCC would assess or increase fees sufficient to recover any additional costs associated with implementing the provisions of the bill.

Technology

Technology costs associated with the implementation of the bill are estimated to be \$126,000 in 2008 and \$26,000 each year thereafter for leasing computer equipment, software, technical support, and enhancements to the commission's database.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 370 Residential Construction Commission

LBB Staff: JOB, KJG, MW, TG

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

Revision 1

April 13, 2007

TO: Honorable David Swinford, Chair, House Committee on State Affairs

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB1038 by Ritter (Relating to the operation of the Texas Residential Construction Commission.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB1038, As Introduced: an impact of \$0 through the biennium ending August 31, 2009.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2008	\$0
2009	\$0
2010	\$0
2011	\$0
2012	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable (Cost) from GENERAL REVENUE FUND 1	Probable Revenue Gain from GENERAL REVENUE FUND 1
2008	(\$503,803)	\$503,803
2009	(\$503,803)	\$503,803
2010	(\$503,803)	\$503,803
2011	(\$503,803)	\$503,803
2012	(\$503,803)	\$503,803

Fiscal Year	Change in Number of State Employees from FY 2007
2008	6.0
2009	6.0
2010	6.0
2011	6.0
2012	6.0

Fiscal Analysis

The bill would amend various sections of the Property Code and the Local Government Code, relating to the functions of the Texas Residential Construction Commission (TRCC). The bill would include in the definition of "builder" a person who had been issued a license by a political subdivision, but not by the state, to practice a trade or profession related to or affiliated with residential construction. Under the provisions of the bill, an individual who builds a home or makes a material improvement to the home with the intent to immediately sell the home and not live in it for at least a year after completion of the work would be liable as a builder under the warranty obligation for the work performed. The bill would authorize TRCC to charge late fees for late payment of any fee due to TRCC in any amount up to the amount of the fee due. The bill would specify that the Texas Star Builder certification is valid for one year and renewable on a date determined by TRCC. The bill would allow TRCC to pursue injunctive relief against non-registered builders and remodelers and would increase the disciplinary powers of the commission. The bill would authorize TRCC to reimburse a third-party inspector for travel expenses incurred to complete an inspection regardless of whether the expenses exceed the inspection fees collected from the party requesting the inspection. The bill would prohibit TRCC from requiring a builder to reimburse fees or inspection expenses if, before the inspection, the builder made or offered to make repairs similar to those identified in the third-party inspection report. The bill would specify that builders in economically distressed areas, as defined by Water Code § 15.001 (11), and any allegations of postconstruction defects are not exempt from TRCC's state-sponsored inspection and dispute resolution process. The bill would prohibit municipalities from issuing building permits to builders not registered with TRCC.

The bill would take effect on September 1, 2007.

Methodology

Based on the analysis of TRCC, it is assumed the increased disciplinary powers and authority to pursue injunctive relief under the provisions of the bill would require additional staff and resources for enforcement including one Attorney II position (1.0 FTE; \$53,596/year); two Investigator VII positions (2.0 FTE; \$56,983/year); one Legal Assistant II position (1.0 FTE; \$47,381/year); and an additional \$70,000 for costs associated with hearings and judicial actions.

Based on the analysis of TRCC, it is assumed the new registration requirements for builders/remodelers and projects in economically distressed areas would increase the number of registrations processed and the number of inspection requests and would require an additional Program Specialist position (1.0 FTE; \$42,754/year) and one Customer Service Representative II position (1.0 FTE; \$29,779/year).

Employee benefits costs associated with the six new positions is estimated to be \$81,327 each year (28.29 percent of salaries). Based on the analysis of TRCC, it is assumed additional costs for leasing computer equipment, software, technical support, and enhancements to the commission's database would be \$12,000 per year.

Based on the analysis of TRCC, it is assumed the agency would incur increased costs of \$53,000 per year for reimbursing inspector's travel expenses under the provisions of the bill.

It is assumed TRCC would assess or increase fees sufficient to recover any additional costs associated with implementing the provisions of the bill.

