

COLORADO DEPARTMENT OF REGULATORY AGENCIES
OFFICE OF POLICY AND RESEARCH

CONTRACTORS AND SUBCONTRACTORS

1996 SUNRISE REVIEW



October 15, 1996

Members of the General Assembly
c/o Doug Brown, Director
Office of Legislative Legal Services
State Capitol Building
Denver, Colorado 80203

Dear Members of the Colorado General Assembly:

We have completed our evaluation of the sunrise application for licensure of subcontractors and are pleased to submit this written report. The report is submitted pursuant to section 24-34-104.1, Colorado Revised Statutes, 1988 Repl. Vol., (the "Sunrise Act") which provides that the Department of Regulatory Agencies shall conduct an analysis and evaluation of proposed regulation to determine whether the public needs, and would benefit from, the regulation.

The report discusses the question of whether there is a need for the regulation in order to protect the public from potential harm, whether regulation would serve to mitigate the potential harm and, whether the public can be adequately protected by other means in a more cost-effective manner.

Sincerely,

Joseph A. Garcia
Executive Director

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INTRODUCTION

The Department of Regulatory Agencies (DORA) has evaluated the proposal for state licensing of building contractors and subcontractors submitted by the Colorado Chapter of the American Subcontractors Association. The association represents approximately 1200 firms in Colorado. The proposal requests that all building contractors, subcontractors, specialty contractors and their entities operate in Colorado only when they are licensed by the state. Requirements for licensure would include meeting certain educational or knowledge requirements and successfully passing a state-administered examination. Regulation of contractors and subcontractors would be administered by a state board who would handle all disciplinary actions against licensees.

The applicant argues that consumers would be protected from unscrupulous and unethical contractors or subcontractors who overcharge, do poor quality of work, or do not perform services they were paid for. Additionally, the applicant argues that state regulation would protect honest contractors who lose business from underbidding illegal contractors and subcontractors who do not pay the required insurance and taxes or who do not obey required safety laws.

In evaluating the applicant's proposal, the Department has the statutory responsibility to analyze and evaluate the proposal for new occupational regulation based upon the following criteria under §24-34-104(1), C.R.S.:

1. Whether the unregulated practice of the occupation or profession clearly harms or endangers the health, safety or welfare of the public, and whether the potential for harm is easily recognizable and not remote or dependent upon tenuous argument;
2. Whether the public needs, and can reasonably be expected to benefit from, an assurance of initial and continuing professional or occupational competence; and
3. Whether the public can be adequately protected by other means in a more cost-effective manner.

The American Subcontractors Association has submitted an application to the Colorado Department of Regulatory Agencies for the licensure and state regulation of construction contractors. According to the application, a contractor is:

“a person, firm, partnership, corporation, association or other organization that for compensation undertakes or submits a bid to or does himself, or by or through, or directly or indirectly supervises others to: construct, alter, repair, add to, subtract from, improve, move, wreck, or demolish any building, highway, road, railroad, excavation, or other structure, project, development or improvement, or do any part thereof, including erection of scaffolding or any other structure or work in connection with construction.”

The applicant requests that the state implement a cash funded licensing program for those professionals that meet the “contractor” definition. They argue that statewide requirements for licensure would increase the quality of work performed by these tradespeople while at the same time protecting the public from increased costs resulting from poor work. A statewide license would also provide a mechanism where consumers could check on the validity of a contractor they wished to hire or could lodge a complaint and seek redress.

Information supplied by the applicants estimates that there are approximately 6,000 contracting companies in Colorado located throughout the state. (This number may be conservative as Denver alone has over 7,000 contractors listed in their files, which includes current licenses and inactive licenses for the last three years. Additionally the state licensed over 16,000 electricians and plumbers last year.) The building construction arena has many different disciplines and each requires a specific knowledge or trade in order for the work to be performed correctly. To better understand the broad scope of this profession, it is necessary to define the responsibilities of the various types of contractors. Construction of a home or building usually has a general contractor. The general contractor has a contract with the owner and has the ultimate responsibility for the project. The general contractor may contract with various tradespeople as subcontractors to perform specific tasks. Construction of a home or building requires carpenters, electricians, plumbers, roofers, bricklayers, welders, HVACR technicians, in addition to many other tradespeople, all of whom may be subcontractors. There are many variations on the

operational responsibilities of construction projects. For example, some projects use specialty contractors, who contract directly with the owner to perform one large task, such as the electrical component of the construction. In other projects, the general contractor performs all of the building tasks itself.

