

**DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL REGULATION**



BOARD FOR CONTRACTORS

Report to the

**House Committee on General Laws
Senate Committee on General Laws and Technology**

Pursuant to Chapter 738 of the 2013 Reconvened Session

Evaluation of Continuing Education Requirements for Tradesmen



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PREFACE

During the 2013 General Assembly Session, the legislature unanimously approved and Governor McDonnell signed House Bill 1645, directing the Board for Contractors to evaluate and report on continuing education requirements for tradesmen.

The Board’s current *Individual License and Certification Regulations* (18VAC50-30) require licensees holding journeyman- or master-level credentials—in the plumbing, heating-ventilation-air conditioning (HVAC), electrical, or gas-fitting trades—to complete three hours of continuing education as a prerequisite for renewal every two years.

Of important note, immediately preceding the introduction of HB 1645—in response to the Governor’s Regulatory Reform Initiative and without knowledge of the impending interrelated legislation—the Board had already initiated regulatory action that proposed to *eliminate* the continuing education requirement for tradesmen. That standalone regulatory review process (governed by the Administrative Process Act) will not be complete prior to the November 1, 2013, deadline placed on this report by HB 1645. Nonetheless, the Board did incorporate public comment received during the concurrent regulatory review period, and considered it to inform its findings for the study on the efficacy of continuing education.

The Board for Contractors respectfully submits this report.

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EXECUTIVE SUMMARY

The Board for Contractors evaluated continuing education requirements for tradesmen—specifically, current prerequisites for license renewal as well as proposed regulatory action to eliminate the government mandate. Ultimately, the Board’s assessment raises larger policy questions as to whether existing state regulatory approaches regarding continued competency are sufficient to protect the public’s health, safety, and welfare from trade-related incompetence.

The Board’s mission is to protect the public while regulating contractors and tradesmen in the least intrusive, least burdensome and most efficient manner. In so doing, the Board is reluctant to endorse continued imposition of a mandate on its licensees—especially one involving additional cost obligation—without evidence of measurable, beneficial results. In the case of tradesmen continuing education, the Board’s data-driven review does not indicate a nominal disciplinary case decrease justifies the comparatively significant financial burden on individual tradesmen.

CONTINUING EDUCATION PROGRAM OVERVIEW

On April 1, 2007, the Board for Contractors promulgated regulations requiring all licensed tradesmen, as a condition of renewal, to complete a Board-approved continuing education course in each discipline in which they hold a journeyman or master license. Initially, the Board’s requirements for continuing education curriculum consisted only of updates to the Virginia Uniform Statewide Building Code (USBC).

For the trades of plumbing, electrical, and HVAC, each continuing education course must be three hours in length; gas-fitting related specialty courses must be one hour. Each individual specialty is one course, so the number of course hours required for each tradesman to renew depends solely on the number of specialties attached to the license—from a low of one, for individuals with only the gas-fitter designation, to a high of ten hours for an individual with all four designations (three hours for plumbing; three hours for electrical; three hours for HVAC; and one hour for gas-fitting).

The regulations also outline the requirements for continuing education course providers, including initial submission, uploading of electronic rosters to a secure server within seven days of course completion, and the authority of the Board to audit courses to ensure satisfaction of all requirements.

The continuing education requirement became effective January 1, 2008, and applied to all tradesman licenses that expired after that date. The eight-month implementation was designed to allow time for the Board to approve a sufficient number of education providers, in order to ensure tradesmen needing the course(s) for renewal would be able to locate a course/provider

without undue burden. All of the original courses were classroom-based, with online courses being approved several months later.

After the continuing education requirement was in effect for two renewal cycles (four years), and had reached all licensed tradesmen, the Board conducted a review of the program. In response to concerns expressed about redundant course requirements in cycles when the USBC is not updated every two years, the Board broadened its curriculum standards. In December of 2011, the Board extended approval for continuing education courses from being limited to code updates, to any subject directly related to the section of the USBC dealing with a specific trade.

For example, this allows an approved continuing education provider to offer electrical tradesmen a course on any section or provision of the National Electrical Code, in addition to a class on an update of changes made to that code since the previous version. As a result, a Virginia electrician is able to satisfy the continuing education requirement and renew his license every two years without course redundancy.

Renewal requirements for other individual license types

During the course of gathering information for the regulatory review process and this report, there seemed to be some confusion regarding the requirement of other individual certifications to complete continuing education as a prerequisite for renewal. Many individuals questioned why the Board would only be looking at tradesman continuing education, but not the requirements for other individual programs.

While state law grants the Board discretionary authority to require continuing education for tradesmen (§ 54.1-1133 of the *Code of Virginia*), it is not mandated for all individual license types. The current continuing education for tradesmen is a *regulatory* requirement applicable to licenses held by plumbers, electricians, HVAC mechanics and gas-fitters, and may be amended by the Board in accordance with the Administrative Process Act (§ 2.2-4000 et seq.), without any additional enabling legislation.

