

**SUBJECT:** Continuing the Texas Residential Construction Commission

**COMMITTEE:** Business and Industry — committee substitute recommended

**VOTE:** 7 ayes — Deshotel, Elkins, Gattis, Giddings, Keffer, S. Miller, Quintanilla

0 nays

4 absent — Christian, England, Orr, S. Turner

**WITNESSES:** For — Ron Connally, Scott Norman, Texas Association of Builders; Victor Drozd Jr., Bryan and College Station Home Builders Association; Jim Frankel; Bill Little, SETX Builders Association; Stephen Polozola; Sally Velasquez; Chris Werth, CENTEX Homes, Texas Association of Builders; (*Registered, but did not testify:* Ray Adatao, El Paso Association of Builders; Adam Aschmann, Greater Houston Builders Association; Carol Baker, Capitol City Insurance Agency; Randy Bowling, Texas Association of Builders; Brooke Bulow, Harry Savio, Home Builders Association of Greater Austin; J.C. Calcote, Texas Panhandle Builder Association; Steven Carriker, Texas Association of Community Development Corporations; Kenny Click; Fred Elsner, Becky Oliver, Greater San Antonio Builders Association; Paul Evans; Margaret Gilbreth; Becky Little; Sherry Livingston; Shirley Mims, Priscilla Soliz, Builders Association-Corpus Christi; Jayne Mortensen, Building Industry Association of Highland Lakes; Scott Porter; Hank Smith; Bob Stout, The Woodlands Development Co., Newland Communities Texas)

Against — Janet Ahmad, Homeowner for Better Building League of United Latin American Citizens (LULAC); Thomas Archer, Wayne Caswell, Homeowners of Texas, Inc.; Pamela J. Bolton, Texas Watch; Sandee Bradshaw, SMB; John Cobarruvias, Homeowners Against Deficient Dwellings; John Cook; Robin Cook; Dorina Corrente; Alicia Espinoza; Diego Espinoza; Craig Eulenfeld; Mary Henderson; Mark Kincaid, Texas Trial Lawyers Association; Terry Lee; Marsha McQueen; Vijay Sabharwal; Francisco Valdez; Leo Wadley; James Winslow; Luz Yontz; (*Registered, but did not testify:* Melissa Cubria, Texas Public Interest Research Group; Toni Fox; Grace Uzomba, S.R. River Construction Services, LLC Riverside Construction Services)

On — Joey Longley, Sunset Commission; Duane Waddill, Texas Residential Construction Commission; (*Registered, but did not testify*: Kelly Kennedy, Sunset Commission)

**BACKGROUND:** In 2003, the 78th Legislature enacted HB 730 by Ritter, the Texas Residential Construction Commission Act (TRCCA). The TRCCA requires home builders to register with the Texas Residential Construction Commission (TRCC). It also defines the state-sponsored inspection and dispute resolution process (SIRP) to resolve homeowner and builder disputes over construction defects. The TRCCA includes requirements for limited statutory warranties and building performance standards for new homes.

In 2007, the 80th Legislature enacted HB 1038 by Ritter and McClendon, which added a variety of violations for which a builder could be subject to disciplinary action. Additional disciplinary remedies were added and administrative penalties increased. The bill made several changes to the state-sponsored inspection and dispute resolution process and to TRCCA general provisions.

The TRCC's governing board consists of nine members appointed by the governor, with the advice and consent of the Senate, and includes four registered builders, three members of the general public, one engineer who practices in the area of residential construction and either an architect or an inspector who practices in the area of residential construction. The commission members serve six-year staggered terms.

In fiscal 2008, TRCC had 80 authorized full-time equivalent (FTE) positions, compared with 32 FTEs in fiscal 2007. The House-passed version of SB 1, the general appropriations bill, would allocate \$18 million to TRCC for fiscal 2010-11, mostly from general revenue-dedicated funds from fees charged for registrations, inspections, and other services provided by the agency.

The TRCC underwent Sunset review during the past interim, and if not continued by the 81st Legislature, the commission will be abolished September 1, 2009.