Regulation of the construction trade varies greatly from state to state.¹ Currently there are five states that do not have any state regulation². Most states license electricians (41 states³) while state regulation for contractors and subcontractors exists in about thirty three states.⁴ A review of states that geographically surround Colorado indicates that only Utah, New Mexico and Arizona require licensing of all trades while Wyoming, Nebraska, Oklahoma and Texas have limited licensing for specific trades such as electrical, plumbing and air conditioning. Kansas has no state licensing requirements.

Regulation of Contractors in Colorado

Colorado requires state regulation of individuals performing technical work in the plumbing and electrical fields. Plumbers have been licensed in Colorado since the 1930s while electricians have been licensed since 1959. At one time, electrical contractors were licensed, and since 1988, are now required to be registered. Both the electrical and plumbing professions are regulated by boards which set professional and trade standards and have authority to take disciplinary action against offending parties.

¹ Information varies greatly among different publications as to the level of regulation by each state.

² States with no state regulatory program include Iowa, Kansas, Missouri, Pennsylvania, New York. National Association of the Remodeling Industry, NARI, *Summary of State Contracting Licensing Laws*, 1995.

³ NARI.

⁴ NARI.

Over the last few years, there have been various sunrise proposals submitted to DORA to regulate other trades related to construction. These proposals include Fire Suppression System Contractors/Installers (1989), Plumbing Contractors (1991), and Heating, Ventilation, Air Conditioning and Refrigeration (HVACR) tradespeople (1995). The General Assembly subsequently enacted legislation that Fire Suppression System Contractors/Installers be regulated by the Department of Public Safety. Both plumbing contractors and HVACR proposals could not identify significant harm or need to warrant state legislation.

Most regulation of contractors and subcontractors is performed on the local level through counties, municipalities, or regional regulatory jurisdictions that encompass both. Depending upon the specific county, municipality, or regional center, it may issue permits for the construction, inspect projects to ensure the work is performed within code specifications, and test and license individual contractors and subcontractors. Additionally, many jurisdictions require that contractors and subcontractors provide proof of workers' compensation insurance as well as other insurance.

County And Regional Center Regulation

Counties are legally considered an extension of state government and as such are granted only those powers that are explicitly stated in statute and those implicit duties to carry out those explicit powers. Under Title 29 and 30 of the Colorado Revised Statutes, counties have permitting authority over the construction of projects in their jurisdiction. Counties can require that specific projects meet building codes adopted by the county. This provides assurances that the project is performed to minimum standards. Counties may require that work be permitted, constructed to meet building code standards, and inspected. If the work is performed incorrectly, the inspector has authority to take certain actions. If the project is still in the construction phase, the inspector may issue a stop work order. If the project has been completed, the inspector can demand that the project be modified to comply with the code.

According to the Colorado Chapter of the International Conference of Building Officials, most but not all counties have building codes. Of the 63 counties in the state, at least 5 counties have not enacted building code requirements. They are:

1. Logan;
2. Saguache;
3. Yuma;
4. Costilla; and
5. Delta.

Other counties have enacted building codes but do not inspect. Where no code requirements or inspection occurs, counties rely on state electrical, plumbing, and sanitation inspectors to identify problems in those areas. Resources and need generally dictate a county's scope of regulation. For example, Saguache County currently does not have a building code. One of the main reasons is the cost. Saguache County encompasses 3,600 square miles and has only 5,500 inhabitants. The vast distances between construction projects would require many resources to implement a permit and inspection program.

