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THE PURPOSES AND EVALUATION METHODS FOR STATE
RESIDENTIAL GENERAL CONTRACTOR LICENSING

By

James Ellis Fenn

A thesis submitted to the faculty of

Brigham Young University

in partial fulfillment of the requirements for the degree of

Master of Science

School of Technology

Brigham Young University

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BRIGHAM YOUNG UNIVERSITY

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FINAL READING APPROVAL

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ABSTRACT

THE PURPOSES AND EVALUATION METHODS FOR STATE RESIDENTIAL GENERAL CONTRACTOR LICENSING

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The main topic in the licensing debate is whether licensing affects construction quality. Available literature and previous studies indicate that it does not. The real question is not whether licensing improves quality, but whether the improving quality is the actual purpose of licensing. There is little information available on the purpose of licensing as defined by state licensing departments as well as a general lack of information on how states evaluate whether licensing is fulfilling the intended purpose.

In order to effectively resolve some of the issues surrounding the construction licensing debate, the true purpose of licensing and the methods used to evaluate licensing must be defined by state licensing departments, not the industry. The sharing of such information could lead to better construction regulations, improved evaluation techniques, further research, and ultimately, a resolution of the licensing debate.

State licensing departments indicated the purpose of licensing as well as methods of evaluating licensing currently used by state licensing departments. Contrary to popular thought, the true purpose of residential general contractor licensing (as defined by state licensing departments) is not to improve construction quality but to protect the consumer's health and life. The license debate will continue as long as there exists a discrepancy between what the industry thinks is the purpose of licensing (improve quality) and what the purpose truly is (protect the consumer). If the main purpose of licensing is, as the states expressed, to protect the consumer, then policy must reflect that idea. Protecting the consumer can be accomplished through mandatory building code inspections without a barrier to entry such as licensing. The information gained from the study provides a foundation for further research on licensing issues that will benefit the construction industry, the economy, and society alike.

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Chapter 1

Introduction

Since the 14th century, occupational regulation has been the topic of writings and debates. The discussion argues the advantages and disadvantages of occupational restrictions. Although there are many forms of regulation now, the most common, and really the only form of regulation in the 14th century were apprenticeships. (Wheelan, 1998) The purpose of such apprenticeships was to facilitate learning through interaction with an experienced professional. The supervision of the professional helped ensure a quality product by the apprentice, thus ensuring the quality of industry.

Apprenticeships are still common in the plumbing and electrical industries to help teach a trade or profession; a hands-on education, if you will. There are many other forms of regulation which are debated just as frequently. These include, but are not limited to certifications (Certified Public Accountant), exams (state law boards), educational requirements (teaching degree), and licensing (dental license). While all forms of occupational regulation are worthy of such studies, this study will focus on state occupational licensing, specifically licensing of residential general contractors.

Many occupations have been and are required to be licensed in the United States from barbers and hair stylists to pharmacists and those in the medical profession. One does not need to discuss in great detail the importance of licensing and regulating doctors or dentists. The lives and health of the customer are the sole responsibility and purpose

of the professional. It is much more difficult to establish the importance of licensing other professions when the protection hoped for is aimed at the consumer's dollar and not their health.

The importance of some licensing is in question because it is difficult for licensing agencies to show that licensing is fulfilling the intended purpose because 1) state agencies have trouble defining the intended purpose of licensing, and 2) agencies do not have methods for evaluating licensing. For example, if the purpose of licensing barbers is to improve the quality of hair cuts, how does the licensing body evaluate whether licensed barbers cut hair better than unlicensed barbers? The same question is being asked by state governments and national building agencies of residential general contractor licensing; what is its purpose, and how do we evaluate it?

While only about half the states require licensing for general contractors, the direct protection it gives the consumer is difficult to calculate. The purpose of licensing medical professionals is to save and protect life through medical attention whereas licensing of construction is "to protect the state's citizenry from untrustworthy and incompetent contractors." (Brunner & O'Connor, p 407). That being an accepted purpose, there is little literature or evidence on what states are doing to evaluate how well licensing is fulfilling that purpose. Because of the different standards, styles, and scopes of construction, states have a difficult time regulating construction professionals. Even states with licensing requirements and evaluation processes in place find they lack the manpower to effectively regulate the contractors and protect the consumer as they should. (Utah Construction Commission, personal interview, October 2004.) This gives the consumer a false sense of security that the state can and does regulate the industry. So

the debate will continue until the questions are answered; what is the purpose of residential contractor licensing, and how do states evaluate how well licensing is fulfilling that purpose?

Background of the Problem

An important issue in the licensing debate in the construction industry is whether licensing directly affects construction quality. There are many that think licensed contractors deliver a better product and just as many that believe the opposite. The reason for such debate is that there is little empirical evidence and far too many theories and ideas to prove either side true. It becomes difficult to resolve the issue when there is confusion over what licensing is supposed to accomplish.

One of the purposes of licensing, as defined by the U.S. Judicial system in 1988, is to “seek to deter unlicensed persons from engaging in the contracting business, and thereby increase the odds that the public will be protected from dishonesty and incompetence in the administration of [the construction] business.” (Bruner & O’Connor, pg 407). The theory of licensing is that the people will indeed be protected by “qualifying” the contractors through the licensing requirements. Only 24 states have licensing requirements for residential general contractors. Most require (at a minimum) the following: a written examination on business and trade practices, industry experience, and proof of liability insurance.

Advocates of occupational regulation argue that licensing promotes better quality by allowing only those professionals who have met minimum standards (licensing

requirements) to work in the industry. The requirements for licensure create a benchmark or “standard by which professional competence may be judged.” (Carroll, 1981, pg 959).

Opponents argue that licensing laws hinder competition and create inflated prices for construction services forcing consumers to look for second rate alternatives causing the collective quality of services to decline. (Carrol, 1981), (Freidman, 1954). So it seems through the limited evidence available, that licensing does not improve quality but actually lowers it. There is still a great need for more research in this area in order to successfully identify the impacts and results of occupational regulation.

Many contractor licensing departments are now having to justify their existence and show how licensing is improving the industry. Because of the high volume of contractors in each state, it is at best difficult, and often impossible for state licensing departments to enforce the licensing regulations and check the qualifications of every contractor, let alone show that licensing is improving the industry. For example, once a license is issued, contractors sometimes cancel insurance policies and the state has little recourse in discovering who carries insurance policies until problems arise and it is too late. Also, larger residential construction companies are usually only required to have one license for the whole company even when hundreds of superintendents may perform the same duties as a general contractor.

The problem of identifying licensing’s impact on the construction industry lies not only with clearly defining the intended purpose, but also establishing methods of evaluating the impact of licensing on the construction industry. A popular method of evaluating licensing’s effectiveness is through building code inspections. These code inspections are not an effective way of evaluating contractor licensing or construction

quality because building codes regulate the structural integrity and safety of a building, and not the quality of craftsmanship or service rendered. Furthermore, each municipality may change its code requirements and thus there is no statewide standard for evaluating and measuring the effectiveness of licensing through code inspections. The need is evident for a resolution of the licensing debate and whether licensing is serving its purpose.

Statement of the Problem

The main problem being addressed in this study is the lack of information available on the purposes of state residential general contractor licensing and the methods used to evaluate how licensing is fulfilling the purpose. Without the information, it is difficult to impossible to discover the impact licensing has on the construction industry.

Question: What are the intended purposes of residential construction licensing as identified by the states and what are the different methods being used to evaluate whether that purpose is being fulfilled through licensing.

Hypothesis: Most states will have a defined purpose for residential general contractor licensing. There are methods and techniques being used to evaluate whether residential contractor licensing is fulfilling the intended purpose.

Rationale: Discovering if states have methods of measuring the effectiveness of licensing will give states more knowledge to establish better controls for licensing, better

regulation of the industry, and better licensing requirements in those and all states. Information compiled from state licensing departments will aid in establishing better ways to regulate quality of service available from the construction industry.

The most effective way to evaluate the effectiveness of licensing is to evaluate the outcomes or effects. This study will survey states that license residential general contractors to discover 1) what is that expected outcome (intended purpose) and 2) what methods are being used to evaluate how licensing is fulfilling the intended purpose. The information is valuable to consumers, contractors, building agencies and government departments.

Research Objectives

There are two objectives of this study:

1. Identify the purposes of state contractor licensing as defined by the states.
2. Identify which states have methods of evaluating the effectiveness of licensing and what those methods are.

Purpose of the Research

The purpose of the research is to identify the ways states define the purpose of licensing, and identify different methods used by licensing states of evaluating the effectiveness of their contractor licensing. The data will be gathered through a qualitative survey instrument taken by state licensing agencies and then compiled and analyzed. The purpose is not to discover if licensing is effective, but merely to discover if states have a way of evaluating or detecting if their licensing is effective in fulfilling its intended

purpose. This information is needed as a foundation for further research on licensing's impact on the construction industry.

Assumptions

This study assumes the following:

1. The information gathered by the state licensing departments is accurate and representative of residential general contractor licensing, the construction industry, and the licensing policies in that state.
2. All licensing states will have a certain unknown percentage of non-licensed, "illegal" contractors. That number, no matter the quantity, will not affect whether or not the states have methods in place to evaluate the effectiveness of their residential general contractor licensing, and therefore will not affect the study.
3. The information collected through the survey instrument will accurately indicate what methods are in place in that state and the state's opinion on whether the methods are effective.
4. The responses from the state licensing department will only reflect one side of the licensing debate. The state licensing departments have a vested interest in their responses and rating and will therefore tend to give positive ratings.

