

PUBLIC HEARING

before

SUBCOMMITTEE

of the

ASSEMBLY COMMITTEE ON COMMERCE, INDUSTRY & PROFESSIONS

on

ASSEMBLY, NO. 805

(An Act establishing minimum standards for materials
used in construction of single family residences)

and

ASSEMBLY, NO. 962

(An Act requiring all building contractors to register
with the State, and post a bond before certificate of
occupancy is issued for all newly constructed one-
family residences)

Held:
May 21, 1974
Assembly Chamber
State House
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Assemblyman Martin A. Herman (Chairman)

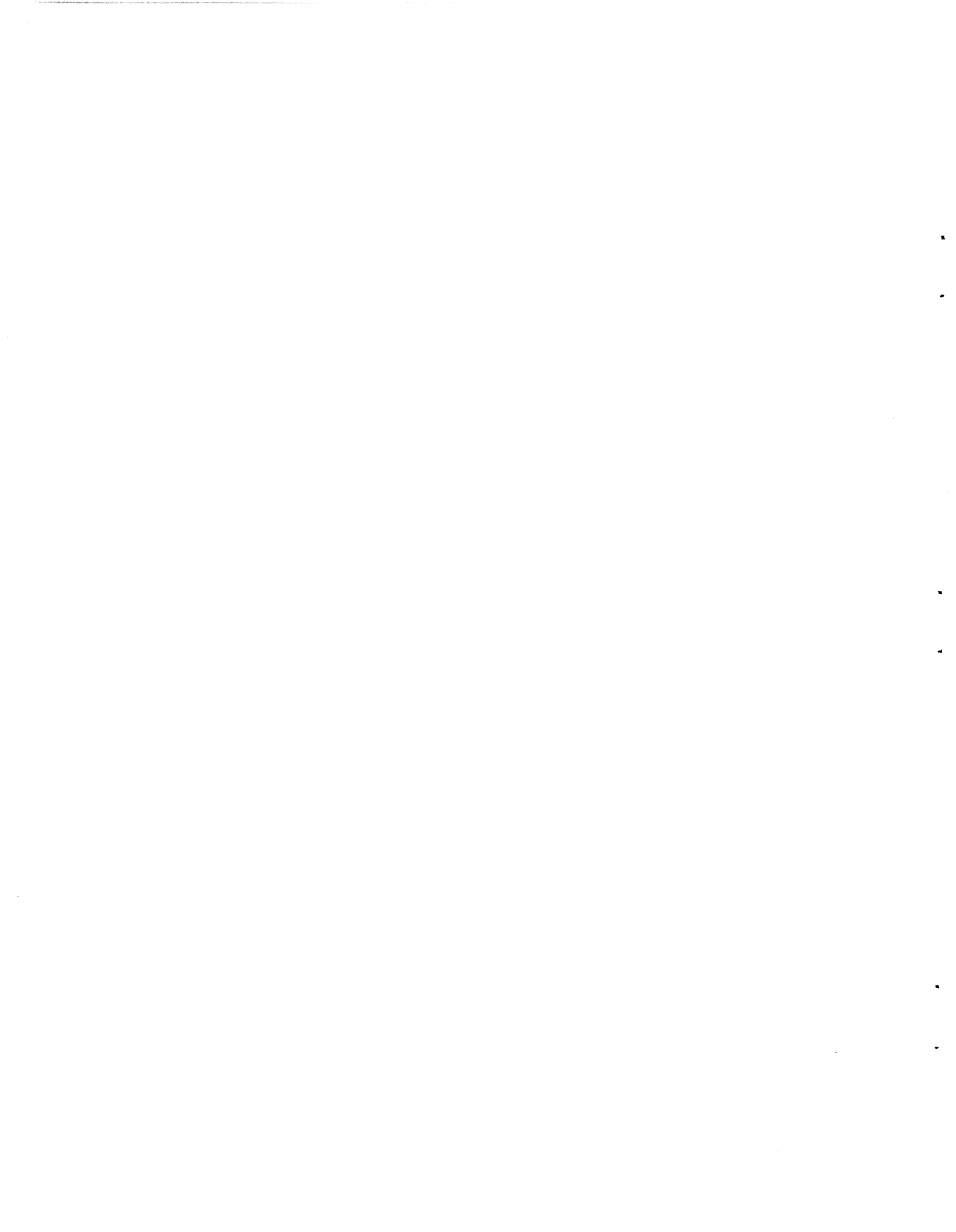
Assemblyman C. Gus Rys

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187
188
189
190
191
192
193
194
195
196
197
198
199
200

I N D E X

	<u>Page</u>
Rosemary Totaro Assemblywoman	1
Richard T. Sweeney Attorney	4
Betty Wilson Assemblywoman	16
Larry Paragano New Jersey Builders Association	25
Philip Coeuzza Attorney	58
Thomas A. Papparone, President Home Builders League of South Jersey	71
Walter B. Riley, Jr. Home Builders League of South Jersey	75
Arthur T. Young Building Contractors Association of New Jersey - - - -	81
Robert F. Ferguson, Jr. Executive Vice President New Jersey Association of Realtors (Submitted Statement)	84 & 86
Letter from Douglas J. Harper, Deputy Attorney General In Charge - Division of Consumer Affairs	91



Sub-Committee Considerations pertaining to

Assembly Bills 805 and 962

1. Reduce bonding fee from 15% to 5%. Have it posted on a county, not municipal, basis. Have a maximum of \$20,000. Building permits not issued unless a contractor can show he is duly bonded.
2. Provide for reimbursement of attorney's fee, cost of experts, and court costs. Provide for written notice.
3. Parties have to agree in advance to binding arbitration possibly through the American Arbitration Association.
4. Statement that the bill shall be liberally construed.
5. Provide for insurance in addition to bonding. Or in lieu of bonding or insurance provide that another form of guarantee can be substituted with approval of the Director of Consumer Affairs provided that no such program shall contain lesser standards. Provide that warranty situations not covered will be covered by adhesion of operation of the law. Provide a minimum warranty.
6. Provide for coverage of home repair. Exclude persons doing own handywork or works less than \$300.00.
7. Exclude persons doing their own construction.
8. Expand specific warranties, such as use ability or fitness, which cannot be waived.
9. Provide that in the event a contractor or sub-contractor brings suit against any homeowner for cause, failure to have posted bond or other requirements of this act shall be considered an affirmative defense by the homeowner.
10. Include termites under warranty.
11. Provide for coverage of collateral claims for injuries and damages that would follow.
12. Provide that the posting of bond would not eliminate the necessity of a builder to post other bonds as required.
13. Provide that all warranties, expressed or implied, shall survive the recording of the deed.
14. Provide the Commissioner or Board of Freeholders of a county to suspend the right of anyone to operate in the State who is not bonded.



15. Provide that any final settlement sheet shall have attached to it receipt of a statement of insurability.
16. Possibly stamp on deed or final settlement sheet "acknowledgement, complied with the law of 197_." Acknowledge by both buyer and seller.
17. Possibly provide for penalties?



ASSEMBLY, No. 805

STATE OF NEW JERSEY

INTRODUCED JANUARY 15, 1974

By Assemblywoman TOTARO

Referred to Committee on Commerce, Industry and Professions

AN ACT concerning the quality of construction and site of single family residences and warranties in support thereof.

1 BE IT ENACTED by the Senate and General Assembly of the State
2 of New Jersey:

1 1. This act shall be known and may be cited as "The Single
2 Family Dwelling Warranty Act."

1 2. It is hereby declared to be in the public interest and to be
2 the policy of the State to establish minimum standards for all
3 construction and sites of single family dwellings and to establish
4 a means by which said standards shall be enforceable by the original
5 and succeeding owners thereof.

1 3. Notwithstanding any provision of law to the contrary, every
2 contract for construction and/or sale or construction of a single
3 family residence by the builder thereof or contract of sale of such
4 a dwelling if initially occupied within 2 years of the date of execu-
5 tion of said contract and after the effective date of this act, shall
6 contain a warranty that said residence shall be constructed with
7 materials and in a manner so as to comply with the Standard Build-
8 ing Code of New Jersey or such other building code as may have
9 been adopted by ordinance in the municipality or county in which
10 such residence shall be located. Said warranty and the bond set
11 forth hereafter shall run with the land and premises to the benefit
12 of all owners thereof for 2 years from the date of initial occupation
13 thereof pursuant to law.

1 4. Any term of a contract as set forth above which shall establish
2 a lesser standard than that set forth herein shall be void and of
3 no force and effect. Nothing herein, however, shall affect rights
4 and remedies resulting from such further warranties as shall be
5 expressed or implied in any such contract.

1 5. Prior to the issuance of any building permit, if required, or
2 beginning of construction of a single family residence, the applicant

3 for a building permit shall post with the issuing authority, or, if
4 there be none, the clerk of the municipality, in which such residence
5 shall be located, cash or a bond in the amount of 15% of the fair
6 market value of the residence to be constructed less the value of
7 the land on which same shall be located.

1 6. In the event said residence shall be located in a municipality
2 wherein a certificate of occupancy shall be required, the require-
3 ments of paragraph 5 shall be waived until such time as certificate
4 of occupancy shall be applied for, but in no event shall said cer-
5 tificate of occupancy be issued and the residence be occupied until
6 the cash or bond set forth in section 5 be posted as set forth therein.

1 7. The cash or bond posted hereby shall be discharged 2 years
2 from the first occupation of the dwelling unless notice of alleged
3 violation of the warranty established hereby shall have been filed
4 by the owner of the premises with the official having custody of the
5 cash or bond within the said 2 years. In the event of notice of
6 violation said cash or bond shall not be discharged until the owner
7 shall file a release of the violation.

