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REPORT TO THE GENERAL ASSEMBLY

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South Carolina  
State Reorganization Commission

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## THE SUNRISE REVIEW PROCESS

Review of Occupational Registration and Licensing  
For  
Residential Specialty Contractors

Sunrise Subcommittee Report  
Rep. Jackson V. Gregory, Chairman

November 8, 1989

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# **THE SUNRISE REVIEW PROCESS**

## **Review of Occupational Registration and Licensing For Residential Specialty Contractors**

**Sunrise Subcommittee Report  
Rep. Jackson V. Gregory, Chairman**

**November 8, 1989**

**This document constitutes the report of the Sunrise Subcommittee, approved November 8, 1989, to be presented to the full State Reorganization Commission for review and consideration on November 28, 1989.**



# STATE REORGANIZATION COMMISSION

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## STATE REORGANIZATION COMMISSION

The State Reorganization Commission was created by Act 621 of 1948, amended by Act 410 of 1971. It operates pursuant to the 1976 South Carolina Code, Sections 1-19-10 through 1-19-260 and is composed of 19 members. This membership includes: the Chairmen of the Senate Finance and Judiciary Committees, five other Senate members, the Chairmen of the House Ways and Means and Judiciary Committees, five other House members, and five gubernatorial appointees. Currently, Senator John Drummond serves as Chairman of the Commission, Representative Herbert Kirsh as Vice Chairman and Representative David Wilkins as Secretary.

The Commission maintains a full-time staff which conducts research into government programs and operations. A support staff provides administrative and fiscal services to the Commission and its research personnel.

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TABLE OF CONTENTS

	Page
Preface.....	i
The Sunrise Review Process: An Overview.....	1
Executive Summary.....	3
Scope and Methodology of the Report.....	5
Background of Regulation of Residential Specialty Contractors.....	8
Evaluation Criteria.....	9
Recommendations.....	37
Appendices.....	39

## PREFACE

Representatives T. M. Burris, Tucker, Elliott, L. Martin, Keegan, Barfield, Fair, Altman, and Hayes introduced House Bill 3407, "Licensure of Residential Specialty Contractors," on February 1, 1989. This bill was referred to the House Labor, Commerce and Industry Committee and subsequently, the Real Estate Subcommittee.

On April 25, 1989, Representative George H. Bailey requested that the State Reorganization Commission conduct a "Sunrise" review on House Bill 3407, in accordance with the Sunrise Law. As a result of this request, the Reorganization Commission held a public hearing on Thursday, August 24, 1989. This report is a summary of written and oral testimony received from interested parties and research performed by Commission staff during the course of the Sunrise Review Process.

## THE SUNRISE REVIEW PROCESS: AN OVERVIEW

In 1988 the South Carolina General Assembly enacted Act 572, "Review of Occupational Registration and Licensing." More commonly known as the "Sunrise" Law, this Act addresses the issue of the growing number of occupations seeking state regulation of their professions.

Subcommittees of standing House or Senate committees, which are referred bills proposing to regulate a profession, have three options under the Sunrise Law. The subcommittee can handle the bill independently, request assistance from the State Reorganization Commission to conduct a public hearing, or request that the Commission be responsible for a public hearing on the bill.

When requested by a subcommittee "to assist," the Commission will provide notices of a hearing to the public and to any public or private organization that may be affected by the proposed bill and assist the subcommittee as required. In addition, the Commission may solicit the participation, on the hearing panel, of state agency personnel who are authorized to regulate a profession similar to the one under review. After conducting its research and receiving the public testimony, the Commission reports its findings and recommendations to the subcommittee.

If a subcommittee requests the Commission to conduct a public hearing, the Commission will be directly responsible for hearing and reporting its findings to the General Assembly. The Commission is to determine if existing remedies adequately protect the public's health, safety or welfare. This is accomplished through oral and written testimony submitted for the public hearing. In addition, all other evidence collected by the Commission during its evaluation is to be considered.

In determining the need for regulation of the profession, the Commission must evaluate the bill using standards provided by the Act. Further, the Act states that any recommendation for regulation should be the "least extensive and restrictive form of regulation consistent with the public interest." Licensure can be recommended by the Commission only when "registration or other means of regulation is not adequate to protect the health, safety or welfare of the public."

The Commission may choose to recommend one or more means of regulation. Recommendations to the General Assembly may be: No regulation be created, that regulation be assigned to an existing board, agency, or commission, or that a new board be established. If registration or licensure is recommended, the Commission is to recommend what qualifications should be specified for the registration or licensure of the profession and what activities may be engaged in by persons pursuing the occupation.

The State Reorganization Commission will issue a final report to the chairperson of the subcommittee of the House or Senate to which the bill was referred, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Governor. In addition, the

Act requires that the Commission's recommendations be mailed to any person who has made a request concerning occupational regulation that was considered by the Commission. If no changes with respect to the regulation of an occupation are recommended, the Commission will notify by mail any person who has requested that regulations or changes be recommended.

In conclusion, with the passage of the Sunrise Law, the General Assembly has enacted a method by which the Legislature can review proposals for regulating professions. It now has statutory criteria for evaluating attempts by interest groups to license or register an occupation. At minimum, the Law requires that proposals show the harm that would occur to the public in the absence of regulation and demonstrate that licensing is the only way to address the public's need to be protected. The economic impact of state regulation on the consumer must be addressed.

The Sunrise Law places the "burden of proof" on professions to justify requests for regulation and, if so, to determine what level of regulation would most benefit the public? Is the public's interest served by restricting the freedom to enter or practice a trade or profession? These issues must be addressed before the State willingly infringes on an individual's right to enter an occupation.

## EXECUTIVE SUMMARY

This report examines the potential impact of regulating residential specialty contractors in South Carolina. The nine evaluation criteria contained in the Sunrise Law (Act 572 of 1988) are designed to determine not only the extent to which the threat of public harm exists as a result of unregulated practice of residential specialty contractors, but also whether the benefits of oversight by the State outweigh the potential negative effects it may have. Applying the nine criteria of Sunrise Review measures the need to protect the public against the public's need for professional services that are affordable, and available in sufficient quantity and quality.

After analyzing testimony from interested parties, along with staff research gathered throughout the process, the State Reorganization Commission's Sunrise Subcommittee arrived at the following conclusions:

*No sufficient and reliable evidence was found to suggest that significant harm is occurring to South Carolinians as a result of the unregulated practice of residential specialty contractors (Criterion 1, p. 9).*

The Sunrise Subcommittee determined that the public is protected through existing regulation in the State. Since, a large number of specialty contractors work under the supervision of a builder or contractor, the Residential Home Builders Commission and the Licensing Board for Contractors process complaints which cover the work performed by specialty contractors. Additionally, the Department of Consumer Affairs has settled complaints effectively against unlicensed practitioners.

The Sunrise Subcommittee received no written documentation of personal injury or harm resulting from the unregulated practice of specialty contractors. One isolated case involving a plumber was received during testimony at the public hearing.

The public is adequately protected from potential harm through existing state and local laws (Criterion 4, p. 21), through nongovernmental means (Criterion 3, p. 19), and available referral resources for choosing a competent specialty contractor (Criterion 2, p. 16).

*Therefore, in accordance with provisions of Act 572 of 1988, the State Reorganization Commission's Sunrise Subcommittee recommends that the General Assembly enact no legislation regulating residential specialty contractors at this time.*

The Sunrise Subcommittee further determined:

As for the impact of regulation on the availability of services in sufficient quantity (Criterion 7, p. 29), there was not conclusive evidence to determine if licensure would increase or decrease the availability of services. However, growth projections for South Carolina indicate minimal increases in the supply of skilled tradesmen.

Also, there is no potential net economic benefit that would accrue to the public as a result of regulation of specialty contractors from the standpoint of third-party reimbursement for services (Criterion 5, p. 25), or decreases in the cost of services (Criterion 6, p. 27).

Finally, if the regulation of residential specialty contractors is thought to need further enhancements, this could be accomplished through an existing board (Criterion 9, p. 35).

In the event that the General Assembly determines that regulation of specialty contractors is in the public interest, an analysis of the elements of occupational regulation, as embodied in House Bill 3407, is included in the report (p. 39), as well as an explanation of alternative forms of regulation.



## SCOPE AND METHODOLOGY OF THE REPORT

This report presents recommendations made by the State Reorganization Commission (SRC) in conjunction with its review of the need for occupational regulation of residential specialty contractors in South Carolina. Occupations seeking regulation in South Carolina must be reviewed according to criteria established in Act 572 of 1988, "Review of Occupational Registration and Licensing" more commonly known as the "Sunrise Law." The Sunrise Law contains nine factors which are to be applied when the State Reorganization Commission reviews a request for professional regulation. The criteria, as defined in Section 1-18-40 of the 1976 Code of Laws of South Carolina, as amended, are:

1. Whether the unregulated practice presents a clear and recognizable danger to the public;
2. Whether the trade or profession is such a specialized skill that the public is not able to select a competent practitioner without some assurance of professional qualifications;
3. Whether the public can be protected by other means;
4. Whether strengthening existing laws would provide adequate protection;
5. Whether third-party payments can be made to a licensed practitioner;
6. Whether the regulation will increase the cost of goods;
7. Whether regulation will increase or decrease the availability of services;
8. Whether regulation will ensure practitioner competency; and
9. Whether regulation can be provided by an existing agency or by licensed practitioners.

The report was produced in accordance with the provisions of the Sunrise Law, as well as with the policies and procedures contained in the "Sunrise Review Operating Manual" approved by the Director of the State Reorganization Commission and implemented in March 1989.

### *Request for Assistance*

On April 25, 1989, Representative George Bailey, Chairman of the Real Estate Subcommittee of the House Labor, Commerce and Industry Committee, requested that the State Reorganization Commission review House Bill 3407 in accordance with the provisions of Act 572 of 1988.

Staff from the State Reorganization Commission were assigned to the project, and the members of the Commission's seven member Sunrise Subcommittee were notified.

### *Background Research*

SRC staff began collecting background information from state and national sources, using the nine evaluation criteria outlined in the Sunrise Law as a guide. These sources included the Council of State Government's Clearinghouse for Licensing, Enforcement, and

Regulation (CLEAR); surveys of other states; the S.C. Department of Consumer Affairs; the S.C. Employment Security Commission and; existing state regulatory boards, such as the S.C. Residential Home Builders Commission and the Licensing Board for Contractors.

In addition, a number of professional associations and organizations , such as the American Subcontractors Association, the Associated General Contractors of America, Mechanical Contractors Association of South Carolina, and the Homeowners' Association, were contacted for information.

An extensive bibliographical search was conducted using the library resources of the State Reorganization Commission, the Council of State Governments, the South Carolina State Library, and the Thomas Cooper and Law Libraries of the University of South Carolina.

### *Response to Criteria Solicited from Applicant Group*

The South Carolina Residential Home Builders Commission and the Home Builders Association of South Carolina, as the chief proponents of professional regulation of residential specialty contractors in the state, provided the Sunrise Subcommittee and the State Reorganization Commission with a written response to the nine evaluation criteria.

### *Sunrise Subcommittee Meeting*

The initial meeting of the Sunrise Subcommittee to discuss the Sunrise Reviews of dietitians/nutritionists and residential specialty contractors was held on June 27, 1989.

### *Public Hearing*

Letters were mailed to 131 individuals and organizations, notifying them of the Sunrise public hearing on August 24, 1988, and outlining procedures for those wishing to testify. Eighteen people testified before the Sunrise Subcommittee on the proposed regulation of residential specialty contractors. A certified court reporter produced a verbatim transcript of the proceedings.

### *Preparation of the Report*

Following analysis of written and oral testimony, along with information gathered during background research, a draft report containing revised findings and recommendations was prepared by a State Reorganization Commission staff and presented to the Sunrise Subcommittee members for review.

### *Format of the Report*

The research and conclusions for each of the nine evaluative criteria comprise the bulk of the report. Each criterion is presented in the following format:

**Statement of criterion.** The criterion is stated as it appears in Act 572 of 1988.

**Explanation of criterion.** A brief statement of the standards used in judging the extent to which existing conditions, in regard to the occupation under review, met the criteria. Most of the statements are based on professional literature on occupational regulation, such as the Council of State Government's "Questions a Legislator Should Ask," and Benjamin Shimberg's book, Occupational Licensing: A Public Perspective.

**Subcommittee's Research.** These sections contain information compiled by the Sunrise Subcommittee during the course of background research on the occupation under review. Oral and written testimony is excluded from this section. Instead, references to testimony appear in the following relevant categories of either "Proponent" or "Opponent" of regulation in the area in question.