Technology

Technology costs associated with the implementation of the bill are estimated to be \$12,000 each year for leasing computer equipment, software, technical support, and enhancements to the commission's database.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 370 Residential Construction Commission

LBB Staff: JOB, SD, KJG, MW, TG

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

March 18, 2007

TO: Honorable David Swinford, Chair, House Committee on State Affairs

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB1038 by Ritter (Relating to the operation of the Texas Residential Construction Commission.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB1038, As Introduced: an impact of \$0 through the biennium ending August 31, 2009.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2008	\$0
2009	\$0
2010	\$0
2011	\$0
2012	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable (Cost) from GENERAL REVENUE FUND 1	Probable Revenue Gain from GENERAL REVENUE FUND 1
2008	(\$503,803)	\$503,803
2009	(\$503,803)	\$503,803
2010	(\$503,803)	\$503,803
2011	(\$503,803)	\$503,803
2012	(\$503,803)	\$503,803

Fiscal Year	Change in Number of State Employees from FY 2007
2008	6.0
2009	6.0
2010	6.0
2011	6.0
2012	6.0

Fiscal Analysis

The bill would amend various sections of the Property Code and the Local Government Code, relating to the functions of the Texas Residential Construction Commission (TRCC). The bill would include in the definition of "builder" a person who had been issued a license by a political subdivision, but not by the state, to practice a trade or profession related to or affiliated with residential construction. Under the provisions of the bill, an individual who builds a home or makes a material improvement to the home with the intent to immediately sell the home and not live in it for at least a year after completion of the work would be liable as a builder under the warranty obligation for the work performed. The bill would authorize TRCC to charge late fees for late payment of any fee due to TRCC in any amount up to the amount of the fee due. The bill would specify that the Texas Star Builder certification is valid for one year and renewable on a date determined by TRCC. The bill would allow TRCC to pursue injunctive relief against non-registered builders and remodelers and would increase the disciplinary powers of the commission. The bill would authorize TRCC to reimburse a third-party inspector for travel expenses incurred to complete an inspection regardless of whether the expenses exceed the inspection fees collected from the party requesting the inspection. The bill would prohibit TRCC from requiring a builder to reimburse fees or inspection expenses if, before the inspection, the builder made or offered to make repairs similar to those identified in the third-party inspection report. The bill would specify that builders in economically distressed areas, as defined by Water Code § 15.001 (11), and any allegations of postconstruction defects are not exempt from TRCC's state-sponsored inspection and dispute resolution process. The bill would prohibit municipalities from issuing building permits to builders not registered with TRCC.

The bill would take effect on September 1, 2007.

Methodology

Based on the analysis of TRCC, it is assumed the increased disciplinary powers and authority to pursue injunctive relief under the provisions of the bill would require additional staff and resources for enforcement including one Attorney II position (1.0 FTE; \$53,596/year); two Investigator VII positions (2.0 FTE; \$56,983/year); one Legal Assistant II position (1.0 FTE; \$47,381/year); and an additional \$70,000 for costs associated with hearings and judicial actions.

Based on the analysis of TRCC, it is assumed the new registration requirements for builders/remodelers and projects in economically distressed areas would increase the number of registrations processed and the number of inspection requests and would require an additional Program Specialist position (1.0 FTE; \$42,754/year) and one Customer Service Representative II position (1.0 FTE; \$29,779/year).

Employee benefits costs associated with the six new positions is estimated to be \$81,327 each year (28.29 percent of salaries). Based on the analysis of TRCC, it is assumed additional costs for leasing computer equipment, software, technical support, and enhancements to the commission's database would be \$12,000 per year.

Based on the analysis of TRCC, it is assumed the agency would incur increased costs of \$53,000 per year for reimbursing inspector's travel expenses under the provisions of the bill.

It is assumed TRCC would assess or increase fees sufficient to recover any additional costs associated with implementing the provisions of the bill.

Technology

Technology costs associated with the implementation of the bill are estimated to be \$12,000 each year for leasing computer equipment, software, technical support, and enhancements to the commission's database.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 370 Residential Construction Commission

LBB Staff: JOB, KJG, MW, TG

