

TRCC Subcommittee Hearing Testimony 3/31/2009

Chairman Gattis did most of the questioning and most of the time was the ONLY subcommittee member present.

HB311 by Liebowitz – Eliminates the \$250 fee to file a SIRP request.

Janet Ahmad (Homeowners for Better Building) wants a venue for filing complaints to a regulatory authority. Homeowners (HOs) used to be able to file complaints with the Attorney General, but the TRCC eliminated that. Gattis was concerned about unsubstantiated marks against a builder and seems to see value in requiring a fee that's later refunded if the complaint is verified (i.e. defects confirmed by SIRP). The theory is that the fee deters frivolous complaints. Janet said the Federal Trade Commission acknowledges that homeowners don't file frivolous complaints. She said HOs may not want to sue or go through but would like a state agency that can recognize a pattern of bad builder behavior. It seems like we need a public version of Angie's List, where HOs can submit complaints and check the credibility of builders.

Dorina Corente (HO in Sugarland) complained about the fee refused to pay the fee.

Duane Waddill (TRCC Executive Director) He said the TRCC has waived the \$250 fee 25-50 times a year. 92% of the time, defects are confirmed and fees are returned.

HB1635 by Todd Smith – Eliminates the TRCC (almost identical to Gattis' bill)

Todd Smith said this is his 3rd try to abolish the agency. He referenced his sponsorship of the Carole Keeton Strayhorn study and report. The objective was to fix the problems, but only window dressing resulted. He read highlights from the Sunset Commission Staff Report, including "only 12% of cases were resolved." His bottom line is that Texas would be better off without the TRCC than with it. He also filed another bill to turn the TRCC into a traditional regulatory agency through licensing. Gattis asked what would happen if TRCC is abolished since he's heard that "the threat of the SIRP process has caused some builders to do a better job and resolve complaints on their own, since they don't want a black mark against them." He asked, "what happens in the case of smaller complaints." Smith agreed that the TRCC was supposed to help resolve the small disputes where HOs are unable to get an attorney. He is skeptical, after fighting for 5 years, that ANYTHING can be done to this agency to properly fix it.

Pam Bolton (Policy Director, Texas Watch) supports the bill. Gattis asked about the most objectionable portions of the current law. She listed several, including fees, inspection process, delay time blocking due process with no ability to force a builder to resolve issues. Fixes include making SIRP and mediation voluntary. Shortening the SIRP time helps, but SIRP is still a problem because the agency has no authority to order a fix.

Sandee Bradshaw (HO in Hutto) supports the bill abolishing the TRCC. Holds her testimony for the Liebowitz bill to abolish TRCC and replace it with licensing under TDLR.

Ron Conolly (TAB President) opposes the bill and cited frivolous lawsuits. He said the agency is new and needs more time to resolve known problems. He supports having a shorter SIRP (e.g. 75 days vs. 105). He said the problems we're hearing about are a tiny % of cases.

Dorina Corina (HO in Sugarland) supports abolishing the TRCC and wants a public apology.

Scott Norman (TAB) opposes the bill. He said the Strayhorn report was done "before" HB1038, which fixed a lot. Results improved from 12% to 38%. He said the Sunset bill enhances discipline actions and agrees with shortening the SIRP timeframes.

Michael Young (President, McCommis Inspections) supports abolishing the TRCC because it's not serving its intended purpose. He criticized the county inspection process and the fact that three inspections is not nearly enough. Michael wants county-wide code enforcement, which means more inspections are needed. Plumbing in the foundation, for example, is not inspected. Plumbing problems under the foundation are extremely expensive. HOW (Home Owners Warranty) helped, but it went out of business. Gattis said that most of Michael's testimony would better apply to another bill, such as HB2243 by Leibowitz re. licensing.

Tom Archer (President, Homeowners of Texas) supports abolishing the TRCC. All contracts say "time is of the essence." This is especially true when resolving serious defects. RCLA is more timely. Gattis argued that litigation takes MORE time than SIRP, as long as SIRP results in a resolution. Tom said mediations tend to succeed after a discovery process. He said the agency is dealing with legal issues without legal experts. 99% of HOs go through TRCC because the builder "won't" resolve the issues. The agency is powerless to cause a fix.