**Proponents.** This section contains a summary of written and oral testimony received throughout the process. Most of the information here was provided by the chief proponents in response to the nine evaluative criteria.

**Opponents.** This section contains a summary of arguments of those opposing regulation, as evidenced in written and oral testimony received.

**Impact of Proposed Legislation.** The purpose of this section is to assess the impact the legislative proposal, which initiated Sunrise Review of the profession or occupation would have, if enacted, in regard to the each of the criteria.

**Subcommittee's Conclusion.** This section represents the Sunrise Subcommittee's decision as to whether the criterion has been met in such a way as to pose a net benefit to the public.

## **BACKGROUND OF REGULATION OF RESIDENTIAL SPECIALTY CONTRACTORS**

### **Existing Regulation of Similar Occupations**

Regulation of the construction industry began in 1936 when the General Assembly restricted the business of contracting to those licensed by the State Licensing Board of Contractors. In 1956, the classification of mechanical contractors was added and in 1974, a separate board was established to regulate residential home builders.

The Residential Home Builders Commission is the sole licensing body for persons who engage exclusively in home building (Audit Council 1988). A residential home builder is defined as an individual who constructs a residential building "which is not over three floors in height and which does not have more than sixteen units in the apartment complex, or the repair, improvement or reimprovement thereof" and the cost of the project exceeds \$10,000 (Section 40-59-10 SC Code of Laws). Twenty states regulate residential home builders, and the number is increasing. (Audit Council 1988).

A general contractor is defined as one who undertakes or bids on "the construction or superintending of construction of any building, highway, sewer, grading, improvement, reimprovement, structure, or part thereof, when the costs exceeds thirty thousand dollars" (Section 40-11-10 SC Code of Laws). A mechanical contractor is one who undertakes or bids on "any plumbing, heating, air conditioning, lighting protection work, or electrical work when the cost of the under taking is seventeen thousand five hundred dollars or more" (Section 40-11-10 SC Code of Laws). Twenty-five states regulate contractors (Audit Council 1988).

In addition to these licensing boards, the law provides for local oversight of plumbers and plumbing in cities with populations of over 15,000 and counties with a population of 150,000 or more. The local boards are responsible for certifying qualified master and journeymen plumbers (Sections 40-29-10 through 40-49-110 and Sections 40-49-210 through 40-49-360 SC Code of Laws). Since 1965, the Municipal Association of South Carolina (MASC), in cooperation with mechanical trades and contractors, has provided an examination and certification program for master and journeyman tradesmen in the electrical, plumbing, heating and air conditioning, and gas fitting fields. The MASC certification may be used as an indication of skill level by all cities in South Carolina that require trade certification for the issuance of licenses and permits (MASC 1989). This program is not for mechanical contractors who are licensed by the S.C. Contractors Licensing Board.

### **Occupational Projections**

Overall growth in occupational employment in South Carolina between 1985 and 1995 is expected to be approximately 23 percent. While growth in the residential construction occupation is projected to increase by 27 percent. Special trade contractors are expected to increase by 25 percent over this same time span. Special trade contractors include: Plumbing, heating, air conditioning, electrical work, masonry, stonework, plaster, carpeting and flooring, roofing and sheet metal work, and concrete work (South Carolina Employment Security Commission 1988).

## EVALUATION CRITERIA

### Criterion One

**The unregulated practice of an occupation presents a clear and recognizable danger to the health, safety, or welfare of the public.**

### Explanation of Criterion

Regulation of an occupation should protect the public from incompetent or unscrupulous practitioners who endanger the public's health, safety, or welfare. In order for this criterion to be met, the evidence must demonstrate that harm is occurring that is not isolated, remote, or guarded against through existing means of protection.

### Subcommittee's Research

Major segments of the construction industry in South Carolina are already regulated. Regulation of the construction industry began in 1936 when the General Assembly restricted the business of contracting to those licensed by the State Licensing Board for Contractors. In 1956, the classification of mechanical contractors was added, and in 1974, a separate board was established to regulate residential home builders.

General and mechanical contractors are regulated by the State Licensing Board for Contractors. These contractors primarily work on commercial and public works projects where costs exceed \$30,000 (Section 40-11-10 SC Code of Laws). Mechanical contractors are licensed to perform "any plumbing, heating, air conditioning, lighting protection work, or electrical work" when the cost of the undertaking is \$17,500 or more (Section 40-11-10 SC Code of Laws). Twenty-five states regulate contractors of this type (Audit Council 1988).

Home builders in South Carolina are licensed solely by the Residential Home Builders Commission. Most residential building and remodeling projects in excess of \$10,000 are undertaken by licensed residential home builders (Section 40-59-10 SC Code of Laws). Twenty states regulate home builders. (Audit Council 1988).

In addition to the oversight provided by these licensing boards, state law provides for local regulation of plumbers and plumbing in South Carolina cities with populations exceeding 15,000 and counties with a population of 150,000 or more. The local boards are responsible for certifying qualified master and journeyman plumbers (Sections 40-29-10 through 40-49-110 and Sections 40-49-210 through 40-49-360 SC Code of Laws).

Since 1965, the Municipal Association of South Carolina (MASC), in cooperation with mechanical trades and contractors, has provided an examination and certification program for



master and journeyman tradesmen in the electrical, plumbing, heating and air conditioning, and gas fitting fields. The MASC certification may be used as an indication of skill level by all cities and counties in South Carolina that require trade certification, as in the case cited earlier of plumbers, for the issuance of licenses and permits (MASC 1989). This program is not designed for mechanical contractors who are licensed by the S.C. Contractors Licensing Board.

Additional regulation is currently being proposed by the Residential Home Builders Commission and the S.C. Home Builders Association for the category of "residential specialty contractor," which is defined in House Bill 3407 as:

...an independent contractor who is not a licensed residential builder and who contracts with a licensed residential builder, general contractor or individual property owner to do any construction work, repairs, improvement, or reimprovement which requires special skills and involves the use of specialized construction trades or craft, when the undertakings exceed one thousand dollars...

The definition of "residential specialty contractors" includes the following skilled tradesmen:

- plumbers,
- electricians,
- heating and air conditioning installers and repairers,
- insulation installers,
- vinyl and aluminum siding installers,
- roofers,
- pest controllers,
- floor covering installers,
- masons,
- dry wall installers, and
- carpenters.

Information provided by the National Clearinghouse on Licensure, Enforcement and Regulation (CLEAR) of the Council of State Governments found that the majority of other states do not regulate residential specialty contractors (Table 1). Also, according to Mr. John Watkins, Director of the S.C. Residential Home Builders Commission, California recently recommended that the state stop licensing specialty contractors, except for plumbers, electricians and heating and air conditioning installers and repairers. California regulates the following trades which have been proposed for licensure by S.C. House Bill 3407: Carpentry (cabinet and millwork), drywall, flooring and floor covering, masonry, and roofing.

**TABLE 1**

**COMPARISON OF REGULATIONS FOR  
RESIDENTIAL SPECIALTY CONTRACTORS**

Proposed Regulation in South Carolina	Number of States with Regulation
Plumbers	8 (a)
Electricians	31 (a)
Heating and Air Conditioning	5 (a)
Siding Installers	0
Insulation Installers	1
Roofers	2
Pest Controllers	0
Floor Covering Installers	1
Masons	1
Dry Wall Installers	1
Carpenters	1

(a) Includes regulation by South Carolina

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SOURCE: Council of State Governments; Clearinghouse for Licensing,  
Enforcement, and Regulation.

The Sunrise Subcommittee sought to determine if sufficient and reliable evidence existed that would establish the need for regulation of residential specialty contractors in South Carolina.

The majority of cases presented to the Sunrise Subcommittee as evidence of "harm" by residential specialty contractors involved work done under the oversight of a licensed residential home builder or contractor. According to the U. S. Department of Labor, many subcontractors work under the supervision of a licensed contractor (U.S. Department of Labor 1986). Although a subcontractor may have performed the actual work, the contractor, by nature of the contractual relationship with the owner, was responsible for the final product. Specialty contractors contract with a prime contractor to perform specialized work, but the subcontract does not establish any contractual relationship between the subcontractor and owner, and neither is liable to the other in contract (Clough 1986).

Since residential home builders employ specialty contractors, complaints received by the Residential Home Builders Commission were reviewed. Of the 580 complaints received

in FY 87-88, 77 resulted in no action, eight licenses were revoked, 67 were referred elsewhere, and 223 were pending. Information was not available on the number of complaints satisfactorily resolved (Annual Reports FY 1983-84 through FY 1987-88).

One case of danger to the public safety was presented during the public hearing held on August 24, 1989. In this case, a plumber installed a hot water tank without replacing the temperature and pressure valve on it. As a result, a woman was killed when the hot water tank's thermostat malfunctioned and the tank exploded. Since a plumber, and not a contractor, performed this work, the Residential Home Builders Commission did not have authority to investigate and prosecute this complaint, and the final outcome was unknown. (Watkins 1989).

The South Carolina Department of Consumer Affairs reported that complaints received against contractors and builders comprise their second largest category. In the last two years, of the over 600 complaints in this area, one-third of the complaints were not acted upon by the Department since they were for informational purposes, were of insufficient merit, or were referred elsewhere. Of the remaining 400 complaints, well over one-half (234) were satisfied, while approximately one-fourth (91) were unsatisfied. The Department of Consumer Affairs was not able to resolve nineteen percent of the cases because the consumer dropped the complaint, the actual facts of the case could not be determined, or a satisfactory agreement was worked out independently by the consumer. The following table provides a breakdown of the complaints received.

**TABLE 2**

**Analysis of Complaints Received by the  
South Carolina Department of Consumer Affairs**

Analysis of Complaints Received by the  
South Carolina Department of Consumer Affairs

<u>Category</u>	<u>Unsatisfied</u>	<u>Satisfied</u>	<u>Undetermine</u>	<u>Abandoned</u>	<u>Total</u>
Heating and Air Conditioning	6 (8%)	49(69%)	8(11%)	8(11%)	71(18%)
Siding	24(36%)	35(52%)	4 (6%)	4 (6%)	67(17%)
Plumbing/wells	5(17%)	35(52%)	7(23%)	3(10%)	30(08%)
Roofing	25(29%)	52(60%)	5 (6%)	5 (6%)	87(22%)
Others	<u>31(21%)</u>	<u>83(57%)</u>	<u>20(14%)</u>	<u>11 (8%)</u>	<u>145(36%)</u>
<b>TOTAL</b>	<b>91(23%)</b>	<b>234(59%)</b>	<b>44(11%)</b>	<b>31 (8%)</b>	<b>400</b>

SOURCE: South Carolina Department of Consumer Affairs



Most of the complaints received by the Department of Consumer Affairs related to shoddy workmanship: Improperly installed or repaired heating and air conditioning systems; fading vinyl or aluminum siding; leaking roofs; defective shingles; uncompleted work on a remodeling project; problems with vinyl floor covering placed over concrete; and incorrect wiring which damaged appliances. None of these cases resulted in personal injury to consumers.

Detailed information about the costs involved in these complaints was not available. Costs were able to be determined for only 38 cases where a settlement was reached. Two-thirds of these cases involved settlements below \$1,000. The remaining third (13) of the cases settled were above \$1,000 and would fall within the specified limits of the proposed regulation of residential specialty contractors.

### Proponents

The proponents of additional regulation, the Residential Home Builders Commission and Home Builders Association of South Carolina, provided no written documented cases of personal injury or death. The Residential Home Builders Commission stated that threats to the public safety arose from fires and electrical shock; to public health, from the unsanitary conditions caused by faulty plumbing; and to public welfare, when the poor workmanship or disregard for acceptable building practices of some specialty contractors which required the homeowner to pay someone else to correct problems (Residential Home Builders Commission 1989).

Further, proponents stated that the number and nature of complaints received by the Residential Home Builders Commission and the Department of Consumer Affairs, along with the fact that an average of 281 home builders have not renewed their licenses for the past six years, justifies the need for regulation (South Carolina Residential Home Builders Commission 1989). Also, proponents cite problems related to the mobility of subcontractors--"unlicensed contractors and subcontractors make raids into the area, do enough work to get into trouble and then disappear (Home Builders Association of South Carolina 1989)."

The Department of Consumer Affairs supports regulation of the residential specialty contractors in light of the number of complaints they receive. The Department stated that while the legislation would not be a cure-all, they felt it would provide for some accountability.

Another proponent ,the Fertilizer and Pest Control Division of Clemson University, stated that they have no control over the repairs of structural damage caused by wood-destroying insects. They cited instances where only cosmetic repairs were made, leaving the real damage hidden (Ogg 1989).