**DIGEST:** CSHB 2295 would continue the TRCC until September 1, 2015, and would make several changes in the structure and operations of the agency, including provisions that would:

- provide a method to opt out of state-sponsored inspection and dispute resolution process (SIRP) and to allow alternative inspection and mediation processes, including shortening deadlines to complete inspections;
- create a homeowner recovery fund as a last resort for homeowners who could not collect damages or get a construction defect repaired;
- establish an ombudsman office at TRCC;
- establish a process of licensing, rather than registering, builders;
- grant TRCC authority to issue emergency orders against those violating the TRCCA;
- expand TRCC board to 11 members;
- establish a Warranties and Performance Standards Advisory Committee; and
- make other revisions — including changes in warranty periods, adoption of building code rules for unincorporated areas, a new TRCC mission statement, and updates of the buyers pamphlet to reflect changes in SIRP — and require another Sunset review in 2015.

### **Opting out of SIRP, Alternative Inspection and Mediation**

**Ability to pursue litigation.** CSHB 2295 would amend Property Code, sec. 426.005, which currently requires homeowners to participate in the SIRP before filing a lawsuit to recover damages for a construction defect. and would allow either the homeowner or builder to pursue litigation on or after:

- 76th day after a request for state inspection of alleged defects in materials and workmanship had been submitted;
- 91st day after a request for state inspection of alleged structural defects had been submitted; or
- 30 days after a notice of appeal of a third-party inspection report is filed with the commission.

If the homeowner or builder caused a delay of more than five days to complete the inspection or to file an appeal, these deadlines would be extended by the number of days of the delay.

Any lawsuit would have to be filed on or before the later of:

- the expiration of the applicable statute of limitations; or
- 45 days after the first date allowed by the deadlines set by the bill.

The bill also would provide that a lawsuit could be filed upon the final, unappealable recommendation or ruling in appeal. The homeowner would not be required to delay filing a lawsuit to allow the builder an offer of settlement or repairs, and the builder also would have the right to offer to purchase the home back from the homeowner.

**Inspection process.** CSHB 2295 would delete current references in the Property Code to a state-sponsored inspection and dispute resolution process. The bill would amend Property Code, sec. 428.003(a) to require that TRCC assign a third-party inspector within 10 days, rather than the current 30 days, of when it received a homeowner's complaint about structural defects. However, the amendment to Property Code, sec. 428.003(a) would permit the TRCC executive director in situations deemed to be an emergency to assign a TRCC inspector or other state employee to conduct the inspection.

CSHB 2295 also would amend Property Code, sec. 428.004 to require that a third-party inspector complete an inspection and make a report within 45 days, rather than the current 60 days. The bill would continue current requirements that a builder be given a reasonable opportunity, upon a written request, to inspect or hire an inspector to determine the nature and cause of the construction defect and to make a recommendation on the need for repairs to remedy the defect.

Third-party inspectors would have the option to include recommendations to repair any other construction defects discovered by the inspection, even if they were not included in the original request for an inspection. However, the inspector would have no duty to inspect for defects not identified in the initial request. CSHB 2295 would allow the TRCC to charge a builder for an inspection conducted under this provision.

**Inspections of repairs.** CSHB 2295 would add Property Code, sec. 428.0041 to require that the builder pay the third-party inspector who made the initial report to re-inspect the home. The re-inspection would have to be completed within 30 days in disputes involving workmanship and materials, other than cosmetic repairs, and within 45 days in disputes

involving repairs to structural problems. The builder would be entitled to a reasonable period, not to exceed 15 days, to complete any minor cosmetic items necessary to complete the repair project.

The bill would allow TRCC to require that another third-party inspector or a TRCC inspector make additional inspections of either the initial claimed defect or the repairs made to the defect.

**Certification and conflict of interest.** CSHB 2295 would add various provisions to Property Code, ch. 27 on the qualifications required of a third-party inspection and would specify what would constitute a conflict of interest. The bill would allow a city plumbing inspector licensed through the Texas State Board of Plumbing Examiners or a city building inspector to be an inspector hired by a builder.