1 8. In the event that during the said 2 years, notice of violation
2 shall be filed preventing discharge of the cash or bond, the party
3 posting same shall have the right to be discharged therefrom if
4 he shall serve the owner of the premises notice of his intent to
5 apply for discharge thereof and the owner of the premises shall
6 fail to file suit to recover for breach of the warranty created hereby
7 within 180 days of service of said notice and serve proof thereof
8 upon the party posting said cash or bond and the municipal official
9 in possession thereof, the cash or bond shall forthwith be dis-
10 charged.

11 In the event suit as set forth is filed, the municipal official in
12 possession of the cash or bond shall hold same pending order of
13 the court therein.

1 9. The municipality in which any dwelling herewithin shall be
2 located shall keep on file records of all cash or bonds posted hereby,
3 all notices posted hereinunder and the nature and disposition of
4 all cash or bonds posted hereunder.

1 10. This act shall take effect immediately.

STATEMENT

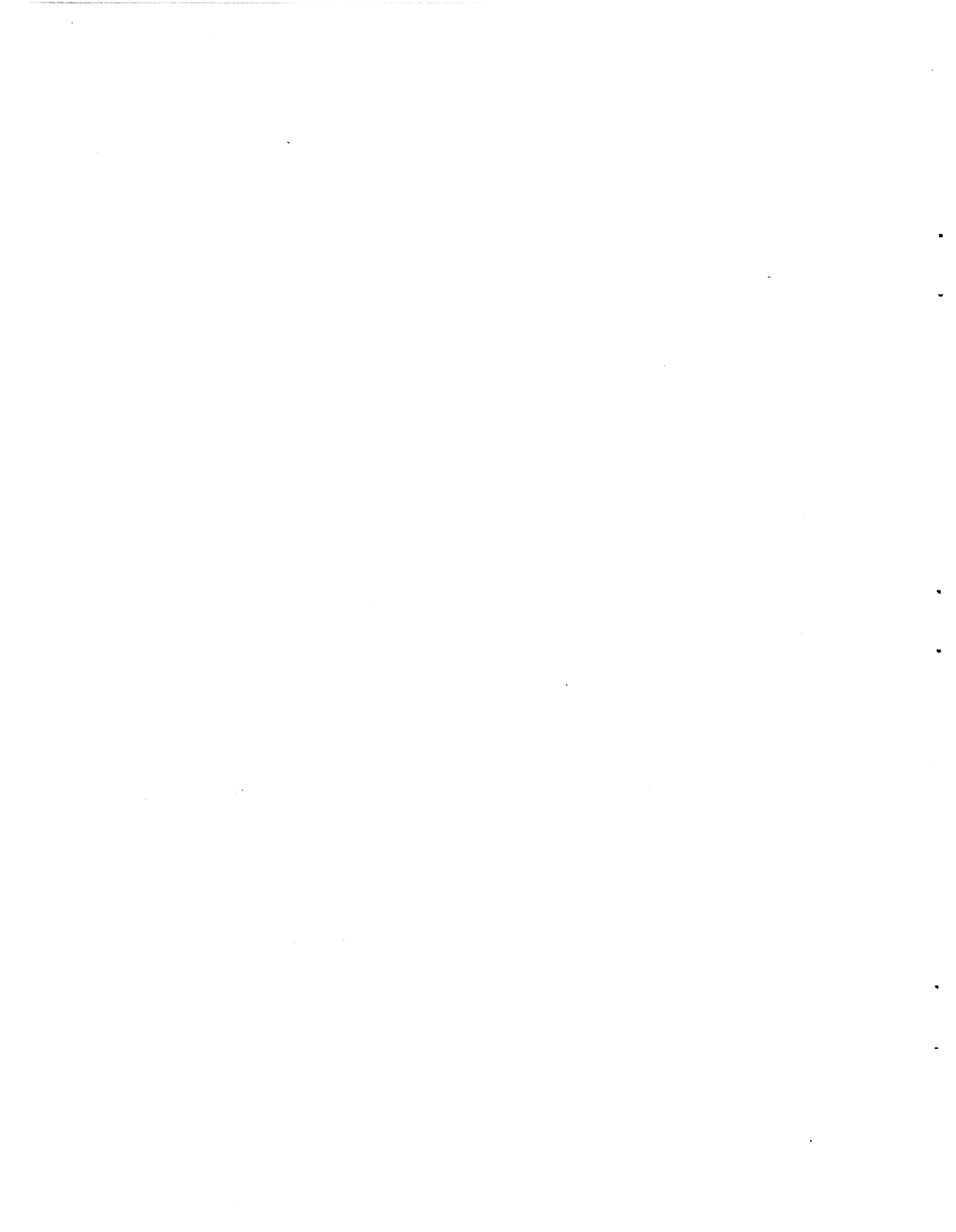
Whereas, single family housing in the State of New Jersey has
and is developed primarily by corporate entities; and

Whereas, the practice of sale of such housing by form contract
dictated by such developers has evolved; and

Whereas, the remedies of individual purchasers for defects in construction have thereby been substantially modified; and

Whereas, it is in the general interest to maintain high standards of construction and to protect the consuming public from inadequate construction standards it is the intent and purpose of this legislation to:

1. Establish minimum standards for materials used in construction of single family residences;
2. Provide a form of security therefor; and
3. Provide an adequate remedy to the consuming public in the event of violation of such minimum standards.



ASSEMBLY, No. 962

STATE OF NEW JERSEY

INTRODUCED JANUARY 24, 1974

By Assemblywoman WILSON, Assemblymen SWEENEY, SIMER, SALKIND, VAN WAGNER, GEWERTZ and HAMILTON

Referred to Committee on Commerce, Industry and Professions

AN ACT creating a State Board of Registration of Building Contractors in the Department of Law and Public Safety, requiring building contractors to register therewith, and requiring contractors to post a bond or other security before certificate of occupancy is issued for all newly constructed one-family residences.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. This act shall be known and may be cited as "The Building
2 Contractor's Registration and Security Law."

1 2. When used in this act:

2 a. Building contractor means and includes any person, firm,
3 corporation or other legal entity who contracts directly with the
4 owner of real property to construct a building or other structure
5 thereon or who constructs such building or structure upon his own
6 real property for the purpose of resale.

7 b. Board or State board, means the State Board of Registra-
8 tion of Building Contractors, created pursuant to this act.

1 3. There is created a State Board of Registration of Building
2 Contractors in the Department of Law and Public Safety, con-
3 sisting of seven citizens to be appointed by the Governor, without
4 regard to political affiliation, and except as to members first ap-
5 pointed, for terms of 4 years and until the appointment of their
6 successors. Of the members first appointed two shall be appointed
7 for terms of 1 year, two for 2 years, two for 3 years and one for
8 4 years. Two members shall be building contractors of at least 10
9 years experience, two shall be local building inspectors who have
10 held such appointments for at least 10 years, and three shall be
11 representative of the public having no association with the building
12 construction industry.

13 No member shall be eligible for appointment for more than two
14 terms. Appointments to fill vacancies on the board shall be made
15 for the remainder of the unexpired term.

16 Members of the board shall be subject to removal by the Governor
17 for cause.

1 4. Each member of the State board shall receive \$25.00 for each
2 day of actual service in attending meetings of the board at which
3 business is transacted and in addition shall be entitled to be reim-
4 bursed for his necessary traveling expenses; provided such com-
5 pensation in any fiscal year shall not exceed \$1,500.00 per member.

1 5. The State board shall organize annually by the selection from
2 among its members of a chairman, a vice-chairman and a secretary,
3 subject to the approval of the Attorney General. Such officers
4 shall so serve without additional compensation. The chairman,
5 vice-chairman and secretary shall serve in such capacities for a
6 period of 1 year or until their successors are selected. Vacancies
7 in such offices shall be filled for the unexpired terms by the State
8 board in the manner set forth above. The State board with the
9 approval of the Attorney General is authorized to appoint an
10 executive-secretary without regard to the provisions of Title 11,
11 Civil Service and such clerical assistants as may be required and
12 within the limits of available appropriations and to fix their com-
13 pensation. The State board is hereby authorized to incur such other
14 necessary expenses, within available appropriation therefor, as
15 may be required to carry out its functions and purpose. All moneys
16 received by the State board shall be remitted to the State Treasury.
17 All expenditures deemed necessary to carry out the provisions of
18 this act shall be paid by the State Treasurer from the registration
19 fees and other sources of income of the board, within the limits of
20 available appropriations according to law.

1 6. A majority of the State board shall constitute a quorum for
2 the transaction of business.

3 The State board may adopt, amend and promulgate such rules
4 and regulations which may be necessary to carry out the pro-
5 visions of this act; provided, however, that the board's jurisdiction
6 shall not include the regulation or determination of matters relating
7 to trade or craft jurisdiction or the determination of whether any
8 particular class of employee is entitled to perform any particular
9 work.

1 7. The State board, under the hand of its chairman and the seal
2 of the State board, may subpoena witnesses and compel their attend-
3 ance before it and may require the production of such papers or
4 documents in any matter involving proceedings for the revocation,

5 denial, or suspension of any registration issued hereunder. Any
6 member of the State board may administer oaths or affirmations to
7 witnesses appearing before the State board. The State board shall
8 keep a record of all proceedings conducted before it.

