

DEPARTMENT OF COMMERCE
SUMMARY OF PUBLIC HEARING COMMENTS AND AGENCY RESPONSE

Clearinghouse Rule Number: 10-039		Hearing Location: Madison, WI	
Rule Number: Ch. Comm 5, Licenses, Certifications and Registrations		Hearing Date: May 5, 2010	
Relating to: Building Contractor Registration			
Comments: Oral or Exhibit No.	Presenter, Group Represented, City and State	Comments/Recommendations	Agency Response
Speaker 1, Exhibit 1	John Mielke Associated Builders and Contractors, Inc. (ABC) – Wisconsin Chapter 5330 Wall Street Madison, WI 53718	<p>a. Requests the penalties for failure to register as a Building Contractor be lowered. Believes a forfeiture 10-times the registration fee for a first-time violation is excessive. Indicates that failure to register does not put the consumer at risk because the Building Contractor is a “registration” and not a credential intended to demonstrate competence of the contractor.</p> <p>b. Objects to contractors being made responsible for primary enforcement of licensing regulations. Believes it is the responsibility of the individual contractor or business to be sure it is registered or appropriately credentialed, and it is the responsibility of the department – not other contractors – to enforce the registration requirement.</p>	<p>a. The proposal has been modified and the forfeitures have been lowered to \$250 for the first offense, \$500 for the second offense and \$1,000 for third and subsequent offenses for contractors who are not in compliance with the registration requirement and for contractors who engage nonregistered contractors. The department believes that the forfeiture amounts needs to be sufficient enough to serve as a disincentive for avoiding registration.</p> <p>b. The responsibility to contract with other contractors and subcontractors who hold the appropriate credentials if required is an existing requirement. The proposed rules establish a potential forfeiture for knowingly violating this responsibility. The department believes this responsibility helps facilitate registration compliance that is mandated under the statutes and supports state efforts to reduce misclassification of employees as subcontractors.</p>
Speaker 2	Pattie Stone Metropolitan Builders Association N16 W23321 Stone Ridge Drive Waukesha, WI 53188	<p>a. Objects to the substantial forfeitures for failing to register as a Building Contractor or for hiring a subcontractor who has not registered as a Building Contractor. Indicates that the main impetus of the Building Contractor Registration was to create a list of businesses involved in the construction industry in Wisconsin. Believes the extent of the fines being assessed goes beyond that original concept. Comments similar to Speaker #1 (Mielke), a.</p> <p>b. Opposes the proposed forfeiture system because the department’s stop work order is an effective sanction on contractors to register as Building Contractors. Indicates that the threat of not being able to work when time is of the utmost is incentive enough for contractors to cross check all subcontractors against the department’s Building Contractors Registration database.</p>	<p>a. See response under Mielke, comment a.</p> <p>b. The department’s stop work order may not be an effective tool in all situations, especially if the work is already completed. The administrative forfeiture as specified by 2009 Wisconsin Act 28 provides another enforcement tool for the department to ensure compliance with the registration requirement.</p>

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Speaker 3, Exhibit 2	Jim Boullion Associated General Contractors (AGC) of Wisconsin 4814 East Broadway Madison, WI 53716	<p>a. Considers the penalties excessive, and objects to the proposed forfeiture system. Recommends the penalties for not registering or hiring an unregistered building contractor be lowered and used only as a compliance tool. Proposes a forfeiture system that ranges from \$100 for first offense to \$500 for third and subsequent offenses, and allows unregistered subcontractors to become registered before a penalty of \$250 to \$500 is assessed. Comments similar to Speaker #1, (Mielke), a. and b.</p> <p>b. Requests the department implement the new rule effective January 1, 2011, rather than during the holidays.</p>	<p>a. See responses under Mielke.</p> <p>b. The department will take the suggestion under consideration. The department has some flexibility as to the effective date at the adoption phase of the rule-making process, however, the legislative standing committee review phase ultimately may affect when the rules become effective.</p>
Speaker 4	Kevin J. Check Kevin J. Check Designs 2501 Oakwood Blvd. Wausau, WI 54403	Recommends the proposed rules include clarification relating to the exemption of designers. Believes the rules are confusing as they require anyone involved in the construction trades to register as a Building Contractor.	The existing rules clearly exclude the activity of design as not requiring registration. The proposed rule revisions do not affect or change this exclusion.
Speaker 5, Exhibit 3	Pat Stevens Wisconsin Builders Association 4868 High Crossing Blvd. Madison, WI 53704	<p>a. Opposes the rule because Comm 3.13 (1) allows Commerce to issue stop work orders to enforce registration and credentialing requirements. Comments similar to Speaker #2 (Stone), b.</p> <p>b. Objects to the forfeiture system for dwelling contractors because it is inconsistent with state law. Cites Wisconsin Statutes 101.654 and 101.66 (3) that specifies the penalty for dwelling contractors failing to obtain certifications be \$25 to \$500 for each violation.</p> <p>c. Considers the forfeiture amounts excessive. Believes the registration is a paperwork exercise and does not relate to safety or if the contractor has the appropriate skill and training to conduct the job. Comments similar to Speaker #1 (Mielke), a.</p>	<p>a. See response under Stone, comment b.</p> <p>b. The department considers the penalties cited under ss. 101.654 and 101.66 (3), Stats., to be those imposed through the courts. Dwelling contractors also fall under the scope of s. 101.147, Stats., and therein the forfeitures of that section.</p> <p>c. See response under Mielke comment a.</p>