**Expediting inspections.** CSHB 2295 would amend Property Code, ch. 428 to require TRCC to adopt guidelines for prioritizing the handling of requests and allocating agency staff and resources in the most efficient manner. The rules would be required to take into consideration:

- expediting inspections in emergency situations and in cases involving the habitability of a house;
- appropriate handling of complex cases and the differences between disputes involving structural defects and those involving workmanship and materials; and
- most efficient ways to use agency staff.

**Reporting requirements.** CSHB 2295 would require TRCC to post information on its website on complaints against builders in cases that have been closed with disciplinary action against the builder. The bill also would require that final reports from third-party inspectors be available on the agency website. The report could not name the homeowner, but would be required to indicate whether the builder had offered to make repairs recommended in the inspection report or otherwise resolved the dispute.

The final reports would be removed from the website if the:

- builder made repairs substantially equivalent to those recommended by the inspection report; or
- TRCC had confirmed with the homeowner and third-party inspector that the builder completed the repairs.

Deleted final reports would not be subject to disclosure under Government Code, ch. 552, the Public Information Act.

**Voluntary mediation.** CSHB 2295 would add Property Code, sec. 428A.004 that would require TRCC to establish procedures, subject to the restrictions in the Civil Practices and Remedies Code, for homeowners and builders to resolve disputes through a mediator not employed by the commission as another alternative to the SIRP. The builder would be required to participate in good faith in the mediation process.

If a homeowner used voluntary mediation, any litigation allowed under Property Code, sec. 426.005(a) could not be filed until after the expiration of the mediation period and would have to be filed within the applicable statute of limitations or 45 days after the expiration of the mediation period or the date of mediation agreement.

The bill would set a limit of the mediation period of 90 days from the day the homeowner submitted a request for mediation. Either the homeowner or builder could file legal action if no agreement were reached before the mediation period expired.

The homeowner and builder would be required to split the fees of the third-party mediator equally. Other provisions would define what good faith participation would entail. It would establish that mediation was considered a request for inspection and resolution of the dispute under Property Code, sec. 428.001 and would not preclude the builder's right to hire a third-party inspector to determine if the repairs complied with TRCC warranties and building and performance standards.

**Binding arbitration contract provisions.** CSHB 2295 would require that any contract between a builder and a homeowner that required that a dispute be submitted to binding arbitration be prominently displayed in a contract in at least 12-point bold type. Each party would be required to initial the contract provision that states they have agreed to submit future disputes for binding arbitration. CSHB 2295 would provide that neither party could require binding arbitration as condition of the contract.

### **Homeowner Recovery Fund**

**Legislative intent and funding.** CSHB 2295 would add Property Code, ch. 421, establishing a homeowner recovery fund. The bill would include a statement of legislative intent that the fund was intended as a last source of

recovery for homeowners who were unable to collect damages from a builder who violated the TRCCA or get a confirmed construction defect repaired by the builder.

Ten percent of administrative penalties collected by TRCC and any fee revenue that exceeded the agency's direct and indirect costs during fiscal 2010 would be deposited into the recovery fund. The provision on the transfer of excess fee revenue would expire on September 1, 2011. Should the balance in the fund exceed \$5 million on December 31 of any year, the additional money would be transferred to the General Revenue Fund and made available for other purposes.

**Claims.** CSHB 2295 would allow a homeowner who had participated in the state inspection program or filed for voluntary mediation to collect from the fund if the homeowner was unable to collect all of a judgment against a builder or if there were not enough assets in a builder's bankruptcy to pay the homeowner's claim. The eligible homeowner also could make a claim if:

- the damages from a builder's violation of the TRCCA, including court costs and reasonable attorney fees, did not exceed \$10,000;
- no offer to repair or resolve the dispute had been made by the builder; or
- damages would not be collectible without filing civil action against the builder.

All claims would be subject to rules adopted by the TRCC, and each claim would be determined through a hearing by the commission. Each claim would be the lesser of:

- the amount of actual damages; or
- \$75,000.