1 8. On and after the effective date of this act, any person desiring
2 to engage in the business of building construction as a building
3 contractor shall register with the State board. Such registration
4 shall include the following:

5 a. the name and address of the applicant, including the names
6 and address of any partners, and if the applicant is a corporation,
7 the names and address of all officers, directors and persons holding
8 at least 5% of the issued and outstanding stock of any class;

9 b. a statement of the applicant's financial status;

10 c. a statement as to whether any person named in paragraph a.
11 has been convicted of a crime or has been convicted of a willful
12 violation of any State or local building code;

13 d. a statement of the applicant's experience in the building con-
14 struction industry;

15 e. names and address of two personal references for each appli-
16 cant, who are not related to the applicant.

1 9. The State board shall act as a hearing board which may on
2 its own motion investigate and conduct hearings regarding the
3 suspension, revocation or denial of any registration required here-
4 under. The State board, on its own motion or on complaint by any
5 aggrieved person, in writing, duly signed and sworn to by the
6 complainant, and filed with the secretary of the State board, may
7 deny, suspend or revoke any registration required hereunder, as
8 hereinafter set forth, if any applicant as registrant has:

9 a. made a material misstatement on his registration statement
10 or renewal statement; or

11 b. willfully committed fraud in his occupation; or

12 c. practiced his occupation in a willfully negligent manner; or

13 d. willfully violated any State or local building code; or

14 e. violated any provision of this act or any rule or regulation
15 adopted pursuant thereto.

16 The State board shall notify the accused applicant or registrant
17 of the time and place of the hearings and the nature of the charges
18 against him. The notice to the accused shall be in writing, directed
19 to his last known place of business and shall be mailed by certified
20 mail, return receipt requested, postage prepaid, not less than 15
21 days before such hearing date. At any hearing the accused shall
22 have the right to appear personally and by counsel and shall have
23 the right to confront and cross-examine witnesses appearing

24 against him and to produce evidence and witnesses in his defense.
25 If a majority of the State board shall vote for denial, suspension
26 or revocation of the accused's registration, the record of the State
27 board shall be so marked and the applicant or registrant shall be
28 notified of the State board's decision as soon as practicable. Any
29 person whose State registration shall have been denied or revoked
30 may apply for a new registration and shall meet all of the require-
31 ments of this act for applicants; provided that such applicant shall
32 not have the right to apply for such new registration within 6
33 months from and after the date of denial or revocation of such
34 registration.

1 10. Upon acceptance of an applicant's registration the State
2 board shall issue a nontransferable and nonassignable registration
3 certificate as proof of valid registration.

1 11. Every registration certificate issued pursuant to this act
2 shall be valid for a period of 2 years from the date thereof. The
3 initial registration fee shall be \$150.00 per applicant. The renewal
4 registration fee shall be \$100.00.

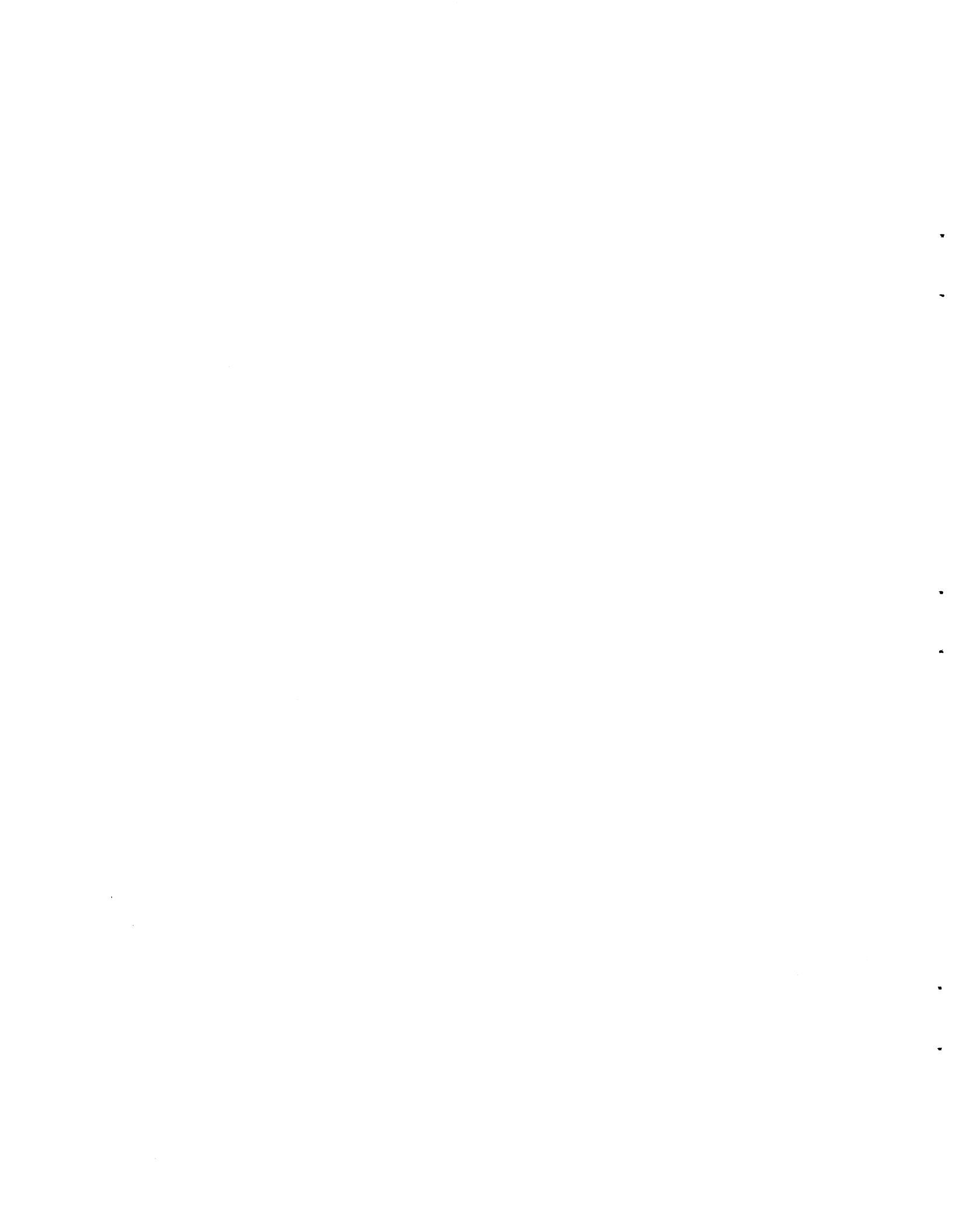
1 12. In addition to such other bonds as may be required by con-
2 tract, every registered building contractor, as a condition precedent
3 to the issuance of a certificate of occupancy by the local building
4 inspector involving all newly constructed one-family residences,
5 shall post with the clerk of the municipality within which the
6 improvement is located, security in the form of cash, certified check
7 or bond issued by a surety company authorized to do business in
8 New Jersey, in an amount of 5% of the value of the improvement,
9 such value to be determined by the local tax assessor. No security
10 shall be required if the value of the improvement is less than
11 \$5,000.00.

1 13. The purpose of the security or condition of the bond required
2 pursuant to this act shall be to ensure that all work done on the
3 premises, for which the certificate of occupancy is required, shall
4 have been performed in a competent manner, in accordance with
5 any applicable State and local building codes and any other State,
6 county or municipal laws, rules or regulations. The board shall by
7 rule and regulation provide who shall be eligible to receive the fi-
8 nancial protection afforded by the security or bond required to be
9 provided pursuant to this act. The term of the security or bond
10 shall be 1 year from the date of the issuance of the certificate of
11 occupancy.

1 14. Any person, firm or corporation who violates any of the
2 provisions of this act or any rule or regulation adopted pursuant

3 thereto shall, in addition to any other penalty provided by this act,
4 be fined not less than \$100.00 or more than \$500.00 for the first
5 offense and not less than \$500.00 or more than \$1,000.00 for the
6 second and each subsequent offense. Penalties shall be collected
7 and enforced by the State board in the name of the State by sum-
8 mary proceedings in any county district or municipal court pur-
9 suant to the Penalty Enforcement Law (N. J. S. 2A:58-1 et seq.).

1 15. This act shall take effect immediately but no person shall
2 be prohibited from engaging in business as a building contractor
3 for failure to register as such until 6 months from the effective date
4 thereof, and no security or bond shall be required pursuant to this
5 act until 6 months from the effective date.



ASSEMBLYMAN MARTIN A. HERMAN (Chairman):

I'd like to call this public hearing to order. It's a public hearing on Assembly Bills 805 and 962 regarding the establishing of home warranties through legislation. We have called a number of witnesses today; and I see that we do have our first witness and prime sponsor of Assembly Bill 805, Assemblywoman Rosemary Totaro. She is prepared at this time to make a public statement concerning the proposed legislation. The floor is yours.

A S S E M B L Y W O M A N R O S E M A R Y T O T A R O :

Mr. Chairman and members of the Committee: I'm Rosemary Totaro, Assemblywoman from Morris County.

For many years we have watched the mark of developers upon the New Jersey scenic landscape and heard the anguish and frustration filter from the town halls and municipal buildings. We have seen the unscrupulous builders sell their inferior houses, dissolve the corporations and move to another location. While the builder counts his profits, the elected officials are spending their municipal meetings listening to the grievances and complaints of the new home owners. There is no solution for them. A-805 is needed.

Five years ago I started out asking Legislators to develop a protection for the new home buyer.

Their reply was that they were working on it. Then I turned to Consumers Affairs and sought their involvement in this area.

