

STATE OF OREGON

MEMORANDUM

BUILDING CODES DIVISION

OCTOBER 25, 2006

To: Construction Claims Task Force

From: CCTF Staff

Subject: Preliminary Draft Executive Summary

As the Task Force begins finalizing proposals for consideration by the legislature, staff has begun drafting the legislative report. Because the Task Force has not given final approval to any recommendations at this time, this initial draft includes only introductory and background material.

At this stage, staff has completed a draft executive summary of the final report. This provides a brief overview of the work of the Task Force and the methodology followed in considering and approving the proposals that will make up the final report.

This represents only one aspect of what will eventually be a full report including background information, legislative recommendations as well as supporting research and data.

Some of the proposals currently under consideration by the Task Force are listed in the draft executive summary as placeholders only. No final action has been taken on any recommendation.



PRELIMINARY DRAFT FOR DISCUSSION PURPOSES ONLY

-----October 25, 2006-----

Construction Claims Task Force

Executive summary

State of Oregon

Department of Consumer and Business Services

Construction Claims Task Force members:

- **Eric Grasberger (Chair)**, representing the public
- **Laura Schauer (Vice-chair)**, representing commercial structure contractors
- **Tom Skaar**, representing single-family dwelling contractors
- **Steven Malany**, representing commercial multi-family dwelling contractors
- **Bill Nesmith**, representing the Oregon Department of Energy
- **David DeHarpport**, representing the state Residential Structures Board
- **John Fahr**, representing residential construction designers
- **Elsie Jones**, representing insurance agents
- **Jim Vavrek**, representing insurers that offer contractor liability coverage

Executive Summary

The 73rd Oregon Legislature created the Construction Claims Task Force to address increasing construction claims and rising contractor liability insurance premiums. The Task Force was charged with studying the relationship between construction claims and industry practices, construction defects, consumer protection and state-mandated requirements for contractors. The task force was directed to deliver a report of their findings, including recommendations for possible legislation, to the 74th Oregon Legislature.

This executive summary provides an overview of the work of the task force and the task force's recommendations to the legislature. The full report contains supporting commentary and data for each task force recommendation. A detailed list of the recommendations can also be found in the full Task Force report. The study and evaluation carried out by the Task Force over a period of approximately 18 months resulted in the following recommendations:

**Placeholder only. No final recommendations have been made. Items below are still under consideration.

Phase I Recommendations: Construction-related issues

1. *Change building code requirements relating to moisture content, mechanical ventilation and flashing.*
2. Change CCB enforcement authority and duties.
3. *Establish a recovery fund for consumers.*
4. Enhance consumer information and information availability.
5. Change regulations regarding permit issuance.
6. Increase certification and competency standards for contractors working on building envelope.

Phase II Recommendations: Insurance-related issues

- 1.
- 2.
- 3.
- 4.
- 5.

Background

The 2005 Oregon legislature created the Construction Claims Task Force (CCTF) in response to an increase in the number of construction claims and sharply rising costs for contractor liability insurance. The Construction Claims Task Force offers the first opportunity for all issues relating to building codes, construction contractors, insurance, and energy to be studied and addressed at once.

House Bill 2078 authorized the creation of the CCTF to study and evaluate the causes of, and the extent of construction defects in Oregon, the need for increased consumer protection and the availability and affordability of liability insurance for contractors. Based on the study and evaluation of these issues, the Task Force was directed to produce a report to the 74th Oregon Legislature, including recommendations that would reduce construction claims, and ensure that appropriate consumer protection measures are in place.

The Task Force consists of nine members. The Department of Consumer and Business services appointed five members, the administrator of the Construction Contractors Board appointed three members and the director of the State Department of Energy appointed one member.

The legislation that created the Task Force also designated the Construction Contractors Board and the Department of Consumer and Business Services as staff support for the Task Force. Together these agencies provided administrative support, coordinated task force activities, performed research and provided expertise on construction and insurance regulation in Oregon.

Methodology

The task force convened for the first time on September 21, 2005 and held a total of 14 meetings through January 2007. To identify and scrutinize the recommendations that ultimately became part of the legislative report the Task Force followed a pattern that included information gathering and analysis, as well invited testimony and public comment sessions. The Task Force received input and recommendations from more than 30 experts in the fields of construction and insurance and received more than 70 different recommendations.

Public comment and participation was a major part of the Task Force's work. During the course of the Task Force's work members heard public comment from 41 individuals. The Task Force Web site also provided the opportunity for individuals to track the work of the Task Force and to contribute by submitting material for consideration by the Task Force, which was posted on the Web site. The CCTF Web site received more than 330 submissions and more than 300 persons signed up for automatic notification of Web site updates.