### **Ombudsman Office at TRCC**

**Duties and qualifications.** CSHB 2295 would require the TRCC to hire a licensed attorney to act as an ombudsman to assist the commission, builders, and homeowners after the completion of the state inspection process. The ombudsman would report directly to the commission.

The ombudsman's responsibilities would be to:

- provide information and any recommendations, other than legal advice, to homeowners and builders participating in the inspection process;
- assist homeowners and builders in locating mediation services; and
- submit comments on proposed rules and other policy changes to the commission.

CSHB 2295 would require TRCC to hire the ombudsman by December 1, 2009.

### **Licensing Builders**

**Licensing process.** CSHB 2295 would require TRCC to adopt rules by no later than December 1, 2009, to implement the licensing program including requirements for:

- license eligibility;
- renewal, examination, and continuing education requirements;
- security and insurance requirements;
- disciplinary actions; and
- other issues deemed necessary by TRCC.

The licensing process would not apply until after January 1, 2010.

Applicants who applied for an original license after September 1, 2011, would be required to meet the existing requirements that a builder be at least 18 years of age, a citizen of the U.S. or a lawfully admitted alien, and satisfy the TRCC of the applicant's honesty, trustworthiness and integrity. In addition, applicants for original licenses would be required to:

- complete an eight-hour course, including one hour on ethics and two hours on limited statutory warranties, building and performance standards, requirements of the International Building Code, and other state statutes and rules applied to builders;
- post a \$25,000 bond with TRCC; and
- pass a licensing examination.

CSHB 2295 would add provisions to allow a non-profit corporation to designate one of its officers to serve as an agent for the non-profit corporation's TRCC license and would permit granting of a provisional license.

**Transitional provisions.** CSHB 2295 would permit those builders who held a valid TRCC registration as of January 1, 2010, to receive a license without the examination. If the builder's registration were not to be active and in good standing as of December 31, 2009, or the license was not active and in good standing as of August 31, 2010, the builder would have to pass the qualifying examination. This provision would expire on December 31, 2014.

The continuing education requirements for license holders would increase from five hours every five years to 16 hours every two years, one of which would have to be an ethics course. The ethics section could not be completed by self-directed study, such as an on-line course. The bill would also limit all self-directed study to no more than two hours every two years.

**Exemptions.** The licensing provisions under CSHB 2295 would not apply to those who do remodeling jobs worth less than \$10,000 or those who serve as a contractor for improvements on their homestead residence that exceed \$10,000 and sell the home and does not live there for at least one year following the completion of the improvements.

**Penalties.** CSHB 2295 would make it a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000) to do business as a builder without a license. The bill would also allow the TRCC to take disciplinary action against a builder for not reporting results of inspection reports to the TRCC, for failure, as determined by a court, to complete obligations of a construction contract or for not complying with the requirements under the third-party inspection provisions.

The bill also would authorize TRCC to prohibit an individual from acting as a contractor or owning or operating a company that supplied goods or services to another contractor or builder for a period of time and under conditions determined by TRCC.

## **Emergency orders**

**Enforcement, appeals, penalties.** CSHB 2295 would allow TRCC to issue an emergency order, regardless of whether a builder was licensed, to cease and desist immediately if TRCC determined that an emergency existed or that the builder was violating the TRCCA. The order could be issued without notice or hearing or with any notice or hearing that TRCC considered practical at the time. The order would be subject to appeal to a district court. After providing notice and an opportunity for hearing, those violating emergency orders could be liable for administrative penalties of up to \$1,000 per day for each day of the violation.

## **Expanding membership of TRCC board**

**Additional members.** CSHB 2295 would require the appointment of two more members to the TRCC. One member would be a representative of the public and the other new member would be a residential building inspector. The four builder members would have to hold TRCC licenses. The governor would be required to appoint the two new members promptly after the bill takes effect on September 1, 2009, with one member named to a term expiring on February 1, 2011, and the other on February 1, 2013.

## **Warranties and Performance Standards Advisory Committee**

**Appointment and duties.** The bill would require TRCC to appoint a new Warranties and Performance Standards Advisory Committee, whose members would serve at the will of the commission and would only receive reimbursement for travel expenses.