Well, as you know, no one did anything until I campaigned on this legislative issue and filed a piece of legislation in the first session. Then, Millicent Fenwick told me that, of course, Consumers Affairs had been working on a warranty for new homes. For many years the people have had nothing but promises.

A house is the most expensive item that a middle-income person buys, and yet, today there is no protection. You may purchase a toaster and receive at least a year's guarantee warranty.

Builders have advised me that the most serious construction defects will appear during the first two years. Therefore, a bond posted with the local governing body will insure that the necessary repairs are made.

Assembly Bill 962's intent has merit because the sponsor is striving for the same protection as 805. We find that it structures another State bureaucracy.

If we feel that contractors should be registered, then I feel that, perhaps, we should take the recommendation of the Builders' Association and license them. As a Legislator, I am still dealing with problems that materialized when I was still an aide. We cannot expect

the frustrated home owner to deal in the same manner with State agencies. Local control is a must to the bonding and also permits the home owner to seek an inexpensive court action, if necessary, without attorney fees, by placing a filing fee of \$13 and a \$6.80 service charge in a district court.

I agree with the Committee that the bond amount should be reduced from 15 percent to 5 percent. The recommendation of the Society of Architects, who endorse this Bill, is that the Bill should also provide for evidence of posting of bond to be made part of the required certificate of occupancy.

A-962 does not set forth any standards by which the Board to be created may grant, refuse or revoke registration by contractors. It cannot clearly or legally define what willful violations may be. Sections 12 and 13 in the Bill give almost absolute authority to the Board to be created to determine the purpose of the bond. The financial protection to be created does not appear to run with the land. It certainly is an intrusion on home rule, and I am still a Legislator who believes that the government should be as close to the people as possible.

A-805 sets forth minimum building standards and the means by which these standards shall be enforced. The legislation provides for compliance with the

standard building code of New Jersey or any building codes that were established by municipal or county ordinances.

In today's paper we read about the insurance proposals that we will be reviewing, and I feel that the real estate brokers will be the ones that can corner the market on this. You have to deal with the costs to the buyer; they are going to escalate. The lawyers and real estate brokers will be counting their money, but the home buyer will pay and pay and pay. And this does not provide for new home warranty.

Members of the Committee: The people of New Jersey have waited far too long. We must protect the honest builder and the home buyer. It is our responsibility. Thank you.

ASSEMBLYMAN HERMAN: I understand that your attorney would like to make a statement.

ASSEMBLYWOMAN TOTARO: Yes.

ASSEMBLYMAN HERMAN: Will he give his name for the record, please.

R I C H A R D T. S W E E N E Y: Richard Sweeney, Mr. Chairman.

ASSEMBLYMAN HERMAN: And your office, sir?

MR. SWEENEY: 211 Route 10, Succasunna, which is in Morris County and part of Mrs. Totaro's district.

Mr. Chairman, I have a few brief comments to make in addition to those of Mrs. Totaro. As to the need

for the Bill, I think she has stated it concisely; and I think the need is recognized by the other legislation which has been submitted.

I must disagree, first of all, with Mrs. Totaro on one point; and that is that it seems to me, lately, the attorneys are counting less and less and, perhaps, others in this field are counting more and more. Be that as it may.

As an attorney, however, I look at this as a practitioner in a small suburban practice; and I ask myself how my clients might be protected--the clients that come to me after they've purchased or after they've signed a contract, the form of which has been prescribed by the developer, with a mortgagee and closing attorney who have been dictated by the developer; and the buyer is faced with the fact that he can either take it or leave it.

The buyer of most homes is not in a situation where he can go out and shop extensively and compare values with knowledge of the value and quality of a product. Most buyers don't have that knowledge. He's not the buyer who can shop for an identical product from store to store, recognizing that the uniform commercial code provides minimal warranties for him. He's not the buyer who has available to him the opportunity to inspect fully and be satisfied with his product before he purchases. In most cases, he is attempting to sell one house in order to move into

another. He's got children who need housing; he's got school problems to meet; he's got a job transfer deadline; and it's my opinion, as a home buyer and as an attorney, that the sellers and their representatives know the predicament. The result is the problem that Mrs. Totaro has described.

I'm sure those of the members of the Assembly who are attorneys and have represented planning boards, in particular, have had to sit and listen to people come in with their hands in the air and their pockets empty, saying: the plumbing doesn't work; the driveway's not in; water is flowing into the cellar window; what do I do? You approved this subdivision; you issued the certificate of occupancy.

Now, I understand this proposed legislation, by a professional association, regards the fact that this Bill only restates what is already the law; and that is that certificates of occupancy cannot be issued until building codes are complied with. Well, that is true in most municipalities. The difficulty is that notwithstanding that a certificate of occupancy is issued, and notwithstanding that the municipality allows a dwelling to be occupied, the fact that the dwelling, for some reason, whether willful or accidental, does not comply with the local building code, does not give the occupier of the property the right to sue the municipality for wrongfully issuing the certificate of occupancy or, even, under the state of the civil law at this time, although that might be changing, the right to sue the

seller for breach of some warranty. It's like the man who has an automobile accident, and he feels the driver of the other vehicle was careless; he goes to the municipal court and he files a complaint; after he prosecutes this, he puts out his hand and says, where's my money; and the judge says, I don't give out money in this court.

The same thing applies here, except it's worse, because if a home owner moves to a home for which he has spent \$40,000 or \$50,000--and that may be becoming a rarity these days as well--and he finds something significantly wrong with it, he goes to the building inspector and says, I want a complaint issued for violation of the building code; and it is issued. Perhaps the builder is prosecuted, and perhaps he is convicted; but that doesn't get the man his money or his house fixed. More importantly, perhaps, is the fact that the home owner, himself, is now maintaining a violation of the building code and he'll get the next summons; and, perhaps, his certificate of occupancy will be revoked until the condition is remedied.

So, reliance upon police power, the enforcing power of the municipality, is really fruitless and it's an empty gesture and it's an attempt by the Legislature and the municipalities to protect the community in general; I think what this Assembly must recognize is that the

individual consumer has got to be protected. I feel that A-805, without creating a bureaucracy, without creating another product to be sold along with the house and along with the title insurance and along with the various other closing costs, creates a direct and simple remedy for the wronged buyer of a new dwelling. It allows him to rely upon a local standard, either the State building code or a building code in force in the municipality. It allows him to rely upon, to some extent, the expertise of the building departments of the various municipalities, who are in a position to inspect and to advise as to whether a condition is within the minimal standard of the code in force; and it allows him a direct remedy through either his own privately retained attorney or on his own in a district court. There are many of us, again, who have appeared in district courts with pro se plaintiffs, people unrepresented. In my opinion and in my experience, they do pretty well. I think the courts recognize the difficulty in which laymen find themselves in courts, and they're given great latitude.

I feel I should comment, as well, on the concept of insurance. Very frankly, as I informed Mrs. Totaro, there is appeal to that concept to me. The difficulty I feel, again, is that the relief will not be as immediate as it would be, in my opinion, under A-805. The relief will have to be developed short of the very extensive insurance contract spelling out the warranty in

complete detail and referring, I would assume, to some form of building code as we suggest. Short of that, the relief is available on an interpretation of what the common law obligation of the seller of a home is. The insurance carrier, I would assume, would not be obligated to pay on a policy until such time as a wrong had been, at least, established to a prima facie extent by the insured. Now, where is that going to be established? My understanding of the law in New Jersey is that caveat emptor, buyer beware, regarding real estate, is just beginning to crumple; and it is a welcome change in the law.

Until the Supreme Court and the Appellate Division begin to expand on the intent, or rather the policy, behind the Weintraub decision, the home buyer and, wisely, the insurance carrier who has to pay the claim, will have to be forced to sit back and wait until the cases begin to come down on a case-by-case, item-by-item, complaint-by-complaint basis. The difficulty there is that if a home buyer, in September of this year, discovers a defect which is substantial, his relief is not certain, with this fund of money available to him in a district court action; but rather, he has the responsibility of retaining an attorney--and I'm sure it's not the type of case where legal services are going to be available on a contingent basis--of paying an attorney on a cost basis--an hourly rate is the way my office would

charge him - and going to the Trial Division, going to the Appellate Division and, perhaps, reaching the Supreme Court for an extension of the Weintraub decision. Expense upon expense upon expense; then, compromise.

Like every claim on an insurance carrier, there's a factor which has to be measured--the factor of exposure times the liability; and if the man has a home with some serious defect, arbitrarily let's say a \$3,000 item, there's going to be a compromise when the claim is paid and who suffers the loss? The home owner gets it again.

Now, there is a problem. I think all the legislation recognizes the problem, and I think the question is: does the Legislature want to correct the problem efficiently and quickly and, perhaps, painfully to some of the segments of the building industry--but, nevertheless, quickly. If it wants to do it quickly and if it wants to do it concisely and if it wants to do it legally, with the standard to be established at the local level, and if it wants to do it allowing the individual the opportunity to collect on his grievance without undue expense, my opinion is that A-805 in its present form--perhaps amended to some minimal extent--is the way to do it.

Thank you, gentlemen.

ASSEMBLYMAN HERMAN: Thank you, Mr. Sweeney. Assemblywoman Totaro, do you have any questions or comments?

(No questions or comments)

ASSEMBLYMAN HERMAN: I have a few questions I've jotted down here. Perhaps you could clarify them.

Mr. Sweeney, you note that in cases such as this, notwithstanding whether there is a compromise or recovery, the home owner is going to suffer some loss because he or she or both will have to pay for attorneys' fees. Is that correct?