Nancy Hinchell (HO) supports abolishing the TRCC but doesn't think it's about good or bad builders. TRCC offers every INCENTIVE for builders to cut corners, to save costs, and NOT to build a quality home. She thinks the threat of triple damages, class actions, and recovery of attorney fees is the best deterrent of bad behavior. She refused to pay the \$425 SIRP fee to go through an agency built for builders and run by builders, because it would be throwing good money after bad. "Eye for an Eye" was originally a building issue. According to the ancient Code of Hammurabi, which was created in 1760 BC and honored for thousands of years since, *"If a Builder builds a house for someone, and does not construct it properly, and the house which he built falls in and kills its owner, then that builder shall be put to death."* NET: Give builders incentives for building quality construction. As we learned in banking, deregulation does NOT help consumers.

Mr. Freeman (HO) supports abolishing the TRCC. He's disappointed that his "American Dream" has become a Jack-in-the-Box. He described the concept of "home" – a place where his children and grandchildren could grow up. He moved to Texas from California, where his home survived earthquakes, but his TX home has had many structural problems. As a Vietnam vet, he helped build homes for military men & women and is appalled that TX homes aren't engineered for expansive soil. There was no soil preparation. His entire subdivision got an attorney, but the attorney said he couldn't do ANYTHING because the TRCC stacks everything against them. He wants a state agency to inspect homes, repair them, and go after builders.

Janet Ahmad (HOBB) supports abolishing the TRCC. All the HO wants is to have their home built right the first time. The TRCC keeps giving builders the “right” to repair defects. There’s no “incentive” to build homes right the first time. She referred to 5000-6000 Amarillo homes with no moisture barrier. Gattis asked if that shouldn’t be a code requirement. Janet said there’s nothing to make sure the home complies with code. Gattis blamed that on cities, but she said it’s because nobody is watching. Gattis was surprised that you can’t get an attorney because of the TRCC. “We don’t want lawsuits; we want homes built right the first time.” Rep. Kirk England asked for examples of incentives. Licensing and regulation is the simplest incentive. A home Lemon Law is another. Real warranties are another.

Luz Yontz (HO) supports abolishing the TRCC. She handed out photos of her house. She could not use TRCC since she bought an Existing home, not a new one. She’s not accepting KB Homes’ offer to repair since it applies window dressing rather than addressing the root cause.

Dan Strauser (HO) supports abolishing the TRCC. His home was built in 2007 zero-feet from a flood zone (actually inside the creek path). He has not yet gone through TRCC but doesn’t know what to do about fraud that compounds the defects issue. He does not TRUST the TRCC. “A half truth is a whole lie.” He said lawyers told him they can’t represent him due to TRCC issues and disputes over flood zone lines.

Francisco Valdez (HO) supports abolishing the TRCC. He referenced his 3/23 testimony and spec home built in 2008. His problem is deception of an upscale community with new starter homes. His foundation is not level. Gattis criticized that he never spoke with TRCC or filed a complaint with them. He went through the office of the Inspector General but was pushed down to TRCC. He does not TRUST the agency since it clearly represents builders and not homeowners.

Lou McCreary (Homeowners of Texas) supports abolishing the TRCC. He spoke about cases he represents. The TRCC panel has 3 people he’s never met, knows nothing about, and who have no legal expertise. One example was a home that was “out of plumb.” The builder showed up with 13 people for the SIRP inspection. The commission upheld the fact the walls are out of plumb and criticized the HO who wants his home bought back, saying the builder has the right to fix the defect, even though it’s unfixable. Lou’s preference is to revert to DTPA, which was usurped by RCLA and then again by TRCC.

Duane Waddill (TRCC) addressed questions from Gattis but pleaded ignorance of the case Lou McCreary described. Gattis’ issue is upholding the SIRP inspection result without saying cosmetic repairs can fix structural defects.