The Task Force divided its work into three phases. During Phase I, the Task Force studied issues related to construction. Phase II of the Task Force's work focused on issues related to construction insurance. Phase III focused on analysis of recommendations and development of the final report to the legislature.

Transparency and the Public Interest

The Task Force operated in full public view and made every effort to involve the public in the information gathering as well as the deliberative aspects of the process. The Task Force provided several opportunities for the public to contribute through oral testimony. In addition, Task Force staff created an easy system that allowed all interested parties to submit information for consideration by the Task Force. All submitted materials and anything considered by the task force was also made available to the public through a continually updated Web site.

Public Participation. The task force encouraged and welcomed the input of the public. In addition to accepting the submissions of the public on the task force Web site, the task force

heard from the public on a number of occasions. In total the task force heard approximately 10 (this number may change as the Task Force completes its work) hours of public comment. The task force asked for public comment at the outset in order to understand the issues faced by those who have confronted construction defect issues. The task force also solicited the comments of the public on the specific recommendations offered by the invited experts.

Web site. Task Force materials including agendas, meeting minutes, white papers and public submissions were posted on the Web site. Submitted items were posted bi-monthly.

Phase I: Study and discussion of construction-related issues

Phase I of the Task Force work plan consisted of six meetings occurring between November 2005 and May 2006. During Phase I the task force studied and evaluated construction practices in order to identify potential recommendations to reduce construction defects. Staff organized panels of experts representing eight key segments of the construction industry. These panels offered insights into the causes of construction defects and submitted recommendations for consideration by the task force. The task force heard from roughly 30 construction experts sitting on the following panels:

- *Building Science Panel (November)*
- *Design Panel (December)*
- *Building Code Panel (January)*
- *Developer Panel (January)*
- *Owner Panel (January)*
- *Contractor Panel (February)*
- *Crafts and Trades Panel (February)*
- *Building Material Supplier Panel (February)*

In addition to the invited panelists, the task force heard from a number of homeowners as well as construction professionals during three public comment periods. The first two public comment sessions allowed the public to share experiences and offer recommendations to the Task Force. For the final public comment period in Phase I the task force asked for and received specific public comments focused on the concepts under consideration. The Task Force held public comment sessions on:

- September 2004
- February, 2005
- May 2005

As a result of invited testimony, public comment and staff research, staff compiled approximately 65 recommendations for improving construction practices and reducing defects. Through discussion and analysis the Task Force identified the most promising recommendations, which have been consolidated into the six (subject to change, depending on Task Force review) proposals offered for review by the legislature.

These proposals are discussed in detail with supporting data in the full report. A detailed summary of the proposals can be found near the end of this executive summary.

Phase II: Study and discussion of insurance-related issues

Phase II of the Task Force work plan consisted of three meetings occurring between July and August 2006. The task force heard from industry experts regarding the potential causes of rising insurance rates for contractors and possible recommendations for increasing availability and affordability. The task force also allotted time for public comment during Phase II. The Task Force gathered input from invited experts and the public at the following meetings:

- *Insurance Regulators (June)*
- *Insurance Agents (July)*
- *Insurance Companies (July)*
- *Public comment: August meeting*

One of the key aspects of Phase II was an independent insurance study conducted by an actuarial consultant. This study mandated by House Bill 2078. The consultant was directed to compile data of insurance defect claims in Oregon and study options regarding actuarially sound insurance reforms.

The consultant presented the findings of the study at the July Task Force meeting and was present at other meetings to respond to Task Force inquiries.

Based on the recommendations of industry experts and the report of the actuarial consultant, a list of items for consideration by the task force was compiled. The Task Force discussed and evaluated the proposals and selected a set of recommendations for consideration by the legislature. These proposals are discussed in detail with supporting data in the full report.

Phase III: Recommendations of the Task Force

The task force agrees that its recommendations will help reduce the number of construction defects, enhance contractor accountability, improve consumer confidence, and ensure the availability of contractor insurance.

While the Task Force understood that each of the following recommendations, if implemented, would be a positive step, members agreed to take a comprehensive approach. Therefore, each recommendation constitutes a component of a whole system designed to improve the construction environment in Oregon. The Task Force believes that recommendations implemented in a piecemeal manner, will not be as effective at alleviating the problems Oregon is confronting as full implementation the Task Force recommendations.

The task force makes the following recommendations:

1. ****Placeholder Only****

Issues to consider

In developing the final list of recommendations to the legislature the Task Force considered many recommendations and encountered a number of additional issues with important implications for the construction industry. While the Task Force ultimately elected to not include these issues in the final set of recommendations, the Task Force wanted to record the work and analysis on these issues to further inform the decisions made by the legislature and other policymakers. These issues include:

1. ****Placeholder Only****