Although counties have the authority to require permits for building projects, there is dispute as to whether counties have the authority to license or register entities who perform building activities in their county. Interpretations by most counties have concluded that they do not have the authority to license or register, and at least one county has changed its program when it was challenged. Other counties continue to establish or maintain existing licensing or registration programs. Currently there are only a few counties that license or register various types of contractors and subcontractors. They include Douglas, Summit, and Las Animas counties. Most of these programs, although called licensing, are really registration programs that identify the contractor's and subcontractor's name and address. Other counties have true licensing programs that require the applicant to first pass a proficiency examination for licensure.⁵

⁵ The distinction between licensing and registration lies with whether the applicant must pass some proficiency examination prior to being accepted. Licensing requires the applicant to meet the proficiency criteria while registration requires that the individual only identify himself/herself and pay a fee. Many counties and municipalities refer to their regulation as a license when they actually have registration programs.

In some parts of the state, regulation of contractors and subcontractors is conducted by regional centers that make up a geographical area which encompasses counties and municipalities. There are at least five such regional areas in the state and they generally make up the larger populated areas in the state. They are: Aspen/Pitkin Regional, Denver Regional, Pikes Peak Regional, Pueblo Regional and Routt County Regional. Of these regional centers, all but Routt County Regional license contractors and subcontractors.

Municipal Regulation

Since municipalities do not have the same statutory constraints, there is no dispute over their licensing authority. As a separate entity, they may establish licensing programs (which may include examining the applicant) as well as require permits and inspections of individual projects. Larger municipalities including Aurora, Boulder, Grand Junction, Greeley, Littleton and Longmont require that contractors be licensed. Like county programs, municipalities vary in how they license. Some communities require that applicants first pass an examination prior to receiving their license. Other municipalities conduct a registration program. Some municipalities may not conduct an examination but accept a license from a community that does test or, if the applicant does not have another license, three references. The local government official will then verify the license and its status or will check references. Reciprocity for accepting licenses also exists between different communities where license requirements are the same. Various municipalities and regional centers issue the Reciprocating Construction Supervisor Exam (RCSE) or the Board of Examiners Test (BEST). Any contractor who takes that exam and passes will be eligible for licensure in any other participating jurisdiction in the state. These exams cover many contractor and subcontractor trades .

Although many municipalities operate their licensing process like a registration program (requiring only the name and address of the applicant and a fee), this format allows the municipality to track contractors working in their jurisdiction. Through communication among local regulators, this information could be used to identify problem contractors and subcontractors in the state, however, currently this practice is limited.

As authority to regulate differs between counties and municipalities, so too does the regulation within a county or municipality. Local and municipal governments usually follow the Uniform Building Code. Although there is general uniformity between jurisdictions, there are times when local communities in the same area all have different requirements for the installation or construction of a particular task. A contractor or subcontractor operating in more than one community may be required to follow different building code procedures when performing the same task. This can result in the contractor or subcontractor making special orders or providing a different system for what appears to be arbitrary reasons. In the six-county area surrounding Denver, there are over 30 separate jurisdictions. It is conceivable that a contractor or subcontractor could do work in many if not all of these locations. Differences in code requirements can be burdensome for the contractor to track. When discrepancies between building codes occur, building associations meet with regulators to negotiate a uniform code that is acceptable to all.

Although most of the state has some regulatory oversight, there are gaps where counties and municipalities do not regulate. In those situations, state electrical and plumbing and sanitation regulators will inspect the project for those specific areas.

Other Regulatory Oversight

Privately, owners of businesses have it in their best interest to ensure that the work they or their employees do is performed correctly. Often new employees have either been trained at an educational facility and are certified, or have done an apprenticeship for a certain period of time. Once hired, it is typical for the employee to be supervised until the employer feels that the employee is competent.

Third parties also provide some oversight of the industry. Better Business Bureaus around the state record complaints about contractors and subcontractors and informally negotiate settlements. Additionally, some District Attorneys have consumer fraud divisions which investigate complaints against contractors. As a preventive measure, consumers may call Better Business Bureaus or local District Attorneys to determine if a particular contractor has received complaints or has had civil or criminal action taken against them.