Delimitations

For the purpose and scope of this study, the following conditions are recognized and noted:

1. This paper will not discuss or research the reasons why licensing affects or does not affect construction quality or the construction industry as it is beyond the scope and time limitations.
2. The study is limited to discovering the purpose of residential contractor licensing and methods used to evaluate how well licensing is fulfilling the intended purpose only, not whether licensing itself is effective.
3. The paper is only examining the methods currently used by states in discovering the effectiveness of their licensing, the information regarding each state being given by the licensing department of that state.
4. The study is limited to the states that license residential general contractors in the United States.
5. The study will not discuss or touch on trade contractor licensing. i.e. HVAC or Electrical contractors.

Definition of Terms

Construction quality- Measure of the product received from the contractor to the expected product hoped for by the consumer defined by the state in their purpose for contractor licensing.

Licensing- Form of occupational regulation that limits professionals in an industry to those that have met certain minimum requirements and/or qualifications.

Contractor licensing- Form of occupational regulation that limits professionals acting as general contractors to those who have met requirements that include but are not limited to experience, proof of insurance, and passing of exams.

General Contractor- the person or entity holding the prime contract in a construction project.

Residential General Contractor- General Contractor that limits work to residential-type projects only and holds a residential-type general contractor license.

Occupational Regulation- restrictions and/or policies regarding practice of a profession. Usually the responsibility of state governments, but also performed by private parties as well.

Chapter 2

Review of Literature

This section discusses the literature related to the license debate in order to identify similar studies, related topics, and some of the issues surrounding the construction license debate. The chapter commences with a review of the types, theories, purposes, and results of occupational regulation, followed by a detailed discussion of occupational regulation in the construction industry. The concluding portion of this chapter includes literature and remarks on evaluation methods of licensing.

Occupational Regulation

Although many have come to regard it as somewhat of a new topic, occupational regulation has existed in some form or another for hundreds of years. We have documented evidence of occupational regulation as far back as the fourteenth century. For example, a four-year apprenticeship was required to become a draper and an eight-year apprenticeship was required to become a carpet-maker in the European town of Flanders. This regulation created a sort of mandatory education so that the talent and trade secrets would be passed on. (Wheelan, 1998).

Since the first occupational regulations were put in place, those involved have debated its necessity as well as its effects. A well-noted economist and author, Adam Smith, said this:

The patrimony of a poor man lies in the strength and dexterity of his hands; and to hinder him from employing this strength and dexterity in what manner he thinks proper without injury to his neighbor is a plain violation of this most sacred property. It is a manifest encroachment upon the just liberty both of the workman, and of those who might be disposed to employ him. As it hinders the one from working at what he thinks proper, so it hinders the others from employing whom they think proper. To judge whether he is fit to be employed, may surely be trusted to the discretion of the employers whose interest it so much concerns. The affected anxiety of the law-giver lest they should employ an improper person, is evidently as impertinent as it is oppressive. The institution of long apprenticeships can give no security that insufficient workmanship shall not frequently be exposed to public sale. (Smith, 1991)

While Adam Smith felt occupational regulation adversely affected the consumer as well as the professional, his point is clear; occupational regulation can and does affect society. The question is whether the effects of occupational regulation are intentional.

Purposes of Occupational Regulation

The purpose of regulating professions should accomplish three tasks, 1. It should ameliorate the asymmetry of information between producer and consumer, 2. It should correct for externalities that may arise when a low-quality service provider poses harm to the public, and 3. It should be a paternalistic mechanism for preventing individuals from

hiring low-quality service providers when society feels it would not be in the individual's best interest. (Wheelan, 1998) Regulation tries to establish rules and policies that protect the public (both consumer and professional) and increase the quality of services rendered by that profession. (Carroll, 1981) "The rationale for [occupational] regulation is that it raises the quality level of services by: 1. providing a standard by which professional competence may be judged so to avoid negative effects which may result from incompetent practitioners, 2. providing a higher standard of quality." (Carroll, 1981, p 959)

Whether the body establishing policy is a state government agency or a local union, they are responsible for defining the intended purpose of regulation and establishing fair and impartial administration of the policies. "The attitudes and dispositions of those who administer policies comprise an important determinant of an agency's influence in the policy-making process. Therefore, policymakers in state and professional licensing and regulation boards are asked to describe 1. responsibilities, 2. constraints on operations, 3. board member roles and 4. their perspective of the organization's overall mission. (Schneider, 1986)

The goal of providing a better service or product to the public is foremost on the minds of policy makers and advocates of occupational regulation, but measuring, showing and proving the effects is difficult. The difficulty lies with the intangible results of licensing and the many variables that can affect the outcome and measurement process.

Effects of Occupational Regulation

Occupational regulation directly affects roughly 18 percent of the U.S. workers. That number is more than the number affected by minimum wage (10%) and unionization (15%). (Kleiner, 1990; Wheelen, 1998) When looking at the results of regulation, there are problems and benefits, but both the problems and the benefits can be classified into two main categories: effects on the economy, and effects on quality.

Effects on the Economy. The National Bureau of Economic Research (NBER) has performed countless studies on the effects of occupational regulation on the economy. Milton Friedman and Simon Kuznets provided mountains of empirical evidence on occupational regulation in their study. They found that occupational regulation causes a shortage of professionals in the industry compared to similar areas that did not regulate the same profession. The shortage caused the prices of services to be significantly higher than in state that did not regulate the same profession. The rationale behind their finding is the economic principle of supply and demand; limiting the supply will increase demand, driving prices higher until economic equilibrium is achieved. A study by Friedman and Kuznets researched many different professions and the conclusion was always the same; occupational regulation causes higher prices and not necessarily better service. (Friedman, 1954) The following is an excerpt from an economic study on occupational regulation.

A new National Bureau of Economic Research study by Morris Kleiner and Robert Kudrie doesn't resolve the issue [of licensing], but it does suggest that licensing laws don't always deliver their vaunted benefits.

The two researchers rated states according to the toughness of their licensing laws for dentists by two criteria: the pass rate on licensing exams and the willingness of licensing boards to recognize the credentials of dentists licensed by other states. They then compared the dental health of a sample of new U.S. Air Force recruits with the states where they had lived. The results indicated that restrictive licensing had no beneficial effect on the recruits' dental health, which was as good among those from states with looser regulation as among those from states with the tightest rules. Restrictive licensing, however, did have a significant impact on the welfare of dentists. Other things being equal, the researchers found that dental fees were 14% to 16% higher and dentist incomes 10% higher in the states with the toughest licensing laws than in states with the least-strict regulations. (Koretz, 1998)

“To reduce the hazards of incompetency, states have accepted the costs of occupational regulation; however, individuals in licensed occupations have been able to obtain monopoly fees for their services.” (Kleiner, Gay, Greene, 1982) It has been shown in many economic studies that regulation has a negative effect on the economy, but the argument still continues because of the expected positive effect on quality.

Effects on Quality and Other Results. In 1978, Sidney Carroll and Robert Gaston performed one of the most comprehensive studies regarding the effects of occupational regulation on quality. The study examines several different regulated occupations and whether or not regulation affects the “quality of service received.”

Despite enormous practical and theoretical difficulties and quite dirty data, from occupation to occupation there existed consistently a strong negative association between per capita numbers in an occupation and measures of per capita quality of services received. Almost as consistently, restrictive licensing appeared to significantly lower the stocks of licensees. There is, then, evidence from several professions and trades that indicates that restrictive licensing may lower the quality of service received. (Carroll, 1981)

It appears that there are many conflicting opinions on whether licensing is beneficial or a hindrance to the professions. Many articles and debates argue that licensing is good for the public and protects the consumer, but very few empirical studies to prove their point.

Opponents argue Friedman's point that regulation causes inflated prices and limits the number of professionals in the industry. Advocates of occupational regulation often argue that regulation is a way of ensuring minimum qualifications for entrance to a profession. It is believed that the minimum qualifications will cause or promote a better product. "There are many good, credible contractors out there, and they have a good work ethic and commitment to deliver a quality product to the consumer, licensing would enhance this." (Hall, 2000) Licensing can indeed enhance the services rendered by allowing a barrier to entry into the profession, hopefully keeping out those who would injure or take advantage of the consumer, or deliver a poor quality product.

An important result of occupational regulation that goes largely unnoticed is the confidence licensing creates in the consumer for the regulated profession. A popular

bumper sticker in Arizona reads “licensed contractors build confidence.” That confidence is a very real benefit that can stimulate the industry and, in turn, benefit all aspects of society. People feel more secure knowing that their hired professional has completed some form of minimum education or standard qualifications. Whether licensing actually accomplishes what the consumer believes is unimportant. The point is that confidence increases. The downside is that without enforcement of the regulations, the consumer has a false sense of security.

It is hard to imagine that someone would get his or her hair cut by a barber who had no experience cutting hair. The same question applies to regulation of the construction industry; why have a contractor build a house who has absolutely no experience? Regulation seeks to ensure that professionals have enough experience to deliver a quality product whatever it may be. This way, the consumer can inherently trust the professional because of being licensed. Such regulation hopes to publicly “prove” that professionals are qualified.

Types of Occupational Regulation

The most common types of regulation today are registration, certification, and licensing. The more recognized of the three is licensing. “Since the 1950s, the number of licensed occupations has grown from 70 to over 500.” (Kleiner, Gay, Green, 1982) The growth in the number of licensed occupations shows that people are concerned about receiving a quality product and protecting the consumer. This makes it ever more important to establish effective ways of measuring the effectiveness of licensing.

Registration. Registration allows states or municipalities to keep track of the profession while not limiting entrance into the profession. Professionals are required to sign up with the state and give contact information and names, and pay a minimal fee. Some states do, however, require certain qualifications for registration that resemble licensing. This registration, although so named, is effectively licensing.

Certifications. Certifications can be voluntary or mandatory. Mechanics and accountants are some highly recognized professions that certify. The common “CSE” certification (Control Systems Engineer) for automotive mechanics signals that the mechanic has undergone rigorous education and training and should be able to offer better mechanical service. Other certifications in the automotive industry include certified control systems technician (CCST), certified automation professional (CAP), certified industrial maintenance mechanics (CIMM), and control systems technician (CST). Many other certifications for the automotive industry can be obtained which help educate and train the mechanic in order to offer better services.