Two other individual license types administered by the Board, however, are subject to a different section of the law. The continuing education requirements applicable to elevator mechanics and water well system providers are written directly into their statutes (§ 54.1-1143 and § 54.1-1129.1, respectively) and, therefore, fall outside the Board's scope of authority to amend.

Regulatory reform proposal to eliminate mandate

In 2012, Governor McDonnell charged all regulatory boards to conduct a comprehensive review of current regulations, and to repeal or amend those determined to be obsolete, unnecessary, or overly burdensome.

In response to this gubernatorial directive, on December 14, 2012, the Board submitted a Notice of Intended Regulatory Action (NOIRA) to initiate such a review of its *Individual License and Certification Regulations* (18VAC50-30) and to amend those tradesmen regulations as may be necessary. This action was approved and published in the *Virginia Register of Regulations* on January 28, 2013.

At its April 2013 meeting, the Board for Contractors reviewed data compiled by staff as requested, considered public comment received during the NOIRA period, and heard a presentation by the executive director of the North Carolina State Board of Examiners of Plumbing, Heating and Fire Sprinkler Contractors, which eliminated its decade-long mandatory continuing education requirement at the end of 2012. In lieu of continuing education, North Carolina now imposes remedial education on a case-by-case basis against licensees found in violation. The Virginia Board has long favored remedial education as a probationary term for disciplinary cases, and frequently requires it as a condition in consent and final orders.

The Board then adopted proposed regulations to eliminate continuing education from requirements for renewal of a tradesman license. These proposed regulations were submitted for Executive Branch Review on April 25, 2013; approved by the governor on July 24, 2013; and published in the *Virginia Register* on August 26, 2013. A 60-day public comment period was established (August 26-October 25), which included public hearings in Chesapeake, Richmond, Roanoke, Fairfax, and Bristol. The Board also conducted an additional public hearing in Richmond exclusively to obtain comment on the HB 1645 study directive for this report.

As of this report date, submitted public comments on the proposed regulations are being compiled for review by the Board at its next scheduled meeting on December 17, 2013. The Board anticipates adoption of final regulations at that time, although with what amendments, if any, remains to be determined.

RESEARCH & EVALUATION

History of mandatory continuing education

The General Assembly granted the Board statutory authority to require continuing education as a prerequisite for license renewal upon placing the tradesmen program under its authority in 1994. In 2001, the Virginia Building and Code Officials Association (VBCOA) requested the Tradesman Committee of the Board for Contractors explore post-licensure methods of assessing proficiency in order to ensure continued competency as it pertains to the USBC. At its meeting on December 7, 2001, the committee recommended to the Board that it consider requiring that tradesmen successfully complete an examination as a prerequisite for license renewal. The Board discussed this recommendation and took no action.

From 2001-2004, the Board and its committee reviewed post-licensure qualifications and competency of tradesmen at length. Most public comment, however, related not to continuing education, but instead focused on developing a requirement for a licensed tradesman to be present on all job sites.

Under existing law, for instance, when a homeowner makes a service call to a plumbing or electrical contractor (business), nothing requires the individual dispatched to perform the repair be a licensed plumber or electrician (individual tradesman). In order to obtain and maintain licensure as a contractor, a business must have a qualified tradesman affiliated with the business—and the contractor firm is held responsible under the firm license for the work, regardless of the qualifications of the individual who performed it.

With no statutory requirement that trade-related work actually be performed by a tradesman, and the overlap of regulations applicable to contractors (businesses) and tradesmen (individuals), the Board sought a solution by attempting to promulgate regulations that would require a tradesman be on a job site at any time when trade-related work is performed. On two occasions the Board attempted to add such a “tradesman-on-the-jobsite” requirement to its regulations. Neither attempt received approval during the executive branch review stage of the regulatory process.

Additional discussion during the early 2000s involved increasing the number of pre-license vocational education hours required for licensure. When the requirements were originally crafted in 1994, the Board determined 240 hours of education sufficient, primarily because the vast majority of those individuals initially licensed applied through the examination exemption (grandfathering), or by exchanging a locally-issued tradesman card. During the first two years of the program, few tradesmen obtained a license via the vocational training route.

Apprentices in state and federally approved programs, as well as tradesmen in other jurisdictions, are required to complete more than 500 hours of vocational training. As a result, the Board attempted to increase the minimum requirement for vocational training hours, but was unsuccessful in obtaining executive branch approval for those proposed regulations.

In 2004, based on a recommendation of its Tradesmen Committee and in recognition of ongoing changes to trade-related sections of the USBC, the Board initiated the regulatory process to require continuing education as a prerequisite for renewal of tradesmen licenses. In reaching this decision, the Board considered data collected over a 20-month period, from January 2003 through August 2004, which showed that approximately 250 of the adjudicated cases (20%) involved situations in which licensees (contractors and tradesmen) failed to meet some requirement of the USBC. Of those 250 cases, more than half concerned licensees with a trade-related specialty, with specific charges involving failure to obtain a permit/inspection or not abating a USBC violation.