### Opponents

While opponents of the bill cite a need for regulation of residential specialty contractors, they do not support the bill as written. Concerns were expressed about the Residential Home Builders Commission's ability to administer the new law; the examining of illiterate

tradesmen; the experience factor being too short; and the "grandfathering" of all who are currently practicing a trade. Additionally, a consulting contractor stated that the Residential Home Builders Commission is not the appropriate place for handling residential specialty contractors.

One opponent, representing Midlands Master Plumbing Association, stated that the Association supports uniform licensing of plumbers. They have many objections to this bill, but feel some type of licensing bill is needed (Brasington 1989).

Another opponent testified in does not support the current bill, but would support of a bill requiring monitoring and licensing of subcontractors, but not the current bill. Concern with the requirement of the examination of tradesmen were expressed because of the high illiteracy rate among them; the opponent felt the tradesmen would be limited through monitoring, licensing, and certification. In her work, this opponent has found the primary problem to be lack of adherence to minimum building codes (Lain 1989).

### Impact of Proposed Legislation

The proposed bill would require licensure of eleven different branches of residential specialty contractors. A license would be required for all projects which are \$1,000 or more. An existing state regulatory board would assume the responsibility of this function. The Residential Home Builders Commission did not provide an estimate of the number of individuals who would be affected. However, the Home Builders Association estimated 25,000 new licensees.

### Subcommittee's Conclusion

*The Sunrise Subcommittee concludes that while a "potential" for harm exists, the practices of residential specialty contractors and primary contractors are already regulated to a degree that protects the public from harm. Therefore, Criterion 1 has not been met.*

A major difficulty in regulating contractors and builders is that there appears to be little correlation between licensing and the quality of services provided by the licensee (Maurizi 1980). This finding appears to be supported by the number of complaints against already-licensed builders that emerged during the Sunrise Review process. Licensing provides little assurance that the contractor selected will be satisfactory, unless vigorous enforcement of disciplinary measures for the incompetent or unscrupulous contractors accompanies issuance of licenses.

Since it was found that many residential specialty contractors work as subcontractors to licensed contractors, the public should be protected by regulations that already exist in the construction industry, including licensure of residential home builders and general and mechanical contractors. Since enforcement of these existing regulations would provide increased protection to the public, consideration must be given to the effects of regulating thousands of additional licensees on enforcement activities.

Local governments have the option to adopt and enforce building codes which would ensure that work performed by specialty contractors meets minimum standards acceptable under state law. Further, existing state laws could be strengthened to provide the public with additional protection, if the General Assembly chooses to consider these alternatives. Alternatives are discussed in more detail under Criterion 4, p.23.

The one isolated case of danger to the public safety presented to the Sunrise Subcommittee during the Sunrise Review Process is insufficient to justify the need for additional regulation of specialty contractors, particularly when more cases were presented of harm caused by contractors already covered by regulation.

When the public chooses to contract independently with specialty contractors, the potential for economic harm may be increased. However, the public may rely on referral sources which already exist when selecting a competent specialty contractor. In most cases, contractual agreements made for the services of a specialty contractor are enforceable through the courts. Safeguards to protect the public when problems are encountered are discussed in more detail under Criterion 2, p.18 and 4, p.23.

Given the extensive regulation of the construction industry that already exists in the State, it appears that vigorous enforcement of existing regulations, enactment of a statewide building code, and increased consumer education efforts, would be a more effective means to protect the public from the possibility of harm than additional regulation.

## **Criterion Two**

**The practice of an occupation requires such a specialized skill that the public is not qualified to select a competent practitioner without assurances that minimum qualifications have been met.**

### **Explanation of Criterion**

This criteria relates to the ability of the consumer to rely on licensing requirements as an indication of professional competency. Other sources of information about competency, such as word-of-mouth recommendations, state, local and national associations, the Better Business Bureau, the Department of Consumer Affairs, and advertisements are examined, as well.

### **Subcommittee's Research**

Since the work performed by residential specialty contractors are skilled trades, the public cannot rely on traditional assurances of professional competency, such as academic requirements and written examinations. Skill, dexterity, and talent are the qualifications of a good craftsman that cannot be objectively measured. Direct examination of the work performed is probably a better way of assuring competency than establishment of minimum entry requirements. Consequently, the public cannot always be assured that meeting minimum licensing requirements will be a measure of a residential specialty contractor's competency (Maurizi 1980). Grandfathering provisions may also allow incompetent practitioners to receive licenses initially.

If possession of a license does not in itself assure competency, what other referral sources can consumers rely upon to find a competent specialty contractor?

Word-of-mouth recommendations from family, friends, and co-workers, along with examination of previous work done by a prospective specialty contractor may be the best source of information.

Before hiring a residential specialty contractor, the consumer can inquire about training and experience. According to the US Labor Department, many heating and air conditioning mechanics, bricklayers and stonemasons, carpenters, drywall workers, and insulation workers best learn their trade through on-the-job training, through programs offered at high schools, or through apprenticeship programs sponsored and supervised by local committees. Apprenticeship programs for electricians and plumbers and pipefitters are recommended as the best way to learn these trades (US Department of Labor 1986). Training offered in South Carolina for these trades is discussed in more detail under Criterion 3, p.21.

The Department of Consumer Affairs provides some literature on choosing a contractor and complaint records are public information. The public can call the Department of Consumer Affairs to determine if a subcontractor they are considering using has been the subject of a number of complaints (Yongue 1989).

Articles from various publications, concerning the hiring of a competent contractor, urge consumers to investigate contractors, builders, or subcontractors prior to hiring someone. Guidelines include, asking for references and then checking them and inspecting the contractor's work; determining whether or not an individual is licensed/certified and bonded; determining what insurance coverage will be provided; and what payment schedule will be required (a contractor should not be paid in full until the work is satisfactorily completed); and finalizing a detailed, written contract (Mechanics Illustrated 1983; The Family Handyman 1985; Money 1984; Consumers' Research Magazine 1985; Changing Times 1983).

The Sunrise Subcommittee found that telephone directories can be used to determine whether or not subcontractors may be bonded, certified, and/or guarantee their work. All of these would provide the consumers with information about the competency of the subcontractor. This is especially true of plumbers and electricians. Also, consumers can ask these questions when deciding on a subcontractor.

Prior to signing any contract, the public can consult an attorney to protect his interest. The contract can be very specific as to responsibility, the dollar amount, work to be done, timeliness of the work, guarantees, and the payment schedule to be followed (Mechanics Illustrated 1983; The Family Handyman 1985; Money 1984; Consumers' Research Magazine 1985; Changing Times 1983).

### Proponents

In their response to the criteria, the Residential Home Builders Commission stated that the public does not have the expertise to choose a competent home builder or specialty contractor. Also, the general public does not have the knowledge to know if the home is built correctly by the builder or specialty contractor. Also, many aspects of the construction are covered by finished products. Latent defects may not show up immediately (Home Builders Association 1989).

One proponent representing the Remodelers Council of Greater Columbia, stated that there is a need for the regulation of specialty contractors. His association has been considering proposing possible legislation to provide oversight of these individuals. He stated that the Council has a list of competent contractors; however, identifying subcontractors can be a real problem (Williams 1989).

The Vice-President of the Home Builders Association of South Carolina stated that the builder is, and should be, responsible for his final product. However, because so much work is performed by subcontractors, builders often lack the tools to identify and restrict persons who hold themselves out to be qualified in various trades (McFarland 1989).



## Opponents

The Sunrise Subcommittee did not receive any verbal or written testimony in regards to this Criterion. However, staff research, outlined in "Subcommittee's Research," provides information about existing sources that can be used to identify competency.

### Impact of Proposed Legislation

The proposed bill would require licensure which is the most restrictive form of regulation. Only individuals who are qualified and approved by the Residential Home Builders Commission in one of the 11 branches of subcontracting would be allowed to practice the specific trades, except when projects are less than \$1,000. The proposed bill does not define minimum qualifications of residential specialty contractors. Instead, the Residential Home Builders Commission would be charged with setting minimum qualifications for each classification.

### Subcommittee's Conclusion

*The Sunrise Subcommittee concludes that the practice of residential specialty contracting does not require such a specialized skill that the public is not qualified to select a competent practitioner with existing resources.*

While no title for competency exists for most of the classifications of residential specialty contractors, the public is capable of using alternative resources in locating and hiring competent subcontractors. There are numerous sources of information for the public to use in its choosing of a subcontractor. However, the best indicator of competency of residential specialty contractors is his/her work. References and examination of prior work should provide the public with assurances that minimum qualifications are satisfied.

### **Criterion Three**

**Whether the public is or may be effectively protected by other means, such as academic credentials, certification by nongovernmental entity, or membership in an occupational association.**

#### **Explanation of Criterion**

This criterion relates to the need for regulation of an occupation by the government. The Sunrise Law states that regulation should be "the least extensive and restrictive form of regulation consistent with the public interest." Additionally, the Reorganization Commission can only recommend licensure when "registration or other means of regulation are not adequate to protect the health, safety or welfare of the public" (Sections 1-18-40 and 1-18-50 SC Code of Laws).

#### **Subcommittee's Research**

Since on-the-job training is the recommended method of learning the skills of residential specialty contractors, training opportunities in South Carolina were reviewed. These include, the certification program offered by the Municipal Association of South Carolina (MASC), state-supported high schools, and technical colleges. The Municipal Association of South Carolina certifies journeymen and master plumbers, electricians, and heating and air conditioning fields. MASC certification is recognized as an indication of skill level by all cities in South Carolina that require certification for the issuance of licenses and permits (MASC 1989).

Individuals may pursue training in some of the specialty contracting fields through federal government apprenticeship programs. In South Carolina, apprenticeable trades include: Bricklayer, carpenter, electrician, plumber, insulation worker, and heating and air conditioning. The Department of Labor registers apprenticeship programs or approves state apprenticeship agencies. The federal government works with local entities to offer apprenticeship programs which meet federally approved standards relating to job duties, related instructions (recommended 144 hours minimum a year), wages, and safety and health conditions. Apprentices who successfully complete the program receive certificates from the Department of Labor or a federally approved state apprenticeship agency. Apprenticeships usually last about four years, but may range from one to six.

State-supported high schools and vocational educational centers, in 45 of the 46 State's counties, offer a program in several of the trades considered to be residential specialty contractors. Building construction is offered in 35 schools; carpentry is offered in 48 schools; electricity is offered in 48 schools; masonry is offered in 57 schools; air conditioning and heating is offered in 21 schools; and plumbing is offered by 7 schools. Students who complete these programs receive a Certificate of Completion from the State Department of Education.

Technical colleges offer programs for heating, air conditioning, and ventilation. A one-year program allows an individual to receive a diploma in industrial technology. While, a two-year program allows an individual to receive an associate degree in industrial technology, which qualifies him/her to install, repair, and perform maintenance on heating, air conditioning, and ventilation systems for residential and small commercial usage. Continuing education courses are taught in plumbing to assist individuals in learning the code requirements.

### **Proponents**

The Residential Home Builders Commission stated that only about five percent of specialty contractors belonged to numerous associations in the building industry. Additionally, they stated that it is almost impossible for a trade association to police or solve problems of their own members with no authority; all they can do is remove them from the association (Residential Home Builders Commission 1989).

The Home Builders Association stated that there are no academic credentials corresponding to each specialty subcontractor and, because of limitations in anti-trust laws, most associations do not have meaningful limits on membership (Home Builders Association 1989).

### **Opponents**

The Sunrise Subcommittee received no written or verbal testimony concerning this criterion. However, alternatives to governmental regulation are discussed under "Subcommittee's Research," above.

### **Impact of Proposed Legislation**

The proposed bill would create governmental regulation of residential specialty contractors in South Carolina. House Bill 3407 does not specify minimum standards for licensure, but requires a one year experience in the field of proposed residential specialty contracting.

### **Subcommittee's Conclusions**

*The Sunrise Subcommittee concludes that the public is adequately protected by available academic credentials and certification by a nongovernmental entity.*

Based on the above "Subcommittee's Research," the public is protected through existing educational programs. Construction trade programs are taught in state-supported high schools in 45 of 46 counties in South Carolina. Additionally, the federal government has an apprenticeship program in several areas. Certification of plumbers, electricians, and heating and air conditioning installers and repairs is provided by the Municipal Association of South Carolina.