Protection for consumers from unethical or unscrupulous contractors may be provided under the Colorado Consumer Protection Act. (CCPA) (§6-1-105, et seq., C.R.S.) This act provides prosecutorial action against persons involved in deceptive advertising or fraudulent marketing practices. The consumer is eligible to receive treble damages, the cost of the action, and attorney fees.

The act prohibits persons from:

- making misleading statements concerning the price of a product or the reasons for the price reduction;
- knowingly passing off goods, services or property as those of another;
- knowingly making a false representation as to the characteristics, uses, benefits, or alteration of services or property;
- representing a product as original or new if he/she knows or should know that they are deteriorated, altered, reconditioned, reclaimed, used or second hand;
- representing that a product is of a particular standard, quality or grade, or that goods are of a particular style or model if he knows or should know that they are of another;

- advertising a product with intent not to sell them as advertised;
- accepting a deposit for the product and subsequently switching the purchase ordered to higher-priced goods; and
- failing to make delivery of the goods within a reasonable time or to make a refund therefor.

In addition to the above, the CCPA also prohibits many other types of unscrupulous business practices.

Finally, associations adopt ethical codes and provide training on proper business management skills that ultimately helps the consumer. Although associations have limited police powers, they do add an extra, albeit small, layer of protection to the consumer.

Public Harm

Unqualified or incompetent building contractors performing poor quality of work have a detrimental effect on the consumer who purchases their services. First, there is the aggravation and time committed to attempt to get the hired contractor or another contractor to do the work correctly or at least built to code standards. Then there is the added cost of redoing the work. Finally, there may be additional costs for repairing other damaged property that resulted from the original poor workmanship. An example is a poorly installed roof. If not properly installed, the roof may leak causing major damage to the interior of the building. The applicant suggests that state licensure of contractors would help to alleviate this problem. Testing and other requirements for a state license may screen out contractors who cannot prove appropriate or competent business or craftsmanship skills.

State licensure would also provide a centralized registration system to track complaints. Contractors and subcontractors who receive complaints in one community may operate in another community unnoticed because there is little shared information about contractors and subcontractors between local communities. Proponents suggest that a state registration number would provide consumers with a way to determine if a contractor or subcontractor had any complaints on them anywhere in the state. It would also give some public assurance that a contractor or subcontractor with a registration number was credible. Finally a registration number would allow the state to track contracting companies who go in and out of business. Contractors who are fined or operating improperly may declare bankruptcy and reemerge under a new name. A state licensing board could review these circumstances before issuing a license.

The applicant suggests that state licensing would also help curtail fraudulent contractors who take money from the consumer and never perform their agreed tasks. These types of cases typically occur with out-of-state roofers who approach consumers after a hail storm and take consumers' money without fixing the roof. Another example is the driveway paver who uses substandard material and charges many times the real price. These people are often paid up front and never return to perform the work. A central registration number would make it easier to deter unscrupulous contractors by making it easier to catch and punish these individuals. The applicant suggests that a statewide contractor number would allow the state to track all complaints and prosecute any misuse of a contractor number as a felony.

The applicant also argues that state licensing would assist legitimate contractors by rewarding those who play by the rules, providing uniform building code requirements, and reducing the cost of business for the contractor. According to the applicant, legitimate contractors are being harmed by those contractors who do not pay workers compensation or income taxes, or do not carry liability insurance. Consequently, they can under bid for projects, taking business away from legitimate contractors. Local rules and regulations increase the cost of doing business for contractors. Contractors operating in more than one community may need to install or contract the same item differently due to the different code requirements. This may require special orders that increase the cost of doing business. Additionally, municipalities require licensing fees for many different trades. Companies that perform more than one trade or provide services in more than one location must purchase multiple licenses and pay multiple fees. Proponents of state regulation argue that a uniform state license would be more efficient and may eliminate some of these problems.