MR. SWEENEY: I recognize that, Mr. Chairman, yes.

ASSEMBLYMAN HERMAN: Do you think this Bill could be further improved by providing that there be reasonable attorneys' fees awarded by the court?

MR. SWEENEY: As a practicing attorney, I'd, of course, have no objection to that, Mr. Chairman. I think that might be a wise thing to do. We considered it when we drafted the legislation. I think, as a practical matter, it was excluded because we took a big bite as it is. If the Legislature will maintain that position - and I think it's a political question - fine I would certainly endorse that addition to it wholeheartedly.

ASSEMBLYMAN HERMAN: As a practicing attorney, don't you find that in any case in which a suit for damages is brought, the attorney's fee is always a problem?

MR. SWEENEY: That is always a problem.

ASSEMBLYMAN HERMAN: Looking into your experience as an attorney, in processing any damage case--let's assume that there's structural damage to a roof or to the bearings or to the floor or a question of installation of

this item or that item in a home--isn't some expert corroborating testimony required in our standard of proofs before the court?

MR. SWEENEY: Yes, there is. Without the legislation establishing a standard, you've got the cost of expert witnesses in every single case of a warranty nature.

ASSEMBLYMAN HERMAN: But even with establishing the standards and the question of whether it was done properly or not properly, won't the possibility or probability exist that plaintiffs are still going to have to bring in some sort of an expert witness? And if they do, who's going to pay for them under your Bill?

MR. SWEENEY: The possibility exists. The probability is lessened by the establishment of a standard.

ASSEMBLYMAN HERMAN: Who's going to pay for it?

MR. SWEENEY: I will concede to the Chair that just as reasonable attorneys' fees may be allowed, perhaps costs of court similarly should be allowed and costs of expert witnesses should be allowed.

ASSEMBLYMAN HERMAN: You have no objection to that being included?

MR. SWEENEY: None in the least. I'll write it if you'd like, Mr. Chairman.

ASSEMBLYMAN HERMAN: Let me ask you this: It would appear that there have been many alternate approaches suggested. Would it violate your concept of this Bill if this subcommittee were to consider permitting in the

alternative the posting of a cash or surety bond as well as an insurance policy? Do you have any objection to that procedure?

MR. SWEENEY: Just the one I mentioned earlier and that is that--no, I'll withdraw that, Mr. Chairman. It would seem to me that what has to be available is a pot to put one's hand in.

ASSEMBLYMAN HERMAN: A fund in court, right?

MR. SWEENEY: That's right. I would require, though, if I may, that in the event it is a form of insurance, the face amount of the policy would similarly have to be deposited and be available to the order of the court so that there would not be, first, a proof problem and a collection problem, thereafter.

ASSEMBLYMAN HERMAN: Isn't that the problem with any surety bond?

MR. SWEENEY: Yes, it is. Sure.

ASSEMBLYMAN HERMAN: And hasn't your experience been, as an attorney, with surety bonds as well as insurance policies, that the admission of liability is always a tenuous one, notwithstanding whether there's a fund in court or not?

MR. SWEENEY: That's true.

ASSEMBLYMAN HERMAN: Have you considered the question of the use of binding arbitration throughout the State to expedite this, assuming this is a State-wide law--we are talking about 21 counties now?

MR. SWEENEY: I haven't considered it, Mr. Chairman. I think any forum which would allow speedy recovery would be a good one. We considered the district court and had it in our consideration when we drafted the legislation recognizing the fact that the costs of government and the size of government are enlarging every year. We saw a court--an inexpensive court designed to aid the pro se party--available; and, at this stage of the proposal, we saw no reason in attempting to create another forum when one was already available.

ASSEMBLYMAN HERMAN: How about if you're suing for \$5,000, Mr. Sweeney?

MR. SWEENEY: It would be a simple amendment to the legislation which creates the district court to except cases of this nature from the jurisdictional amount of the court.

ASSEMBLYMAN HERMAN: That would be your recommendation--to make that type of amendment?

MR. SWEENEY: Yes, it would.

ASSEMBLYMAN HERMAN: I assume you'd have no objection to the Bill if it were extended to say that "this Bill shall be liberally construed."

MR. SWEENEY: How could I object to that?

ASSEMBLYMAN HERMAN: And I assume that you would have no objection if the bills to be considered were to establish new warranty standards which this Bill doesn't have--an extension of our present case law.

MR. SWEENEY: Yes, in fact, I'd like to comment on that, Mr. Chairman. I think that there is a consideration the Legislature should make, and that is that the State building code is the standard which we used, again, because it was the one and the only one universally available in the State. That code, and, perhaps, by supplemental legislation directed to Community Affairs, should be, probably if it's to serve the intent and purpose of this legislation, clarified considerably and, perhaps, updated. So, yes, it would seem to me that work on the standard proposed would be appropriate.

ASSEMBLYMAN HERMAN: Are you aware that the Home-builders League of New Jersey is contemplating adoption of the English system of home warranty guarantee?

MR. SWEENEY: I was advised of that this morning, sir.

ASSEMBLYMAN HERMAN: Assuming that that is an acceptable program, would you have any objection to a builder being able to provide that type of protection with the consent of the Director of Consumer Affairs?

MR. SWEENEY: Well, I'm not really familiar with the program so I really can't fairly comment on it, Mr. Chairman.

ASSEMBLYMAN HERMAN: One last question: Does your Bill cover home repairs?

MR. SWEENEY: Not in its present form, no sir.

ASSEMBLYMAN HERMAN: I assume there'd be no objection to extending coverage to the home repair contract.

MR. SWEENEY: None whatsoever, not to me; of course, I'm not the sponsor; I'm only the draftsman.

ASSEMBLYMAN HERMAN: You're speaking on behalf of the sponsor.

ASSEMBLYWOMAN TOTARO: Since he's my expert, anything he says, goes.

ASSEMBLYMAN HERMAN: Fine. I think that's valid. I want to thank you for appearing.

I see Assemblywoman Wilson waiting in the wings.

MR. SWEENEY: Thank you.

ASSEMBLYMAN HERMAN: Mrs. Wilson, if you would, please.

A S S E M B L Y W O M A N B E T T Y W I L S O N :

Thank you.

The Bill that I've come to speak about is A-962, which I have sponsored. This is a Bill drawn to protect private home owners in the contract that represents, for most, the largest investment of their lives.

Certainly the majority of builders are honest persons attempting to build and sell a product of some quality at a fair price. However, there are those who exploit the ignorant and innocent public through unscrupulous practices and shoddy workmanship.

Home buyers sometimes find it difficult or nearly impossible to learn the identity of the principals in the corporation from whom they are buying, much less how to reach them. Buyers must take the fiscal responsibility of the builder on faith alone, not knowing whether they will meet

interminable or costly delays or, perhaps, never see the house finished because of his insolvency.

If the home is completed, they must then begin pursuing him, often without success, to fulfill the terms of the contract guarantee. Too often the choice is either do it yourself or go through an expensive, time-consuming law suit.

Some persons have sought recourse through local elected officials. However, the local elected official has very little leverage. The performance bond on public improvements is very limited in coverage and really covers only sewers, streets and the like; and the only other leverage that the local official has is a builder's agreement if, indeed, one has been negotiated. The builder's agreement, however, is a contract; and if it is violated, it can really only be pursued through the courts. Neither of these, obviously, is satisfactory or effective in dealing with the home owner's problems because the home owner's problems deal with shoddy workmanship and an irresponsible builder.

The Bill that I have drafted would require builders to register with the Department of Law and Public Safety and provide basic information. The basic information-- I'll just list what they would have to give--is the name and address of the partners and the addresses of all officers holding at least 5 percent of the outstanding stock, a statement of the applicant's financial status,

a statement of any conviction of willful violation of State or local building codes, a statement of experience, and the names and addresses of two personal references.

The Bill would also establish a State Board of Registration. This Board would issue, deny, revoke, suspend or restore licenses. The license fee would be \$150, would last for a two-year period, and the renewal would cost \$100.

The Bill would also require builders to post security on a single family home prior to issuance of a certificate of occupancy. The amount of the security would have to be 5 percent of the value of the improvement. The term of the bond would be one year. Payment of claims would be done through procedures set up under the rules -- the rule-making power of the Department of Law and Public Safety.

I am prepared to propose an amendment that would provide an alternative to the performance bond. It has come to my attention that the National Association of Home Builders is drafting an insurance policy which I believe could be used as an option by the builder if the builder so chose, instead of the performance bond.

ASSEMBLYMAN HERMAN: Mr. Rys, do you have any questions?

(No questions)

ASSEMBLYMAN HERMAN: Mrs. Wilson, I have a few.

ASSEMBLYWOMAN WILSON: O.K.

ASSEMBLYMAN HERMAN: Does your Bill cover the home repair contract industry?

ASSEMBLYWOMAN WILSON: I don't quite know what you mean by the home repair contract industry.

ASSEMBLYMAN HERMAN: New construction vs. old construction, remodeling of a living room.

ASSEMBLYWOMAN WILSON: Yes, it does; it's not just the new home.

ASSEMBLYMAN HERMAN: Your Bill would leave the collection of damages solely up to the administrative procedure that would be established rather than going through the courts?

ASSEMBLYWOMAN WILSON: Yes, except, of course, if that failed, the plaintiff would always have the option to go to court; that is, if the administrative procedure failed to give satisfactory redress.

ASSEMBLYMAN HERMAN: In other words, you would give the complaining party, if I understand it, two bites at the apple. If he or she could not get what they wanted from the administrative agency, they would then be able to go to court and see whether they could succeed there.