#### **Criterion Four**

**Whether current laws are ineffective or inadequate to protect the public's health, safety, and welfare, and whether strengthening the laws would provide adequate protection to the public.**

#### **Explanation of Criterion**

This criterion is aimed at ensuring that strengthening regulation will actually protect the public's health, safety and welfare. Existing statutes, such as laws directed at unfair trade practices, may provide adequate protection for the public in the absence of regulation. Also, alternatives to individual licensing are: Enforcement or strengthening of existing statutes relating to deceptive or unfair trade practices; assignment of inspection or other supervisory authority to an existing agency; or licensure of establishments rather than individuals.

#### **Subcommittee's Research**

As discussed under Criterion 1, p.11, the practice of residential specialty contracting is largely covered through existing laws. The following briefly describes these.

Local governments are required to ensure certification of plumbers in cities and counties with populations which exceed 15,000 and 150,000, respectively (Sections 40-49-10, et. seq. SC Code of Laws). Since 1965, the Municipal Association of South Carolina (MASC) has offered certification for master and journeyman tradesmen in the electrical, plumbing, heating and air conditioning, and gas fitting fields. This certification is recognized as an indicator of competency for these tradesmen (MASC 1989).

Construction and electrical work, as well as, licensure of contractors may be regulated by counties with populations of over 150,000 and counties containing cities with population of over 97,000. The rules, regulations, and codes can apply to all buildings or structures not covered under other laws, and may include: Minimum housing, fire prevention, and gas codes (Sections 4-25-10, et. seq. SC Code of Laws).

State laws protect the public from work performed by residential specialty contractors employed by licensed residential home builders and contractors. The Residential Home Builders Commission and the Licensing Board for Contractors license individuals who have met the minimum requirements in their respective fields. Enforcement of this licensure is granted to ensure continued competency. These regulatory boards have the authority to revoke licenses of practitioners who do not abide by the laws and regulations. Also, when the Residential Home Builders Commission was reauthorized by Act 62 of 1989, enforcement powers were strengthened, empowering the Commission to suspend and restrict licenses in addition to revocation.

The state protects the public from deceptive and misleading business practices and claims through the Unfair Trade Practices Act (Section 39-5-10, et. seq. S C Code of Laws). In June 1989, a plumber in South Carolina was found to have violated the Unfair Trade Practices Act and the South Carolina Consumer Protection Code, by what the judge called "outrageous" business conduct and overcharges for repair work. The plumber plans to appeal the ruling (York Observer 1989).

Private attorneys may be retained by the consumer to protect his/her interest prior to contracting with a contractor. The contracts can be very specific as to responsibility, the dollar amount, work to be done, timeliness of the work, guarantees, and the payment schedule to be followed (Mechanics Illustrated 1983; The Family Handyman 1985; Money 1984; Consumers' Research Magazine 1985; Changing Times 1983). Also, when problems occur, the Department of Consumer Affairs, the Office of the State Attorney General, magistrate courts, and civil suits are all avenues by which the public may seek to resolve their problems.

Additional oversight of specialty contractors could be accomplished through statewide building codes. Building codes and inspections by local officials are designed to guard against structural defects and safety hazards. South Carolina does not have a uniform building code across the state. According to the Building Code Council, 27 counties in South Carolina have not adopted a standardized building code. In March 1989, Senate Bill 460 was introduced. This bill would have enacted statewide building codes and established a building inspection program. This bill was not passed during the 1989 session.

Additional financial protection could be provided through strengthening existing laws. Other states have taken action to protect consumers from problems in the construction industry. In 1987, Connecticut established a Home Improvement Guaranty Fund. This fund is being funded with fees paid by registered home improvement contractors and salesmen, and will reimburse homeowners who are unable to collect on loss or damage suffered from a contractor's performing, or offering to perform a home improvement (Connecticut Office of Legislative Research 1988). In addition to Connecticut, Hawaii, Virginia and Arizona have established guaranty funds.

Maryland licenses applicants who pass a professional examination prescribed by its seven-member Home Improvement Commission. The Commission can impose penalties for violating the law and operating without a license.

California has mandatory provisions for home improvement contracts which includes a payment schedule that does not allow payments in excess of 100 percent of the value of the work performed at any one time (excluding the down payment). The consumer pays as the project is completed. However, a contractor may furnish a performance and payment bond, a lien and completion bond, a bond equivalent, or a joint control in place of the payment schedule. New York established an escrow account system for all home improvement contracts. All contracts must have a payment schedule, and the amount of each payment must bear a reasonable relationship to the completion of the job.

In 1987, Utah enacted a performance bond requirement for all commercial and residential contractors. Contractors are required to provide the owners with a bond equal to the contract price, if the contract is valued at \$2,000 or more. The performance bond ensures that the owner is not liable for unpaid subcontractors and others who supplied materials and labor.

Residential builders and contractors may secure bonds to provide consumer protection. Bonds provide the public security for problems which result from these contractors. A bond can be used to complete work which was "guaranteed" by the company writing the bond. Contract bonds guarantee the work will be completed in accordance with the contract documents and that all construction costs will be paid. There can be two separate contract bonds for each construction contract; one to cover performance and the other to cover materials and labor (Clough 1986).

### Proponents

Proponents of regulation stated that the current laws are inadequate as to the regulations governing specialty contractors and do not provide for disciplinary action such as cease and desist orders against unlicensed builders (Residential Home Builders 1989). The Director of the Residential Home Builders Commission, during questioning at the public hearing, stated that building codes were one way to correct improper work done by specialty contractors, and that education was needed (Watkins 1989).

The Director of the Residential Home Builders Commission stated that they would license the plumbers, electricians, and heating and air conditioning, and register the other trades, because these are the three trades that pose potential harm for the health, safety, and welfare of the general public (Watkins 1989).

According to the Home Builders Association, it has taken ten years for the public to use, and industry to recognize, the Residential Home Builders Commission. Further, they stated House Bill 3407 would not cure all problems with residential specialty contractors immediately. However, it would provide a step in the right direction.

### Opponents

One opponent, representing the Midlands Master Plumber Association, had several concerns. One of this 'opponent's' concerns centered around the grandfathering of all individuals currently practicing a trade. This was especially a concern in light of the fact that only 19 counties have building codes to establish minimum standards. Additionally, the bill proposes one year's experience for licensees not grandfathered in; this is less than the two year requirement of the Municipal Association, which currently certifies master and journeymen plumbers, electricians, and heating and air conditioning people. In the 19 counties, there are 272 entities which belong to the Association (Brasington 1989).

Another opponent, in a letter to the Sunrise Subcommittee, stated that the following must be accomplished to protect the public: Establishment of a statewide building codes;

requirement that the inspectors be trained and certified and penalties enacted for contractors and subcontractors who constantly do not follow building codes (Lain 1989).

### **Impact of Proposed Legislation**

Residential specialty contractors are not currently regulated. The proposed bill would require licensure of eleven branches of residential specialty contractors. After the grandfather provision, applicants would have to meet qualifications set by the Residential Home Builders Commission, including an examination developed by the Commission. The Commission would be responsible for enforcing compliance with the laws and regulations. Licenses could be revoked, suspended or restricted. In addition, cease and desist orders could be issued against individuals who are practicing specialty contracting without a license.

### **Subcommittee's Conclusion**

*The Sunrise Subcommittee concludes that there are existing laws which are adequate to protect the public in absence of regulation of residential specialty contractors.*

Regulation of specialty contractors does occur at several levels. Local governments have the option to regulate construction and electrical work, and may establish rules and regulations necessary to adequately protect the public. Additionally, counties and cities with populations of 150,000 and 15,000 and more, respectfully, are required to regulate plumbers. State laws govern the practice of licensed residential home builders and contractors. To settle complaints, consumers may use the Department of Consumer Affairs and/or the court system.

Measures could be taken to strengthen or expand existing laws to better protect the public. For example, a statewide building code and certification program for building inspectors would require minimum standards to be applied consistently across the State. This would result in inspection of the work performed by subcontractors to ensure compliance to the minimum building codes. Additionally, local governments could be required to ensure that all plumbers, electricians, heating and air conditioning repairers and installers are certified.

Other states have implemented measures to safeguard the public against financial hardships suffered when using a licensed practitioner. For example, a guaranty fund, funded by an annual assessment of residential home builders, could be used to protect homeowners by allowing homeowners who are unable to collect on loss or damage suffered from a contractor's performing, or offering to perform his/her work. An option to the guaranty fund would be a type of bond, similar to the one adopted by Utah which protects homeowners from mechanic liens.

## **Criterion Five**

**Whether the practitioner performs a service for others which would qualify for payment of part or all of those services by a third party if the practitioner were to be regulated by the state.**

### **Explanation of Criteria**

Regulation of a profession may be sought by an occupation for the purpose of facilitating access to third-party and governmental reimbursement sources. The costs of third-party reimbursement must be weighed against the benefits that accrue to the public. Potential costs include the effect of decreasing benefits elsewhere, increasing premiums, increasing governmental expenditures. Potential benefits are that the public may be provided with access to alternative providers. Also, the profession may benefit by allowing direct reimbursement for services.

### **Subcommittee's Research**

Third-party payment is not available to practitioners, but home owner warranties, surety bonds or other types of bonds, and types of constructions insurance are available. In 1989, Florida's Construction Complaint Study Committee recommended that the state's industry licensing board include a requirement of "completed operation insurance" for certification. This insurance will cover the secondary problems. The intent was to protect the consumer from resultant damage, such as a leaking roof causing interior damage to carpeting and furniture.

Residential builders and contractors are required to secure bonds. Bonds provide the public security for problems which result from these contractors. A bond can be used to complete work which was "guaranteed" by the company writing the bond. Contract bonds guarantee the work will be completed in accordance with the contract documents and that all construction costs will be paid and are available. There can be two separate contract bonds for each construction contract, i.e., one to cover performance and the other to cover materials and labor (Clough 1986).

Protection for new home owners is available from the Home Owners Warranty (HOW) Corporation of South Carolina. This company offers a national plan of a home owners' warranty to consumers. Builders must meet set qualifications before this warranty can be offered. The qualifications include construction competence, financial stability, and customer service. This warranty provides the consumer with protection from defects up to tens years after completion of homes. The warranty also protects the consumer from problems which are secondary to the cause of the problem, e.g., a leaking roof which causes problems with a subflooring. Additionally, there is a procedure for arbitration of disputes between the builder and home owner.



### **Proponents**

The Residential Home Builder Commission stated there is no third party to call on for payment. About 40 percent of builders have on file a \$10,000 surety bond. However, this is not required by law.

### **Opponents**

An opponent to House Bill 3407 stated that the bond requirement of \$10,000 was not sufficient to protect the public.

### **Impact of Proposed Legislation**

The proposed bill would require residential specialty contractors to obtain a surety bond in the "perquisite amount." The bill does not specify the amount for individuals licensed after the grandfathering period. Grandfathered subcontractors would be required to have a \$10,000 surety bond, or proof of financial responsibility.

### **Subcommittee's Conclusion**

*The Sunrise Subcommittee concludes that there would be no third party coverage if practitioners were to be regulated by the state.*

There would be no third party coverage if practitioners were to be regulated by the state. However, surety bonds, completed operation insurance, and home owners warranties would provide the public with financial relief for problems resulting from poor workmanship.

## **Criterion Six**

**Whether regulation will increase the cost of goods.**

### **Explanation of Criterion**

The objective of occupational licensing is to raise the average level of quality. However, this may result in a higher price for services. This criterion examines possible increases in the cost of services provided by residential specialty contractors.

### **Subcommittee's Research**

The Sunrise Subcommittee found no direct evidence to determine whether the regulation of residential specialty contractors would increase the costs of services to the public. However, the Federal Trade Commission (FTC) staff cites several studies that support the fact that licensing laws may actually cause harm by encouraging injurious self-treatment or by forcing some to go without help altogether (FTC 1989). States with strict laws regulating plumbers have more people doing their own plumbing (Carroll and Gaston 1977). Also, accidental electrocutions were directly related to the restrictiveness of a state's licensing laws for electricians (Carroll and Gaston 1981). A separate study found that the seven states with the most restrictive laws had up to ten times more accidental electrocutions (Business Week 1977). The FTC staff states that "Consumers' tendency to use self-help measures when the cost of services is raised or supply limited, in turn, may result in a reduction of the overall quality of services actually consumed even when that portion of the services delivered by the licensed occupation increase in quality." Carroll and Gaston concluded the overall result in many cases may be that "the lower middle classes and the poor...tend to be short-changed and offered low quality or no service at all."

### **Proponents**

The Residential Home Builders Commission feels that regulation will not increase the cost of services by a significant amount. The Commission has stated that they believe it will only cost about \$20 per constructed house.

