

Construction Claims Task Force



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CCTF Legislative Wrap-up - July 1, 2007

SUMMARY

The following report provides an overview of action taken by the 2007 Oregon legislature based on recommendations of the Construction Claims Task Force. The task force studied construction and insurance issues over 18 months and delivered a report of their findings to the legislature. The report included 11 recommendations for improving Oregon's construction and insurance environment.

Bills were drafted addressing the nine task force recommendations that required legislative action. The legislature ultimately adopted concepts based on five of the task force recommendations. Three of the remaining four recommendations, while not officially adopted, remain unresolved and require additional discussion.

BACKGROUND

The 2005 Oregon Legislative Assembly created the Construction Claims Task Force to address increasing construction claims and rising construction liability insurance premiums. The task force was directed to conduct a study of these issues and deliver a report to the 2007 legislative assembly.

Nine members made up the task force, each member appointed for their expertise and experience in the construction, insurance or energy fields. Representatives from the construction and insurance industry formed the majority of task force membership, including members from the commercial, residential and design segments of construction as well as insurance industry representatives.

Over 18 months, the task force studied and evaluated the causes and extent of construction defects as well as the need for consumer protection and the availability and affordability of contractor liability insurance. From a list of more than 80 recommendations for reducing construction defects the task force selected the most promising suggestions, which were then refined through research analysis and discussion.

The task force delivered a report of its research and findings to the 2007 Oregon Legislature. The report included 11 recommendations for reducing construction defects, enhancing consumer protection and improving insurance affordability and availability. Most recommendation were unanimously approved. The task force presented each of the 11 recommendations as a component of a comprehensive system designed to improve the construction environment in Oregon.

Bills were drafted based on the 11 recommendations of the task force. Each task force recommendation that was drafted received at last one legislative hearing. Several of the task force recommended bills were adopted with only minor changes, others were amended to varying degrees in order to obtain the support necessary for passage. Four of the task force recommendations that required legislative approval were not approved by the legislature.

As the bills moved through the legislative committee process it became necessary to consolidate many of the task force recommended concepts as well as other related issues into a single bill. House Bill 2654 became the vehicle for bringing these issues together. The following summary describes the key components that were adopted through House Bill 2654:

- Requires contractors to obtain general liability insurance that includes coverage for completed operations.
- Requires Construction Contractors Board (CCB) to establish continuing education requirements for contractors.
- Prohibits a contractor from claiming a lien if the contractor did not provide a written contract when a written contract is required.

- Requires a contractor who constructs a new residential structure to offer a warranty to the owner or purchaser of the structure. The contractor is allowed to set the terms of the warranty, which the purchaser can accept or refuse.
- Requires a contractor who constructs a new residential structure to provide recommended maintenance information developed by the CCB to the owner or purchaser.
- Requires CCB to establish standard contract terms for construction contracts.
- Allows a consumer one business day to cancel a construction contract.
- Streamlines standards and procedures for contractor delivery of consumer notices.
- Increases the amount of the bond required of construction contractors by \$5,000.
- Revises the definition of construction debt to include judgments or civil penalties resulting from business related construction activities..
- Expands the information that must be provided by an applicant for a contractor license.
- Enhances the ability of CCB to take action against individuals and businesses who violate construction related laws.

The remainder of this report provides a detailed discussion of the status of all 11 task force recommendations as of the end of the legislative session in July of 2007. It includes a summary of actions taken by the legislature and a report on task force recommendations that are in the process of administrative adoption. The report also discusses the next steps in the process, including what may lie ahead for some of the task force recommendations not adopted by the legislature.

TASK FORCE RECOMMENDATIONS – Adopted by Legislature

1. Construction Contractors Board Enforcement and Licensing Changes

Task Force Recommendation

The task force determined that stronger enforcement and more knowledge of an applicant's history might help improve the quality of contractors. The task force made six specific recommendations related to granting CCB authority to address the problem of defective construction.

Legislative Action – House Bill 2654

The legislature adopted the primary components of four of the task force's six recommendations related to expanding the enforcement authority of CCB. House Bill 2654 included expanded authority to sanction contractors for poor performance as well as authority to keep individuals with a history of construction-related judgments and violations from obtaining a license. It also included the expanded emergency suspension powers suggested by the task force.

The legislature did not adopt task force recommendations related to expanding contractor acts that could be punishable by criminal sanction or the recommendation to grant CCB criminal citation authority.