Another form of certification happens in the accounting industry. A familiar term heard often in the United States is CPA or certified public accountant. Graduating from a university with a degree in accounting does not give you the certification; passing of a comprehensive exam is required. Most states require mandatory certification in order to practice accounting. Mandatory or not, it is a certification nonetheless, and is used to prove that the individual has “certified knowledge” of accounting. Certified professionals, regardless of profession, can charge a premium because of their proven

knowledge of the profession, yet, if wanted, consumers can usually higher un-certified individuals for a lower cost and not necessarily inferior service.

Professionals can signal quality by voluntarily undertaking whatever training would be mandatory under a licensure program. Yet voluntary certification does not exact any of the deadweight costs associated with mandatory licensure. From an information standpoint, certification is Pareto [globally] superior to licensure. Those who desire information will get it in the form of certification, but no consumer is forced to pay for information or quality that he or she does not want, as is the case with licensure. (Wheelan, 1998)

While the many forms of regulation are debated often in legislation and local meetings, the topic of study is construction regulation. Construction is not exempt from the issues of occupational regulation. The issues, types, policies, and theories apply to the construction industry as well, some of the states regulating construction since the early 1900's.

Occupational Regulation in Construction

Regulation of construction is left to the individual states to decide on policies and regulations. Each state must decide on administration, how much and what form of regulation it will require as well as what construction trades will be regulated. Nearly all states require licensing of electricians and plumbers but many do not require licensing of the general contractor, even if the plumber must be licensed. Two thirds of the states have some type of regulation for residential contractors. Regulation of the industry also

applies to trade contractors such as electricians and plumbers. Trade licensing will not be discussed even though many of the issues are the same. The focus of this study is the general contractor license as well as what states are doing to measure the effectiveness of their contractor licensing.

General Contractor Licensing

Since the scope of work of the general contractor is the entire construction project, the general contractor must know and be able to recognize quality work in all applicable phases, materials, and trades of construction. The rules and regulations of general contractor licensing are established to fulfill a purpose defined by each state's licensing department, usually along the lines of protecting the health and welfare of the consumer and/or ensuring quality service. "States have come up with myriad rules, procedures and testing requirements that govern the construction industry. Each state has established its own guidelines to control--or ignore--[general] contractors." (Kalb, 1997) It is no wonder that licensing of general contractors has become a much debated topic on our schools and legislatures because it encompasses the safety of the consumer as well as the product delivered and reputation of the contractors.

Purposes of Contractor Licensing

The main purpose of regulation in the construction industry is protection. "Consumer protection would seem to be necessary, regardless of whether the construction involves residential, commercial or public works" (Kalb, 1997) Protection can be broken down into two main categories; protecting the consumer and protecting the

contractor. Policies are made to serve and protect both parties. In the state congress sessions at the beginning of 2005, more than ten of the 26 residential general licensing states were trying to pass legislation that would alter or tighten their methods of construction regulation. That shows how important the topic of construction regulation is that so many would be trying to pass new legislation on licensing.

Protection of the Consumer. The most general and common purpose of construction regulation is safeguarding the life, health, and property of the public. (Brunner & O'Connor, p 407) As stated in a contractor's forum on licensing, "the intent of the law [in California] is meant to be protective of the consumer." (Hall, 2000)

Enhancing the safety of the consumer relies on building code inspections to deliver safe, healthy construction products, but health and safety of the consumer is not the only focus of licensing. Licensing seeks to protect the consumer's dollar as well. The idea is that qualifying individuals through licensing ensures that the consumer receives the product paid for, at the quality and service expected. Licensing seeks to draw a line in the sand if you will, between qualified contractors and unqualified contractors the separation being licensing. Many retailers put themselves at risk of not getting what they pay for by hiring contractors who are not properly licensed. (Anonymous, 1995)

Licensing and other forms of regulation seek to establish methods of ensuring that consumers receive the best service per dollar paid by regulating the knowledge of those who enter the profession. In the case of construction licensing, exams on business and construction practices are given to test the knowledge of the applicant.

A sub-topic of protecting the consumer is improving the quality of service given because a better quality product protects the consumer as well as his dollar. By establishing minimum knowledge requirements through regulation, the hope is that a benchmark of quality will be established. The actual effect of regulation on quality is hard to prove. A contractor consultant panel addressed the license debate in 2000. One member said this concerning quality, "I am studying for my electrician's license and if our [HVAC] industry could have the same requirements that electricians do, I'm sure it would clean up some of the substandard work that is done." (Hall, 2000) An increase in actual quality of service may not be the case. S. Carroll wrote the following in her study of quality of service received:

There are at least four ways in which restrictive licensing may lower the quality of services actually received by consumers. First, when restrictions are imposed and a smaller total supply of service results, some consumers will turn to substitutes of lower quality. Substitutes can be nothing more than "do-it-yourself" services possibly coupled with untrained advice or assistance. In some instances, the substitute is simply no service at all. Second, licensees can be asked to perform tasks for which they are over-trained. Considerable time may be devoted to services that could be performed equally well by persons of lesser training; however, restrictive regulations prohibit such action. Third, the relevant concept of quality is a function of both skill content and quantity of service. Thus, even if the skill content received by consumers could be increased by restrictions, the quantity of service may be reduced, and

the net result can be detrimental if the quantity reduction more than offsets the skill increase. [Fourth] If licensing restricts competition among professionals, then it might lessen competitive pressures to compete on quality. (Carroll, 1981 p960)

As indicated in the above statements, there are two sides to regulation those in support and those in opposition, and both are difficult to prove. Theories are correct in identifying the possible effects of licensing, but in reality, what are the effects? Not only does licensing seek to protect the consumer, but it also seeks to increase the honesty and responsibility of the professionals.

Protection of the Contractor. Protection of the contractor is a relatively new subtopic of the licensing debate that is gaining more attention. A new buzzword phrase in the construction license debate is “lien rights.” The following discusses some problems associated with lien rights and licensing.

The unlicensed subcontractor has no valid contract, and therefore no lien rights. All of the work he performs will be free and he is faced with back charges for any damages this may cause his contractor or the owner.

What of the general contractor? If "any part" of the general contract is performed by an unlicensed contractor, then arguably his contract is void and invalid too. And so are his lien rights. If the general contract is invalid and unenforceable, there is an argument that the other subcontracts are invalid too since a "part" of their subcontract is invalid, being based on the general contract.” “Without contract or lien rights,

the contractor is without legal remedy to collect his money for work performed. One can see how serious a problem this creates on any job where even one contractor is caught without the appropriate license (Ashby, 2003)

The problems with contract law and enforceable payment and lien rights are very complicated. Licensing laws try to protect the general contractor from hiring unlicensed subcontractors and thus protect the general contractor from not collecting payment deserved. For the purpose of this study, it must be known that the purpose of regulation is not only to protect the consumer but also to protect the welfare of the contractor against consumers who would take advantage of lien laws and collection rights of the contractor.

There are many theories behind licensing and many purposes in such theories. The methods the states go about fulfilling those purposes starts with the state licensing requirements.

Requirements for Contractor Licensing

There are many requirements for obtaining a contractor's license. The most common in the states that license contractors are exams, minimum experience, and proof of insurance. While these three requirements are not all that is required, in all the states that license, at least these three are mandatory.

Exam. The exam is used to test the applicant's knowledge of the industry. The questions in the exams cover installation, building codes, and materials used in the industry. The exams also contain a business portion that is specific to construction

business practices and regulations in the state. Usually a score of 70% is required for licensure. The applicants can take the test as many times as they wish, but the fee for taking the exam is required each time. Exams can be given by a private testing agency (Experior being the most common) or by the state. Both are effective in their purpose of testing the understanding and knowledge of the applicant. (NAHB, 2002) “To protect the health of the public, it is essential that electrical wiring be installed by persons who have proven their understanding, ability, and skill in installing electrical wiring” (Wheelan, 1998)

Experience. This requirement compliments the knowledge indicated by the applicants exam score. Many licensing states require a minimum number of years in the industry along with references. The experience requirement helps ensure that the applicant, besides passing a written exam, has worked in the industry and therefore should be familiar with common practices and methods used in the region. Many of the states also require a certain number of years in a managerial role. This adds to the construction knowledge the applicant should have in supervising other people and running a construction company. (NAHB, 2002)

Proof of Insurance. The proof of insurance is broken down into liability insurance and worker’s compensation insurance. All licensing states require at least one of the two forms, but most require proof of both types. Liability insurance covers accidents and damage to property caused by the contractor or subcontractors, while workers comp. covers employees who are injured on the job. Insurance is an important

requirement because it not only protects the consumer in case something happens to the project, but protects the contractor as well if something happens to one of the employees.

Other Requirements. The other requirements include, but are not limited to character references, minimum time working in the state, financial data, and financial investigations. Because these requirements are not mandatory in all states, they will not be discussed, but it is important to note that each state is able to set its own licensing requirements; some having more and some having less.

Evaluating the Effectiveness of Licensing

Each state is not only left to decide its licensing requirements, but also how they will go about evaluating its effectiveness. There are very few studies or literature on the techniques used to evaluate contractor licensing. If there is no method in place to evaluate licensing, then states can not show its effectiveness. Information on methods used to evaluate licensing would help states establish better licensing regulations and policies.

Licensing itself is being criticized because there is little evidence of its effect. Since licensing regulations are being attacked, the methods of enforcement of those regulations are as well. “There is little agreement among regulatory theorists about what should be done to improve enforcement programs. As a result, figuring out how to enhance compliance is a difficult puzzle for local officials as well as for regulatory scholars.” (Burby, May, Paterson, 1998) If compliance can not be enforced, then there is

little left to measure, and therefore, even less left to show that licensing is fulfilling its purpose.