Literature review of continuing professional education

The nexus among continuing education, net value to licensees, and protection of the public is a frequently debated topic of professional regulation. At one end of the spectrum, proponents suggest formal continuing education is the only way to ensure an individual will keep up with changes within their profession and should be mandated by official licensing bodies. On the other end of the spectrum, opponents counter that continuing education is of limited or no public protection value and, at best, should be optional and under the purview of private non-governmental organizations.

Studies, primarily in the medical fields, are extensive but ultimately inconclusive. Representative examples of peer-reviewed studies analyzed for this report are summarized below.

- National Council of State Boards of Nursing study conducted in 2004 found that work experience, basic pre-license education, and experience with mentors and preceptors was more valuable than continuing education. Additionally, in those cases where continuing education was mandated, nurses attended more classes not related to their specific specialty, with many of those courses being provided by correspondence. (*Journal of Nursing Administration's Healthcare Law, Ethics, and Regulation*, 6(1), 22-31.)
- UNLV School of Health and Human Sciences study from 2005 found mandatory continuing education is positively correlated with the number of formal hours taken by practitioners. In states without a mandate, physical therapists completed, on average, 16% less time on continuing education—with nearly six percent not completing any voluntary continuing education. In addition, regardless of their state's requirements, therapists who reported membership in the national professional association completed seven more hours of continuing education annually than non-member therapists. (*Journal of the American Physical Therapy Association*, 85(9), 861-871.)
- Athletic trainer respondents in a 2010 Georgia College & State University study completed more informal continuing education, defined as self-directed learning such as journal clubs and networking opportunities. More than 75% of study participants perceived informal training as more useful in improving clinical skills and abilities than formal training. Less than 25% percent of study participants preferred formal continuing education training, which included board-approved workshops, seminars or conferences.

The Board is unaware of definitive data—for any occupational field in any area of professional credentialing—to conclude whether government mandated *continuing* education (as opposed to initial entry and remedial education standards) is effective in protecting the public from incompetent practitioners.

Comparative state assessment

Contractors and tradesmen regulation is not administered uniformly throughout the United States. Some jurisdictions do not regulate the industry at all, while others leave the responsibility to local governments. In many cases in other states, individual trades are represented by independent regulatory boards, and a few or even several trades may be regulated, but not all. In those states with multiple boards, licensees who practice in more than one trade are often required to pay multiple licensing fees and adhere to multiple sets of regulations.

Virginia is unique from a licensing standpoint in that one regulatory body regulates all entities—businesses (contractors) and individuals (tradesmen)—as well as the various construction-related activities. The Commonwealth’s streamlined approach minimizes the regulatory burden on its licensees.

A review of other states’ requirements indicates differential treatment in tradesmen regulation. Electricians are regulated by 70% of the states, and most of those jurisdictions impose a continuing education requirement ranging from three hours to more than 30 hours per licensing cycle. By comparison, only 35% of other states regulate plumbers and 27% regulate HVAC mechanics—and continuing education requirements range from two to 16 hours (but far fewer jurisdictions require any continuing education to renew).

In addition, when states do mandate continuing education for tradesmen, not all classes are required to be based on applicable building codes. Some programs allow credit for first aid, CPR, and OSHA requirements which, while not directly related to the USBC, are arguably important for protection of the licensee and/or the public.

Other states’ approved continuing education courses are more tangentially related to public protection, if at all. Kentucky, for instance, approves “Herding Cats for Profit” (four credit hours) and “Setting up an LLC & Onsite Billing” (three credit hours). “Introduction to the Role of a Foreman” is an approved continuing education course (four credit hours) in five states (Delaware, Florida, New Mexico, North Carolina, and Utah). Most jurisdictions that mandate continuing education do, however, require the majority of credit hours be based on the applicable code.

Colorado’s approach to ensuring competency for electricians upon renewal is unique and differs slightly from the traditional continuing education approach. Electricians are administered an “assessment” test as a condition of renewal—not a pass/fail examination, but a points-based evaluation. For example, if a licensed electrician completed the assessment and showed a weakness (points deficit) in the area of grounding circuits, the licensee would be assigned eight hours of continuing education in grounding circuits as a condition of renewal. (Colorado does not require an assessment or alternative continuing education component for other regulated trades.)

Board continuing education statistics

As a result of the Governor's Regulatory Reform Initiative, the Board collected and reviewed data regarding disciplinary cases, electronic correspondence, licensee populations, and other relevant statistical information.

Licensee Population

Since the Board for Contractors mandated continuing education as a prerequisite for renewal, the number of licensed tradesmen decreased significantly. The overall decline in licensed tradesmen is more than 18%, with plumbers and gas-fitters dropping more than 25%. By comparison, the population of the Board's non-trade-related licensees decreased 10% since 2007.

Certainly, a portion of that decline is attributable to the simultaneous economic downturn, which especially devastated the construction industry. According to a 2011 Economatrix Research Associates report, based on Bureau of Labor statistics data analyzed by Patrick Gaughan, Ph.D, the number of electricians nationwide decreased 16.72% from its peak in 2005. This national trend line approximates the decline in Virginia during the same timeframe.