### **Opponents**

The Sunrise Subcommittee received no written or oral testimony concerning the cost of services, if licensure were to be enacted.

### **Impact of Proposed Legislation**

The proposed bill does not include licensure costs, such as examination fees, application fees, and licensure fees, which would ultimately be passed on to the consumer. These are to

be set through Residential Home Builders Commission regulations. However, to be licensed one would have to have a license for each of the eleven branches of specialty contracting in which they intend to work. A bond would have to be secured for licensure.

#### Subcommittee's Conclusion

*The Sunrise Subcommittee concludes that there is no evidence that regulation of residential specialty contractors would greatly increase the cost of services provided to the public by residential specialty contractors.*

It appears that direct costs attributable to licensure, such as the annual licensure fees, application fees and examination fees, and the required bond would be minimal. However, evidence was not found to prove conclusively that regulation of specialty contractors would greatly increase the cost of services provided to the public.



## **Criterion Seven**

**Whether regulation will increase or decrease the availability of services to the public.**

### **Explanation of Criterion**

This criterion assesses the impact what regulation will have on the public's access to professional services in sufficient quantity. One of the principal burdens regulation places on occupational entry relates to the aspiring professional's freedom of occupational choice. Regulation limits career opportunities in two ways: (1) By specifying entry requirements (Occupational Standards that have no reasonable relationship to professional competency should be avoided, as they may impose unnecessary barriers to entry into a profession, thereby affecting the availability of services to the public. Discriminatory entry standards such as those based on age, residency, citizenship, or membership in trade associations should be avoided. Entry requirements also establish terms prescribing training needed to move into "higher level" occupation. Licensing may have adverse effects on licensed practitioners also, since reciprocity arrangements affect interstate mobility of practitioners), and (2) By delineating the range or scope of tasks that can be performed.

### **Subcommittee's Research**

This criterion is closely related to the costs of service discussed in Criterion 6. p. 27 According to the Federal Trade Commission (FTC) staff, licensing restricts the supply of practitioners and raises the cost of entry into the licensed occupations, even though the quality of services is improved. However, some consumers may want lower-quality, lower-cost services, and licensure may not allow these individuals to practice (Maurizi 1980). As an alternative to licensure of occupations, FTC staff recommend voluntary certification, because minimum requirements would be met before a title could be used, but the practice would not be restricted. Therefore, the supply would not be adversely affected (FTC 1989).

Entry requirements into most classifications of specialty contracting are not extensive in regards to education, and therefore, should not decrease the available supply of services. Most workers in the construction occupations acquire their skills on the job, and apprenticeship periods are recommended by most training authorities (U. S. Department of Labor 1986). Apprenticeships under the supervision of the federal government, high school curriculums, and technical schools offer educational programs in some of the residential specialty contractors classifications. Additionally, the Municipal Association of South Carolina (MASC) offers certification for plumbers, electricians, and heating and air conditioning workers. These are discussed in more detail under Criterion 3, p 19.

Review of projections for growth in the construction area, found that the projected growth in this area is expected to be as fast as the average through the mid-1990's. (US Department of Labor 1986). Employment for the construction industry in South Carolina has

been projected by the Employment Security Commission to remain relatively stable. In 1985, and in estimates for 1995, the construction industry represents six percent of the state's jobs. Employment as a special trade contractor is expected to remain constant at approximately 48 percent of those employed in the construction occupations (SC Employment Security 1988).

### **Proponents**

The Residential Home Builders Commission, in its response to the criteria stated that regulations should not restrict entry or be more restrictive than necessary. The Commission stated that reciprocity could be provided by law for individuals who move to South Carolina from a state with similar laws.

Since the Residential Home Builders Commission will offer oral examinations, the Home Builder's Association is convinced that there will be a proper balance between adequate protection and over-regulation. In addition, the Association stated that the Commission can provide this regulation without significantly restricting the availability of construction craftsmen.

### **Opponents**

One opponent, representing the Midlands Master Plumber Association, had several concerns. One of this opponent's major concerns centered around the grandparenting of all individuals currently practicing a trade. This was especially a concern in light of the fact that only 19 counties have building codes to establish minimum standards. Additionally, the bill proposes a one year experience for licensees not grandparented in; this is less than the two-year requirement of the Municipal Association, which currently certifies master and journeymen plumbers, electricians, and HVAC people. In the 19, counties there are 272 entities which belong to the association (Brasington 1989).

Another opponent stated it would be "totally impractical to ramrod a bill through that would require licensing,..certification, of subcontractors, because we have a lot of people in this trade that are functionally illiterate." This opponent stated that these people are skilled craftsmen and should not be denied an opportunity to earn a living (Lain 1989).

### **Impact of Proposed Legislation**

The practice of residential specialty contracting would be restricted to those individuals who pass an examination administered by the Residential Home Builders Commission and have a minimum of one year of actual experience in building construction involving the trades for which the license is sought. The Commission is charged with establishing the classifications and setting the minimum requirements and qualifications for each classification. The bill has no provision for reciprocity between states. Also, individuals practicing in one or more of the classifications of residential specialty contracting and who apply within six months of the enactment of the bill may be grandfathered in without being qualified by the Commission.

## Subcommittee's Conclusions

*The Sunrise Subcommittee concludes that there is no conclusive evidence that regulation of residential specialty contractors would increase or decrease the availability of services.*

If licensure requirements promulgated by the Residential Home Builders Commission are not too restrictive, then the availability of services to the public should not decrease. Also, licensure should not decrease the availability of services, since growth in the area is expected to remain relatively constant.

## **Criterion Eight**

**Whether regulation will assure the competency of practitioners of the occupation.**

### **Explanation of Criterion**

Occupational licensing seeks to assure competency by requiring potential licensees to demonstrate that they meet minimum-quality standards. The standards contained in a licensing statute should represent the judgement of the legislature as to what minimum qualifications an applicant must possess. State government is responsible for assuring an adequate minimum level of applied competence. This is carried out through initial testing and licensure procedures and through complaint investigation and discipline after licensure is granted. Additionally, vigorous enforcement is probably the most appropriate governmental role to ensure competent practice.

### **Subcommittee's Research**

Minimum competency standards of the residential specialty contracting branches may be difficult to define. According to the U. S. Department of Labor, "most people acquire construction skills informally working as laborers and helpers and observing experienced worker and/or attending vocational or trade schools or by taking correspondence courses (U.S. Department of Labor 1986). In South Carolina, apprenticeship programs are available and these must meet minimum standards set by the federal Department of Labor. Also, state supported high schools offer programs in several classifications of specialty contracting for which a certificate of completion is awarded for graduates of the program. Also, the Municipal Association offers certification programs for masters and journeymen plumbers, electricians, and heating and air conditioning.

Further Sunrise Subcommittee research is incorporated into the analysis below of the impact of the proposed legislation.

### **Proponents**

The Residential Home Builders Commission states that if a person is registered or licensed and there is a state agency for oversight, the person will "adhere to a more professional attitude in their work." The Commission acknowledges that licensing or registration by itself will not assure competency. The Commission has no prerequisite qualifications for practitioners who will be grandparented, and there are no plans for mandatory continuing education. The Commission states that they could put on voluntary programs for all trades.

The Home Builders Association of South Carolina responded that in the remodeling and home-improvement areas, the consumer is more likely to deal directly with one or more

of the residential specialty contractors. The consumer is less likely to be able to judge the competency or to have recourse if a problem develops with the residential specialty contractors.

### Opponents

One opponent, representing the Midlands Master Plumber Association, had several concerns. One of this opponent's major concerns centered around the grandparenting of all individuals currently practicing a trade. This was especially a concern in light of the fact that only 19 counties have building codes to establish minimum standards. Additionally, the bill proposes a one-year experience for licensees not grandparented in; this is less than the two-year requirement of the Municipal Association, which currently certifies master and journeymen plumbers, electricians, and HVAC people. In the 19 counties, there are 272 entities which belong to the association (Brasington 1989).

Another opponent, stated it would be "totally impractical to ramrod a bill through that would require licensing,..certification, to subcontractors, because we have a lot of people in this trade that are functionally illiterate." The opponent stated further that these people are skilled craftsmen and should not be denied an opportunity to earn a living. Additionally, there has to be some kind of realistic monitoring of inadequacy in complaints of subcontractors. It is impractical for the Residential Home Builders Commission to assume this responsibility (Lain 1989).

### Impact of Proposed Legislation

The initial competency of residential specialty contractors has not been established within the bill. The scope of practice and standards for each classification have not been incorporated into the bill, but has been left to the Residential Home Builders Commission to set. Applicants would be required to pass an examination administered by the Residential Home Builders Commission and have a minimum of one year of actual experience in building construction that involve the trades or crafts for which the license is sought.

The Residential Home Builders Commission would be responsible for developing and administering an examination for each of the eleven branches of residential specialty contracting. General and mechanical contractors are exempt from the licensure as a specialty contractor. In addition, individuals may perform specialty contracting work as long as the project does not cost more than \$1,000. The majority of the Department of Consumer Affairs' complaints against specialty contractors were under this limit (see Criterion 1 p. 9 for more details).

The Licensing Board of Contractors licenses numerous classifications of general and mechanical contractors. In 1988, the Audit Council found that the Board needed to ensure that professional testing standards are used for all exams; and that examinations needed to be developed for 13 classifications of general contracting. According to the Board, it is impossible to develop exams for some classifications which contain a diversity of contracting specialties. Further, the official claimed that most specialty contractors are supervised by another contractor. The cost for administering these exams was cited as another reason, multiple examinations had not been developed.



The Residential Home Builders Commission would assume responsibilities for handling complaints and disciplinary action. In FY 87-88, 580 complaints against licensed home builders were made to the Commission. The Home Builders Association has estimated that 25,000 individuals would be licensed under this bill. Complaints concerning these new licensees would be the responsibility of the Residential Home Builders Commission.

In 1988, the Audit Council noted improvements needed to be made in the administration of complaint files. Also, written procedures needed to be established concerning inspections and referrals of unlicensed builders to the Attorney General's Office. Act 62 of 1989 empowered the Commission to suspend and restrict licenses of builders, in addition to the revocation of licenses. The proposed bill would also authorize the commission to issue cease and desist orders to individuals who are illegally practicing in the capacity of a residential specialty contractor. The courts can impose a civil penalty, not more than \$1,000, on individuals found guilty of violating a cease and desist order.

For individuals who are grandparented, there are no minimum qualification requirements. These individuals must pay the application fee, provide a surety bond of \$10,000 or proof of financial responsibility, and provide a letter from a licensed residential home builder that states that the individual is currently practicing in the trade for which the license is applied and that individual is recommended for licensure. This provides the public with no safeguards on the competency of current practitioners.

#### Subcommittee's Conclusion

*The Sunrise Subcommittee concludes that the competency of residential specialty contractors would not be ensured with House Bill 3407 as proposed.*

Minimum qualifications and scope of practices for each classification have not been established, and may it be difficult to do so. For new licensees, the Residential Home Builders Commission will have to develop eleven different examinations, and because of the high illiteracy rate of the specialty contractors, an oral examination will be required in many instances. Also, current practitioners will be grandfathered in with no minimum quality standards; only a letter of recommendation from a licensed residential home builder and posting of a surety bond of \$10,000 is required.

The bill provides for no continuing education requirements, and the commission has no plans to require this. Renewal of licensees requires the submission of the renewal fee, provision of surety bond or proof of financial responsibility, and the that licensees be in good standing with the Commission, (i.e., his license has not been revoked or he is not under investigation for wrong doings).

Enforcement to ensure continued competency of practitioners will most likely increase the workload of commission staff. The Home Builders Association has estimated 25,000 new licensees. However, the Commission has not conducted any studies to estimate the number of potential licensees or the number of complaints which could be reasonably expected.

## **Criterion Nine**

**Whether regulation can be provided through an existing state agency or under supervision of presently licensed practitioners.**

### **Explanation of Criterion**

Throughout the history of state occupational regulation, the traditional mechanism for administering regulatory statutes has been an autonomous, or semi-autonomous board, consisting of members of the licensed profession. Recently, there have been moves to place these boards within a common or central agency of state government. Proponents of centralization of board activity cite the following reasons for the practice: Increased administrative efficiency, better coordination and oversight, and greater public accountability.

### **Subcommittee's Research**

Two existing state agencies, the Licensing Board for Contractors and the Residential Home Builders Commission, license builders and contractors in South Carolina. Mechanical contractors licensed by the Licensing Board for Contractors include persons who undertake air conditioning, heating, plumbing, and electrical projects costing \$17,500 or more.