ASSEMBLYWOMAN WILSON: I think anyone always has that option--to go to court.

ASSEMBLYMAN HERMAN: Does your Bill provide, in any fashion, for the reimbursement of expert costs to prove a case as the example I gave to Mrs. Totaro--the question of structural damage, roof repair or other things that would

need expert evaluation or testimony?

ASSEMBLYWOMAN WILSON: No, the Bill does not provide that; and if you would care to amend it to include that, that would certainly meet with my approval.

ASSEMBLYMAN HERMAN: You would have no objection to a provision to provide reasonable attorneys' fees?

ASSEMBLYWOMAN WILSON: I have no objections. May I just comment on that. Hopefully, we would be able to avoid the expense of attorneys' fees by setting up administrative procedures; but if that were necessary, I would certainly not object.

ASSEMBLYMAN HERMAN: I would like to make one observation. I've heard this bandied about, even by attorneys--the ability to represent oneself pro se--and, with all due respect to the sponsors, I think that we are really creating a disservice to the public; I'm not speaking now as an attorney. Law is perhaps the only field I know where we encourage self-operation. If we were to get a tooth extracted--a wisdom tooth out--we wouldn't suggest we do it by ourselves; if we went into the hospital to have our appendix removed, we wouldn't supervise our own operation. Yet, because of, perhaps, the bad public relations and the problems that we've had with attorneys lately in some areas of our government, we encourage the public to continue to perform legal operations on themselves. I say this not just as an attorney but as a general observation that we are creating a bad practice.

We are asking the laymen to go in and present their own cases and legally operate on themselves in an arena in which they are not trained. It's not a question of manufacturing attorneys' fees; I think that we have to administer justice. The problem with the type of justice that includes self-operation is that we have been losing too many patients over the years because they have been operating on themselves. I'll just make that observation; perhaps one of these days I'll make it on the floor of the Assembly, too.

I have some other questions for you, if I may, Mrs. Wilson.

As to standards of registration, is there anything in the Bill presently that would set forth the qualifications of the builder or a particular contractor as to their ability to be licensed?

ASSEMBLYWOMAN WILSON: Item D, which requires a statement of the applicant's experience in the building industry, and Item E, which says the person must have two references, come closest to any kind of standard. This, then, would be a matter for the Board to determine.

ASSEMBLYMAN HERMAN: In other words, you would leave it to the Board to draw up standards that would cover each area?

ASSEMBLYWOMAN WILSON: Yes.

ASSEMBLYMAN HERMAN: Have you had an opportunity to examine the proposed New Jersey building contractors licensing law?

ASSEMBLYWOMAN WILSON: Only in a very cursory manner.

ASSEMBLYMAN HERMAN: I assume that you would have no objections, either administratively or legislatively, to expanding various areas of specialties so that they would be defined.

ASSEMBLYWOMAN WILSON: I have one problem with shifting the responsibility of the contractor to the subcontractor. I believe the prime contractor ought to be the responsible party. The prime contractor is the one who has negotiated the contract and who is receiving the fee--after all, the price of the house--and I think that as part of that, the prime contractor must accept responsibility.

ASSEMBLYMAN HERMAN: Just a few other questions, if I may. Do you believe that the one-year warranty is sufficient?

ASSEMBLYWOMAN WILSON: I would be willing to extend that to two or, perhaps, even five years. I was trying to make a modest proposal.

ASSEMBLYMAN HERMAN: Something that would be tenable and swallowable?

ASSEMBLYWOMAN WILSON: Yes.

ASSEMBLYMAN HERMAN: As to the question of the 5 percent bond or posting, would you object... I believe under your Bill, it has to be done in cash, is it?

ASSEMBLYWOMAN WILSON: No, it would be cash, a surety bond or a certified check.

ASSEMBLYMAN HERMAN: Would you have any objection if it were, in the alternative, an insurance policy?

ASSEMBLYWOMAN WILSON: No, I would not. As I said before, I know now, since this Bill was drafted, that the National Association of Home Builders has come up with this insurance policy; and as long as it meets the same standards at minimum--and I'm given to understand that perhaps the insurance policy provides an even greater coverage than we are requiring--I would certainly accept that as an alternative.

ASSEMBLYMAN HERMAN: Have you had any discussion with the Division of Consumer Affairs in regard to your legislation?

ASSEMBLYWOMAN WILSON: Yes.

ASSEMBLYMAN HERMAN: What have been those comments?

ASSEMBLYWOMAN WILSON: Excuse me, Division of Consumer Affairs, no, I'm sorry. The Department of Community Affairs has contacted me, and I have discussed with them one point that was made to me. That is that they already have a Building Inspection Division which inspects plans and buildings for multi-family construction; and their proposal was, instead of duplicating in the Department of Law and Public Safety, to put this in the Department of Community Affairs. If that is the wish of this Committee, I would certainly agree with that; I don't want to see duplication of effort. The reason I put it in the

Department of Law and Public Safety was because we followed the pattern that was used for the regulation and registration of electrical contractors and plumbing contractors, and that's where they are.

ASSEMBLYMAN HERMAN: I didn't get Mrs. Totaro's comments on the question--I forgot to ask her--of standardizing building contracts. There were some comments--I don't know whether you heard them by Mr. Sweeney--regarding the inability of the home buyer to modify home building contracts. Do you have any thoughts on that subject?

ASSEMBLYWOMAN WILSON: Well, I suppose there should be a standard; and I was under the impression that there was a standard that was used by most builders throughout the State. That may be incorrect. That can be changed, but most people don't know that it can be changed; and I think that this is where the problems come in. The people don't realize that they have the option to negotiate changes.

ASSEMBLYMAN HERMAN: Mr. Rys, any questions?

ASSEMBLYMAN RYS: Betty, if I may, I have one question. On page 5 at the bottom, line one of paragraph 14, "Any person..." I'm very concerned with that--in the sense of the word. We're talking about a small individual; how do we compare him with the large firms? I am going to ask the question in two senses: the registration and also the fines.

ASSEMBLYWOMAN WILSON: Could you give me the section number?

ASSEMBLYMAN RYS: Page 4, I'm sorry.

ASSEMBLYWOMAN WILSON: I have a different kind of copy. Yes, section 14?

ASSEMBLYMAN RYS: You're talking there about an individual person and then you're comparing them with a big firm.

ASSEMBLYWOMAN WILSON: I understand the problem, and we tried to work out some sliding scale of fees because of the difference in size of operations--the large corporation as opposed to the individual who builds one house a month or two months or however long it takes. It became so complex that we decided that it was really next to impossible to have a sliding scale of fees, and I think the same would be true of fines. Essentially, the same problems exist for the person who bought the house whether the seller is a large corporation, a multi-million dollar corporation or one person doing all of his own labor.

Thank you very much.

ASSEMBLYMAN HERMAN: Is Mr. Paragano here?

L A R R Y P A R A G A N O:

Thank you. Gentlemen, my name is Larry Paragano and I am a builder and a member of the New Jersey Builders Association. During the past several years I have served as a chairman of a committee for the

Association formed to study research and develop recommendations with regard to the licensing and registration of building contractors. Approximately 1850 firms comprise the New Jersey Builders Association and these member firms are responsible directly and indirectly for the employment of 350,000 people in New Jersey and perform roughly 75% of the construction in the state.

The two bills under consideration today and the entire concept of builder licensing and registration, and the establishment of a form of "warranty" for new homes are both subjects of great interest to our Association.

Let me clearly indicate that while the New Jersey Builders Association does find great fault with the specific provisions of A-962 and A-805, it does not object to the concepts proposed therein.

In fact, it should be made clear that:

- 1) The New Jersey Builders Association supports the concept of builder licensing and registration; and
- 2) The Association believes that a comprehensive and meaningful form of warranty should be provided for every new home.

As a result, the Association has taken great care to prepare a program to institute the following:

- 1) Legislation, far more comprehensive than A-962, which would provide for the licensing and registration of all building contractors throughout the State; and

2) A Home Owners Warranty Program, which has been developed by our parent organization, the National Association of Home Builders (NAHB), and which will provide meaningful protection far in excess of that offered under A-805.

We will discuss both of these proposals, in greater detail, later in this testimony, but, at this point, I would like to explain to this body the reasons for our objections to both A-962 and A-805.

I. A-962

A-962 is designated the Building Contractors Registration and Security Act and would require all building contractors to register with the State and to post a bond before a Certificate of Occupancy can be issued for all newly constructed single-family residences.

a. The measure is incomplete since it attempts to license only general building contractors, and disregards the specialty or sub contractor--the parties who actually perform the work.

This first objection may be considered somewhat unique since we do not believe that the legislation is as comprehensive as it might be. A-962 addresses itself only to the licensing and registration of the general building contractor, and totally ignores the specialty or sub contractor. Without including the subcontractor or the specialty contractor, since they perform the actual labor involved in the construction of new buildings, the Legislature would be overlooking the main source of potential future violations.

This is most inappropriate since approximately 90% of the residential construction in New Jersey is performed by independent sub contractors, who are hired by the general building contractor. There are very few builders who are "big enough" to employ a full time staff to perform the actual construction work. For this reason, we feel that it is imperative that all specialty or sub contractors who actually perform the construction work be registered and licensed and any bill which does not address itself to this point is most incomplete.

b. A-962 is based upon an East Brunswick ordinance, which was ruled invalid by the New Jersey Supreme Court in March, 1972.

