

Certification and Licensure
Technical Advisory Group:
State Regulation of
Construction Occupations

March 2002



The Certification and Licensure Technical Advisory Group (TAG) was appointed by the Construction Codes Advisory Council to examine the issue of State Regulation of Construction Occupations. The TAG was held its first meeting on June 5, 2001 and the group meet monthly until March 2002.

Charge:

The charge given to the Certification and Licensure TAG by the Construction Codes Advisory Council was:

The TAG will study issues related to certification, licensure, registration, or other endorsement options for people in the areas relating to life safety and construction. The TAG will focus primarily on inspectors, contractors, and installers in the construction area. Also included is a study of the feasibility of creating a comprehensive consolidated resource for all appropriate areas of licensing, certification, or registration.

Membership:

According to the Construction Codes Council "the TAG shall consist of no more than 15 members appointed from the list of persons and organizations expressing an interest in membership. The TAG appointed the chair of the TAG. Membership of the TAG shall be representative of interest groups affected by the specific issue and shall include members with technical expertise or field experience in the specific issue." A list of members and their affiliated groups is appended to the end of this report.

Research:

- Statutes

In 1976, the Minnesota Legislature passed Chapter 214, which sets out the criteria for occupational regulation. This statute was intended to be a guide to those who seek regulation and for Legislators to use in evaluating a request for regulation. Chapter 214.01 lists four criteria for regulation and four modes of regulation.

The four criteria are:

Subd. 2. Criteria for regulation. The legislature declares that no regulation shall be imposed upon any occupation unless required for the safety and well being of the citizens of the state. In evaluating whether an occupation shall be regulated, the following factors shall be considered:

(a) Whether the unregulated practice of an occupation may harm or endanger the health, safety and welfare of citizens of the state and whether the potential for harm is recognizable and not remote;

(b) Whether the practice of an occupation requires specialized skill or training and whether the public needs and



will benefit by assurances of initial and continuing occupational ability;

(c) Whether the citizens of this state are or may be effectively protected by other means; and

(d) Whether the overall cost effectiveness and economic impact would be positive for citizens of the state.

The four modes of regulation are:

Subd. 3. Regulation of new occupations. If the legislature finds after evaluation of the factors identified in subdivision 2 that it is necessary to regulate an occupation not heretofore credentialed or regulated, then regulation should be implemented consistent with the policy of this section, in modes in the following order:

(a) Creation or extension of common law or statutory causes of civil action, and the creation or extension of criminal prohibitions;

(b) Imposition of inspection requirements and the ability to enforce violations by injunctive relief in the courts;

(c) Implementation of a system of registration whereby practitioners who will be the only persons permitted to use a designated title are listed on an official roster after having met predetermined qualifications; or

(d) Implementation of a system of licensing whereby a practitioner must receive recognition by the state of having met predetermined qualifications, and persons not so licensed are prohibited from practicing.

Two or more of these modes may be simultaneously implemented if necessary and appropriate.

- Legislative Auditor

In February 1999, the Legislative Auditor issued a report, Occupational Regulation and its companion document, Directory of Occupational Licenses. (<http://www.auditor.leg.state.mn.us/ped/1999/pe9905.htm>). This report listed over 200 regulated occupations in Minnesota, of which 17 were construction related. This report was an invaluable help as a starting point for looking at the subject of construction occupational regulation.

Method:

The initial discussions of the TAG focused on whether to approach the issue of construction occupation from a macro or a micro point of view; i.e., should we examine



every possible construction occupation in detail or should we address the subject in general.

The TAG decided to deal with the overall issue of how to regulate construction industry occupations rather than whether a specific occupation should be regulated. This was due to time constraints (holding a four hour hearing on every conceivable construction occupation that could be regulated was impractical) and would have been divisive for the TAG (widely divergent views were held by different TAG members of whether a particular occupation should be regulated).

Recommendations:

A number of recommendations were reached by the TAG:

- Construction occupations that are unregulated and affect public safety must come under regulation by the State of Minnesota.
- The State of Minnesota should work towards the goal of regulation being statewide in scope and administered by a statewide agency. A statewide agency should have, at a minimum, the following powers:
 - (1) Establish and enforce minimum standards for credentialing.
 - (2) Establish disciplinary procedure.
 - (3) Establish and maintain a sharable uniform database.
 - (4) Establish and maintain a minimum fee structure.
- Any State regulation of an occupation should regulate three areas:
 - (1) The business aspects of the occupation:
 - (a) Responsibility (accountability) to consumer for actions of workers and/or subcontractors.
 - (b) Financial security (insurance, bond, recovery fund, etc).
 - (c) Accountability for compliance with business, tax and employment law.
 - (d) Qualified employees and/or independent contractors.
 - (2) The technical supervision of the occupation:
 - (a) Qualified employees and/or independent contractors.
 - (b) Direct and immediate technical supervision of the worker.
 - (c) Greater scope of authority and technical competency than individual worker.
 - (d) Natural person.
 - (3) The technical competency of the individual worker:
 - (a) Natural person.
 - (b) Technical competency.
 - (c) Levels of competency.
- There are a number of methods to demonstrate and maintain competency
 - (1) Education



- Mandatory and elective
 - (2) Experience
 - (3) Examination
 - (4) Continuing education
- Construction occupations that are presently regulated by the State of Minnesota may continue their different types of regulation, until a uniform statewide regulation system is enacted.
- Statewide occupation regulation should supplant local occupational regulation.
- All code enforcement occupations should be regulated by the state by requiring licensing, certification or registration in each area as determined necessary to provide effective enforcement, with national licensing, certification or registration preferred.
- Any system of regulation should provide an incentive for continuing education and advancement within the occupation area.
- Minnesota construction codes should be adopted statewide.

Closing Statement:

We acknowledge that many of our recommendations include terms that are open to varied interpretation. For many of these recommendations, definitions of terms will be necessary for effective implementation.

Members of the Certification and Licensure TAG

Bruce Hutchins, Plumbing Inspector, (Eden Prairie)
 Charles Durenberger, State Agency, (Residential Builders, Department of Commerce)
 Daniel Dropik, Certified in Plumbing Engineering
 Dennis Burmeister, Pipefitter
 Gary Thaden, representative of Mechanical and Electrical Contractors
 Gary Topp, State Agency, (Plumbing Unit, Department of Health)
 Janine Atchison, Housing Inspector, (Minneapolis)
 Jeff Howe, Building Official/ Fire Marshal, (Waite Park)
 Joe Voss, Plumbing Contractor
 John Griebler, Building Official, (St. Cloud)
 John Schultz, State Agency, (Board of Electricity)
 Merwyn Larson, Building Official, (Minneapolis)
 Michael O'Hara, Engineer
 Roger Larson, Architect
 Ron Sonnek, Building Inspector, (Brooklyn Park)
 Thomas Martin, Plumber