According to the U. S. Department of Labor, most construction workers are employed by construction firms. Masons, roofers, and non-structural tradesmen (cabinetmakers, painters, floorcoverers, etc.) may be licensed as general contractors if they work on projects in excess of \$30,000. Since licensed residential home builders oversee subcontractors working on residential projects, residential specialty contractors are supervised on the job by licensed practitioners.

In addition to state agencies which license similar occupations, the Municipal Association of South Carolina certifies journeymen and master plumbers, electricians, and heating and air conditioning tradesmen.

The Department of Consumer Affairs is the South Carolina state agency that handles complaints against builders and contractors not presently licensed by the two existing boards. They have been successful at resolving many of the complaints filed against builders and contractors. If the proposed legislation is enacted, continued oversight by the Department would be required on projects under \$1,000.

### **Proponents**

The Residential Home Builders Commission would assume responsibility for the regulation of residential specialty contractors. No other state or federal agency regulates specialty contractors in the home building industry.



## Opponents

One opponent expressed reservations about the Residential Home Builders Commission capability to efficiently and effectively administer a licensure program for residential specialty contractors. The opponent questioned the ability of the Residential Home Builders Commission to handle this additional responsibility effectively. It was stated that consumers were not able to get consistent treatment and proper resolution of complaints with presently licensed builders. An additional problem in South Carolina is that there is no mandatory requirement for building inspectors to be certified (Lain 1989).

### Impact of Proposed Legislation

The bill proposes to place the regulation of residential specialty contractors within an existing state agency. No additional state agency or regulatory board would be created.

### Subcommittee's Conclusion

*The Sunrise Subcommittee concludes that if regulation is warranted, it could be provided through an existing board.*

The Residential Home Builders Commission would be the most likely candidate to regulate residential specialty contractors, although the Licensing Board for Contractors has already established specialty classifications. However, existing certification programs may adequately protect the public without additional licensure requirements. The Municipal Association of South Carolina offers a certification program for plumbers, electricians, and heating and air conditioning workers.

## RECOMMENDATION

*The Sunrise Subcommittee recommends that the General Assembly enact no regulation of residential specialty contractors at this time.*

The provisions of Act 572 of 1988 specify that the Commission must recommend no regulation unless necessary to protect the health, safety, or welfare of the public. Based on an evaluation applying the nine Sunrise criteria, the Sunrise Subcommittee concludes that the unregulated practice of residential specialty contractors does not present a clear and recognizable danger to the public health, safety, or welfare.

### Alternative Proposals

If the General Assembly determines that existing remedies do not adequately protect the public from harm caused by services provided by residential specialty contractors, it may wish to consider the alternatives listed below. The proposals are ranked from the *least* extensive and restrictive form of regulation to the *most* extensive and restrictive.

**Statutory Changes.** During the review, the Commission identified several areas where existing laws could be strengthened in lieu of additional regulation.

**Establishment of statewide building codes.** A statewide building code, with required inspections and training for inspectors, would provide consistent minimum standards across the state which would be enforced by qualified local inspectors.

**Mandatory certification by local authorities.** Municipalities and counties could be required to certify plumbers, electricians, and heating and conditioning professionals regardless of populations. Currently, certification is only required for counties and municipalities with populations exceeding 150,000 and 15,000, respectively.

### Changes to the Residential Home Builders Commission.

-Authorizing the Commission to order cease and desist orders as proposed in House Bill 3407, and allowing the Commission to fine licensed builders for violations of the law would strengthen enforcement powers.

-Establishing of a guaranty fund, funded through a fee assessed licensed builders, would protect the public from losses suffered if a builder loses his license or goes bankrupt.

-Increasing insurance requirements of residential home builders to require "casual" or "completed operations insurance." This would allow consumers to collect financial reimbursement for secondary damages.

**Registration of Residential Specialty Contractors.** Legislation would provide for the listing of the name, location, and nature of operation of each practitioner engaging, for a fee, in one of the eleven branches of specialty contracting. No minimum qualifications would be required to be met, but revocation of registration, in accordance with the Administrative Procedures Act, would have the effect of prohibiting the incompetent practitioner from performing specialty contracting. Consumers who have been harmed could appeal to a board to handle complaints and investigations.

**APPENDIX A**

**Analysis of Provisions of House Bill 3407**

# ANALYSIS OF PROPOSED LEGISLATION

## House Bill 3407

### OCCUPATION UNDER REVIEW *RESIDENTIAL SPECIALTY CONTRACTORS*

#### NATURE OF PROPOSED REGULATION *Licensure*

The analysis below examines each of eleven features commonly contained in occupational licensing enabling legislation in terms of the proposed legislation. Parenthetical comments do not represent the official position of the State Reorganization Commission, but are presented for informational purposes only.

#### Definitions

House Bill 3407 would legally define a "residential specialty contractor." The eleven classifications proposed are included as part of the definition.

#### Board Structure and Function

The existing Residential Home Builders Commission would assume responsibility for the licensure of residential specialty contractors. No changes to the commission have been proposed. The Board is composed of seven members, who serve four year terms. The Board members must have been residents of South Carolina for five years; three must be public members and four must have been actively engaged in residential home building for five years. Members are appointed to the Board by the Governor with the consent of the Senate. Members of the Commission receive the usual per diem, mileage and subsistence rates allowed by law for state boards. Board duties include: Meeting at least quarterly; electing officers; determining standards and qualifications for residential builders and residential specialty contractors; approving the examination to be administered; and enforcing the laws concerning home builders and residential specialty contractors.

#### Licensing Requirements

To be eligible for licensure, an applicant must: (1) Pass the Commission's prescribed examination; (2) Submit an executed bond in the form and with a surety approved by the Commission; and (3) Have one year's experience in the field licensure is sought.

#### Exemptions

Residential home builders, general contractors, and mechanical contractors are exempt from licensure. Also, contracts which are less than one thousand dollars do not have to meet the requirements of this bill.

### **Scope of Practice Definitions**

The bill requires the Residential Home Builders Commission to set regulations to classify residential specialty contractors in a manner consistent with established useage and procedure in the construction industry. The bill does not define scope of practice.

### **Administrative Provisions**

The Commission is authorized to employ an executive secretary to serve at the discretion of the Commission. The duties of the Executive Secretary are to be prescribed by the Commission. The Commission is to renew licenses annually and print an annual rooster; and promulgate regulations necessary to carry out the provisions of the act.

### **Examinations**

Examinations are to be approved by the Commission. A examination is to be established for each of the eleven branches of residential specialty contracting.

### **Reciprocity**

House Bill 3407 contains no provision for reciprocity with other states.

### **Continuing Education**

House Bill 3407 does not contain any specific requirements for continuing education.

### **Grounds for Suspension, Revocation**

The Commission is authorized to revoke, suspend, and restrict the licenses of residential specialty contractors. In addition, the Commission would have the authority to issue or pursue cease and desist orders against unlicensed practitioners.

### **Penalties for Violating the Law**

Civil penalties; fines of not less than two hundred fifty dollars nor more than one thousand dollars.

**APPENDIX B**

**House Bill 3407  
Licensure of Residential Specialty Contractors**



A BILL

TO AMEND SECTION 40-59-10, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE LICENSING OF RESIDENTIAL HOME BUILDERS, SO AS TO REDESIGNATE THE TERM "RESIDENTIAL HOME BUILDER" TO "RESIDENTIAL BUILDER" AND FURTHER PROVIDE FOR THE DEFINITION OF A RESIDENTIAL BUILDER; TO AMEND THE 1976 CODE BY ADDING SECTION 40-59-15 SO AS TO DEFINE THE TERM "RESIDENTIAL SPECIALTY CONTRACTOR"; TO AMEND SECTION 40-59-70, RELATING TO LICENSES REQUIRED OF RESIDENTIAL BUILDERS, SO AS TO PROVIDE FOR THE LICENSING OF RESIDENTIAL SPECIALTY CONTRACTORS, TO REVISE THE LICENSING PROCEDURE AND TO DELETE CERTAIN LICENSING EXCEPTIONS; TO AMEND THE 1976 CODE BY ADDING SECTION 40-59-75 SO AS TO PROVIDE THAT THE RESIDENTIAL BUILDERS COMMISSION MUST BY REGULATION CLASSIFY AND DEFINE THE SCOPE OF OPERATIONS OF RESIDENTIAL SPECIALTY CONTRACTORS; TO AMEND SECTION 40-59-80, RELATING TO APPLICATIONS FOR AND THE ISSUANCE OF LICENSES, SO AS TO FURTHER PROVIDE FOR THE APPLICATION AND LICENSING PROCEDURES; TO AMEND SECTION 40-59-90, RELATING TO REVOCATION AND REISSUANCE OF LICENSES SO AS TO REVISE THIS REVOCATION AND REISSUANCE PROCEDURE; TO AMEND THE 1976 CODE BY ADDING SECTION 40-59-95 SO AS TO AUTHORIZE CERTAIN LEGAL PROCEDURES AGAINST PERSONS VIOLATING THE PROVISIONS OF THIS ACT AND TO PROVIDE PENALTIES FOR VIOLATION; TO AMEND SECTION 40-59-100, RELATING TO ROSTER OF LICENSES, SECTION 40-59-110, RELATING TO THE ANNUAL REPORT OF THE COMMISSION, SECTION 40-59-120, RELATING TO REGULATIONS OF THE COMMISSION, SECTION 40-59-130, RELATING TO PENALTIES FOR VIOLATIONS, AND SECTION 40-59-160,

RELATING TO DUTIES OF BUILDING OFFICIALS, SO AS TO INCLUDE RESIDENTIAL SPECIALTY CONTRACTORS IN THESE PROVISIONS; TO AMEND SECTION 40-59-140, RELATING TO THE EXEMPTION OF GENERAL CONTRACTORS, SO AS TO ALSO EXEMPT MECHANICAL CONTRACTORS WHEN ENGAGED IN CONTRACTING IN THE CLASSIFICATION IN WHICH THEY ARE LICENSED TO PERFORM MECHANICAL CONTRACTING, AND TO PROVIDE FOR THE EXEMPTION FROM LICENSING OF CERTAIN PERSONS ENGAGED IN RESIDENTIAL SPECIALTY CONTRACTING ON OR BEFORE JULY 1, 1989, AND TO AUTHORIZE THE COMMISSION TO CLASSIFY OR RECLASSIFY LICENSES IN EXISTENCE ON THE EFFECTIVE DATE OF THIS ACT.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 40-59-10 of the 1976 Code is amended to read:

"Section 40-59-10. For the purpose of this chapter, a 'residential <home> builder' <shall be> is one who constructs a residential building or structure for sale or who, for a fixed price, commission, fee or wage, undertakes or offers to undertake the construction, or superintending of the construction, of any building or structure which is not over three floors in height and which does not have more than sixteen units in the apartment complex, or the repair, improvement or reimprovement thereof, to be used by another as a residence when the cost of the undertaking exceeds <ten> five thousand dollars. Nothing <herein shall prevent> in this chapter prevents any person, or his agents, from performing these acts on his own residence or on his other real estate <holdings> held for personal or rental, as opposed to speculative purposes. Anyone who engages or offers to engage in such undertaking in this State <shall be deemed> is considered to have engaged in the business of residential <home> building."

SECTION 2. The 1976 Code is amended by adding:

"Section 40-59-15. A residential specialty contractor is an independent contractor who is not a licensed residential builder, who contracts with a licensed residential builder, general contractor or individual property owner to do any construction work, repairs, improvement, or reimprovement which requires special skills and involves the use of specialized construction trades or craft, when the undertakings exceed one thousand dollars and are not regulated by the provisions of Chapter 11 of this title.

Residential specialty contractors include:

- (a) plumbers;
- (b) electricians;
- (c) heating and air conditioning installers and repairers;
- (d) vinyl and aluminum siding installers;
- (e) insulation installers;
- (f) roofers;
- (g) pest controllers;
- (h) floor covering installers;
- (i) masons;
- (j) dry wall installers;
- (k) carpenters."

SECTION 3. Section 40-59-70 of the 1976 Code is amended to read:

"Section 40-59-70. (A)

All residential <home> builders and residential specialty contractors are <shall be> required to be licensed by the <Commission> commission annually under the provisions of this chapter. <except that any person engaged in residential home building on or before July 1, 1974, shall be duly licensed by the Commission, without examination, after paying the required annual fee by submitting to the Commission within a period of twelve months after such Commission is established the following:

- (a) An affidavit showing that such residential home builder has constructed a minimum of one>

<residential home within a year prior to July 1, 1974; and

(b) An executed bond with a surety approved by the Commission in the sum of ten thousand dollars, or proof of financial responsibility acceptable to the Commission.