Mark Eberwine (TX Association of Real Estate Inspectors) supports abolishing the TRCC because after 5 years of fixes, they’ve not got it right. Gattis asked how to change the TRCC. If TAB really wanted bad builders to go away, they would have applied teeth to TRCC. They haven’t. He referenced builders who don’t like the TRCC standards. (He was involved in creating those standards and sits on the TRCC warranty and standards committee. He is embarrassed at the cases that have come before the standards committee, including homes with an unlimited number of ¼” wide cracks. He asked Texas A&M Construction Sciences Department how those standards could be set. The Engineering Department views them as a joke. If the TRCC is so fundamentally flawed, he has no confidence that it can be fixed in

this session or next. He also referenced the older homes that have withstood decades of soil heave without cracks and defects.

Maria Swarz (HO) supports abolishing the TRCC. She paid over \$200K in high-end neighborhood, but now they're building \$90K homes. She also described defects in her 2007 home. She refuses to go through the TRCC but has not yet spoken with an attorney re. fraud plus defects. Rep. Gary Ekins asked if she signed a binding arbitration agreement. He encouraged her to try TRCC as the best option, knowing she'd otherwise face a stacked arbitration. His concern is her waiting beyond the statute of limitations and then having no options.

Unknown (HO) supports abolishing the TRCC and told his story about moving to TX from NV. He missed the 1-yr statute of limitation for workmanship defects but may still get relief on 2-yr and 10-yr warranty issues. He recommended having standards more like in Nevada (e.g. ICBO). Gattis asked about NV laws, which require licensing. The HO said any complaint agency should be an independent agency and NOT one controlled by builders, and he referenced the number of industry members on the commission. He described the TRCC as a standard governmental agency with no oversight and punishment of agency management.

Jennifer Harris (HO in Cibolo) supports abolishing the TRCC after a nightmare with the agency. She spoke of numerous problems with Ryland Homes. The SIRP inspector found foundation deflections and code violations – essentially everything she complained about. Even though she submitted her paperwork in time, but after TRCC delays she past the statues of limitations. The builder appealed, and the inspector changed his report to conform to the builder's request. The final report confirmed cosmetic flaws but did not reaffirm structural ones. Ryland fixed cosmetic problems but not structural.

Roger Hariaga (Director Local & Government Affairs, KB Homes) defended his company's ethics, saying that Fortune Magazine rated them as a respected company. They're open with buyers and disclose everything. They have many happy customers, but Gattis said they also have many very unhappy ones. Gattis said he built his own home and had his slab engineered. He said, "All of our slabs are engineered too." He also said their contracts require NON-binding arbitration. Gattis asked for information on flood plane maps.

Duane Waddill (TRCC) addressed issues about shortening the inspection process and appeals process.

Susan Durso (General Counsel, TRCC) was called to explain the appeal process. Each party has 3 days to file an appeal to a 3 person appeals panel with the same qualifications of other SIRP inspectors. They simply review the records (from both parties and the 3rd party inspector) but don't re-inspect. Rep. Elkins says that it's common for all industries, including doctors, for an appeals panel to confirm the work or their peers rather than overturn it. He questioned whether it's effective for the industry to be policing itself. The 3 person panel is not allowed to consider new evidence. Susan said, "Reversal is very unusual." They then talked about specs for the foundation and how builders can sell home with known defects in center heave, edge heave, and tilt. Elkins references the 2006 Strayhorn report saying 86% of complaints did not have a favorable outcome. Susan referenced HB1038 and said it's improved. Elkins said the legislature needs to set resolution targets for the agency. Waddill said that 60-70% resolution

would be a good target. He describes the appeals panel as a “judicial review panel,” but they have no legal training.

Tom Archer (HOT) offered clarifying testimony about Waddill’s 40% resolution statistic.

Todd Smith (bill author) offered closing comments. He compared prior law (RCLA) with current law (TRCC) and the replacement of Implied Warranty of Habitability with Limited Minimum Warranty and differences in statutes of limitations. He criticized Waddill’s 40% resolution statistic. He described the TRCC appeals process as far worse than binding arbitration, which is far worse than being able to have a trial in front of a judge or jury. That’s why an independent expert staff (the Sunset Commission staff) recommended abolishing the agency.