The committee would review and evaluate TRCC residential construction performance standards and make recommendations to the commission. TRCC would adopt rules to determine the number of committee members, qualifications, terms or service and other duties and procedures for the committee. Terms of the existing Warranties and Performance Standards Advisory Committee would expire once the new panel was named, and the provision on reimbursement of travel expenses would apply only after the bill took effect on September 1, 2009.

## Other Provisions

CSHB 2295 would amend Property Code, sec. 430.001(b) to extend the warranty for workmanship and materials from one year to two years and the warranty for plumbing, electrical, heating, and air-conditioning delivery systems from two to four years. Property Code, secs. 430.001(d) and (e) would be amended to require that TRCC adopt rules so that the International Residential Code and National Code would apply to construction in unincorporated area. Also, this section would be amended to reflect that the changes in the licensing and inspection programs applied in unincorporated areas. The TRCC would be required to adopt rules to implement the warranty and building and performance standards by no later than December 1, 2009, and the changes would take effect January 1, 2010, except for construction begun or contracted for before that effective date.

CSHB 2295 would revise the TRCC mission statement to include a duty to:

- educate builders and homeowners about all aspects of the residential construction industry affecting the building or remodeling of homes, and
- facilitating resolution of disputes between builders and homeowners on construction defects through the state inspection program and a voluntary mediation program.

The bill would require TRCC to publish a pamphlet with information about the agency and detailing the state inspection program. The brochure would be made available on the agencies' website and in a hard-copy format to be provided to new homeowners at closings by escrow agents at title companies or attorneys not providing title insurance or as part of a home registration through TRCC.

CSHB 2295 would set the next sunset date for TRCC as September 15, 2015. The bill also includes standard sunset provisions that would provide for use of technology and negotiated rulemaking and alternative dispute resolution procedures.

CSHB 2295 also would repeal Property Code sections that:

- define the state-sponsored inspection and dispute resolution

process;

- create the Texas Star Builder program, a voluntary designation requiring completion of additional education;
- require five hours of continuing education, one hour of which must address ethics;
- prohibit TRCC from taking disciplinary action except in cases of repeat violations;
- require a homeowner making a complaint to notify the homebuilder within 30 days; and
- provide that a court could vacate an award in a residential construction arbitration upon a showing of manifest disregard for Texas law.

The bill, which would take effect on September 1, 2009, would set various deadlines for completion of its provisions.

**SUPPORTERS  
SAY:**

CSHB 2295 would adopt a comprehensive and balanced approach to protect homeowners, homebuilders, and all the citizens of Texas. The bill would help ensure successful regulatory control over an industry responsible for more than 500,000 jobs and \$35 billion in contributions to the state's economy.

CSHB 2295 would provide valuable additions to the significant consumer protections added last session in HB 1038. The additional provisions for alternatives to the SIRP process include independent inspections and avenues for voluntary mediation, a homeowner recovery fund, streamlined processes to seek redress in the court system, a program to enhance professionalization in the homebuilding industry, and increased enforcement tools for TRCC to stop unscrupulous and unlicensed builders from preying on the public.

The full Sunset Advisory Commission, which consists of legislators and members of the public, carefully reviewed, but ultimately rejected, the Sunset staff recommendation to abolish the TRCC. These are the legislators who attended the many public hearings and worked closely with the Sunset staff in reviewing the agency, and members should carefully weigh their conclusion to continue the agency.

One reason that TRCC has been controversial is that homeowners may have too-high expectations of how regulation of home builders should work. The common complaint involves delays in getting a builder to repair

construction defects. If a dentist does a poor job on a root canal or an accountant botches a tax return, no other state agency would make the consumer return to the same dentist or accountant to fix the mistake. The same standard should apply to homeowners seeking assistance from the TRCC.