2. Consumer Information

Task Force Recommendation

The task force recommended giving consumers information on how to proceed early in the construction processes and directing consumers to appropriate resources in order to help prevent or alleviate claims. The task force made five specific recommendations related to enhancing the requirements for information provided to consumers. Four of them required legislative action.

Legislative Action – House Bill 2654

Of the four consumer protection recommendations that required legislative action, the legislature adopted three, but also included additional measures to enhance the information provided to consumers. The legislature clarified the standards and procedures regarding the information that a contractor must provide to consumers including consumer protection information and maintenance information.

Under House Bill 2654 the legislature included some additional measures related to consumer protection. It provided CCB with authority to establish standard contract terms for construction contracts, prohibits the contractor from claiming a lien if no written contract was provided and allows the consumer one business day to review the contract and other consumer information. Failure to provide required information can result in CCB sanctions, but the legislature did not adopt the task force recommendation to extend the filing period for CCB claims for failure to provide required information.

The legislature enhanced the task force recommendation by also requiring contractors to provide maintenance information to consumers related to moisture intrusion.

3. Residential Permits

Task Force Recommendation

The task force recommended changes to the permitting process designed to clarify who is responsible for construction work and ensure that appropriate licensing and certification information is provided to the local building department. Task force recommendations also included establishment of a certificate of occupancy requirement and a standard inspection checklist for use by local building departments. The task force made four specific recommendations related to residential permits.

Legislative Action – House Bill 2478

The legislature adopted House Bill 2478 to clarify the authority of the Building Codes Division to set uniform standards for permit, certificate of occupancy and inspection requirements. Rather than adopting each component of the task force's permits recommendation individually, the legislature established a framework within the building codes division to administratively adopt the standards recommended by the task force in a uniform fashion throughout the state.

4. General Liability Coverage

Task Force Recommendation

Under current law, the insurance coverage a contractor must obtain to be licensed is not required to cover contractor liability that arises after a construction job is complete. The task force recommended improving consumer protection by requiring that contractors obtain general liability insurance coverage that extends coverage for completed operations. The task force made four specific recommendations related to general liability coverage.

Legislative Action – House Bill 2654

The legislature adopted the two components of the task force recommendation that required legislative approval. House Bill 2654 expands the insurance requirements for contractors to include coverage for completed operations, which will extend coverage for liability that arises after the job is complete. Contractors must comply with the expanded requirements at their next general liability policy renewal.

5. Contractor Group Liability Insurance Rates

Task Force Recommendation

The Task Force recommended streamlining the rate filing requirements for certain large construction projects, making it easier for contractors engaged in such projects to take advantage of contractor group liability policies. Contractors involved in these large construction projects can find it difficult to obtain insurance coverage. Streamlining the rate filing requirements is intended to ensure access to coverage for these contractors.

Legislative Action – House Bill 2751

House Bill 2751 added a provision to Oregon insurance code allowing insurers to provide preferred insurance rates to contractors who are involved in certain types of large projects such as condominiums, without violating laws that prohibit preferred rates.

TASK FORCE RECOMMENDATIONS – Not Adopted by Legislature

1. Limited Consumer Assistance Fund

Task Force Recommendation

The task force recommended the creation of a fund at the disposal of the CCB to provide limited relief in the event that a residential structure contains a defect. The fund would be available to an owner who was unable to recover some measure of relief from the assets of the contractor that caused the defect. The fund was to be established from civil penalties collected by CCB. It would have established a minimum balance of \$250,000 and would have allowed a capped assessment on contractors if civil penalties failed to achieve the fund's minimum balance.

As part of the same recommendation the task force also suggested increasing the amount of the bond required for contractors by \$5,000. The legislature adopted this recommendation as part of House Bill 2654

Legislative Action – House Bill 2658

The house consumer protection committee held two hearings on the measure but did not take any action. It remained in committee upon adjournment.

2. Building Envelope Training and Competency

Task Force Recommendation

Based on data obtained by a research consultant as well as comparative regulatory models, the task force determined that some level of training and verification of building envelope work was necessary. The task force recommended a two-tiered training and certification program for individuals working on the building envelope as well as those working on the construction site.

The task force also recommended requiring continuing education for all contractors, which was ultimately adopted as part of House Bill 2654.

Legislative Action – House Bill 2656

House Bill 2656 was assigned to the house consumer protection committee. After an initial public hearing, the committee chair requested that agencies and stakeholders convene a workgroup to negotiate a consensus on the legislation. BCD and CCB held several workgroups with stakeholders and the bill was eventually amended and passed out of committee and referred to the joint ways and means committee on general government.