It is clear that A-962 is based upon a municipal ordinance which was adopted by the town of East Brunswick. We are most familiar with this ordinance since our Association contested the ordinance on several levels before finally receiving a decision from the New Jersey Supreme Court (New Jersey Builders Association V. the Mayor and Township Council of Township of East Brunswick) on March 6, 1972. While the court ruled that the registration of building contractors is a valid exercise of municipal police power, it did strike down the particular East Brunswick ordinance because of the vague and imprecise nature of the specific provisions of the ordinance. One such vagary concerns the bonding provision of the ordinance and this provision has been incorporated in A-962.

There are a number of problems and questions regarding the bonding provision, several of which the court addressed in its decision and which can also be raised with regard to A-962.

For instance, must an action on the bond be commenced within one year or may such a suit be brought thereafter to recover for a defect allegedly in existence during this period? Difficulties in procuring surety bonds of this sort will only be increased by the failure to carefully limit and define the intended risk. Further, it is not clear how the bond is to be released nor the manner in which its benefits are to be made available.

All of the questions, which I have just raised, are the very same points which the New Jersey Supreme Court asked when it ruled that the particular East Brunswick ordinance was invalid.

c. Bonding based upon a percentage of the value of the home, as provided for in A-962, was ruled unreasonable and oppressive by the New Jersey Supreme Court and was recognized, by the Court, as a hardship upon the builder.

A-962 stipulates a bond of 5% of the value of the improvement for each new single family home must be posted with the clerk of the municipality in which the home is located. While the Supreme Court indicated that bonding in general would be an appropriate means of pursuing its effort of regulating and supervising building

contractors, it did say that the bonding "must, in its impact, be reasonable and not oppressive. Furthermore, the mechanics of the arrangement must be carefully spelled out and not left in doubt."

In support of this statement, the court made reference to NJSA 45:5A-19, a section of the Electrical Contractors Licensing Act of 1962, which provides for a flat \$1,000 surety bond, and to the State Plumbing License Law, NJSA 45:14C-26, which provides for a flat \$3,000 surety bond.

Therefore, there is neither precedent nor reasonable support for a percentage bond and certainly a 5% bond on the value of the improvement would be to use the court's words, "unduly oppressive." Such a bonding provision would cause a tremendous hardship for small builders, who would be forced to place cash equal to 5% of the value of the improvement as security with the clerk of the municipality, since most small builders would be unable to secure such a bond.

It should also be pointed out that about 80% of the new homes in New Jersey are built by "small builders" who build less than 18 homes a year. As a result, under A-962, only the very largest of building corporations would be able to obtain bonds in the amount of 5% of the value of the improvement for each home which they build.

In the case of the small builder, the 5% requirement would jeopardize the continuation of his livelihood since not only would he have great difficulty obtaining such a bond, but he would normally use this money to finance subsequent projects.

Again, we refer to the decision of the Supreme Court, in which the Court states with reference to bonding that, "the effect upon their (the plaintiffs, New Jersey Builders Association) cash flow and credit requirements will be such as virtually to put them out of business."

The real effect of the 5% security requirement would be to raise the price of every new home by at least 5% and we are certain that this is not the intent of the legislation.

d. A-962 makes no provision for preventing municipalities from establishing their own licensing and bonding regulations, over and above this proposed Statewide Legislation.

A-962 makes absolutely no reference to the pre-emption of municipal powers with respect to the licensing and registration of building contractors. For while the adoption of such a State law should not prevent any municipality from inspecting the work performed by a licensed contractor, nor from regulating the standards and manner in which the work shall be done, no municipality should be permitted

to require that a contractor obtain a municipal license in order to engage in the business of a building contractor and no municipality should be permitted to require the posting of a bond other than those required under N.J.S. 40:55-1.21 et. seq. We believe that there is sufficient precedent - in the case of the Plumbing Contractors licensing - for our recommendation that there not be both local and state licensing. Such a dual requirement was abolished in that instance and, therefore, should not be permitted to exist in the area of building contractor licensing.

II. A-805

Assembly Bill 805 is designated the "Single Family Dwelling Warranty Act" and establishes minimum standards for materials used in the construction of single family residences.

Upon closer review of the legislation, the New Jersey Builders Association has found that A-805 does not really accomplish its alleged intention. There are three basic points which our Association would like to make with regard to A-805 and they are as follows:

- 1) Section 3 of the bill requires that a single family house be built in accordance with the standards established by the building code which is in effect in the municipality. Not only is this requirement redundant since it is inherent that a building code is established for that purpose, but also, unless a house is con-

structed in accordance with these standards, a Certificate of Occupancy will not be granted. In addition, the bill calls for compliance with the Standard Building Code of New Jersey. This code is a poor imitation of the BOCA code, has not been updated in five years, and, consequently, is a very difficult standard for which to obtain proper interpretations. Plus, not every municipality has adopted this code. Perhaps I should be making a pitch for a State-wide building code at this point.

ASSEMBLYMAN HERMAN: Lots of luck.

MR. PARAGANO: Maybe I'll need lots of luck, but I think it's important.

If this section represents an attempt to establish minimum standards for use in residential construction, then it is a meaningless and fruitless exercise and totally superfluous since such protection is afforded through existing building codes.

2) In an attempt to provide a form of security, the bill requires that either cash or a bond in the amount of 15% of the fair market value of the house be posted with the municipality. We have already spoken to this point in great detail on A-962, however at the risk of being repetitious, let me again emphasize that such bonding provisions, based upon a percentage of the value of the structure, have been ruled invalid by the New Jersey Supreme Court (New Jersey Builders Association V. the Mayor and Township Council of Township of East Brunswick) in its March, 1972 decision. Of course, if

we're going to, first, use the 5 percent figure and, then, add on the 15 percent, we are up to 20 percent. That would make it pretty difficult. With regard to builder licensing, the Court stated that while bonding, in general, is an appropriate means of attempting to regulate and supervise building contractors, such bonding "must in its impact be reasonable and not oppressive. Furthermore the mechanics of the arrangement must be carefully spelled out and not left in doubt." The 15 percent bond, which A-805 requires, is the very same amount which the East Brunswick ordinance provided for and which the Supreme Court struck down.

In support of its statement concerning the reasonableness of a bond, the Court made specific reference to NJSA 45:5A-19, a section of the Electrical Contractors Act of 1972, which provides for a flat \$1,000 surety bond and to the State Plumbing Licensing Law, NJSA 45:14C-26, which provides for a flat \$3,000 surety bond. Consequently, there is neither precedent nor reasonable support for a percentage bond and certainly a 15% bond on the value of the improvement would be, to use the court's words "unduly oppressive." Such a bonding provision would cause a great hardship for small builders who would be forced to place cash equal to 15% of the value of the improvement as security, since most small builders would be unable to secure such a bond.

In my discussion of A-962, I gave specific examples of the hardships which the Supreme Court said would befall the builder under

such bonding provisions. Since the bond, as provided for in A-962,
was a 5 percent bond, one can readily determine the impact of a
15 percent bond, as provided for in A-805.

3) In its very brief and undetailed form, A-805 attempts to spell out the provisions for the warranty of a new home and to provide a mechanism whereby the complaints of a dissatisfied home buyer can be dealt with swiftly and effectively.

I have already called attention to the Home Owners Warranty Program, which has been developed by our parent organization, the National Association of Home Builders. The program is based upon a very successful British system and is about to be finalized for implementation throughout the U.S. NAHB has spent in excess of \$750,000 to refine the program and to create a comprehensive and meaningful system to deal with consumer complaints and to provide a worthwhile warranty on all new homes.

The Home Owners Warranty Program will be implemented by our Association as soon as NAHB has worked out the final details. We fully expect to have the program in effect and operational before the end of the year and we are of the firm belief that this program will provide the protection which many legislators are seeking, but which none have been able to effectively provide through legislation. Actually, the program is the first real attempt by

a major industry in the U.S. to afford such a degree of protection to its consumers, and specific details are contained further on in the statement.

I might also add that Millicent Fenwick, the former Director of the Division of Consumer Affairs, was greatly impressed by the Home Owners Warranty Program when it was presented to her. Mrs. Fenwick had formed a Home Owners Protection Committee in an effort to develop some safeguards for new home buyers and our Home Owners Warranty Program emerged from those meetings as the most viable and most comprehensive program of protection.

We are hopeful that this body will accept our comments on A-962 and A-805 in the spirit in which they are being offered. Now that we have established some of the problems inherent in both of these measures, I would like to discuss the alternate solutions, in the form of (1) the Association's proposed "N.J. Building Contractors Licensing Law," and (2) the Home Owners Warranty Program.

III. "N. J. Building Contractors Licensing Law," as Proposed by the New Jersey Builders Association

Let me reemphasize that the New Jersey Builders Association supports the concept of licensing and registration of building contractors.

But, such licensing must include all subcontractors and specialty contractors in order to be effective and to give the public the protection to which it is entitled.

However, the Association is concerned with doing whatever it can to ensure that the legislation which accomplishes this end is the best, most practical and most comprehensive law possible. For this reason, our Association has taken great pains to give the matter the attention which it deserves, and as a result, we believe that we have drafted legislation which provides for the licensing and registration of building contractors in a most effective manner. I might point out that my committee studied at great length the building contractors licensing laws of California, Florida, Arizona and Hawaii before making our recommendations for the New Jersey Building Contractors Licensing Law.