TRCC has made great strides since enactment of HB 1038 last session gave it additional resources and enforcement powers. The Sunset staff report properly noted that only 12 percent of all complaints had been successfully resolved through fiscal 2007. Since then, the TRCC staff has been increased from 32 to 80. The increased staff and authority provided by the Legislature has increased the resolution rate to about 40 percent through the first quarter of 2009. In February, the TRCC concluded a five-month investigation that led to the permanent revocation of the registration of a Williamson County builder and life-time prohibition of its registered agent from working in residential construction industry in this state.

**Opting out of SIRP.** CSHB 2295 would provide a process that could shorten and streamline the inspection process. The bill also would allow either party to opt out of the process entirely. Homeowners or builders could have their day at the courthouse before the revised inspection was complete should the process extend beyond the condensed timelines proposed in the bill.

The bill would incorporate a mediation procedure that would replace the TRCC inspection procedure at the consumer's discretion. The bill would require that the mediation process follow the standard for those kinds of dispute resolutions. There would be adequate safeguards to ensure that the process would conform to state law. Making the parties split the cost of mediation would be a fair way to allocate costs.

CSHB 2295 would keep the decision to adopt binding arbitration a matter of arm's length negotiation between the parties and would not allow either to require binding arbitration as a condition for a contract.

**Reporting requirements.** Additional information about complaints against specific builders and on individual inspection reports would provide needed information for consumers. The restrictions on release of personal information and the limit of displaying the information on the TRCC website after resolution of the complaints would protect the privacy of all involved. Also, residents would have other access to information,

especially from their neighbors, of common defects in a subdivision.

**Homeowner recovery fund.** CSHB 2295 would provide a mechanism for compensation for homeowners who were unable to recover from a builder who was not able to pay a full court judgment or went bankrupt. The recovery fund would function much like other similar funds, such as provided through the Texas Real Estate Commission. The money would come from fines levied for violations of the TRCCA. It also would provide an incentive for homeowners to participate in the process of inspections.

**Ombudsman.** CSHB 2295 would help TRCC's mission to serve both consumers and builders by creating a separate ombudsman's office. This addition would be modeled on the offices of Public Insurance Counsel, the Public Utility Counsel, and Injured Employee Counsel — other agencies designed to protect the interests of Texas consumers. Currently, such authority is comingled among other TRCC offices, and the bill would provide an independent office to be an advocate for homeowners.

**Licensing.** CSHB 2295 would help Texas join 28 other states that license those in residential construction. Requiring licensing, rather than registration, would help increase the level of professionalization among home builders. The bill would require passing a qualification examination and posting bond and would require additional education to register as a builder. Continuing education requirements would apply to all builders who renewed their licenses, and the bill would require that most of the instruction occur in a classroom setting among their professional peers rather than working on-line and alone.

Exempting from new licensing requirements those who already hold one credential is a common practice when a regulatory agency changes regulatory standards. Requiring all existing 28,000 registered builders to take a qualifying examination would be costly and burdensome for the industry and the state.

**Expanded penalties.** CSHB 2295 would provide some real teeth behind TRCC enforcement efforts. The licensing requirement would provide for criminal penalties for unlicensed persons claiming to be builders. Other provisions would provide for the possibility of swift action and severe penalties for violating emergency orders and would provide a way to punish hurricane and storm chasers who come from out of state after severe weather causes damage to Texans' homes. The bill also would

provide administrative penalties for failures to comply with the inspection program.

**Expanding board and new advisory committee.** CSHB 2295 would provide more public input and expertise by expanding its governing board by two members. The proposed Warranties and Performance Standards Advisory Board also would help ensure that appropriate standards and new policies were adopted by TRCC.

**Other proposals.** CSHB 2295 would provide needed protections to consumers by extending the warranty for workmanship and materials from one year to two years and the warranty for plumbing, electrical, heating, and air-conditioning delivery systems from two to four years. These would be a reasonable and justified extension.

The bill would provide a readily understood minimum warranty standard through statute, rather than relying on an implicit standard based on judicial decisions. A homeowner should expect that an item will last to the extent of the manufacturer's warranty, but the homebuilder should not be required to provide a warranty that lasts longer than the manufacturer's estimate of the product's useful life.

The proposed change in the mission statement and the revisions to the consumer pamphlet would give the Legislature an opportunity to review and provide guidance for the future of the agency.