ANALYSIS

The Office of Policy and Research contacted District Attorneys' Offices of Consumer Fraud, Better Business Bureaus, building officials, and contractor and subcontractor associations in an effort to determine the prevalence of these problems. Additionally, the applicant provided anecdotal examples of harm as well as letters from individuals who support state licensure. The building industry is extremely vast with numerous specialty trades and occupations. As such, complaints cover a wide range of topics. The Denver Better Business Bureau tracks over 30 categories related to contractor and subcontractor complaints. Home inspections, alarm systems, electricians, plumbers, chimney sweepers, new construction home builders, landscapers, roofers and, water proofers are just a few of the complaint categories that fall within this industry. Taken individually, complaints per year are relatively few. However, when added together for all categories, the numbers are more significant. Consequently, analysis of complaints must reflect these differences.

The Denver Better Business Bureau reported that complaints against contractors ranked second in complaints. (Auto repair facilities were first.) Data was compiled from a six county area that includes Denver, Arapahoe, Adams, Douglas, Jefferson, and Boulder counties. (It is important to note that Denver alone licenses between 5,000 and 7,000 contractors and subcontractors, of which there are over 25 license types.) Between January 1, 1995 and December 31, 1995 the Bureau received 648 complaints on all contractor and subcontractor categories. Roofers had one of the highest number of complaints (83 complaints) and the Bureau resolved 37 of those complaints. Additionally, the Bureau received over 16,000 inquiries from consumers checking on specific roofers. Comparatively, the Bureau received 35 complaints against plumbers who are state licensed. The Bureau resolved 12 of the 35 complaints. Any complaints that is not resolved by the Bureau are either dropped by the complainant or brought to the courts to make judgment.

The applicant and other local regulators agree that a majority of the complaints in the state against contractors occur on the front range where most of the new construction transpires and where hail damage is high. A survey of District Attorneys' offices support this statement. Below is a list of complaints and resulting cases regarding subcontractors and contractors for area District Attorneys' offices.

- Adams: 100-150 complaints per year resulting 12-15 cases per year
- Boulder: approximately 900 complaints resulting in approximately 360 cases of which 50 cases become enforcement cases per year.
- Denver:⁶ 40-50 cases per year
- Douglas: 104 complaints resulting in 5 to 6 cases per year

District Attorneys' consumer fraud offices receive complaints and maintain files on each contractor. They attempt to resolve the complaint through informal negotiations between the two parties, refer complaints to Better Business Bureaus who provide these services, or take enforcement action against illegally operating parties. Often the District Attorneys and the Better Business Bureau share information that assist in their responsibilities. In Denver, quality of work issues are forwarded to the Better Business Bureau while fraud issues are forwarded to the District Attorney. In other jurisdictions, like Boulder, the District Attorney also handles quality of work complaints. Consequently, complaints to the District Attorney in Boulder are much greater than in Denver. In Boulder, only 40 percent of the initial complaints become cases and 75 percent of those cases are resolved through mediation with the consumer fraud office. Additionally, tracking of complaints by District Attorneys and Better Business Bureaus helps to identify repeat offenders. When a contractor has a pattern of complaints, the District Attorney will take enforcement action and may alert local licensing boards.

⁶ Denver District Attorneys' Office of Consumer Fraud does not track number of complaints received against contractors and subcontractors.

Overwhelmingly, the offices contacted indicated that a majority of the problems involved transient contractors who receive payment up front and fail to return and start or complete the work. These situations generally involve transient roofing and paving contractors preying on unsuspecting consumers. Complaints in these areas usually occur in municipalities that already have licensing or registration requirements. For example, Denver handles 50 to 60 cases against these types of contractors and subcontractors each year. None of these contractors or subcontractors are licensed. Unfortunately, state licensing will not prevent those individuals who wish to operate outside the law. A better alternative would be for building associations and local agencies to educate the public to either get second opinions or contact groups such as the Better Business Bureau to investigate a contractor prior to hiring them.