In Utah, there is some discussion between the state and the Southern Utah Home Builders Association (SUHBA) regarding licensing. Floyd Jackson of the SUHBA summed up the argument in these words, “if [the state] can’t enforce the regulations, then they need to do away with them. Either make them more strict or get rid of them. [The regulations] aren’t serving their purpose and end up being more red tape than anything else.” (Floyd Jackson, Personal Interview, October 2004) Utah is not the only state having difficulty measuring and proving the effectiveness of contractor licensing. In the past decade, California has subjected its licensing departments to “sunset laws” where a date is set by which time the department must “justify its existence or face elimination.” (Kalb, 1997)

Since passing of the sunset provisions in 1994, many licensing laws in California have been relaxed because of the lack of evidence to support their effectiveness. (Kalb, 1997) The Utah Construction Services Commission, which oversees penalties of license violations, says that there is not enough manpower to effectively regulate the construction industry and enforce compliance. Therefore, licensing cannot be 100% effective. The Commission also recognizes that there is not a method to measure whether or not the licensing requirements and licensing itself is fulfilling the intended purpose. (Utah Construction Services Commission meeting, October 2004)

Methods of Evaluation

There are several methods of evaluation that came up in literature; building code inspections and forms of auditing being the most common. Whatever the form of evaluation, the method must be directly tied to the purpose of licensing.

Inspections. Building code inspections are a way of measuring adherence to building codes. The inspections are usually under the jurisdiction of the municipalities or counties. Building codes don't address the issue of quality or what is being done "to protect the state's citizenry from untrustworthy and incompetent contractors." (Brunner & O'Connor, p 407) Inspections by themselves, although helpful, are not an effective way of evaluating licensing. Inspections are used by many states, both those that license contractors, and those that don't.

Audits. Auditing is a broad term used in business that means to assess, review or examine. Audits in the construction industry may be audits of financial data, insurance information and compliance, or audits of tax information. Whatever the form, auditing is a method of following up on the contractors to see that they are maintaining the minimum requirements of licensure, and doing what they committed to in the contract. Because of the protective nature of licensing, audits can be an effective evaluation tool by always assessing the licensed contractors. The effectiveness of audits lies in performing enough audits to give an accurate sample and compiling the data for future analysis and comparison.

Other. Other methods currently used by states include state oversight committees, arrest power, surveys, and the Better Business Bureau. Each has the ability to somewhat quantify how well licensing is fulfilling the intended purpose. The problem with state powers and state licensing boards is that the state has recourse to fine, punish, or revoke a license if the licensed contractors fail to comply, “Yet the state has little or no manpower, finances, or persistence to go after non-licensed contractors.” (Kalb, 1997)

Evaluating the Effectiveness of Contractor Licensing

“Most analysts recognize the costs of licensing, but few have recognized the potential benefits. Maybe this is because the benefits of licensing are difficult to measure.” (Kleiner, 2000) This is the problem faced by all states that license residential general contractors. In the history of licensing in Utah, there was a short period in the 80’s where the construction industry was deregulated and licensing was not required because of the lack of evidence that showed licensing was making a difference. That period only lasted a few years because so many people complained. The problem of evaluating licensing didn’t change however and is still an issue in the licensing department today.

Not only do states have to battle with the many problems in the construction industry, but they must do so with a limited number of personnel. “When personnel and other enforcement resources are limited, the tasks necessary for enforcing compliance can be performed poorly (or not at all), with consequences that can be disastrous”(Burby, May, Paterson, 1998)

Whatever the problems involved, it is important to measure the effects of licensing in order to change, improve, or do away with regulation policies to make the industry more conducive to building.

Methods of Evaluation

One of the few studies on methods used to evaluate licensing was conducted by Burby, May and Paterson in 1998. They found that the main problem with measuring compliance to codes and licensing requirements and, in effect, measuring the effectiveness of licensing was the lack of manpower to enforce compliance. In the footnotes of their study, the following was written:

Until the study reported in this article, no systematic nationwide research has examined compliance with building codes and development-management codes. Nevertheless, there is previous evidence that at least in some communities, severe slippage in compliance has occurred.

Johnston and McCartney (1991) reported widespread violation of the mitigation requirements of the California Environmental Quality Act, which led the state legislature in 1989 to mandate local government monitoring of compliance. Burby and Paterson (1993) found that 64 percent of 128 construction sites inspected failed to meet state and local standards for sedimentation pollution control. Promersberger (1984) found that 50 percent of 101 storm water detention ponds inspected in the Denver area were not in compliance with design specifications. Brower and Ballenger (1991) found that 59 percent of the projects receiving

coastal use permits in North Carolina in a recent year failed to comply with permit standards. And a study of compliance with state energy codes in Boise, Idaho found that 97 percent of all new homes inspected did not comply (Residential Construction Study 1992). Undoubtedly, many other examples of what syndicated columnist Neil Pierce (1992) terms "wink-an-eye-at-the codes" building and development existed. 2. We use the term "development management regulation" to comprehend the myriad of rules about the built environment that planners have some responsibility for promulgating and enforcing. These include land use and zoning regulations, building codes, environmental regulations of various types (e.g., grading regulations, slope and hillside regulation, floodplain and other sensitive area regulations), and housing codes, among others. (See Patterson 1988.) 3. Other statistical analyses we undertook, which disaggregated the task effort index into its component parts, indicate that to obtain high rates of compliance, effort on three tasks is critical: plan checking, site inspection, and technical assistance. Neither surveillance to detect building without a permit, nor effort devoted to legal prosecution, public awareness of codes, and public relations had a statistically significant positive effect on compliance. 4. The relatively low adjusted coefficient of variation could also be explained by an under-specified model or by measurement unreliability. We think the model has been well specified. Because of the subjective nature of the measure of contractor commitment, unreliability is a consideration. However, we

note that Cronbach's alpha, which measures reliability of a summated index, is more than acceptable at .85. 5. Corruption in the administration of local building and development regulations has been a serious problem in a number of American cities. Our data show that its effects go well beyond the specific incidents of corruption, since it tends to demoralize the development community and suppresses the willingness of builders and developers to comply willingly with code and permit requirements. 6. This is calculated by comparing the predicted values obtained from the unstandardized regression models that parallel those of tables 3 and 4 when substituting, for the variable of interest, the values at the 75th and the 25th percentiles, respectively. For the remaining variables in the equation, the mean value of all jurisdictions is employed. The percentage change in predicted values is the policy effect. Only policy choices for which the statistical significance is below .05 are evaluated. 7. The indirect effects are included by substituting the appropriate predicted value of contractor commitment for the policy choice of interest as the relevant value for the compliance equation, in comparison to that obtained when using the mean value for contractor commitment. Indirect effects are calculated only for those choices for which the statistical significance in the contractor commitment equation is below .05. (Burby, May, Paterson, 1998)

This study indicates the need for evaluation methods for inspections and also for licensing. In order for inspections to serve their purpose, there must be compliance and

evaluation of the inspection process. The same is true for licensing. In order to ensure fulfillment of licensing's purpose, the purpose as well as the methods to evaluate the fulfillment of the purpose must be defined.

Conclusion

In conclusion, general contractor licensing is a form of occupational regulation whose purpose it is to protect the consumer, the contractor and the industry. This is accomplished by minimum guidelines and standards for obtaining a license. It is still difficult, however, to measure the overall effect of licensing on the construction industry because of intangible benefits such as increased confidence and improved reputation. Yet, in order to have a regulatory system that benefits all of society, states must be able to measure how well licensing is serving the intended purpose for licensing.

Chapter 3

Methodology

Process

The study was conducted through administration of a survey instrument (see Appendix). All states have occupational licensing departments or divisions, but only states that license residential general contractors were chosen to participate in the study. The participants represented the states that license residential general contractors according to the NAHB. (NAHB, 2002) The study identified the purpose of licensing as defined by each state, and the effectiveness of licensing in fulfilling the purpose as seen by each state's licensing department as well as what techniques and methods are being used to evaluate their regulations.

The questions in the survey instrument were developed by identifying key topics, policies, and forms of contractor licensing and evaluation methods from related literature, personal interviews. The review of literature and interviews helped identify purposes of contractor licensing as well as methods used for evaluation. After drafting the survey instrument, a panel of university professors and researchers reviewed and critiqued it as part of a two-part validation process. The second part of the validation was a review of the survey by individuals of the Department of Labor and the Department of Occupational Licensing of the state of Montana. Comments and suggestions from both panels were used to produce a final draft of the survey instrument.

The survey instrument was administered to the construction licensing divisions/departments of the following states because they license residential general contractors: Arizona, Arkansas, Delaware, Florida, Hawaii, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Nevada, New Jersey, North Dakota, Oregon, Rhode Island, South Carolina, New Mexico, North Carolina, Tennessee, Utah, Virginia, Washington, and West Virginia.

Survey

The survey was developed by identifying common problems, misconceptions, theories, and evaluation techniques of contractor licensing through literature and personal interviews with individuals in the construction industry, contractor agencies, and state licensing departments. Below, the questions are discussed in detail. A copy of the survey instrument is contained in the Appendix.

Design. The survey consisted of two topics and two types of questions. The topics covered in the survey were: 1) purposes and methods of evaluating contractor licensing and 2) requirements and regulation of the general contractors. The questions consisted of information gathering questions and evaluative questions.

The first topic (questions 1-8) was used to determine the states' intended purposes of contractor licensing, how well that purpose is being fulfilled, and what they are doing to evaluate how well licensing is fulfilling the intended purpose. The second topic (questions 9-16) was used to determine licensing requirements, the effectiveness of the requirements, and what is being done to regulate the contractors after licensure. The two

topics were chosen because of their close relation to the main objective of the study; methods used in evaluating licensing. There was a certain amount of redundancy in the questions because both topics addressed the same issue of evaluating licensing's effects; topic one through the avenue of licensing and topic two through that of contractors.