License Renewals

Renewals of existing licenses peaked during the 2009-10 biennium, with more than 94,000 tradesman individuals and contractor businesses renewing. Since that time, the Board has experienced a steady decline in both types of license renewals, dropping to just over 91,000 during the 2011-12 biennium.

The current 2013-14 biennium is on pace to conclude with approximately 86,000 renewals—a decline of nearly 10% since the 2009-10 peak. This is especially significant given the number of new applicants has declined simultaneously, creating an overall deficit in the Board's current and future regulant populations (and, subsequently, sources of revenue).

USBC-Related Violations

As noted in the 2006 "Agency Background Document" submitted when the Board initially explored regulatory amendments to require continuing education, from January 2003 through August 2004, 248 cases had been adjudicated involving situations where some requirement of the building code was not followed properly (such as obtaining a permit or inspection, or failing to abate a violation). More than half of those 248 cases involved regulants with trade-related licenses, either contractors or tradesmen.

In accordance with this study directive, the Board reviewed the dataset more extensively, focusing solely on cases involving individual tradesmen licenses and excluding those limited to contractor businesses.

During the five-year period prior to implementation of mandatory continuing education (2003-2008), the Board adjudicated 46 cases against licensed tradesmen. Of those 46 cases, nine involved building code-related issues.

In the five years since implementation of mandatory continuing education (2008-2013), the Board adjudicated 39 cases against licensed tradesmen. Of those 39 cases, six involved situations directly related to building code topics covered by a continuing or remedial education course.

The net decrease of three adjudicated cases involving tradesmen—coinciding with the overall licensee population decline—offers no clear indicator of correlation between code-related violations and mandatory continuing education.

Operational Impact

During the first quarter of calendar year 2013, management monitored more than 600 incoming calls to the Board's call center. Of those calls, more than one-third (206) involved questions regarding tradesmen continuing education. Based on past averages (call times historically average three minutes and 40 seconds) and extrapolating this sample, licensing specialists are dedicating more than 2,000 call center hours annually to continuing education inquiries.

Management sampled another set of incoming calls during the three month period from August to October of 2013. Of those 5,145 calls monitored, 20% (1,035) involved questions or issues regarding continuing education for tradesmen. Combining both sample data sets, tradesmen continuing education generates 22% of all incoming calls to the Board—second only to application status inquiries in terms of categorical impact.

During the second sampling period, management also collected data on inquiries sent to the Board's general electronic mail accounts. Of the 1,392 e-mails sent to the contractors@dpor.virginia.gov and tradesmen@dpor.virginia.gov addresses during the three-month period, almost half (41%) pertained to tradesmen continuing education—primarily requests for information about specific courses.

Administrative Overhead

When the continuing education program was first implemented, the Board initially re-assigned an existing licensing specialist to perform associated tasks. However, once it became apparent that administration of the tradesmen continuing education responsibilities would require an estimated

1,500 hours per year, the Board added one full-time position dedicated to these duties. This education specialist position is responsible for processing education courses and roster uploads; review of provider applications; and preparation of education material for consideration by the Board's Tradesman Committee.

Altogether the Board estimates a total 5,000 hours of staff resources are spent annually toward operation of the continuing education program, when factoring in the full-time education specialist, call center workload, and supervisory responsibilities for course audits and related administrative oversight. In addition, each year, periodic personnel shortages or seasonal telephone traffic spikes occasionally necessitate an estimated 200 hours of augmented call center staffing by temporarily reallocated Board staff.

Public Comment Summary

As noted in the preface to this report, the legislative directive in HB 1645 coincided with the Board's already initiated regulatory proposal to amend the *Individual License and Certification Regulations* to eliminate the continuing education requirement for tradesmen. The public comment received in response to the Board's proposed regulatory action—at regional public hearings and in writing via regular and electronic mail, as well as through the Virginia Regulatory Town Hall—is reviewed here in brief as it relates to the study parameters. (The Board will provide a more comprehensive summary and response to all public comment as part of the formal regulatory review process and in accordance with the Administrative Process Act.)

For summary purposes, public comment received is grouped into three recipient categories: (1) education providers or individuals affiliated directly with such providers; (2) trade organizations, government agencies or individuals affiliated with such organizations/agencies; and (3) licensees or individuals unaffiliated with an education provider, trade organization, or government agency.

To date, nearly half of public comment received is from the second category: trade organizations such as the Virginia Building and Code Officials Association, the Virginia Plumbing and Mechanical Inspectors Association, and the International Brotherhood of Electrical Workers; and local government agency officials representing jurisdictions such as Pulaski County, the City of Fairfax, Fairfax County, Roanoke County, and the Town of Christiansburg. The remainder of the public comment received is split evenly between education providers (first category) and unaffiliated licensees (third category).

Comments from existing education providers and trade organizations advocate for maintaining mandatory continuing education as a requirement for renewal of tradesmen licenses. Attendance at the regional public hearings was overwhelmingly represented by self-identified education providers, trade organizations, and local government agency officials. Participants at the public hearings expressed unanimous opposition to the Board's proposal, with some speakers attending more than one hearing to support preservation of the continuing education renewal requirement.