Except as provided in this chapter, all licenses shall be issued or renewed upon the payment to the Commission of the annual license fee.>

(B) The commission shall issue a license upon the applicant's payment of examination fee and annual license fee, if the commission, as a result of examining the applicant, has determined that he is qualified to engage in residential building or residential specialty contracting, and has the requisite bond or proof of financial responsibility.

(C) Unless a proceeding under Section 40-59-90 is pending or the commission has issued its order determining that the applicant has violated that section so as to require revocation of his license, if he had not allowed it to expire, in which cases the commission approval of renewal or relicensing as provided in that section is necessary, the commission shall renew all licenses upon the applicant's submission to the commission of the renewal application, proof of financial responsibility or bond, and payment of the annual license fee.

The annual license <fee shall be> fees for residential builders and for residential specialty contractors must be set by the <Commission> commission <after it considers> based on its cost of operation. <Such> The annual <fee> fees may be increased or decreased by the <Commission> commission but in no event <shall> may the <Commission> commission set <such> the annual <fee> fees at an amount which would not provide sufficient revenues to pay all the salaries, costs, and expenses incurred by the <Commission> commission in enforcing the provisions of this chapter. The annual license <fee shall be> fees are for the period of twelve

months beginning July first of each year. All license fees collected by the <Commission> commission <shall> must be paid into the State Treasury as provided by law for payment into the State Treasury of other taxes."

SECTION 4. The 1976 Code is amended by adding:

"Section 40-59-75. The commission shall, by regulation, classify residential specialty contractors in a manner consistent with established usage and procedure in the construction business, and may limit the field and scope of the operations of a licensed residential specialty contractor to those in which he is to be licensed.

(1) After the commission classifies the fields and branches of the contracting vocation, in order to properly test the qualifications and experience of an applicant for a residential specialty contractor's license in the various fields and branches, the commission shall specify minimum requirements and qualifications for each classification. All residential specialty contractor licenses issued by the commission must be for one or more of the classifications adopted pursuant to this chapter.

(2) Specialty contractors must be qualified and experienced in the particular branches or fields of the contracting vocation in which they intend to, and do, engage. A licensee may make application for classification, and be classified in, more than one classification if he meets the qualifications prescribed by the commission for the additional classification.

The application fee fixed by the commission and a license fee must be paid for each classification."

SECTION 5. Section 40-59-80 of the 1976 Code is amended to read:

"Section 40-59-80. Any residential <home> builder or residential specialty contractor who

desires to be licensed under the provisions of this chapter shall make and file with the <Commission> commission thirty days prior to the next meeting of the <Commission> commission a written application on such form as may be prescribed by the <Commission> commission. <Such> The application <shall> must be accompanied by the payment of the annual license fee required by the <Commission> commission and an examination fee as set by the Commission. A prerequisite for the taking of an examination for a residential home builder's license or a residential specialty contractor's license is a minimum of one year of actual experience in building construction involving the trades or crafts for which the license is desired. <After the Commission accepts such application and finds that it is in order, the applicant may be examined by the Commission at its next meeting.> The <Commission> commission, in examining <such> an applicant, shall consider the following qualifications of the applicant:

- (a) <Experience> experience;
- (b) <Ability> ability;
- (c) <Character> character;
- (d) <Financial conditions> financial condition;
- (e) <Equipment> equipment;
- (f) <Ability> ability and willingness to conserve the public health and safety; and
- (g) <Other> other pertinent information the <Commission> commission may require.

If, as a result of the examination, the <Commission> commission finds that the applicant is qualified to engage in residential <home> building or residential specialty contracting in South Carolina, and if the applicant submits an executed bond in the form and with a surety approved by the commission, or proof of financial responsibility acceptable to the commission, the commission shall issue the license for which the applicant is qualified <the applicant shall be issued the license required herein>. Any applicant rejected by the <Commission> commission <shall> must be given

the opportunity to be reexamined after he has paid an additional examination fee, except that if the applicant fails the examination three times he shall wait twelve months before being examined again <a new application has been filed and an additional annual fee paid>.

<A record shall be made and preserved by the Commission of each examination of an applicant and the findings of the Commission pertaining to such examination. A certified copy of such record shall be furnished to any applicant so requesting such record upon the payment of a fee to the Commission that reasonably reflects the cost of furnishing such record to the applicant.>"

SECTION 6. Section 40-59-90 of the 1976 Code is amended to read:

"Section 40-59-90. The <Commission> commission may revoke the license of any residential <home> builder or residential specialty contractor who, in the opinion of the <Commission> commission, has committed fraud or deceit in obtaining a license required by the provisions of this chapter or has been guilty of gross negligence, incompetence, or misconduct in the practice of <home> residential building or residential specialty contracting. Any person, including the <Commission> commission, may prefer charges of fraud, deceit, negligence, incompetence, or misconduct against any residential <home> builder or residential specialty contracting licensed <hereunder> under this chapter. <Such> The charges <shall> must be made to the <Commission> commission in writing and sworn to by the person <so charging> making the charge and <shall> must be submitted to the executive <secretary> director of the <Commission> commission.

<Such> The charges, unless dismissed without hearing by the <Commission> commission as unfounded or trivial, <shall> must be heard by <the Commission> a panel of commissioners or an



administrative hearing officer designated by the commission in an open hearing within <three> four months after the date on which they were preferred unless the parties consent in writing to an extension. A copy of the charges, together with notice of the time and place of the hearing, <shall> must be legally served on the residential <home> builder or residential specialty contractor <so> charged at least <fifteen> thirty days before the <fixed> date fixed for the hearing. At <such> the hearing the residential <home> builder or residential specialty contractor <so> charged may appear personally or be represented by counsel and may cross-examine witnesses against him and produce evidence and witnesses in his defense. If, after <such> the hearing, a majority of the <Commission> commission votes in favor of revoking the license of the residential <home> builder or residential specialty contractor <so> charged on the basis of fraud or deceit in obtaining his license, or gross negligence, incompetence, or misconduct in the performance of <home> residential building or residential specialty contracting, the <Commission> commission shall order the license of <such> the residential <home> builder or residential specialty contractor revoked. <After the Commission revokes the license of such residential home builder he shall have ten days in which to file with the Commission written notice of his intention to appeal from the order of the Commission. All appeals from the order of the Commission shall be to the circuit court of the county in which the accused resides and the proceedings on such appeals shall be the same as now provided for appeals from the magistrate courts to the circuit court, except that such appeals shall be de novo. Any party may appeal to the Supreme Court from the court of common pleas in the same manner as provided by law for appeals from the circuit to the Supreme Court.>  
Appeals from the commission's orders are pursuant to the South Carolina Administrative

Procedures Act in the circuit court of the county in which the residential builder or specialty contractor resides.

The <Commission> commission may reissue a license to any residential <home> builder or residential specialty contractor whose license was previously revoked if <three> four or more members of the <Commission> commission vote in favor of <such> the reissuance."

SECTION 7. The 1976 Code is amended by adding:

"Section 40-59-95. (A)

In addition to all other remedies, when it appears to the director, either upon complaint or otherwise, that any person, firm, partnership, corporation, association, or other organization (person), or a combination of any of them has engaged in, or is engaging in any act of contracting, practice, or transaction which constitutes a violation of this chapter, or of any regulation or order of the commission, the director may either:

(1) Serve upon the person not licensed under the chapter, by certified mail or by personal service, a cease and desist order requiring the person to cease and desist immediately, upon receipt of the notice, from engaging in the act, practice, or transaction. If the person fails to comply with the order, the director may file an action, pursuant to item (2) of this subsection, in the court of common pleas to restrain and enjoin the person from engaging in the act, practice, or transaction, and for willful violation of the order. If the court finds that the person willfully failed to obey a valid cease and desist order, the court shall impose a civil penalty of not less than two hundred fifty dollars nor more than one thousand dollars for each violation. Any amount collected as a civil penalty must be remitted pursuant to subsection B. of this section.

(2) Apply through the attorney general, the county attorney, or solicitor of the county in which the act, practice, or transaction is

alleged to have been committed, to the court of common pleas of that county for an injunction restraining the person from engaging in the act, practice, or transaction, or doing any act in furtherance of the act, practice, or transaction, and, upon a proper showing, a temporary restraining order, a preliminary injunction, or a permanent injunction must be granted without bond. Process in the action may be served upon the defendant in any county of this State where he transacts business or is found.

(B) Each violation of this chapter, or regulation or order of the director constitutes a separate offense and the court may impose a civil penalty not to exceed one thousand dollars for each violation. Fifty percent of the penalty must be remitted to the general fund of the county where the case was tried and fifty percent must be deposited in the state general fund if the violation is prosecuted by the county attorney or solicitor. The entire amount must be deposited in the state general fund if the violation is prosecuted by the attorney general."

SECTION 8. Section 40-59-100 of the 1976 Code is amended to read:

"Section 40-59-100. A complete roster that shows all the names and places of business of the residential <home> builders and residential specialty contractors licensed by the <Commission> commission during the preceding year <shall> must be prepared annually by the <Commission> commission and forwarded to and filed with the clerks of court for the several counties."

SECTION 9. Section 40-59-110 of the 1976 Code is amended to read:

"Section 40-59-110. The <Commission> commission shall annually submit to the Governor

a report of its transactions for the preceding year including a complete statement of the receipts and expenditures of the <Commission> commission and a roster of all the residential <home> builders and residential specialty contractors licensed for that year. The <Commission> commission shall also annually file with the Secretary of State a certified copy of such report at the same time <such> the report is submitted to the Governor."

SECTION 10. Section 40-59-120 of the 1976 Code is amended to read:

"Section 40-59-120. The <Commission> commission <is authorized to> may promulgate <such> reasonable <rules and> regulations as may be necessary to effectuate the provisions of this chapter."

SECTION 11. Section 40-59-130 of the 1976 Code is amended to read:

"Section 40-59-130. Any residential <home> builder or residential specialty contractor who undertakes or attempts to undertake the business of residential <home> building or residential specialty contracting without first having procured a valid license required by the provisions of this chapter which has neither expired <or> nor been revoked, <required by the provisions of this chapter> or who knowingly presents to, or files <>false information> with, the <Commission> commission false information for the purpose of obtaining <such> a license <shall deemed> is guilty of a misdemeanor and upon conviction <shall> must be fined not less than one hundred dollars or imprisoned for not less than thirty days.

No residential <home> builder or residential specialty contractor who does not have the license required <herein> may bring any action

either at law or in equity to enforce the provisions of any contract for residential <home> building or residential specialty contracting which he entered into in violation of this chapter.

Whenever it <shall appear> appears to the <Commission> commission that any residential <home> builder or residential specialty contractor has violated, or is about to violate, the provisions of this chapter, the <Commission> commission may in its own name petition the court of common pleas of the county wherein the violation occurred or is about to occur to issue a temporary restraining order enjoining <such> the violation of this chapter, pending a full hearing to determine whether or not the injunction <should> must be made permanent."

SECTION 12. Section 40-59-140 of the 1976 Code is amended to read:

"Section 40-59-140. The provisions of this chapter do not apply to any person licensed as a general contractor under the provisions of Chapter 11 of Title 40, for the purpose of undertaking the construction, or superintending of construction, of any building, or the improvement, <or> reimprovement or repair of any building. No residential <home> builder who is licensed pursuant to the provisions of this chapter is also required to be licensed as a general contractor or mechanical contractor under the provisions of Chapter 11 of Title 40 in order to engage in residential <home> building as defined in Section 40-59-10. A mechanical contractor is exempt from the provisions of this chapter relating to specialty contractors when engaged in contracting in the classification in which he is licensed to perform mechanical contracting. The Residential <Home> Builders Commission is the sole licensing board for persons who engage solely in <home> residential building <only> as defined in Section 40-59-10."

SECTION 13. Section 40-59-160 of the 1976 Code is amended to read:

"Section 40-59-160. It is the duty of the building official, or other authority charged with the duty of issuing building or similar permits, of any incorporated municipality or subdivision of the municipality or county, to refuse to issue a permit for any undertaking which would classify the applicant as a residential <home> builder or residential specialty contractor under the provisions of this chapter unless the applicant has furnished evidence that he is either licensed as required by this chapter or exempt from the requirements of this chapter. It is also the duty of the building official, or other authority charged with the duty of issuing building or similar permits, to report to the State Licensing Board the name and address of any person who, in his opinion, has violated this chapter by accepting or contracting to accomplish work which would classify the person as a residential <home> builder or residential specialty contractor under the provisions of this chapter."