The two question types were: 1) general information questions, made up of multiple choice, short answer, and open-ended questions and 2) evaluative/scale-type questions that had the participants rate the effectiveness of licensing issues in their state. Each question and its purpose are discussed in detail below. (Refer to the Appendix for wording and actual survey instrument)

Question 1 asks what state the participant represents for ease of compiling the data.

Question 2 asks what year residential general contractor licensing was put into effect to identify trends in years or decades.

Question 3 had the participant identify if their state had a "stated or otherwise documented purpose for residential contractor licensing" to discover if any states do not have an understood purpose for licensing. If they did, then they continued to question 4, if not; question 5.

Question 4 had the participant identify where the purpose was documented in order to identify the most common place and evaluate the accessibility of the purpose of licensing.

Question 5 had the participant identify, from a list, which choice *best* described the intended purpose of licensing residential general contractors. The choices consisted of the purposes expressed in literature as well as those stated in interviews with industry

professionals, building agencies, court cases, and licensing departments. (Specific references for the choices are contained in the Appendix) This was done to identify the most popular purpose of contractor licensing.

Question 6 had the participant rate how effective licensing was in fulfilling the intended purpose. The 7 point scale ranged from very ineffective to very effective.

Question 7 had the participant choose from a list, all methods currently used in their state to measure how well licensing is fulfilling the intended purpose. The list of choices was compiled from known methods of gathering information (surveys, etc.) and methods used by other agencies for evaluating effectiveness.

Question 8 was the final question of topic one and had the participant rate how effective the indicated method(s) (selections in question 7) are in evaluating the effectiveness of residential contractor licensing.

Question 9 began the second topic and had the participant identify, from a list of options, the requirements for obtaining a residential contractor license in their state. Some, but not all of this information is available through the NAHB. The question also encouraged the participant to change mind-frame from licensing policy to the contractors which was the focus of the subsequent questions.

Question 10 had the participant identify from a list the methods that are used in their state to ensure that the requirements are maintained after licensure. One of the arguments of licensing is that requirements like insurance are “proved” for licensing, then cancelled by the contractor after licensure. This question helped identify what states are doing to combat that issue.

Question 11 and Question 12 applied to those states that do have methods in place for evaluating the effectiveness of licensing. The participant explained the advantages (11) and disadvantages (12) of having those methods in place.

Question 13 and question 14 applied to states that do not have methods in place for evaluating the effectiveness of licensing. The participant explained the advantages (13) and disadvantages (14) of not having methods in place.

Question 15 had the participant explain, if there were any, reoccurring complaints from general contractors regarding licensing to help identify new issues that didn't surface in literature or interviews.

Question 16 had the participant explain, if there were any, reoccurring complaints from consumers of construction services regarding contractor licensing for the same purpose as question 15.

Validation. After developing the questions, the survey was validated first by a panel of university researchers and professors, and then by members of the Department of Labor and the Department of Occupational Licensing from Montana. The first part of the validation involved a panel of researchers and professors from various universities. The members of the panel were chosen because of their experience in the construction industry and/or background in research allowing them to make significant contributions to the study. Those who participated in the survey were Dr. Kevin Burr (BYU), Dr. Kevin Miller (BYU), Dr. Ron Gonzales (BYU), Dr. Hinckley Jones-Sanpei (BYU), and Dr. James McQuivey (Boston University). The panel's background and experience

includes statistics, education, construction, technology, qualitative and quantitative research, and the social sciences.

All of the participants are experienced professors and researchers and were able to give important advice and comments making the survey instrument easier to understand while still gathering the desired information. When the panel completed their review, modifications were made per their advice, and members of the State Department of Montana began the second part of the validation process.

The second part of the validation involved sending the survey instrument to the Department of Labor and the Department of Occupational Licensing of the State of Montana and having them review the questions. The participants of the second validation were Jill Caldwell; Bureau Chief of Business and Occupational Licensing, Lisa Addington; Bureau Chief of Health Care Licensing, Todd Boucher; Executive Officer of Architects Division, and Edward A. Dawes; Independent Contractor Central Unit. They were chosen because of their direct involvement in either licensing issues and policies, or the construction industry. The participants reviewed the survey and offered more suggestions that helped the questions more accurately reflect the chosen topics and therefore more effectively gather the desired information. The survey was revised per their advice and then administered to the licensing states' construction licensing departments.

Administration

The survey was administered by phone or email to the department in charge of residential contractor licensing in the selected states. The administrators of the survey

were selected undergraduate students of the Construction Management program at BYU. Because of limited knowledge of the licensing debate on the part of the interviewer, issues could not be clarified in such a way to induce bias responses or “coach” the participant for specific responses.

In the majority of cases, the director or similar completed the survey. If the director could not complete the survey, the participant had to be responsible for overseeing or managing the residential contractor licensing in that state and know the state policies, purposes and regulations of residential contractor licensing. This improved the accuracy of the responses in reflecting the state’s position and opinions.

Both the interviewer and the participant were able to view the survey instrument during administration of the survey. The interviewer asked the questions while the participant followed along and could see the available responses. The interviewer clarified the questions and responses for the participant and recorded what the participant’s answers.

Analysis

Analysis took place after completion of the survey and is discussed in chapter 4. Chapter 4 analyzes how many states have a documented, intended purpose for residential contractor licensing, how well the states feel that residential contractor licensing is fulfilling its purpose, and what methods are being used to measure the effectiveness of contractor licensing.

Conclusion

The purpose of this survey was to discover the most common purposes for residential contractor licensing as defined by licensing states, and what methods are currently being used evaluate if licensing is fulfilling the intended purpose. By developing a survey instrument from related literature and personal interviews with those in the industry, questions were designed that would focus on the main issues of the licensing debate, have validity, and provoke response related to the study of evaluative methods of residential contractor licensing. The validation process allowed for revision and modification to eliminate bias and obtain accurate information. The study was designed with the objective of determining what is being done to measure how well states believe their residential contractor licensing is fulfilling the state's intended purpose.

Chapter 4

Data

The following is a compilation of information gathered from the survey instrument. 17 of the 27 states responded, giving a total response rate of 63%. The states that responded were Alaska (AK), Arizona (AZ), Arkansas (AR), Delaware (DE), Hawaii (HI), Louisiana (LA), Michigan (MI), Minnesota (MN), New Mexico (NM), North Dakota (ND), Oregon (OR), Rhode Island (RI), South Carolina (SC), Tennessee (TN), Utah (UT), Virginia (VA), and Washington (WA). Only 16 of the 17 state responses were used in data compilation because New Mexico stated that licensing of residential general contractors was privatized and no longer handled by the state department. Even though New Mexico still requires state residential contractor licensing, the information was not obtained for this study because of the significant difference in how that licensing is managed.

The topics of data compilation are broken down into nine categories. The categories are: 1) the year licensing was instituted/established in the state, 2) How many and which states have a formal purpose for licensing, 3) The actual purpose of residential contractor licensing, 4) The effectiveness of licensing as rated by the state, 5) The Methods used to evaluate licensing, 6) The perceived effectiveness of the methods of evaluation, 7) Requirements for Licensure, 8) Methods used to ensure Contractors

maintain requirements, and 9) Other methods and comments by the states. The categories follow the sequence of the questions in the survey.

Year Licensing was Instituted

The list and diagram that follows address the second question in the survey instrument of what year licensing was instituted in each of the states. All state departments knew what year licensing was instituted. Five of the sixteen states (31%) instituted licensing during the depression years, and no new licensing took place during the following decade. The information is provided in written form in the list below, as well as a plot-type diagram of the frequency of new licensing per decade.

Table 4.1 Year Licensing was Established

State	Year Licensing was Established
AK	1990
AZ	1931
AR	1999
DE	1969
HI	1957
LA	1956
MI	1965
MN	1992
ND	1932
OR	1971
RI	1990
SC	1976
TN	1931
UT	1936
VA	1938
WA	1963

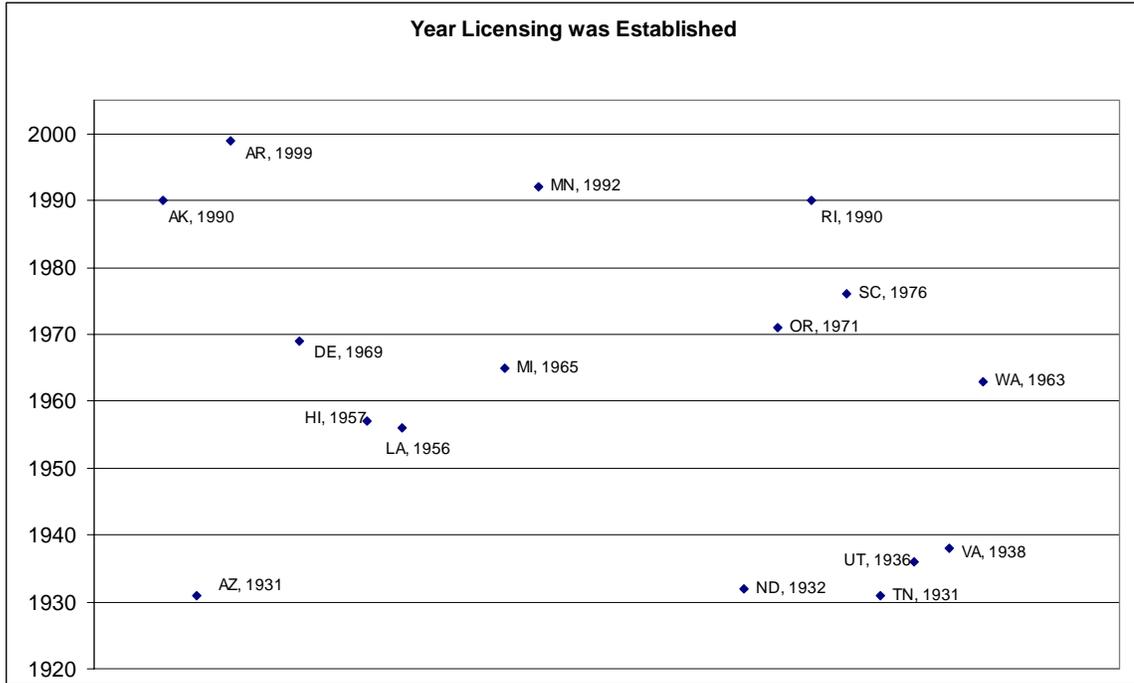


Figure 4. 1 Year Licensing was Established

Which States have a Formal Purpose of Licensing

The two charts below represent the number of licensing states that have a documented purpose for residential contractor licensing and if so, where that purpose is found. Of the sixteen states, 81% (13) had a formal or documented purpose for licensing. Of those thirteen states, twelve had the purpose outlined or written into state code, or state statute. Virginia stated that the purpose of residential licensing was specified in the mission statement of the department. Figure 4.2 shows the number of the licensing states that have a formal, documented purpose for licensing. Table 4.2 shows the responses of where the documented purpose is found.