Comments from unaffiliated licensees and individuals are almost evenly split over the continuing education requirement, with slightly more than half supporting the Board’s proposal to eliminate the mandate.

Advocates for tradesmen continuing education are undoubtedly committed to their work and have provided impassioned testimony outlining their rationale for the current mandate. During the information gathering phase for this report, Board staff sought data from advocates and independent sources in support of their position on mandatory continuing education. Although no statistical evidence was provided, the Board does not discount or overlook the testimonials and other anecdotal insights informed by experience. To the contrary, several aspects of those viewpoints are incorporated into this report’s final recommendations.

POTENTIAL ALTERNATIVES

During the course of receiving public comment for its proposed regulations to eliminate the existing tradesmen continuing education requirement, many contributors presented alternative recommendations. The most frequently expressed recommendations are considered and addressed in this section.

1) Keep the current continuing education requirement and change the tradesmen license renewal cycle from two to three years, in order to coincide with the changes in the USBC, as adopted in Virginia.

HB 1645 (2013), as introduced, initially proposed to extend the tradesmen license term from two to three years in order to “sync” building code updates with license renewal timeframes.

The Board’s two-year license term is aligned with the Commonwealth’s biennial budget cycle, which facilitates compliance with the biennial review of fees and expenses mandated by the Callahan Act (§ 54.1-113). The anomaly of a license cycle exceeding two years would complicate the Board’s process for adjusting fees, require attendant expenditures to change the agency’s licensing system, and likely increase fees in order to ensure total revenue for the forecasted three biennia remains unchanged.

Even if the Board managed to absorb costs associated with a change to a three-year term, tradesmen license fees still would need to be adjusted simply to account for the proposed cycle change. Tradesmen currently pay \$90 for a two-year license (\$45/year)—so an individual would be required to pay \$135 upfront (\$45 multiplied by three) for a three-year license. And while this scenario is technically not a fee increase, the Board is sensitive that for many it will feel like one. License fees are due in one lump sum, no

matter the license term, and tradesmen who are already stretched financially may find it difficult to summon sufficient resources for an increased renewal payment.

Extending the license term also may generate unintended consequences for both education providers and individual tradesmen. Currently, education providers are assured a steady stream of students, with a continuous supply of tradesmen enrolling in at least one course every two years. With continuing education only required every three years, the pace and volume of enrollment naturally lessens. If the number of overall active course providers were to decline in response to episodic enrollment, licensees could be adversely affected by a limited availability of classes left to serve more than 30,000 students (particularly individuals in less populous or otherwise underserved areas).

In addition, while the USBC may *generally* be revised every three years, any updates are not mandated on a particular schedule and do not necessarily take place exactly every 36 months. As a result, even under a three-year license term an individual might face a six-year gap in obtaining “new” code training between renewals.

For example, approximately 1,300 tradesmen renew their licenses each month, on average. A (not unprecedented) four-month delay in implementation of the USBC would result in 5,200 licensees whose continued competency is based on the “old” code—and who probably ended up taking a redundant class on their trade topic twice within the same cycle—the same issues faced under the current two-year license term.

And no matter the length of license term, license expiration dates are staggered and occur on a rolling schedule throughout the calendar year, so some tradesmen *always* will end up renewing the month just before and just after a code update.

As an alternative, the goal of promoting current USBC code competency could be addressed—without altering the length of license term—by requiring tradesmen to complete a continuing education course within six months of adoption of a code update, or face automatic license suspension.

Administration of this option would be extremely expensive, however, primarily due to licensing system alterations, compliance tracking, and postage costs.¹ Such expenses would be passed on directly to the Board’s licensees, as required by the Callahan Act.

¹ The Board is experienced in operating this type of program. The Contractor Transaction Recovery Fund Act requires the Board levy a special assessment against licensed contractors under certain fiscal conditions, with failure to pay within a prescribed timeframe resulting in automatic license suspension. The last time circumstances dictated such a special assessment, postage expenditures alone amounted to nearly \$80,000, and the Board required additional staff for processing duties. These costs were passed on directly to licensees.

2) Require a licensed individual be present on the job site whenever trade-related work is being performed. Such a regulation would ensure a competent licensee oversees all work.

Although public comment in favor of retaining the existing continuing education mandate relies heavily on assumptions about public protection—raising the life and safety risks involved with trade work to argue the need for up-to-date USBC knowledge—in fact, no state law or regulation requires a contractor to send a licensed tradesman to a jobsite.

The effectiveness of the Board’s existing mandatory continuing education program in protecting the public is uncertain, because Virginia lacks any requirement for a licensed tradesman to be on a job site to perform, oversee or inspect trade-related work.

Board estimates indicate perhaps half of all legally executed trade-related work (at most) is actually performed either by a licensed tradesman or under the supervision of a licensed tradesman, with the remainder completed by non-tradesmen working for a properly licensed contractor firm.

