

BOARD FOR PROFESSIONAL AND OCCUPATIONAL REGULATION



REPORT TO THE

Governor

House Committee on General Laws

Senate Committee on General Laws and Technology

Evaluation of the Regulation of Residential Building Energy Analysts

Pursuant to the fourth enactment clause of Chapter 865 of the 2011 Regular Session



Department of Professional and Occupational Regulation

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Residential Building Energy Analyst Regulatory Program

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EXECUTIVE SUMMARY

The Board for Professional and Occupational Regulation (BPOR) evaluated the implementation and regulatory framework of the newly mandated licensure program for Residential Building Energy Analysts.

Regulations administering the program under the Board for Contractors became effective July 1, 2013, and as of this report, 53 individuals and 29 firms are actively licensed.

Data is insufficient at this early date to make a fully informed assessment regarding the appropriateness of the existing degree of professional regulation. BPOR, the Department and all its regulatory programs strive to regulate professions as assigned by the legislature in the least intrusive, least burdensome and most efficient manner possible, while protecting the public's health, safety and welfare.

BPOR will continue to monitor and evaluate the Residential Building Energy Analyst regulatory program, as will the Board for Contractors through its recurrent regulatory review opportunities.

LEGISLATIVE MANDATE

During the 2011 General Assembly Session, the legislature approved and Governor McDonnell signed Senate Bill 1375, establishing a new licensure program under the Board for Contractors for individuals and firms engaged in the practice of residential building energy analysis.

“Residential building energy analysis” is defined as inspections, investigations, or surveys to evaluate or measure energy consumption and efficiency *in combination with* recommendations to promote resource conservation (i.e., electricity, HVAC systems, water, appliances).

The legislation creating the mandatory licensure program for Residential Building Energy Analysts became effective July 1, 2011. Its second and third enactments directed the Board for Contractors to promulgate emergency regulations which would remain in effect until the adoption of final regulations.

This report responds to the fourth and final enactment of SB 1375, instructing the Board for Professional and Occupational Regulation (BPOR) to evaluate and report on the regulatory framework for Residential Building Energy Analysts.

PROGRAM IMPLEMENTATION

In recognition of the 280-day emergency regulation clause, the Board for Contractors initiated the promulgation process in June, just prior to the bill's July 1, 2011, effective date. The Office

of Attorney General, Department of Planning and Budget, and Secretary of Commerce and Trade completed their requisite reviews and approvals by June 29, 2011.

Upon the governor's approval on April 23, 2013, the proposed emergency regulations were published in *Register of Regulations* on May 20, 2013. After the 30-day public comment period ended, the regulations became effective and the Residential Building Energy Analyst licensure program began on July 1, 2013.

As of the date of this report, the Board for Contractors actively licenses 53 individual Residential Building Energy Analysts and 29 Residential Building Energy Analyst Firms.

PROGRAM EVALUATION

Pursuant to subsection B of § 54.1-311 of the *Code of Virginia*, in determining the proper degree of professional regulation, if any, the Board for Professional and Occupational Regulation (BPOR) shall determine the following:

1. Whether the practitioner, if unregulated, performs a service for individuals involving a hazard to the public health, safety or welfare.

“Residential building energy analysis” is defined as inspections, investigations, or surveys to evaluate or measure energy consumption and efficiency *in combination with* recommendations to promote resource conservation (i.e., electricity, HVAC systems, water, appliances).

If performed incompetently or fraudulently, the public's risk of harm is primarily financial. Structural or physical safety might conceivably be compromised based on implementation of a faulty energy analysis recommendation, though the potential hazard from such a scenario is mitigated by other contractor licensure and building permit/inspection requirements.

The Department of Professional and Occupational Regulation (DPOR) has received no complaints to date relating to residential building energy analysis.

2. The opinion of a substantial portion of the people who do not practice the particular profession, trade or occupation on the need for regulation.

Three individuals posted to the Virginia Regulatory Town Hall public comment forum on the Board for Contractors proposed regulations for residential building energy analysts, all of whom identified as practitioners.

Neither BPOR nor the Board for Contractors has heard from constituents who do not practice in the field regarding regulation of this particular profession.

3. The number of states which have regulatory provisions similar to those proposed.

In 2013, Nevada enacted a licensure program for residential energy auditors. Several states, or their localities, promote the use of home energy audits without establishing a mandatory licensure program. For example:

- Austin, Texas, requires audits performed by privately credentialed professionals as part of a real estate sale
- Missouri allows a state income tax deduction for the cost of implementing efficiency recommendations of a state-certified energy auditor

In addition, according to the National Conference of State Legislatures, Arkansas, Maine, and Nebraska, enacted bills in 2013 requiring energy audits for state-owned (not residential) buildings—without, however, specifying professional requirements for the individuals or firms responsible for the energy efficiency assessments.