Setting a six-year Sunset schedule, rather than the customary 12-year cycle, would be appropriate for an agency as closely scrutinized as the TRCC. This period would allow time for implementation of needed changes, but would provide a short timetable for the needed legislative oversight and detailed Sunset review of this agency.

**Repealed sections.** CSHB 2295 would justifiably eliminate the Star Builder Program. The Sunset staff concluded that the program failed to gain much acceptance among builders or consumers. Only 38 out of more than 28,000 builders have ever qualified for the distinction, and none are large or conspicuous home builders.

OPPONENTS  
SAY:

The TRCC should be abolished. This bill would not make the necessary public policy and statutory changes necessary to create a regulatory

agency with a clear mission to protect the public. Having a poor regulatory program, especially one that functions as a creature of the industry it is designed to oversee, is worse than having no regulatory program at all. The TRCC has had the dubious distinction of having two different state reports, the Strayhorn report in 2006 and the Sunset staff report, recommend its elimination. This would be the third time this decade that the Legislature has extensively reviewed this agency, and after three strikes, the TRCC should be gone.

Texas regulates doctors, attorneys, accountants, psychologists, and land surveyors, but those other regulatory agencies do not deny access to justice at the courthouse for those harmed by the wrongdoing of members of the regulated profession or industry. TRCC procedures effectively shield home builders from the consequences of their actions, and CSHB 2295 would do little to redress that imbalance. Families' homes are typically their largest investments, and they should expect that any defect that would affect their comfort and safety and the value of their nest egg should be promptly and properly remedied.

TRCC believes that its mission is to "reconcile differences" between builders and homeowners. A leaking roof or cracked foundation should not be a "difference." Texans do not need a state agency to make them wait before they can begin a process that could finally force the builder to repair the problem with their home.

In a public school, a grade of 40 percent would be failing. While the Legislature did give TRCC extra enforcement abilities and more staff last session, builders can escape the possibility of those potential fines merely by making an inadequate offer to repair the defects. CSHB 2295 would not remedy this fundamental flaw in the system.

Even the successes that TRCC claims can be misleading. The local district attorney's office was instrumental in the investigation and prosecution of the Williamson County builder, and the agency was a latecomer to the process.

**Opting out of SIRP.** CSHB 2295's proposed revisions to Property Code, sec. 55 (a) and the addition of Property Code, sec. 428A.004 would provide only an illusion of voluntary mediation because it would be subject to the unlikely occasion of a builder's agreeing to a third-party inspector. Also, the bill would have no requirement for local mediation, so

the builder could demand that mediation occur anywhere in the state or the nation. Making the parties split the cost of mediation would be unfair to the homeowner and would discourage use of this option.

CSHB 2295 also would introduce the concept of “final, non-appealable determination” into the mediation process, as part of the proposed Property Code, sec. 428A.004 (f). As with much of the bill, this language would be so horribly convoluted, confusing, and vague and open to interpretation that it would be an invitation to further litigation and abuse.

The bill would not address the current legal presumption implicit in the dispute resolution process. It would remain extremely important to follow all the required steps and meet the deadlines. Currently, 36 percent of homeowners hire an attorney to guide them through the process, and the proposed process would not be any less legalistic.

**Reporting requirements.** The lack of specific information and the requirement that information be deleted from the TRCC website after the complaints were resolved would make this information incomplete and almost useless to consumers. Currently, there are large-scale problems with Chinese-produced drywall. Under CSHB 2295, a builder could quickly settle a single claim and would have that information removed before others who may also have the same drywall installed in their homes were aware of the problem in their neighborhood.

**Recovery fund.** CSHB 2295 would cap recovery at only \$75,000 for a homeowner who otherwise would not be able to recover from a judgment-proof or bankrupt builder. In many cases, that amount would be significantly less than the actual damages, and the homeowner might have to wait several months until even that amount would be available.

**Ombudsman.** Having an ombudsman housed with the rest of the TRCC staff and requiring the person to report to the board would not guarantee independence of that office. Adding an ombudsman as a participant in the inspection and mediation process would only compound confusion with the agency’s mixed role as regulatory agency and inspection service.