3) Address public protection goals by requiring licensed tradesmen to demonstrate continued competency at renewal through performance on examination or assessment.

Continuing education proponents assert that trade-related work, if not performed according to the provisions of the USBC, poses life threatening risks to consumers. A course completion certificate alone, however, does not necessarily indicate a student’s mastery of the content or ability to apply new knowledge. End-of-course examinations may suggest a measure of student comprehension, but are ambiguous as a valid metric because education providers rely on pass rates to attract students.

Alternatively, a Board-approved examination administered as a prerequisite of renewal could measure licensee knowledge of USBC updates and, for example, exempt from the mandatory continuing education requirement those individuals who successfully demonstrate competency by achieving a certain pass rate.

As noted previously, licensees seeking renewal in Colorado must complete a Board-approved “assessment” and are assigned continuing education only on topics in which they fail to achieve minimum competency scores. If the individual fails to complete any assigned education, the license is invalidated.

Either of the above continued competency alternatives is likely to increase licensee proficiency and improve public protection, but also would need to be measured against an additional fiscal and operational impact.

4) Establish a committee of the Board for Contractors to review the current continuing education program and offer recommendations for improvement.

As a substitute for the Board’s proposal to eliminate mandatory continuing education, some commenters suggest the Board establish a special committee to study the topic further. While such a proposal is logistically feasible, any benefits would be negligible and outweighed by the costs.

The Board already is comprised of industry representatives, including representative stakeholder and trade organizations, with which several Board members are affiliated. In addition, as evidenced by this study, the Board exercised ample due diligence in its information gathering and data collection efforts to reach reasonable determination that continuing education—while valuable in terms of personal growth and professional development—should not be mandated by a government regulatory agency without overwhelming evidence of public benefit.

The Board cannot endorse the allocation of resources, financed by license fees, to a redundant exercise when the concurrent regulatory process affords multiple opportunities for public comment and review.

CONCLUSION

The Board for Contractors first wishes to clear up any misconception regarding its position on the significance and worth of education. Unfortunately, various commenters seem to assume the Board’s objection to the continuing education *mandate* is somehow also a denunciation of the very value of learning.

In adopting the proposed regulations to eliminate the continuing education prerequisites for tradesmen license renewal, the Board did not intend to suggest it downgrades the importance of education as a business tool and for professional development.

To the contrary, the Board is keenly aware of the necessity for individuals and businesses to remain knowledgeable about the most current versions of the USBC, as well as other industry trends beyond the building code. Any contractor or tradesman—in reality, every worker in any

field in a free market—who fails to keep up with information updates, new products, or changing technology will (and should) certainly fall behind.

Ultimately, the Board’s evaluation of continuing education for tradesmen reveals a fundamental difference of opinion over what constitutes an “unnecessary burden” to licensees, as well as unresolved questions about the adequacy of existing continuing competency requirements to protect the public’s health, safety and welfare.

Advocates for *compulsory* continuing education assert that licensees will not keep up with industry changes (specifically USBC updates) on their own initiative, without a mandatory renewal requirement—and, therefore, will pose a clear danger to the public as a result of insufficient knowledge.

The Board, however, is charged by statute and executive order with protecting the public while regulating contractors and tradesmen in the least intrusive, least burdensome and most efficient manner. In carrying out this mission, the Board is reluctant to impose (or prolong) a mandate on its licensees—especially one involving additional cost obligation—without evidence of measurable, beneficial results to the public.

In the case of tradesmen continuing education, the Board’s data-driven review does not indicate the nominal disciplinary case decrease—which cannot be assumed to correlate to the renewal mandate—justifies the comparatively significant financial burden on individual tradesmen.

Finally, although the role of a government regulatory agency to ensure *minimum* competency, the absence of a state mandate does not preclude licensees interested in professional development from pursuing continuing education opportunities offered by, for instance, trade organizations.

Findings

- 1) Current statutes and regulations do not require a licensed tradesman be present at the jobsite while trade-related work is being performed. Although all contractor companies are required to designate at least one master tradesman on staff in order to obtain or maintain a state license—and while some companies employ many tradesmen on staff—no law or regulation requires them to dispatch tradesmen to do the work.

When a consumer calls a contractor business to do trade-related work, that contractor is under no obligation to send a journeyman or master tradesman for the job, or to supervise or inspect the work. Implying that continuing education is necessary to ensure the safety of citizens (consumers) certainly argues for continuing the mandate, but only if the individuals performing the work are the same tradesmen completing the education—which is not, in fact, the case.

- 2) The Board for Contractors has adjudicated thousands of cases over the past decade—the vast majority involving contractor businesses, with a much smaller amount against individual tradesmen. In the past five years since program implementation of mandatory continuing education, the net decrease of disciplinary cases involving tradesmen is three, with no clear indicator of correlation between the decrease in code-related violations and mandatory continuing education. In addition, the decrease coincided with an overall licensee population decline.