4. Whether there is sufficient demand for the service for which there is no regulated substitute and this service is required by a substantial portion of the population.

Services performed by residential building energy analysts intersect with home inspector and other tradesman/contractor scope of practice. Home inspection (a voluntary certification program in Virginia) is limited to residential buildings and is defined as written evaluation of readily accessible components of HVAC, structural items, etc., while licensed trade-related contractors (HVAC-plumbing-electrical) assess energy consumption and efficiency in determining appropriate appliances/systems.

In addition, public utilities often offer energy audits as a service to customers as a way to lower their consumption and monthly bills.

As of November 1, 2013, the Board for Contractors actively licenses 53 Residential Building Energy Analysts (individuals) and 29 firms. At this time, four months into program implementation is premature to make assumptions about service demands and customer requirements unique to the profession.

5. Whether the profession or occupation requires high standards of public responsibility, character and performance of each individual engaged in the profession or occupation, as evidenced by established and published codes of ethics.

The two primary professional trade associations for the industry—the Residential Energy Services Network (RESNET) and the Building Performance Institute (BPI)—both publish established Codes of Ethics that uphold high standards of professional conduct and integrity; promote accountability and consumer disclosure; protect client confidentiality; and prohibit conflicts of interest.

RESNET and BPI are nationally recognized as holding their members to high professional standards, as evidenced by the organizations’ status as official training providers for the U.S. Department of Energy (DOE) and Environmental Protection Agency (EPA). In addition, the Virginia Board for Contractors approved RESNET and BPI as qualifying certification organizations that satisfy the training prerequisites for licensure as a Residential Building Energy Analyst.

6. Whether the profession or occupation requires such skill that the public generally is not qualified to select a competent practitioner without some assurance that he has met minimum qualifications.

According to ENERGY STAR, members of the public are themselves qualified to assess residential energy consumption and evaluate measures to improve efficiency. The EPA’s online “Home Energy Yardstick” application allows consumers to enter basic residential features and recent utility bill data to compare their home’s energy efficiency with similar homes across the country, and obtain recommendations for energy-saving improvements.

In addition to tutorials on “do-it-yourself audits” available online at http://www.energystar.gov/?c=home_improvement.hm_improvement_audits, the DOE website offers specific guidance for finding and selecting qualified practitioners at <http://energy.gov/energysaver/articles/professional-home-energy-audits>.

7. Whether the professional or occupational associations do not adequately protect the public from incompetent, unscrupulous or irresponsible members of the profession or occupation.

RESNET and BPI enforce compliance with organizational standards of conduct through complaint-based disciplinary processes and proof of corrective action for infractions.

8. Whether current laws which pertain to public health, safety and welfare generally are ineffective or inadequate.

DPOR has received no complaints to date relating to residential building energy analysis.

If performed incompetently or fraudulently, the public's risk of harm is primarily financial. Structural or physical safety might conceivably be compromised based on implementation of a faulty energy analysis recommendation, though the potential hazard from such a scenario is mitigated by other contractor licensure and building permit/inspection requirements.

9. Whether the characteristics of the profession or occupation make it impractical or impossible to prohibit those practices of the profession or occupation which are detrimental to the public health, safety and welfare.

The Board is aware of no reported specific instances of harm to the public's health, safety and welfare related to residential building energy analysis.

10. Whether the practitioner performs a service for others which may have a detrimental effect on third parties relying on the expert knowledge of the practitioner.

Third parties reliant on the work product of a Residential Building Energy Analyst or Firm might include trade-related contractors implementing energy-efficiency recommendations (i.e. installation of a different HVAC system).

However, any licensed contractor in such a hypothetical scenario is under no obligation to adhere to the "expert knowledge" of another practitioner—the requirement to pull proper building permits and exercise independent judgment eases that particular concern.

Other detrimental incidents for third parties are difficult to envision, considering the similarly situated practice of home inspections (even though that regulatory program is one of voluntary certification rather than mandatory licensure). Several parties are involved in the real estate transaction central to home inspection reports, yet the Department adjudicates a nominal amount of cases involving certified home inspectors (and, in fact, Virginia does not require the highest level of regulation for that profession).