**Registration.** CSHB 2295 would provide for licensing in name only and would do nothing to ensure the competence and financial responsibility of builders in the state, nor would it prevent unqualified individuals from entering the field. Of more than 28,000 applications, only 385 applications

have been rejected. A vast majority of those registered builders would be grandfathered under the new license requirements. This bill would not weed out bad builders and simply would be an attempt to artificially classify Texas as a state that licenses homebuilders.

The bill's proposed continuing education requirements would not improve the quality of builders. They would have to complete, but not necessarily pass, an eight-hour course. Two hours of the course would be devoted to the following subjects: limited statutory warranties; building and performance standards; requirements of the International Residential Code; and other statutes and rules that apply to builders under the TRCC Act. A requirement to spend 30 minutes on each of these subjects in an audited course would not be useful for either the builders or homeowners.

**Expanded penalties.** Enforcement of the proposed expanded penalties would depend heavily on the resources available to TRCC. This bill would be another example of the perils of expanding programs after the appropriations process has reached its later stages. The Legislative Budget Board fiscal note estimates that full implementation of the bill would require an additional 10 FTEs and almost \$1 million more per fiscal year, and that funding would not be readily available until the next biennium.

**Other changes.** Adding two more members to the TRCC governing body would not necessarily make it more responsive to the public. Replacing the Warranties and Performance Standards Advisory Board would probably add little to TRCC operations. Other changes, such as revisions to the mission statement or the homeowner information pamphlet, could be seen as little more than legislative micromanaging of the agency and would consist of little more than cosmetic repairs.

Extending the warranty for workmanship and materials from one year to two years and the warranty for plumbing, electrical, heating, and air-conditioning delivery systems from two to four years would be unnecessary and could add costs without benefits to homeowners.

**Repealed provisions.** The bill's provision to abolish the Star Builder Program would eliminate one of the very few worthwhile consequences of the original creation of the TRCC.

**Sunset.** Absent of a Sunset date of September 1, 2009, CSHB 2295 should have retained the original bill's Sunset date of September 1, 2013. TRCC

should be carefully reviewed again in four years, if not sooner.

OTHER  
OPPONENTS  
SAY:

TRCC should end its involvement in the inspection and dispute resolution process entirely and become strictly a regulatory agency overseeing the residential construction industry. CSHB 2295 would provide a start to the process of licensing those in the business and should be the basis of increased educational and professional requirements for builders and contractors. The state already provides the same kind of oversight for plumbers, electricians, heating and air conditioning contractors, and other trades.

**Other provisions.** CSHB 2295 would implement a two-year workmanship warranty for most construction defects. In contrast, most new cars carry warranties typically lasting between four years and a decade. A car loan may run from three to six years, while a mortgage on a new home typically lasts for 30 years. A two-year warranty with its resulting statute of limitations would be contrary to the typical four-year statute of limitations applicable to most contract actions in Texas.

NOTES:

The committee substitute differs from the bill as filed by changing the Sunset date proposed in the original bill from September 1, 2013, to September 1, 2015; requiring bonding and education requirements for new license applicants; requiring the TRCC to post complaint information on its website; requiring 16 hours of continuing education for license renewals; permitting disciplinary actions against builders for failure to meet post-inspection reporting requirements; providing a revenue stream for the recovery fund; establishing a voluntary mediation program; and requiring the TRCC to appoint a Warranty and Performance Standards Advisory Committee.

The Legislative Budget Board fiscal note estimates that full implementation of the bill would require an additional 10 FTES and almost \$1 million more per fiscal year.

The Business and Industry Committee has heard and left pending several other related bills, including three bills — HB 1635 by T. Smith; HB 2243 by Leibowitz, Maldonado; and HB 2695 by Gattis — that would abolish the TRCC, and HB 3629 by T. Smith, which would make TRCC a regulatory agency without the inspection and dispute resolution functions.

The companion bill, SB 1015 by Hegar, has been referred to the Senate Business and Commerce Committee.