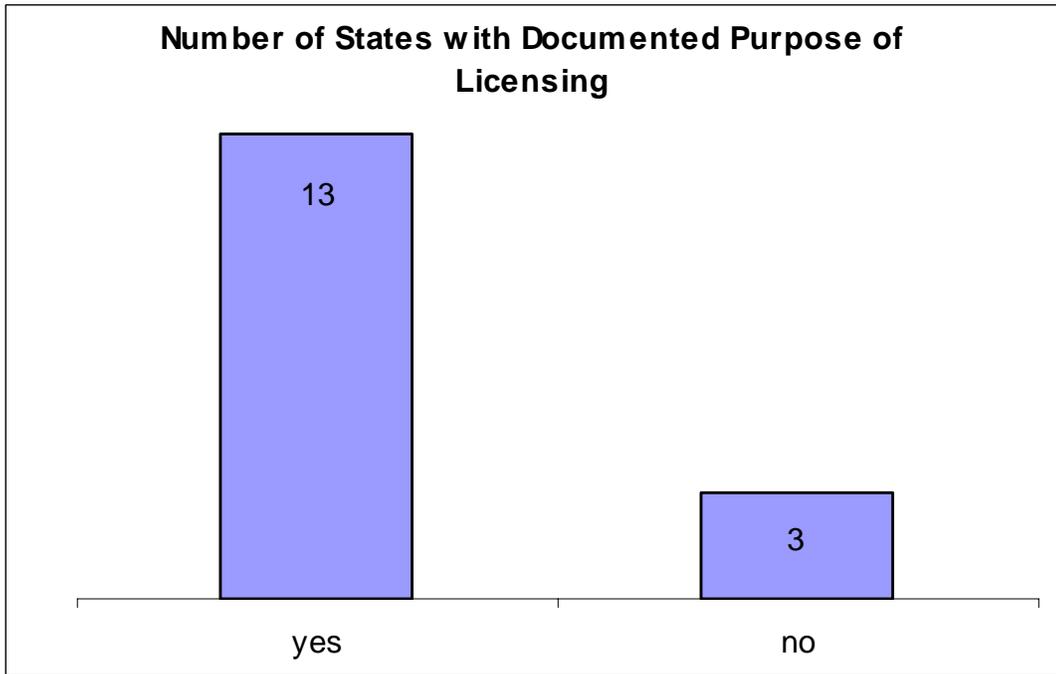


Figure 4. 2 Number of States with Documented Purpose

Table 4. 2 Location of Documented Purpose by State

AK	State code
AZ	State Code/Website
AR	State Code
DE	none
HI	State Code
LA	State Code
MI	State Code/Website
MN	none
ND	none
OR	State Code
RI	State Code
SC	State Code
TN	State Code
UT	State Code
VA	mission statement
WA	State Code

Purpose of Residential Contractor Licensing

The participants were asked to choose, from a list, the option that best described their state’s purpose for licensing residential general contractors. The list of choices was compiled from information found through interviews with licensing departments and review of literature. The choices and their origin are found and explained in the Appendix on the survey instrument. 75% of the states chose “protection of the lives and health of the consumer” as the main purpose of residential general contractor licensing. The other three states chose protecting the consumer from untrustworthy contractors (MN, WA), and improving the quality of construction services (AK). Figure 4.3 shows the frequency of the responses and Table 4.3 lists the specific responses. There was one non-response on this question (DE) because they defined their purpose of licensing residential general contractors as “licensing all businesses in the state.

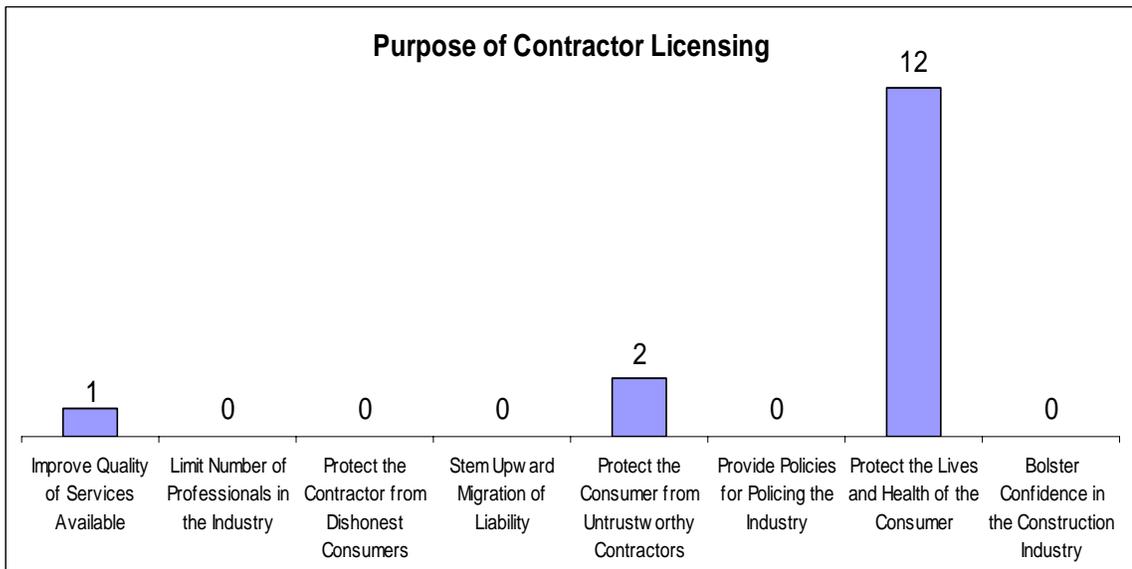


Figure 4.3 Frequency of Choices for Purpose

Table 4. 3 Purpose of Licensing by State

State	Purpose of Licensing as Defined by State
AK	Improve Quality of Services Available
AZ	Protect the Lives and Health of the Consumer
AR	Protect the Lives and Health of the Consumer
DE	No purpose as defined by the state
HI	Protect the Lives and Health of the Consumer
LA	Protect the Lives and Health of the Consumer
MI	Protect the Lives and Health of the Consumer
MN	Protect the Consumer from Untrustworthy Contractors
ND	Protect the Lives and Health of the Consumer
OR	Protect the Lives and Health of the Consumer
RI	Protect the Lives and Health of the Consumer
SC	Protect the Lives and Health of the Consumer
TN	Protect the Lives and Health of the Consumer
UT	Protect the Lives and Health of the Consumer
VA	Protect the Lives and Health of the Consumer
WA	Protect the Consumer from Untrustworthy Contractors

Effectiveness of Licensing

The state licensing departments were asked to rate how well licensing is fulfilling the intended purpose. The participants rated their licensing on a 7 point scale ranging from “Very Ineffective” to “Very Effective.” 75% chose that their licensing is effective or very effective in fulfilling the intended purpose. There wasn’t a significant correlation between what the defined purpose of licensing is and the effectiveness. Significantly, no state chose that licensing was on the poor side of the scale. Figure 4.4 represents the frequency of the state’s responses and Table (4.4) lists the specific responses by state.

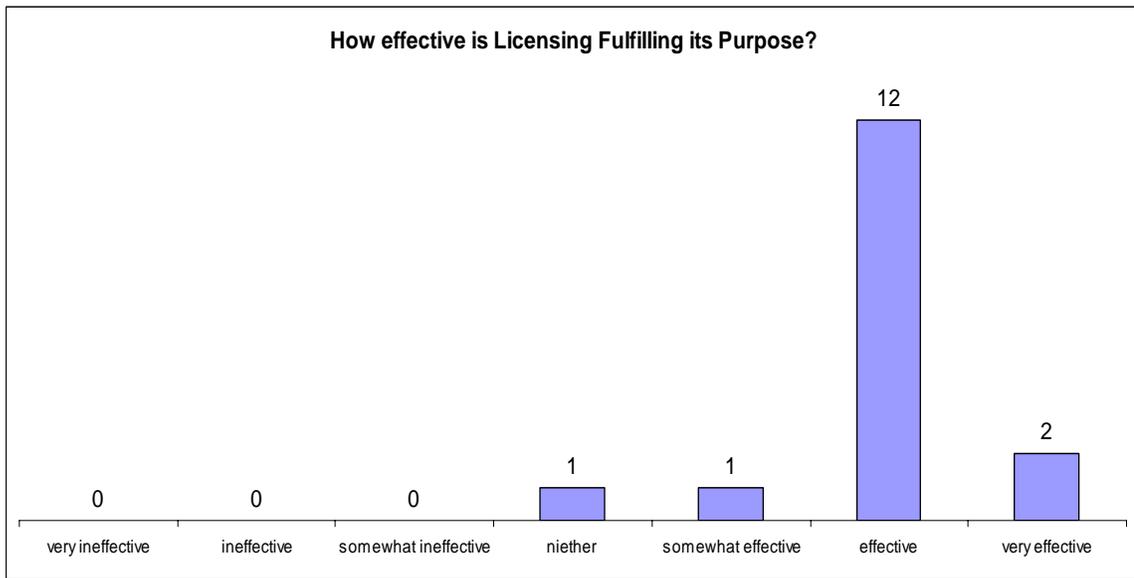


Figure 4. 4 Ratings of Licensing

Table 4. 4 Ratings of Licensing

State	Rating
AK	Effective
AZ	Effective
AR	Effective
DE	Neither
HI	Effective
LA	Effective
MI	Effective
MN	Very Effective
ND	Somewhat Effective
OR	Very Effective
RI	Effective
SC	Effective
TN	Effective
UT	Effective
VA	Effective
WA	Effective