The amended bill would have removed the second tier of the certification program and required that an individual with building envelope certification substantially observe the envelope construction. An advisory committee was to be created in order to develop rules establishing the certification program.

Discussions and workgroups continued until late in session but ultimately the ways and means subcommittee elected not to move the bill forward.

3. House Bill 2781: Data Reporting Requirements

Task Force Recommendation

The task force recommended developing a list of insurance data items for construction claims that insurers would be required to report to the Oregon Insurance Division, which the division would use to monitor the affordability and availability of contractor insurance coverage.

Legislation

House Bill 2781 would have provided authority to the Director of the Department of Consumer and Business Services to convene an advisory committee to advise the director on insurance claim data that is needed to monitor the affordability and availability of insurance for construction contractors.

The bill was passed out of the consumer protection committee but received a subsequent referral to elections, ethics and rules. The bill remained in committee upon adjournment.

4. First-Party Warranty

Task Force Recommendation

The task force recommended the adoption of a mandatory warranty that all contractors would be required to provide to the owner of a new residential structure. The recommended warranty would cover any defect for one year, the major deliver systems such as heating, cooling electrical and plumbing for two years, and major structural defects for 10 years. The task force recommendation also included a detailed set of guidelines, which would have prohibited disclaimers, and governed the procedure for resolving disputes related to the warranty.

Legislative Action – House Bill 2654

The warranty requirement recommended by the task force was not adopted by the legislature. However, House Bill 2654 included a much simplified warranty, requiring only that a contractor who constructs a new residential structure offer a *warranty* to the owner of the structure. Under the bill, the contractor sets the terms of the warranty. The owner of the structure has the option to either accept or reject the offer.

TASK FORCE RECOMMENDATIONS – Administrative Adoption

Some of the task force recommendations did not require legislative action in order to be implemented. These recommendations are being adopted through administrative action.

1. Building Code Requirements

Task Force Recommendation

The task force recommended changes to the state building code aimed at preventing moisture intrusion. In order to prevent moisture from entering a building and remove moisture from a building the task force recommended changes to the building code related to moisture content of structural components, ventilation and flashing.

Administrative Action

The Building Codes Division has proposed several amendments to the state building code based on the recommendations of the task force. The residential structures board code adoption committee has

begun consideration of proposed amendments including the task force recommended amendments. The final decision of the board will occur by October 31, 2007. The code is scheduled for final adoption on April 1, 2008. The recommendations would amend the code to: 1) limit the moisture content of moisture sensitive components to less than 19 percent at the time of cover; 2) enhance mechanical ventilation requirements designed to remove moisture from the structure, and 3) require appropriate horizontal flashing on envelope penetrations, transitions between materials etc.

2. Voluntary Loss Control Discounts

Task Force Recommendation

The task force recommended encouraging insurers to implement voluntary loss control discounts in their rating plan for contractors who adopt task force recommendations and other construction best practices.

Administrative Action

The Oregon Insurance division has prepared an insurance bulletin encouraging insurers to offer voluntary loss control discounts for construction-related best practices.

NEXT STEPS

Administrative Implementation

Administrative implementation of task force recommendations will move forward on several fronts. As discussed above, administrative implementation has already begun on task force recommendations not requiring legislative approval.

Some of the task force recommendations that received legislative approval may also require administrative action for full implementation. The Construction Contractors Board, the primary licensing agency for construction contractors, will carry out the bulk of the administrative action arising from task force legislation. Much of the task force legislation affects areas administered by CCB, including enforcement and licensing changes, continuing education for contractors and enhancements to consumer information materials.

Building Codes Division will be responsible for implementing and administering activities related to the standardization of permits, inspections and certificates of occupancy passed by the legislature. New requirements for general liability insurance for contractors and group liability policies will be administered by the Oregon insurance division.

Unresolved Issues

The key task force recommendations left unresolved after the legislative session are contractor warranty requirements, a consumer assistance fund and building envelope training and competency requirements. The door remains open for further action on one or more of these issues. Bills addressing warranties, a consumer assistance fund and building envelope training may be revisited in the future.

The most likely issue to be the subject of additional legislative or administrative action is the building envelope training and competency recommendation. The task force made clear that the training and oversight of envelope construction was the key recommendation of the task force. House bill 2656 received more attention in the form of work group discussions and negotiations than any other task force recommendation, but consensus was not achieved prior to the end of session. However, the failure to adopt House Bill 2656 does not foreclose future legislative consideration of this issue, or administrative action, such as increased inspections, aimed at ensuring safe and proper installation of envelope components.

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