HB1653 by Veasey – implements optional builder licensing through TRCC

Veasey said the bill does not abolish the TRCC but offers optional licensing as a way of differentiating from competitors. The bill requires 10-years of experience. If TRCC revokes registration, then the builder license is automatically revoked.

HB3629 by Todd Smith – replaces TRCC registration with TRCC

Todd Smith said the bill is designed to turn TRCC into a regulatory agency to protect consumers with licensing and education and insurance bonding requirements and cease and desist authority and authority to suspend licenses. It eliminates SIRP resolution process.

Carol Longacre (Remodeler & Homebuilders Association of Greater Dallas) is a Star Builder opposes the bill. She supports the education requirement. Rep. Deshotel asked about making Star Builder mandatory, with its education & bonding requirement, phased in over time. Although she became a Star Builder to set herself apart from competitors, she does not want Star Builder to be mandatory. She does not agree with the bonding requirement and said she’d be priced out of jobs. She does not want to sit through the same education that construction superintendents need.

Kevin Tucker (Swimming Pool Education Counsel) opposes the bill because of its swimming pool provisions. He supports licensing specific to pool contractors but not in TRCC and blended into residential construction. The pool industry has no representation on the TRCC board and worries that their concerns would not be heard.

Janet Ahmad (HOBB) supports the bill.

Randy Bolding (TAB) opposes the bill. He’s from El Paso, a poor community with average income of \$38K. He worries that licensing would increase home prices and make it more difficult to get into the profession. He also worries that Hispanic builders would have a hard time passing the test. He admitted that El Paso plumbers, electricians and HVAC installers are licensed but had no real answer to defend not licensing builders. Deshotel asked about having an option between mediation or SIRP. Randy supports HB2295, which says you first need SIRP before moving on to mediation, arbitration, or court. His contracts include binding arbitration.

Scott Norman (TAB) opposes the bill and instead supports HB2295. He does support the option of using either mediation or SIRP, as long as both parties agree. Deshotel said since builders love SIRP, they won't agree to mediation. Scott said HB1038, with requirement for making an offer to repair or else lose builder registration, is an effective enforcement hammer. He supports increasing education requirements but does not support the insurance and bonding requirements.

HB2243 by Leibowitz abolishes the TRCC and replaces it with Licensing under TDLR

Leibowitz said taking away the TRCC is only half of the problem. We still need a way to keep bad builders from building bad homes. He referred to barbers, tattoo artists and electricians as needing a license but not the builder. A bad builder cited by TRCC can simply reregister under different DBA. He outlined the date timelines for when TDLR must be ready with the exam, when builders must take the exam, and when the license takes effect. He described reciprocal agreement with other states and grandfather clauses and education requirements.

Sandee Bradshaw (HO) supports the bill. HO life and health should not be jeopardized when built on expansive soil. She introduces photos of \$200-300K homes under construction as examples of defects from unlicensed builders. (short & sweat)

Carol Longacre (remodeler & Dallas Homebuilder Assn) opposes the bill because it blocks entry in the profession. Deshotel asked about giving the HO an option between mediation and SIRP. Her testimony confused her own opinions and those of the homebuilder association. Deshotel criticized homebuilders for their strong position AGAINST abolishing the TRCC or putting regulatory teeth into it. "There's probably not a whole lot of regulation going on."

Ron Conally (TAP president) opposes the bill. He criticized TDLR for not understanding building and wants any regulation in a builder-specific agency (that they can control).

Eddie Martin (President, Tilton Homes) opposes the bill and its performance/surety bond requirements. He said he talked to his agent and was shocked at the high cost (\$3800 for \$300,000 house) that would have to be passed onto the buyer. Smaller builders don't have the financial strength to even get bonded. He also wants oversight by a builder-specific agency. He had no problem with the education requirement and does not view it as a barrier to entry.