SECTION 14. Any person engaged in residential specialty contracting on or before July 1, 1989, must be duly licensed by the commission without examination, after paying the required annual fee, by submitting to the commission, within a period of six months after the effective date of this act, the following:

(a) An affidavit from a licensed residential builder or general contractor stating that the residential specialty contractor is active in the specialty for which he applies, and that the affiant would recommend that the applicant be licensed in that specialty classification.

(b) An executed bond with a surety approved by the commission in the sum of ten thousand dollars, or proof of financial responsibility acceptable to the commission.

SECTION 15. The commission may also classify or reclassify existing licenses valid on the effective date of this act into the classifications in which the majority of the licensee's contracting is embraced, which fact must be determined according to the information requested by and given to the commission by the licensee. The commission shall give the licensees the opportunity to qualify for, and be classified and licensed in, additional classifications in which they intend to, or do, contract.

SECTION 16. This act takes effect July 1, 1989.



**APPENDIX C**

**Senate Bill 460**

A BILL

TO AMEND CHAPTER 9, TITLE 6, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO BUILDING CODES, SO AS TO REVISE THE AUTHORIZATION FOR AND SCOPE OF BUILDING CODES, REGULATIONS, AND REGIONAL AGREEMENTS, PROVIDE FOR THE APPOINTMENT OF A BUILDING OFFICIAL AND ESTABLISHMENT OF A BUILDING INSPECTION PROGRAM, REVISE THE PROCEDURES FOR THE ADOPTION OF CODES AND STANDARDS, REVISE THE MEMBERSHIP AND OFFICERS OF THE BUILDING CODES COUNCIL, REVISE PENALTIES, DELETE THE REFERENCE TO THE ADOPTION OF CODES BEFORE MAY 1, 1982, AND PROVIDE FOR THE EFFECT OF THE PROVISIONS ON THE AUTHORITY OF LOCAL BUILDING OFFICIALS AND THE STATE FIRE MARSHAL.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 9, Title 6 of the 1976 Code, amended by Act 24 of 1987, which added Section 6-9-65, is further amended to read:

"Chapter 9

Building<, Housing, Electrical, Plumbing  
and Gas> Codes

Section 6-9-10. <The governing body of any incorporated municipality or county> All municipalities, as defined by Section 5-1-20, and counties in this State <is authorized to> shall adopt building, <housing,> electrical, plumbing, <and> mechanical, gas, and fire codes, referred to as building codes in this chapter,

relating to the construction, livability, sanitation, erection, installation of equipment, alteration, repair, occupancy, or removal of <buildings and> structures located within <its jurisdiction> their jurisdictions and promulgate regulations to implement <the codes> their enforcement. The municipality or county may adopt only the codes provided in Section 6-9-50.

<The codes and the implementing regulations may embrace matters such as the preparation and submission of plans and specifications; the issuance of permits; standards governing the kind, quality, and performance of materials, equipment, and workmanship; the establishment of fire zones; fireproofing; means of egress and ingress; floor-area-per-occupant requirements; sanitary facilities and proceedings for the correction of unsafe, unsanitary, or inadequate structures.

The codes and regulations may only be adopted by reference to national, regional, or model codes listed in Section 6-9-60 and to certain special provisions approved by the South Carolina Building Code Council. Nothing in these codes or regulations may extend to or be construed as being applicable to the regulation of the design, construction, location, installation, or operation of equipment or facilities used in the generation, transmission, distribution, or communication of a public or private utility or electric or telephone membership cooperatives, other than buildings used primarily for offices or residential housing nor to equipment or facilities already subject to regulation by the Liquefied Petroleum Gas Board.>

With the exception of structures used primarily for offices, storage, warehouses, shop areas, or residential housing, nothing in the building codes or regulations applies to a public utility corporation subject to regulation by the authorities of the South Carolina Public Service Commission or the Liquefied Petroleum Gas Board.

Section 6-9-20. <County> Municipalities and <municipal bodies are authorized to> counties may establish regional agreements with other political subdivisions of the State to issue <building> construction permits and enforce building<, electrical, plumbing, gas, housing, and other> codes in order to provide the services required in this chapter and more effectively carry out the provisions of this chapter.

Section 6-9-30. <The county and municipal governing bodies may appoint building, electrical, plumbing, gas, and housing inspectors and employ other assistants as they may consider necessary and may prescribe fees or charges for permits and inspections.> All municipalities and counties shall appoint a building official. Based on the needs established by each municipality or county, the building official or appointing authority may appoint and employ other personnel and assistants necessary to perform the required inspections and duties and may prescribe fees for construction permits and inspections. The appointment of a building official and the establishment of a building inspection program for all municipalities and counties must be accomplished according to the following dates and populations based on the population figures of the latest official United States Census:

- (1) municipalities and counties with a population above 50,000: July 1, 1992;
- (2) municipalities and counties with a population of 25,000 to 50,000: July 1, 1993;
- (3) municipalities and counties with a population under 25,000: July 1, 1994.

Section 6-9-40. <Prior to adoption of any of the codes or regulations permitted in this chapter, the governing body shall hold public hearings on the codes or regulations. Not less than fifteen days' notice of the time and place of the hearings must be published in a newspaper of general circulation in the county.> The

building codes and standards referenced provided in Section 6-9-50 must be adopted within six months after the establishment of a building inspection department. State agency adoption of a building code or regulation permitted by this chapter must be accomplished in accordance with the Administrative Procedures Act.

Section 6-9-50. <County governing bodies have the authority to establish codes and promulgate regulations under this chapter for the entire unincorporated area of the county or for any specified portion of the unincorporated area.> Municipalities and counties shall adopt by reference only the latest editions of the following nationally known codes and the standards referenced in the codes for regulation of construction within their respective jurisdictions: Standard Building Code, Standard Gas Code, Standard Plumbing Code, Standard Mechanical Code, and the Standard Fire Prevention Code, as published by the Southern Building Code Congress International, Inc., and the National Electrical Code, as published by the National Fire Protection Association. The appendixes of the codes provided in this section may be adopted as needed by a municipality or county, but this fact must be referenced by name or letter designation in the adoption ordinance.

Section 6-9-60. Municipalities <or> and counties <are authorized to> may adopt by reference only the latest editions of the following nationally known codes and the standards referenced in the codes for regulation of construction within their respective jurisdictions: <Standard Building Code,> Standard Housing Code, <Standard Gas Code, Standard Plumbing Code, Standard One and Two Family Dwelling Code, Standard Mechanical Code, Standard Fire Prevention Code,> Standard Swimming Pool Code, Standard Excavation and Grading Code, <National Electrical Code, and National Fire Protection Association Gas Codes> as published by the Southern Building Code

Congress International, Inc., and the One and Two Family Dwelling Code, as published by the Council of American Building Officials. The appendixes of the codes provided in this section may be adopted as needed by a municipality or county, but this fact must be referenced by name or letter designation in the adopting ordinance.

<Should any city, town,> If a municipality or county <contend> contends that the codes authorized by this chapter do not meet its needs due to local physical or climatological conditions, the variations and modifications must be submitted for approval to <a> the South Carolina Building <Code> Codes Council <of thirteen members which is> established in this section. Members of <this> the council must be appointed by the Governor for terms of four years each and until a successor is appointed and qualified. The council shall include an architect registered in South Carolina, <representatives from the Municipal Association of South Carolina, the South Carolina Association of Counties, the Building Officials' Association of South Carolina, South Carolina Building Trade Council,> a municipal certified building official, a county certified building official, a representative <from> of the <electric utility> electrical industry who is either an engineer or master electrician registered in South Carolina, <a representative of the Carolinas Branch of the Associated General Contractors of America, Inc., representatives from the gas, electric, and plumbing industries, a representative of the Home Builders Association of South Carolina>, a general contractor and residential home builder licensed in South Carolina, a handicapped person, <and the Chief Engineer of the State Budget and Control Board> a representative of the mechanical and gas industries who is either an engineer registered in South Carolina or a master mechanic, a representative of the plumbing industry who is either an engineer registered in South Carolina or a master plumber, a representative designated by the

Chief Engineer of the State Budget and Control Board, a structural engineer registered in South Carolina, a certified building inspector, and a representative designated by the State Fire Marshal. <At least one member of the council must be a member of each of the congressional districts, to be appointed, if positions become vacant, in the order provided below or as resignations occur.> A vacancy must be filled in the manner of the original appointment for the unexpired portion of the term. The primary function of the council is to decide to what extent <any> a jurisdiction may vary from the series of codes listed in this <section> chapter in the establishment of construction standards. The council shall monitor the adoption of building codes by <cities> municipalities and counties to insure compliance with this chapter.

<Of the members initially appointed by the Governor, four shall serve for terms of two years, four shall serve for four years, and five shall serve for terms of six years. After the initial appointment, all appointments are for terms of six years.>

Members of the council shall receive mileage, subsistence, and per diem as provided for other state boards, committees, or commissions for attendance at board meetings called by the chairman. The Division of General Services of the State Budget and Control Board shall provide personnel for enforcement of the laws and regulations of the <South Carolina> Building <Code> Codes Council and shall employ and supervise personnel necessary to carry out <the> its duties <of the council>.

<Within thirty days after its appointment the council shall meet on call by the Chief Engineer of the State Budget and Control Board.> The council shall elect from its <appointive> members a chairman, vice-chairman, and secretary. The council shall adopt regulations not inconsistent with this chapter. Meetings may be called by the chairman on his own initiative and must be called by him at the request of three or more members of the council. All



members must be notified by the chairman in writing of the time and place of meeting at least seven days in advance of the meeting. Seven members constitute a quorum. All meetings are open to the public. At least two-thirds vote of those members in attendance at the meeting constitutes an official decision of the council.

Section 6-9-65. (A) For purposes of this section, 'farm structure' means a structure which is constructed on a farm, other than a residence or a structure attached to it, for use on the farm, including but not limited to, barns, sheds, and poultry houses, but not public livestock areas. For purposes of this section, 'farm structure' does not include a structure originally qualifying as a 'farm structure' but later converted to another use.

(B) The governing body of a county or municipality may not enforce that portion of <any> a nationally recognized building code it has adopted which regulates the construction or improvement of a farm structure. Standards for flood plain management by the Southern Building Code Congress International apply.

(C) The provisions of this section do not apply unless <prior to> before constructing a farm structure the person owning the property on which the structure is to be constructed files an affidavit with the county or municipal official responsible for enforcing the building code stating that the structure is being constructed as a farm structure. The affidavit must include a statement of purpose or intended use of the proposed structure or addition.

(D) This section does not affect the authority of the governing body of a county or municipality to issue building permits <prior to> before the construction or improvement of a farm structure.

Section 6-9-70. <The violation of any of the codes or regulations adopted pursuant to the provisions of this chapter is declared to be a

>misdemeanor, and any< A person violating the building codes or regulations adopted pursuant to the provisions of this chapter is guilty of a misdemeanor and, upon conviction, must be >punished by a fine< fined not >to exceed one< more than two hundred dollars or >imprisonment of< imprisoned for not more than thirty days, or both. Each day the violation continues is a separate offense.

Section 6-9-80. >In case of any< For a violation of >or proposed violation of< the building codes or regulations adopted pursuant to this chapter, the South Carolina Building >Code< Codes Council, >the< local building >inspectors< officials, municipal or county attorneys, or other appropriate >authority< authorities of >the< a political subdivision, or >any< an adjacent or neighboring property owner who would be damaged by the violation >may<, in addition to other remedies, may apply for injunctive relief, mandamus, or other appropriate proceeding >to prevent, correct, or abate the violation or threatened violation<.

Section 6-9-90. County or municipal governing bodies >are authorized to< may appropriate and expend funds to implement the provisions of this chapter.

Section 6-9-100. The provisions of this chapter are cumulative to other >authority of counties and municipalities< local ordinances and do not limit the authority of counties >and< or municipalities.

>A city or county that has adopted any of the national, regional, or model codes or any other code prior to May 1, 1982, may continue its use.<

Section 6-9-110. >In no event may any< A county, municipal, or other local ordinance or regulation which requires the purchase or acquisition of a construction permit, license, or other device utilized to enforce >any< a building standard >be construed to< does not

apply to any a state department, institution, or agency, including school district, permanent improvement project, construction project, renovation project, or property. Nothing in this section prohibits local building officials from making inspections on state-owned buildings. Nothing in this chapter limits or modifies the powers and jurisdictional authority of the State Fire Marshal."

SECTION 2. This act takes effect upon approval by the Governor.