Methods of Evaluation of Licensing

After specifying how effective licensing was fulfilling its purpose, the participants chose, from a list, the methods used to evaluate whether licensing is fulfilling its purpose. The participants were also able to add a different method if it was not listed. Figure 4.5 shows the frequency of the responses indicating the most common methods being used. 81% (13) of the states use inspections and investigations to evaluate if licensing is fulfilling the intended purpose. That coincides with the goal of building code inspections of protecting the consumer’s health and safety. The next most frequent answer was using committees to police the contractors, nine of the sixteen states chose this response (56%) Table 4.5 lists the states and their responses; oddly enough, Delaware chose that they do not use any methods to evaluate licensing. Interestingly, Delaware is also the only state where the licensing department is under the department of revenue.

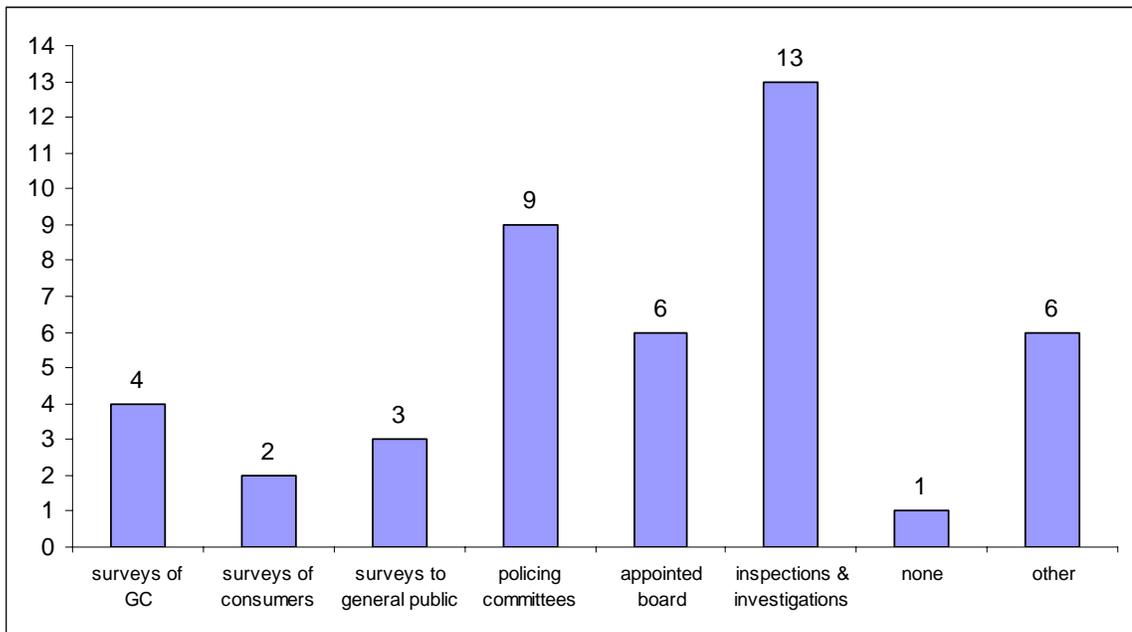


Figure 4.5 Frequency of Evaluation Methods

Table 4.5 Evaluation Methods by State

	Surveys of General Contractors	Surveys of consumers	Surveys to the General Public	Committees in charge of policing the Contractors	Governor Appointed Board or Commission	Inspections and Investigations	None	Other
AK	X		X	X		X		
AZ				X		X		
AR						X		X
DE							X	
HI				X		X		
LA				X	X			
MI	X			X	X	X		
MN						X		
ND	X	X	X	X	X	X		X
OR	X	X	X	X	X	X		X
RI						X		
SC								X
TN				X	X	X		
UT				X	X	X		X
VA						X		X
WA						X		

Oregon, one of two states that marked their licensing as “Very effective in fulfilling the intended purpose” was the only state to have a formal, state governed dispute resolution program. Minnesota also marked “very effective” but didn’t have any other special considerations or explanations for their response.

Effectiveness of Methods of Measurement

Participants were asked to specify how effective their current methods (those chosen in question 7 and illustrated in Table 4.4 and Figure 4.4) evaluate how licensing is fulfilling the intended purpose. The participants rated their methods using the same scale in question 6 that ranged from “Very Ineffective” to “Very Effective.” 75% of the states

rated their methods as effective or very effective. The other four states chose either “somewhat effective” (HI, ND, RI) or “neither effective nor ineffective” (DE). Figure 4.6 represents the frequency of responses. Table 4.6 is a listing of each states’ response.

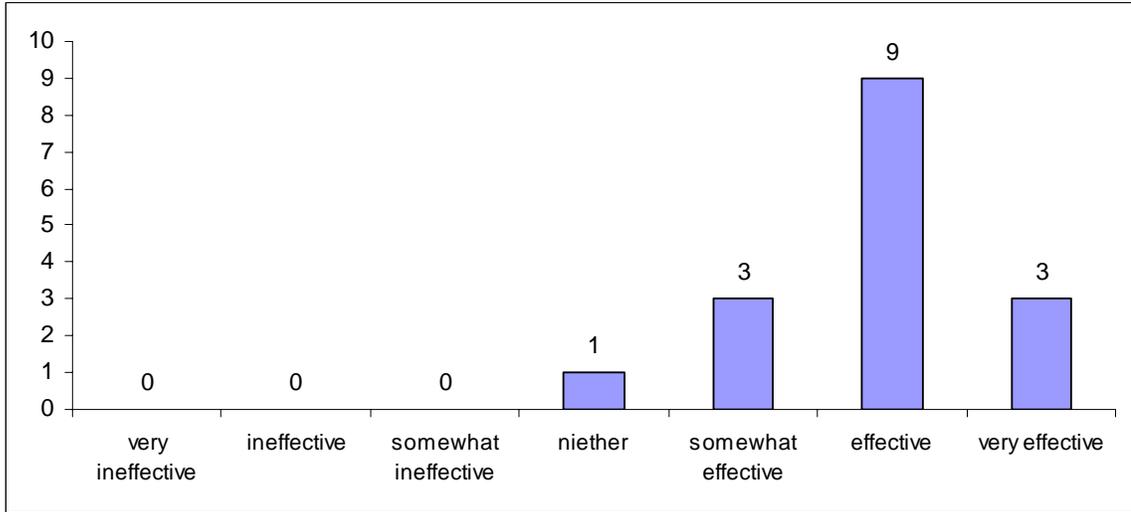


Figure 4. 6 Ratings of Evaluation Methods

Table 4. 6 Ratings of Evaluation Methods by State

State	Rating
AK	Effective
AZ	Effective
AR	Effective
DE	Neither
HI	Somewhat Effective
LA	Effective
MI	Effective
MN	Very Effective
ND	Somewhat Effective
OR	Very Effective
RI	Somewhat Effective
SC	Effective
TN	Effective
UT	Effective
VA	Very Effective
WA	Effective

Requirements for Licensure

In question 9, the participants indicated, from a list, the requirements for obtaining a residential contractor license. State fees, insurance requirements and some exam information can be obtained from the Contractors License Manual published by the NAHB, but the survey revealed more information on licensing requirements. All sixteen states require a fee for licensure, and most (81%) require an exam and proof of worker’s compensation insurance. Interestingly, seven of the sixteen states indicated “other” qualifications that weren’t identified in the NAHB manual or was easily accessible. The states that chose “other” indicated that they require specific forms, bonding, certain percentage passing grade on the examination, and mandatory education requirements.

Table 4.7 represents the state’s responses.

Table 4.7 Licensing Requirements by State

	Minimum Experience	Management Experience	Financial Records	State Fee	Exam	Proof of Insurance	Proof of Worker's Comp.	Other
AK				X	X	X	X	X
AZ	X	X	X	X	X		X	X
AR	X	X	X	X	X			
DE				X			X	X
HI	X		X	X	X	X	X	
LA			X	X	X	X	X	
MI	X		X	X	X			X
MN				X	X	X	X	
ND				X	X	X	X	X
OR				X	X	X	X	X
RI				X		X	X	
SC	X		X	X	X			
TN	X		X	X	X	X	X	
UT	X	X		X	X	X	X	X
VA	X		X	X	X	X	X	
WA				X		X	X	

Methods used to Ensure Licensees Maintain Requirements

Because one of the arguments in the license debate is whether or not the licensing department can enforce compliance of the regulations, the states were asked to identify the methods they use to ensure that the licensing requirements are maintained after the license has been awarded. The participants could also identify a different method if their current method was not represented on the list of choices. 81% of the states (9) used methods other than those found identified in literature and personal interviews. Nine of the sixteen states use methods not identified by literature or interviews. The methods used that were not on the list, written in by the participants, were the license renewal process, consumer complaints to the department, department investigators, and filing of the insurance certification. Table 4.8 shows the specific responses.