CONCLUSION

The General Assembly assigned the highest degree of regulation—mandatory licensure—to the practice of residential building energy analysis when it brought the profession under a state regulatory framework.

Currently, BPOR and the Board for Contractors are unaware of data indicating demonstrated risk (or potential risk) to the public's health, safety and welfare from practitioners in this profession. At the same time, four months of program implementation is an insufficient interval to draw inferences or justify changing course.

If the potential public harm is eventually not substantiated, and less restrictive means of consumer protection are deemed warranted, BPOR recommends alternative regulatory approaches such as stronger disclosure requirements, more strict causes for civil action and tougher criminal penalties.

APPENDIX

VIRGINIA ACTS OF ASSEMBLY -- 2011 RECONVENED SESSION

CHAPTER 865

An Act to amend the Code of Virginia by adding in Chapter 11 of Title 54.1 an article numbered 5, consisting of sections numbered 54.1-1144, 54.1-1145, and 54.1-1146, relating to the Board for Contractors; licensing of residential building energy analysts.

[S 1375]

Approved April 6, 2011

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 11 of Title 54.1 an article numbered 5, consisting of sections numbered 54.1-1144, 54.1-1145, and 54.1-1146, as follows:

Article 5.

Residential Building Energy Analysts.

§ 54.1-1144. Definitions.

As used in this article, unless the context requires a different meaning:

"Accredited residential building energy analyst training program" means a training program that has been approved by the Board to provide training for individuals to engage in blower door, duct blaster, or similar testing to measure energy efficiency, conduct energy modeling, prepare a residential building energy analysis report, and provide recommendations for improvements with return on investment or third-party verification for nationally accredited energy efficiency programs.

"Licensed residential building energy analyst" means an individual who has successfully completed an accredited residential building energy analyst training program or meets the criteria of experience required by this article and regulations of the Board and who has been licensed by the Board.

"Residential building energy analysis" means (i) an inspection, investigation, or survey of a dwelling or other structure to evaluate, measure, or quantify its energy consumption and efficiency, including lighting, HVAC, electronics, appliances, water heaters, insulation, and water conservation, and (ii) recommendations to reduce energy consumption and improve efficiency of a dwelling or other structure, including lighting, HVAC, electronics, appliances, water heaters, insulation, and water conservation for compensation conducted or made by a licensed residential building energy analyst.

§ 54.1-1145. License required.

A. No person shall engage in, or offer to engage in, work as a residential building energy analyst in the Commonwealth unless he has been licensed under the provisions of this article.

B. The Board may issue a license to perform residential building energy analysis in the Commonwealth to any applicant who has submitted satisfactory evidence that he has successfully:

1. Completed an accredited residential building energy analyst training program;

2. Completed at least five residential building energy analyses under the supervision of a licensed residential building energy analyst;

3. *Remains in good standing with any certifying organization approved by the Board, provided that the requirements for the applicant's class of membership in such association are equal to or exceed the requirements established by the Board for all applicants;*

4. *Maintains the necessary insurance coverage as determined by the Board; and*

5. *Demonstrates the financial capability, as determined by the Board, to perform residential building energy analysis.*

C. *Individuals applying for a license as a residential building energy analyst between July 1, 2011, and July 1, 2012, who submit satisfactory evidence to the Board of having been actively and continuously engaged in residential building energy analysis for the immediately preceding three years shall be licensed by the Board, unless an applicant is found by the Board to have engaged in any act that would constitute grounds for disciplinary action.*

§ 54.1-1146. *Additional powers of the Board.*

The Board shall adopt regulations necessary to establish procedures and requirements for the (i) approval of accredited residential building energy analyst training programs, (ii) licensing of individuals and firms to engage in residential building energy analysis, and (iii) establishment of standards for performing residential building energy analysis consistent with the U.S. Environmental Protection Agency guidelines and recognized by the Energy Star Program.

2. That the Board for Contractors shall promulgate regulations to implement the provisions of his act to be effective within 280 days of its enactment.

3. That notwithstanding any other provision of law to the contrary, the regulations promulgated pursuant to the second enactment of this act shall remain in full force and effect until replaced by final regulations adopted by the Board for Contractors.

4. That the Board for Professional and Occupational Regulation shall evaluate the regulation of residential building energy analysts required by this act and shall submit a report on or before November 1, 2013, to the Governor and the chairmen of the Senate Committee on General Laws and Technology and the House Committee on General Laws, as to whether a different degree of regulation should be imposed pursuant to §54.1-311 of the Code of Virginia.