

CONFIDENTIAL
LEGISLATIVE BILL REVIEW FORM: 2015

Bill Number: S.105 **Name of Bill:** An Act Relating to Home Improvement Contracts

Agency/ Dept: DHCD **Author of Bill Review:** Dale Azaria and Shaun Gilpin

Date of Bill Review: April 9, 2015 **Related Bills and Key Players:** H.483 Home Improvement Fraud (in Senate Judiciary)

Status of Bill: (check one): Upon Introduction As passed by 1st body As passed by both

Recommended Position:

Support Oppose Remain Neutral Support with modifications identified in #8 below

Analysis of Bill

1. Summary of bill and issue it addresses. *Describe what the bill is intended to accomplish and why.*

The bill protects homeowners who enter into construction contracts for home improvements estimated at \$5,000 or more. It requires that all such contracts be in writing, be explicit regarding whether they are fixed price or time and materials, include work start and completion dates, describe the work to be performed and the materials to be used, and provide an express warranty of the contractor's work. The bill also requires that all changes be in writing; limits the amount of a down payment to 1/3 of the maximum price or the price of materials, whichever is greater; and prohibits binding arbitration clauses in such contracts.

The bill as originally introduced stated that a contract that did not comply with these requirements could not be enforced against the homeowner. The most recent draft (No. 2.1, 3/23/2015) provides that failure to comply with these requirements is a violation of the Consumer Protection Act.

<http://legislature.vermont.gov/assets/Documents/2016/WorkGroups/Senate%20Economic%20Development/Bills/S.105/S.105~David%20Hall~Draft%20No.%202.1,%203-24-2015~3-24-2015.pdf>

2. Is there a need for this bill? *Please explain why or why not.*

Vermont does not currently require that home improvement construction contracts be in writing, which creates a risk of miscommunication or of deception. Vermont also does not prohibit a contractor from exceeding an estimate, and does not require advance approval before incurring costs that exceed the estimated costs. Such consumer protections could be valuable. However, Vermont does have a law prohibiting fraud in home improvement contracts (13 VSA sec. 2029). For that reason, it is not clear the bill as drafted is necessary.

3. What are likely to be the fiscal and programmatic implications of this bill for this Department?

None anticipated. We have no authority over and do not get involved in homeowner-contractor disputes.

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4. What might be the fiscal and programmatic implications of this bill for other departments in state government, and what is likely to be their perspective on it?

Enforcement of the Consumer Protection Act is under the auspices of the Attorney General's office, so there would be increased demand for their resources. However, they may already be engaged in working with homeowners on these issues, in which case this additional tool might make their work easier.

5. What might be the fiscal and programmatic implications of this bill for others, and what is likely to be their perspective on it? (for example, public, municipalities, organizations, business, regulated entities, etc)

Contractors, particularly smaller enterprises, will almost certainly view this as an intrusion on their freedom to conduct their business as they see fit. Other businesses may also view this as overreaching by the state government. No fiscal or programmatic implications have been identified for other public entities, municipalities, organizations, or regulated entities.

6. Other Stakeholders:

6.1 Who else is likely to support the proposal and why? None identified.

6.2 Who else is likely to oppose the proposal and why? None identified.

7. Rationale for recommendation: *Justify recommendation stated above.*

This bill would provide remedies for homeowners who fall victim to unscrupulous contractors. It may also serve to promote greater clarity in contracts and improved communication between contractors and homeowners. However, as drafted the bill tilts towards the homeowner and will likely result in contractors going unpaid in many situations where their failure to comply with the law was inadvertent. Even if their failure to comply was knowing, the remedy may still far exceed the homeowner's actual damages and place an undue burden on the contractor. The bill is unlikely to be popular among homeowners and contractors that prefer to do business informally. The bill was sent back to committee (Senate Economic Development) after concerns about the enforcement provisions were raised on the Senate floor. (The latest draft addresses this.) The bill's fate is uncertain. No further testimony has been scheduled. A related bill, H.483 clarifying that a contractor's failure to perform work together with the conversion of the owner's money to his or her own use is a criminal violation, passed the house and is now in Senate Judiciary.

8. Specific modifications that would be needed to recommend support of this bill: *Not meant to rewrite bill, but rather, an opportunity to identify simple modifications that would change recommended position.*

None suggested.

9. Gubernatorial appointments to board or commission? N/A

Secretary/Commissioner has reviewed this document: Noelle MacKay **Date:** 4/15/2015

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