Janet Ahmad (HOBB) supports the bill. Licensing is a must. Knowledge and financial responsibility is a problem for this industry. She said one of her board member registered as "Cheetem Custom Homes." She told about a HO that was never notified that the builder appealed the decision. She complained about being belittled by the agency. "The Egyptian pyramids were built on level ground, but Texas builders can't pour a level foundation?" "We've got to give builders an incentive to build homes right the first time." Licensing helps prevent problems on the front end. HOs can't get an attorney, even after SIRP finds in their favor, because of what RCLA did to block class actions, punitive damages and ability to recover attorney fees. Deshotel challenged that. Abolishing the Act eliminates the implied warranty issue. Repealing RCLA resorts to DPTA. Licensing is aimed at building it right the first time.

Tom Archer (HOT) supports the bill. A Doctor's office posts a sign with phone# to call with complaints, and complaints can result in revoking a license. Builders will respond to that threat, and that's the teeth. Tom contrasted the rights of a buyer of a new and existing home. "Who is governing the TRCC?" HB1038 gave them a lot of tools they haven't used. In contrast, TDLR has a good reputation and experience in licensing. He described differences in licensing between the different states.

Wayne Caswell (HOT) supports the bill. He told of TRCC misrepresentations that lead to mistrust of the agency. His first example is interchanging the terms Licensing and Registration. He read from HOT's brochure describing the difference. He then read part of the warranty section from TRCC's flyer to new homeowners, describing exceptions and exclusions. One exception is "changes to the soil that are not a direct result of construction activities." The other highlighted is "work performed or materials supplied by someone other than the builder/remodeler."

Michael Young (McCommis Inspections) supports the bill and talked about building science and the need for education that would let builders do a better job of hiring and managing their subcontractors. He praised TDLR and the "tight reign" on contractors.

David Kettler (remodeler) opposes the bill, although he agrees with complaints against the TRCC. He said TRCC now limits registration to projects over \$10K but the new bill eliminates that and would apply to wallpapering. He also said small companies won't be able to get a performance bond. He opposes reverting to DTPA and lawsuits because of the cost of attorneys. [It sounds like liability insurance is more acceptable than performance bonds. An alternative is to only require bonds for build-on-your-lot projects.] The TRCC was a joke, but slow and surely it's be getting better. He also suggested changing the TRCC board structure.

Leroy Freemon (HO) supports the bill. He asked, "How many buyers ask the builder if they're licensed?" We should know if they're licensed, capable, and financially responsible. A driver needs a license. The car needs a license AND registration. And the car needs annual inspection. These rules protect the health, safety and welfare of citizens.

Rep. Leiberwitz closed by showing HOT's brochure, pointing to the map that shows 28 other states (in blue) and with Texas as a standout among high-growth states. Why do Texas homebuilders get a unique exception? Bonding is only required for builders building 25+ homes per year. He also challenged the 2% of home value cost of bonding and said the bond policy could rotate between homes. "Licensing is person specific." "Registration is DBA specific." He used KB Homes as an example in concluding that "these guys need be held more accountable."

H2095 by Farrar reforms the TRCC

Farrar described added enforcement and insurance & bonding requirements, in a bill introduced for the third time.

Janet Ahmad (HOBB) supports this bill, which makes SIRP optional for homeowners. A mandatory Star Builder program gets close to licensing.

Dorina Corente (HO in Sugarland) wants to abolish the TRCC, NOT reinforce it, and license builders.

Marsha Kushner (HO) supports the bill and simply thanked the committee.

HB2223 by Parker enhances workmanship warranty

Parker said the bill enforces notices to homeowners.

HB2695 by Gattis abolishes the TRCC

It's getting late, so comments are getting briefer.

Tom Archer (HOT) During both hearings (3/23 & 3/31), not a single consumer testified to keep TRCC. Some builders favored abolishing it. ONLY builders and their representatives testified to keep it.

HB3348 by Gattis imposes criminal penalty for builders not registering

HB3349 by Gattis adds disciplinary action for failing to complete a project