Table 4. 8 Methods for Compliance of Licensing Requirement

	Audits of GC	State follow-ups	Continuing Education	Municipal follow-ups	BBB	Civil and Criminal Reporting	None	Other
AK	X		X			X		
AZ								X
AR								X
DE							X	
HI						X		X
LA	X	X	X					X
MI		X			X			
MN			X	X	X			
ND	X	X			X	X		
OR		X						X
RI								X
SC								X
TN								X
UT		X	X		X			
VA						X		X
WA	X					X		

Results of Survey Related to Chapter One Research Questions

The responses of the survey indicated that the most common purpose of residential contractor licensing is to protect the consumer, either through safety (protecting the lives and health of the consumer), ethics (protecting the consumer from untrustworthy contractors), or quality (improving the quality of construction services). The survey also revealed the methods states are using to evaluate how licensing is fulfilling the intended purpose. The methods used included surveys to contractors and the public, committees, boards, inspections, and dispute resolution programs. Not only was the survey successful in identifying the purposes of residential contractor licensing, but also in revealing methods used by states to evaluate licensing that were not documented and readily available.

Chapter 5

Conclusions

The responses to the survey indicate that there are still licensing states that do not have a formal, documented purpose for residential general contractor licensing. Of the states that do have a formal, documented purpose, 80% define the main purpose of their licensing as “protecting the lives and health of the consumer.” Besides protecting the consumer, there are other considerations that should be addressed in the purpose of licensing such as improving the quality of construction (chosen as the purpose of licensing by Alaska), bolstering confidence in the construction industry, and protecting the contractor.

It is interesting that with such a popular topic as licensing, some states would still not have a formal, documented purpose for general contractor licensing. In order to effectively enforce compliance and measure the impact of anything, be it licensing, production, or customer service, there must be a clear defined goal, or purpose; a standard by which to measure. Without it, the states will have a difficult time explaining the purpose to others and communicating the regulations to the public. Delaware, which stated that they do not have a documented purpose for licensing, also stated that their licensing is neither effective nor ineffective in fulfilling the purpose of licensing. This helps reinforce the idea that a purpose of licensing must be understood in order to effectively evaluate licensing.

The information from the survey also indicated the methods used by states to evaluate licensing. The states were asked to either choose from a list which methods they use, or write in methods not available in the list to obtain all methods currently in use by states that license residential general contractors. The most common method of evaluating licensing was through the use of inspections and investigations, chosen by 81% of the states. Building code inspections, health inspection, OSHA investigations, and zoning investigations have been established to protect the lives and health of the occupants, and since the most frequent response for the purpose of licensing was the safety of the consumer, it makes sense that inspections and investigations would be the most frequently chosen method of evaluating licensing's purpose.

The survey also revealed methods not indicated in literature or interviews that the states use to evaluate licensing. Oregon and Minnesota were the only two states that rated both their licensing and their methods of licensing as "Very effective." Of all the states, Oregon is the only state with a state governed dispute resolution program for residential general contractors. Some states use mediation to evaluate licensing, but not at the level Oregon does. The dispute resolution program seems to be a significant factor in the rating of "Very effective."

There were no strong correlations between the ratings of licensing and the purpose of licensing, or ratings of methods of evaluation and actual methods used, except in the area of Oregon. Because Oregon was one of only two states to rate both their licensing and evaluation methods as "Very effective" and the only state to have a dispute resolution program, the conclusion must be made that their dispute resolution program

has a significant impact on the perceived effectiveness of residential general contractor licensing.

The methods used and indicated by the survey are not unique to any state, meaning that they could be implemented in other states. But the problem exposed through literature is the lack of common, readily available information shared between the states and available to the public.

In reviewing literature on the subject, the dispute resolution program was never mentioned, and neither were some of the other methods used by the states. This shows that the information on evaluation methods is not readily and publicly available, and therefore, states can not benefit from the programs or methods of other state governments. The dispute resolution program is an excellent way of evaluating licensing as indicated by Oregon. The program can track what kinds of disputes are common, how they were resolved, and how to go about curbing the number of those disputes. If that information is then made available to other states, perhaps some of the issues surrounding the licensing debate could be resolved.

The most important discovery of the study was a discrepancy between what literature indicates as the purpose of licensing, and what state licensing departments say. Literature on licensing as well as the general public believes the purpose of licensing is to improve construction quality while state licensing departments define the purpose of licensing as “to protect the lives and health of the consumer.” This discrepancy prolongs resolution of the licensing debate because both sides are arguing different points. Studies indicate that licensing does and will not improve quality (Carroll and Koretz). Protection of the consumer can and is accomplished through building code inspections, not through

licensing. There are currently states that require building code inspections while not requiring licensing of residential general contractors (Texas and Montana), and their consumers are receiving the same safety as those in licensing states. Therefore, it appears that licensing is not needed to fulfill the purpose of protecting the consumer, only building code inspections. The licensing debate will continue until the main purpose of licensing is understood by both sides; that licensing seeks to protect the consumer's health and life, not to improve construction quality.

Recommendations

Although this study is only a compilation of information from licensing states, it does indicate other ideas and topics for further research. Some valuable studies would be an in-depth study on the evaluation techniques used by the states, a study on Oregon's dispute resolution process, as well as a comparison of construction in licensing and non-licensing states.

In addition to researching and comparing the evaluation techniques of the licensing states, it would also benefit states to see the advantages of the dispute resolution program used by Oregon. Research on their program and processes may reveal knowledge and techniques not known or used by other states. It may also reveal other problems of and possible solutions for the license debate.

Perhaps the most valuable study in the licensing debate would be a comparison of states with licensing, and states without. Any research on the subject would be able to identify a correlation between licensing and the safety of the consumer to see if, in fact, licensing contractors protects the consumer more than not licensing contractors. This is

the main thrust of the licensing debate; whether or not licensing makes a difference. The first problem for further research on licensing and non-licensing states would be discovering the purpose or goal of licensing, which this study addressed. The next problem is identifying what to compare, and then discovering a method of evaluating that portion of construction that is common to both licensing and non-licensing states.

Any information comparing licensing and non-licensing states would be valuable to building agencies, state departments and legislature. The need for this type of research was verbally expressed by the NAHB, Utah Construction Services Commission, and numerous industry professionals and construction industry lobbyists. (Personal communication, April 2004-January 2005)

Implications

The implications of this study are that hopefully states can access the data and use it to reevaluate their methods of licensing and how well licensing is fulfilling the intended purpose. By knowing what other states are doing and how well it is working, knowledge can be used and changes made to benefit the construction industry, the consumers, society, and the economy.

The information obtained through the survey is useful to all states in evaluating their licensing regulations and techniques, but not necessarily for exact reproduction in their own states. Perhaps the main implication of the study is the compilation of information as a foundation to spur further research in the area of residential general contractor licensing in hopes to, in the future, resolve many of its issues.

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Appendix

Survey Instrument

1. Which state do you represent?
2. What year was residential contractor licensing put into effect by your state?
3. Does your state have a formal or otherwise documented purpose for residential general contractor licensing?
4. If so, what is that purpose, where is it found and when was it drafted?
5. Please indicate which (choose just one) of the following **best** describes your state's intended purpose for residential contractor licensing:

___ To improve the quality of craftsmanship services available (Utah construction Commission, personal interview, October 2004)

___ To limit the number of professionals in the industry (Wheelan, 1998)

___ To protect the contractor from dishonest clients (Ashby, 2003)

___ To protect the public financially from untrustworthy contractors (Brunner and O'Connor,)

___ To provide policies for policing the industry (Ashby, 2003)

___ To protect the lives and health of the consumer, i.e. safety. (Wheelan, 1998)

___ To bolster consumer's confidence in the construction industry (Personal interview, Arizona Contractors, July 2004)

6. Please specify how effective residential general contractor licensing is in fulfilling the state's intended purpose:

Very Ineffective

Ineffective

Somewhat Ineffective

Neither Effective nor Ineffective

Somewhat Effective

Effective

Very Effective

7. Of the following methods (choose all that apply), which does your state use to measure how well licensing is fulfilling the intended purpose? (Personal interviews and communication with multiple state licensing departments, September 2004-January 2005)

- Surveys of general contractors
- Surveys of consumers (i.e. those who have purchased construction services recently)
- Surveys of the general public
- Departments or committees that police the contractors
- A Governor appointed oversight board/commission
- Inspections and investigations
- None of these: Our state does not have any method.
- Other _____

8. Please specify how effective the above indicated method(s) are in measuring the effectiveness of residential contractor licensing in your state:

The methods indicated are:

Very Ineffective

Ineffective

Somewhat Ineffective

Neither Effective nor Ineffective

Somewhat Effective

Effective

Very Effective

9. Please indicate which of the following are required for obtaining a general contractor's license in your state: (NAHB, 2002)

- Minimum experience
- Management experience
- Financial records
- State fee
- Passing grade on examination
- Proof of insurance
- Proof of workers compensation insurance
- Other _____

10. Of the following, which methods are used in your state to ensure that the above requirements are maintained after licensure has been awarded? (Personal interviews with state licensing departments, September 2004-January 2005)

- State audits of licensed contractors
 - Periodic follow-ups by state department or committee
 - Continuing education requirements for contractors
 - Municipal follow-ups, i.e. not the states responsibility
 - Better Business Bureau
 - Mandatory reporting of civil/criminal actions taken against licensee
 - Our state doesn't have any method
 - Other, please indicate: _____
11. If your state DOES have methods in place to measure the effectiveness of licensing, please list any **advantages** to having those methods:
12. If your state DOES have methods in place to measure the effectiveness of licensing, please list any **disadvantages** to having those methods:
13. If your state DOES NOT have methods in place to measure the effectiveness of licensing, please list any **advantages** to not having those methods:
14. If your state DOES NOT have methods in place to measure the effectiveness of residential contractor licensing, please list any **disadvantages** to not having those methods:
15. Are there any reoccurring complaints from the licensed residential general contractors regarding licensing?
16. Are there any reoccurring complaints from consumers regarding residential contractor licensing?