While there is agreement that a majority of the problems occur on the front range, it is important to note that this area also has the greatest amount of regulation over contractors. A majority of municipalities license or register contractors while fewer license or register subcontractors. Municipal regulation provides a mechanism where it can track and monitor problem contractors and subcontractors. Complaints may be placed into the contractor's or subcontractor's file, and renewal for licensure may not be granted if a contractor or subcontractor has too many complaints. Although licenses are rarely revoked, some local regulators use their authority to ensure all outstanding work is complete prior to renewing a license. This helps ensure that problems do not linger. Little enforcement action on licenses is consistent with state regulated trades. Of the approximately 17,000 electricians and plumbers in the state, last year only one license was revoked and no licenses were suspended. The threat of action on their license motivates the electrician or plumber to correct the problem.

Some municipalities do require passing an examination prior to receiving a license for all or some types of building contractors. Fort Collins and Aurora test all contractors they license. From January through September 20th, 1996, Aurora issued 639 examinations and failed 24 applicants for licensure. Additionally larger municipalities also permit and inspect work.

Overlapping municipal regulation, regional centers permit and inspect projects and register or license contractors and subcontractors. For example Denver, Pikes Peak, and Pueblo license contractors and subcontractors.

While there appears to be sufficient regulation of contractors by local and municipal governments, it is unclear how state regulation would protect the public safety any better than local government. The applicant responds that the state would provide stronger enforcement in these communities. Although this may be true, communities already work together in a limited fashion to create uniform regulatory and enforcement guidelines. Local governments working together could expand on this regulatory scope providing better protection for consumers. In Kansas, local government regulates contractors but many of the jurisdictions administer a uniform examination. Trade associations could work with local governments to create shared databases to enable local regulators to track contractors and subcontractors operating in each community. Additionally, trade associations could work with local authorities to educate the public on hiring a contractor and identify what questions to ask to get a qualified individual. Although the current regulatory scheme in Colorado is not as efficient as a uniform state set of requirements and fees, it is not strong enough evidence of harm under §24-34-104.1, C.R.S., to recommend licensure.

The applicant argues that a state licensing program would curtail the workers' compensation and other insurance abuses by requiring applicants to list their workers' compensation insurance number when applying for a license. A number of local jurisdictions currently follow this practice. Additionally, there are current laws in statute that address these issues. Under the workers' compensation statutes, there are certain exemptions from carrying the insurance. Consequently, not all subcontractors would be required to have workers' compensation insurance, making it difficult to enforce such a program. The Division of Workers' Compensation finds that the industry itself provides the best enforcement. Contractors who are losing business to illegal operators report these individuals to the Division. Additionally the Division is implementing a program that cross-checks those who registered with unemployment insurance against a federal employer identification number. Currently the Division is working with insurance carriers and other groups to make this process work more uniformly and efficiently. When finished, it should provide a valuable tool against insurance fraud.

The industry and local regulators are in disagreement as to the scope and authority of state and local regulation of contractors and subcontractors. The applicant who represents the American Subcontractors Association, Colorado Chapter, proposes that all subcontractors and contractors be licensed by the state, but does not receive the support from major contractor associations who would be regulated under the proposed scheme. Additionally, at the writing of this report, there was no clear direction from the industry on the whole as to its support for the applicant's proposed regulation. The construction industry and local regulators are currently working together to propose a workable regulatory structure. Some believe that local regulation can work, and through cooperation can be made stronger. Others feel that state regulation is the only alternative. Once a unified direction is determined, it is suspected that there will be greater support to identify harm resulting from poorly trained or unqualified contractors as well as to determine whether local regulators can create a better regulatory system. At the present time, local cooperation to address problems in the contracting and subcontracting arena has not been fully explored. Until local cooperation is shown to be unfeasible, state regulation will not be recommended.