Even if one assumes a causal link between continuing education course completion and decreased tradesmen violations (although the data does not imply any such relationship), the resource costs required to administer the continuing education program—which are borne directly by all licensees—do not offset whatever nominal benefit may accrue from the potential decrease in disciplinary cases.

- 3) While numerous studies have been conducted regarding the efficacy of continuing education generally across professions, no clear conclusion can be drawn with regard to its value. The Board was unable to find a study that documented a decrease in disciplinary action or, in the case of studies involving health professions, an increase in patient care skills or competency as a result of untargeted continuing education.

Targeted education efforts are arguably more effective and equitable, and do not require 30,000 individuals bear the burden for the actions of less than one-half of one percent of the licensed tradesmen population. For instance, the Board already imposes remedial education as a probationary term for disciplinary cases, making case-by-case determinations best suited to specific regulatory violations by incompetent licensees.

- 4) Although the root cause for the decreased population of licensed tradesmen is debatable—whether because of the economic downturn generally or more specifically due to increased licensure expenses—there is no denying the Board licenses significantly fewer tradesmen today than before the implementation of the continuing education program.

The continuing education mandate adds an estimated \$400 financial obligation, on average, to the cost of tradesmen license renewal (when accounting for individuals licensed in more than one trade specialty), plus time and travel expenses.

Continuing education compliance-related costs—even if considered minimal or comparatively reasonable—constitute an added expense that may adversely affect some individuals' ability to sustain licensure or livelihood.

APPENDIX

VIRGINIA ACTS OF ASSEMBLY -- 2013 RECONVENED SESSION

CHAPTER 738

An Act to direct the Board for Contractors to evaluate continuing education requirements for tradesman; report.

[H 1645]

Approved April 3, 2013

Be it enacted by the General Assembly of Virginia:

1. § 1. *That the Board for Contractors shall evaluate continuing education requirements for tradesman, including curriculum standards, corresponding updates to the Uniform Statewide Building Code (§ 36-97et seq.), effectiveness in protecting the public, and cost to regulants, and initiate regulatory action to reduce any unnecessary burdens.*

§ 2. *That on or before November 1, 2013, the Board shall report its findings to the Chairmen of the House Committee on General Laws and the Senate Committee on General Laws and Technology.*

Representative public comment from former Board members

As noted previously, the regulatory review process associated with the Board's proposed action to eliminate mandatory tradesmen continuing education will not be complete prior to the November 1, 2013, deadline placed on this report by HB 1645.

The 60-day public comment period closed on October 25, 2013, with comments submitted via regular and electronic mail directly to the Board office; posted to the Virginia Regulatory Town Hall online forum²; and offered in person at the regional public hearings. All written submissions and oral testimony transcribed from the public hearings are being compiled for review by the Board at its December 17, 2013, meeting.

While emphasizing that all comments deserve and will receive equal consideration as part of regulatory review, for purposes of this study the Board calls attention to two submissions in particular (copied below in their entirety). These specific comments are highlighted because they offer an especially balanced, well reasoned representation of the primary arguments for and against mandatory continuing education for tradesmen licensure.

Of significance, the opinions expressed are those of two former Board members who served when the mandatory continuing education program was initially adopted and implemented. In their own words—and of their own volition—these ex-members (each of whom served the maximum two consecutive four-year terms) express concisely the “pros and cons” substantiated in this report's potential alternatives, conclusion and findings.

Both licensed tradesmen whose qualifications and integrity are accepted throughout their profession, Mr. Kirby owns and operates a licensed contracting business as well as a Board-approved education provider, while Mr. Redifer is a longtime building official well versed in code compliance and attendant life/safety issues.

As with any issue that generates controversy and evokes strong opinions, this topic has led some to express concerns about process maneuvering or raise questions about motivations. In the spirit of openness and as an expression of good faith, the Board highlights these unabridged, written public comments to demonstrate its sincere effort to address divergent perspectives, respond to issues and alternatives presented, and respect stakeholder groups and other constituencies in its evaluation of mandatory tradesmen continuing education.

² The Virginia Regulatory Town Hall public comment forum, which contains 33 posts, is available for viewing online at <http://www.townhall.virginia.gov/L/ViewStage.cfm?stageid=6569>.

Board for Contractors Individual License and Certification Regulations 18 VAC 50-30

I am writing to you in reference to the Subject Regulatory Matter. As a Licensed Tradesman and Contractor, Tradesman Education Service Provider, and former Member and Chair of the Commonwealth of Virginia Board for Contractors, I support the proposed regulation changes and elimination of the requirement for Continuing Education. My reasons are as outlined below:

1. The regulation requiring Continuing Education was originally presented to the Board when I was a member. It was the position of the State Administration at that time that this requirement was needed because Tradesmen were not keeping current with code changes. I did not support the regulation and only voted in favor of it when it was clear that Continuing Education would ONLY focus on Code Changes. Since the inception of Continuing Education the Virginia Uniform Statewide Building Code has undergone two (2) changes. The associated changes to the Plumbing, Mechanical, and Fuel Gas Codes have all been relatively minor, yet the cost to each tradesman (or company as the case may be) for the biennial training remains, whether there are no Code Changes or many Code Changes.
2. Virginia moved from the BOCA Codes to the ICC Codes in the mid to late 1990's as the ICC absorbed BOCA and other regional codes into a single, more national approach to code administration. At the inception of the ICC Codes, there were many changes, however I believe that all of the codes are relatively mature at this point, and moving forward, code changes will truly be very minor and mostly administrative in nature as new products are developed and brought to market. We cannot change the laws of physics, and the bulk of the actual content of the present codes rely on fundamental application of these laws. Nevertheless, Tradesmen still have to sit through 3 hours of training for Plumbing, 3 hours of training for Mechanical, and/or 1 hour of training for Fuel Gas every two (2) years. As a training provider, with mature codes such as we now have, I can truly say that it is very difficult to fill the required amount of training time with code changes, yet I am bound to this requirement by the current regulations.
3. Based on my experience as a Board Member, I am confident that the Board for Contractors has maintained records of any increase or decrease in complaints for Tradesmen – especially complaints for Code Related infractions – since the inception of Continuing Education. My recollection based on the years that I sat on the Board subsequent to the institution of Continuing Education were that the vast majority of complaints before the Board dealt with financial, criminal, or ethical issues and complaints about Tradesmen relating to their performance relative to Code Issues were extremely rare. Therefore I would question the actual value that Continuing Education brings to the Citizens of the Commonwealth.
4. I further recollect that one of the main goals of the Board was to seek out agreements for Reciprocity with other States and jurisdictions. I know that the State of North Carolina (which coincidentally instituted Continuing Education for Plumbing and Mechanical before Virginia) abandoned the requirement for Continuing Education. At present, I do not believe an agreement for Reciprocity exists between Virginia and North Carolina. Should Virginia eliminate the necessity for biennial Continuing Education, I believe the Codes and Regulations of Virginia and North Carolina will be very similar such that an overture toward Reciprocity would be more amenable.

In closing, I feel compelled to quote from perhaps one of the most gifted individuals to hail from our beloved Commonwealth, Thomas Jefferson: "That government is best which governs least, because its people discipline themselves. If we are directed from Washington (heads of an organization) when to sow and when to reap, we will soon want for bread."

I for one say it is time to stop our dependence on our government to tell us how to run our lives, our trades, and our businesses.

Trusting that my comments will be met favorably by the Board for Contractors, I wish all of you well, and remain,

Sincerely,

Robert M. Kirby, P.E.

<http://www.townhall.virginia.gov/L/viewcomments.cfm?commentid=29126>

Commenter: Michael D. Redifer, Building Official *

10/2/13 12:12 pm

Proposed Elimination of Continuing Education for Tradesman

As the Board considers the elimination of continuing education for tradesmen, it is important to look at the history which led us to this point. I was a member of the Board for Contractors during the time that the regulation was revised to include this mandatory requirement. There were several reasons which prompted the Board to exercise its ability to require formal training prior to license renewal. One of those reasons was that information from local building departments throughout the Commonwealth supported the conclusion that, generally, tradesmen rarely were aware of changes to the various adopted codes. The method of educating those who followed this model most likely took the form of jobsite sessions caused by less than satisfactory inspection results.

There are those who blame this requirement for lower numbers in the licensed tradesman population. The diminishing number of those holding individual tradesman licenses cannot be attributed exclusively if at all to the implementation of continuing education requirements. There are many factors which can be more readily verified as affecting these numbers. Lack of interest in these trades was a topic of discussion for years prior to this requirement and continues to be. Information from the Department of Labor and Industry's Apprenticeship Council supports this. Additionally, a fluctuating economy can also be cited as a major contributing factor.

It is no surprise that the number of disciplinary cases coming before the Board has not significantly decreased since 2008. As I recall during my service, disciplinary cases were predominately initiated as a result of contract disputes or abandonment of the job. Although code violations were occasionally discovered during the course of staff investigation, rarely were they the cause of the complaint.

As required by the directive contained in the Governor's substitute House Bill 1645, the Board must conduct a detailed analysis of the tradesman continuing education program. Recommended changes to the regulation should be based on the results of that analysis and not solely a desire to cut costs. Consideration must be given to the curriculum requirements as well as how they relate to revisions to the Virginia Uniform Statewide Building Code. Contained within the directive is the requirement to also evaluate the cost to regulants and how the program contributes to public safety. Knowledge of code requirements decreases the potential for tragedy and we cannot count the tragedies that do not occur.

Although the Board is enabled by statute, continuing education for those performing this critical work is not mandated nor is the form or content prescribed. There are many options available at little or no cost which can be brought to the table for consideration by the Board. I ask that the Board enlist the assistance of the Department of Housing and Community Development as well as the various organizations of code administrators and inspectors to revise the tradesman continuing education requirements in order to reduce any unnecessary burdens. Please consider options to make it better but not eliminate it.

Respectfully Submitted

Michael D. Redifer

<http://www.townhall.virginia.gov/L/viewcomments.cfm?commentid=29132>