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		d. Recommends warnings be issued and discretion be built into the proposed rule. Believes contractors should be given the opportunity register before a forfeiture is imposed.	d. The department’s work procedures typically involve educational efforts, including the issuance of warnings, before assessing forfeitures.
Speaker 5, Exhibit 3 (cont.)	Pat Stevens (cont.)	e. Objects to contractors being made responsible for primary enforcement of licensing regulations. Comments similar to Speaker #1 (Mielke), b.	e. See response under Mielke, comment b.
Exhibit 4	Ann Rodrigues, CCP Vice President David & Goliath Builders, Inc./Avid Homes, LLC an Affiliate of DGBI/DG Remodeling a Division of DGBI 1177 Quail Court Pewaukee, WI 53072	<p>a. Opposes the forfeiture system because the department already has the ability to enforce its registration and credentialing requirements by issuing stop work orders. Believes the forfeiture authority is not needed. Comments similar to Speaker #2 (Stone), b.</p> <p>b. Objects to the forfeiture because it is inconsistent with state law that specifies the penalty for not being certified as a dwelling contractor is \$25 to \$500 for each violation. Comments similar to Speaker #5 (Stevens), b.</p> <p>c. Opposes the forfeiture amounts because they are excessive for failure to register with the department. Comments similar to Speaker #1 (Mielke), a.</p> <p>d. Recommends the proposed rules require the department to issue a warning before imposing the forfeiture and allowing the negligent contractor the opportunity to register. Comments similar to Speaker #5 (Stevens), d.</p> <p>e. Objects to contractors becoming “licensing police” by subjecting them to forfeiture if they hire someone who does not hold the Business Contractor Registration. Comments similar to Speaker #1 (Mielke), Comment b.</p>	<p>a. See response under Stone, comment b.</p> <p>b. See response under Stevens, comment b.</p> <p>c. See response under Mielke, comment a.</p> <p>d. See response under Stevens, comment b.</p> <p>e. See response under Mielke, comment b.</p>

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Exhibit 5	Michael Coello Metropolitan Builders Association Coello & Associates, Inc. 2122 South West Ave. Waukesha, WI 53189	Opposes the proposed forfeiture system. Believes the “stop work” order is sufficient to enforce Building Contractor Registration. Endorses the AGC’s forfeiture proposal. Comments similar to Speaker #1 (Mielke), comment a., and Speaker #3 (Stone), b.	See response under Mielke, comment a., and Stone, comment b.
Exhibit 6	Wayne E. Foster The Foster Group 17100 W. Bluemound Road, Suite 209 Brookfield, WI 53005	Opposes the fine structure on dwelling contractors who are certified and registered with the department. Indicates that requiring registration is discriminatory to small businesses in the construction industry and serves no legitimate need. Believes the proposed forfeitures are excessive, plus the proposed system requires certified dwelling contractors to “police” the proposed requirement.	The registration of building contractors and dwelling contractors is statutorily mandated. Dwelling contractors also fall under the scope of s. 101.147, Stats., and therein the forfeitures of that section. See response under Mielke, comment a.
Exhibit 7	Mark S. Reihl Wisconsin State Council of Carpenters 115 W. Main Street Madison, WI 53703	Supports the proposed rules relating to Building Contractor Registration. Believes the proposed forfeitures for contractors who are not in compliance with the registration requirement and for contractors who engage nonregistered contractors are fair and necessary to assure compliance.	Support noted.