There are some merits to the argument for state licensing of contractors. Currently the only recourse to a consumer is to get the local authorities involved, and they have limited resources to accomplish such tasks. If local authorities are unable to assist in the resolution of the dispute, the court system is the only resort. This is both time consuming and costly. An analysis of the state regulation of contractors and subcontractors would benefit from an extensive review of state regulation related to this area. Next year the Electrical and Plumbing Boards will undergo a sunset review by the Department of Regulatory Agencies. Because of their relationship with other building trades, this review would prove invaluable in further assessing the need for regulation in all building contracting areas.

In order for local regulation to work, government officials must be given the proper tools to be effective. Eliminating any controversy over counties' authority to license would be a very large step in combating contractor and subcontractor problems. Under the permitting authority, a county will issue a permit to the contractor or subcontractor for the project being performed. Once the project is completed, the contractor or subcontractor has the legal responsibility to notify the county building department that they wish to be inspected. One recurring problem in the regulation of this area is that the projects often are never closed because the request for inspection is never initiated by the contractor or subcontractor, or the project fails to meet building code requirements. Jefferson County reports that 18 percent of their permits were not closed last year. Closing these permits would go a long way toward assisting the consumer in getting work completed and within code requirements. Without licensing authority, there is no way to enforce closure of these permits. Additionally, counties may not use an open permit to deny a contractor or subcontractor from applying for another permit since the permit process regulates the project but not the individual(s) performing the work. Explicit county licensing authority would prevent open permits. Counties could deny licenses to those contractors and subcontractors who have outstanding permits. In an effort to provide effective local regulation of this industry, it is recommended that the legislature expand county responsibilities to include licensing of contractors and subcontractors.

Although state regulation of building contractors is not recommended, one prevalent reoccurring problem should be addressed. Communities must protect themselves against so called "fly-by-night" contractors. During the hail season, illegitimate roofing contractors approach homeowners who have damaged roofs and offer their services to repair the roof. After inspecting the roof, the individual may significantly raise the price and charge for work that is not needed or provide fraudulent service. Other times they will ask and receive money up front from the homeowner and never return to begin the project. Some local authorities meet and share information informally to alert each other of possible suspected illegitimate contractors. Local news shows provide public service pieces educating the public to get second opinions and to call local building offices to determine if they are licensed. Some local District Attorney offices find it difficult to prosecute these cases and have limited tools to enforce against these unscrupulous contractors and subcontractors. Stronger statutory penalties and enforcement authority against these activities may assist local governments to address these problems.

After reviewing the applicant's proposal, contacting District Attorney Offices, Better Business Bureaus and state and local officials, the Department recommends that contractors and subcontractors not be licensed by the state at this time. The applicant has not shown that unregulated state practice of contracting and subcontracting clearly harms the health, safety and welfare of the public, nor has the applicant shown that the public would not be better protected by bolstered cooperative local regulation.

Anecdotal examples of harm provided by the applicant and complaint information supplied by Better Business Bureaus and District Attorneys reveal that most of the problems with this industry occur on the front range where there is already a strong local regulatory presence. Harm to consumers fell generally into two categories: quality of work issues and consumer fraud issues. Quality of work issues are currently handled by the Better Business Bureaus and District Attorneys, which are fairly successful in negotiating settlements. If work is conducted to building code requirements, there is little that can be done even if there is a state licensing program. Quality of work may be addressed through an examination requirement prior to a contractor or subcontractor receiving a license. Cooperation by local authorities and trade associations could establish such a program throughout the state. Contractors and subcontractors who commit fraud will continue to operate in the same manner even if a state licensing program is established. Currently these cases are investigated by the District Attorney.

Many of the problems associated with contractors and subcontractors may be resolved through cooperation between local regulators and industry. Creating uniform licensure requirements, sharing regulatory and enforcement information, strengthening counties' abilities to license and local jurisdictions' abilities to catch fraudulent individuals will all greatly assist in relieving problems associated with contractors and subcontractors. Until it is shown that local regulation cannot work, state regulation should not be implemented.

Recommendation: This report recommends that there is no need for state regulation of contractors and subcontractors to be implemented at this time.