At this time I would like to provide this body with a brief resume of the "N.J. Building Contractors Licensing Law," which our Association has drafted into final form. The proposed law provides for the licensing and registration of all building contractors throughout the State, and categorizes building contractors as either:

a) Specialty Contractors, which would include such contractors as your carpenters, your roofers, your landscapers, your masons, your heating contractors, etc.

b) General Building Contractor - anyone who is capable of building an entire house or any other structure.

c) General Engineering Contractor would be more encompassing. This would be for the large high-rise builder, the man who builds power plants and such large structures.

It defines 61 classes of Specialty Contractor, contains a clause to cover specialized building trades not included in the list of 61 and provides for the issuance of a Contractor Business License, "which permits an employer to engage in the business of performing the contracting services and work permitted by the license of its responsible managing employee." What we're trying to say there is that we know that many people have entered the building field who have had very little, if any, knowledge of this field; and what we're trying to do at this point is say, fine, if you wish to enter the field and you have a good financial background and a good business background and you are a reputable individual, you must have someone working for you who understands the building field. You can't just go out and start building because you decide to become a contractor.

ASSEMBLYMAN RYS: If I may, what would happen if a person working for a plumber or carpenter, for instance, decided to build a house by himself and sell it to someone?

MR. PARAGANO: He could not do so unless he had a license, sir.

A "responsible managing employee" is the individual who is responsible for the direct management of the contracting business of the licensee.

Three types of license are available in each of the three categories:

1. General building contractors, engineering contractors, specialty contractors licenses shall be issued to those applicants establishing that they have the technical skill, training and experience and responsibility to engage in such business.

2. General building contractors business licenses, engineering contractors business licenses and specialty contractors business licenses shall be issued to those applicants establishing that they have the responsibility to engage in the business of performing the contracting services and work permitted by the license of their respective responsible managing employee, which I just explained.

3. Responsible managing employee contractors licenses shall be issued to those applicants establishing that they have the technical skill and training and experience to engage in the performance^{of}/contracting or specialty contracting, as a responsible managing employee.

The bill provides that every holder of a specialty contractors license or specialty contractors business license must enter into a surety bond in favor of the State of New Jersey in the amount of \$3,000; and that every holder of a general building or general

engineering contractor license must enter into a surety bond in favor of the State of New Jersey in the amount of \$10,000.

Now, picture this, if you will. We're speaking of a situation where approximately 40 to 60 subcontractors are employed by a building or general contractor in construction of a home or other structures; and if each one of these places a \$3,000 bond, and the general contractor or the general building contractor furnishes a \$10,000 bond, we're speaking of somewhere in the vicinity of \$130,000 to \$190,000 of bonding protection on an individual house.

ASSEMBLYMAN HERMAN: Would you explain that again please?

MR. PARAGANO: Well, what I'm trying to project is this: Here we have a situation where a...

ASSEMBLYMAN HERMAN: Just the amounts--how you arrived at the amounts.

MR. PARAGANO: Fine. We have approximately 40 to 60 subcontractors or specialty contractors engaged in the construction of a one family home, if you wish to use that as an example. Each one of these contractors is required to post a bond in the amount of \$3,000. Now, if we had 40 contractors at \$3,000, we'd have \$120,000; and the general building contractor has to post a \$10,000 bond; so we now have \$140,000. Of course, if the number was 60 subcontractors, that would be increased by an additional \$60,000.

ASSEMBLYMAN HERMAN: One question: Are you talking about a development or a single home? It makes a big difference.

MR. PARAGANO: Actually, it really doesn't matter because our bonding provision is for all specialty and subcontractors, whether they be building one family homes, multi-family, commercial, industrial, what have you. Everyone is to be covered.

ASSEMBLYMAN HERMAN: Alright, please continue. I'll have some questions later.

MR. PARAGANO: Fine, sir.

A New Jersey State Board of Examiners of Building Contractors is created within the Department of Law and Public Safety to administer the act. The Board consists of seven citizens and seven alternates, to be appointed by the Governor.

The Board will adopt, amend, and promulgate rules and regulations, in accordance with the Administrative Procedures Act, to carry out its duties under the Act.

The duties of the Board include:

- a. Record all applications for State licenses.
- b. Test, through written examination, all applicants for an original contractors license and an original responsible managing employee license.
- c. Issue licenses to those persons who, within 6 months after the effective date of the act, submit satisfactory evidence that he has been employed in the contracting business for

which he seeks a license for two years prior to the date of application for a state license.

- d. Charge and collect fees for original licenses and renewals thereof.
- e. Renew licenses annually, upon written application of the holder, payment of the prescribed fee, and renewal of the required bond.
- f. Act as a hearing board, which may on its own motion investigate and conduct hearings regarding the suspension or revocation of any state license issued under this act.
- g. May, on complaint by any aggrieved person, in writing, signed and sworn by complainant, and filed with the Secretary of the Board, suspend or revoke any license, if the licensee violated the provisions of the act, following a hearing.

A license may be suspended if five (5) voting members of the Board vote for suspension or revocation; the record of the Board shall be so marked and the licensee so notified within five (5) days. The suspended licensee may apply for a new state license, provided he meets all the necessary requirements, but such application may not be made sooner than six (6) months from the effective date of revocation.

Every person whose state license has been refused, suspended or revoked shall have the right to appeal from the decision of the Board by proceeding in lieu of prerogative writ.

Penalties for violations of this act are \$100 to \$500 for the first offense, and between \$500 and \$1,000 for the second and each subsequent offense.

This act preempts any municipal ordinance which would require a licensee to obtain a municipal license or business permit to engage in the contracting business for which he is licensed under this act, in such municipality. It also preempts the municipality from requiring the posting of any bond other than those required under N.J.S. 40:55-1.21.

Exempt from this act are Electrical Contractors, whose business is as defined under the Electrical Contractors Licensing Act of 1962 and Plumbing Contractors, whose business is as defined and licensed under the State Plumbing License Law of 1968.

We have provided a complete copy of our proposed "N.J. Building Contractors Licensing Law," so that you may more fully review it, and, I will be pleased to attempt to answer any questions you may have about the bill.

IV. Home Owners Warranty Program

At this point it is imperative that we indicate a very fundamental principle --- the licensing and registration of building contractors cannot be combined with the establishment of a warranty on an individual home.

These are two separate and distinct pursuits. If each is to be provided in an effective and meaningful manner, they cannot be haphazardly intermingled.

The registration and licensing of building contractors must, by its very nature, be broad in scope and must be basically a record-keeping and "clerical" function. It is simply a system whereby an individual is allowed or disallowed to practice a trade.

Once it has been established that he can practice the trade, then, the concept of the warranty comes into play. In order to be effective, the warranty must exist through a buyer-builder relationship, in which the builder makes specific guarantees with regard to the structure and for which the buyer can readily be compensated should these guarantees not be met.

The surety bond, by its very nature, is not the device through which to offer this ready recompense to the buyer.

A program which can combine a practical system of handling buyer complaints with a swift and readily-available system of repayment is the answer --- and that is exactly the method that is offered through the Home Owners Warranty Program.

The enclosed material provides a basic, yet adequately-detailed, explanation, of the Home Owners Warranty Program, which will be

implemented by the New Jersey Builders Association before the end of 1974. We strongly recommend to this Committee that the NAHB Home Owner Warranty be the program implemented as it will offer the maximum protection to the public while, at the same time, relieving the State of the added burden and expense of administering their own program.

The system has been in operation in England, in its present form, since 1965; and its success is attested to by the magazine article which you have in your folders.

Basically, the program offers the buyer the maximum protection for a minimal one-time charge, and yet does so without encumbering the builder with a costly, often impossible-to-obtain, and totally useless surety bond as proposed under A-805.

I'd like to go into this a bit. The program as it is proposed would be insured by the American Bankers Insurance Company of Miami. In essence, the program insures the buyer for varying periods for various components in his or her new home. It provides arbitration and settlement of complaints and enforcement of procedures which protect both the buyer and the builder. The terms of the warranty agreement provide responsibility for a new home among the builder, the insurer and the buyer.

During the first year of the warranty agreement, the builder is responsible for faulty workmanship and defective materials. For the first two years, the builder is responsible for the plumbing, heating, cooling and electrical systems, exclusive of products covered by manufacturers' warranties.

I might point out that our Association is in the process of negotiating with numerous manufacturers to increase their normal one-year warranty to a two-year period, and they have been successful so far in getting several of the manufacturers to go along with this extended period.

The insurance company will also cover valid claims during the first two years if the builder does not, or is financially unable to, fulfill the warranty terms.

The builder has seven major responsibilities. He agrees initially to register and annually re-register with the local council, apply to the local council for insurance on each home he builds for sale and pay the premium on behalf of the buyer before construction begins. He agrees to abide by the conditions and registration including any spot check inspections during the construction that are deemed necessary by the local council. He agrees to repair or defray the cost of repairing, within a reasonable time following receipt of the buyer's claim in writing, any defects for which the warranty holds him responsible during the initial warranty period. He agrees to deliver to the purchaser manufacturers' warranties for all appliances and mechanical equipment and to enter into a contract with the buyer agreeing to binding arbitration for disputes and, thereafter, to abide by all the arbitrator's decisions within a reasonable time set by the local council. He further agrees to provide the home buyer with appropriate documents as well as an explanatory booklet explaining his rights and responsibilities under the warranty.

There are some items that are excluded from the warranty coverage, and these items are normally covered by home owners insurance policies; e.g., defects reported by a second owner which were not reported by the first owner, defective design of materials supplied by the buyer, normal wear and tear or alterations by the buyer, defects caused by failure to maintain adequate ventilation, landscaping, insect damage and secondary injury due to defects.

This is the way the program would work when and if a dispute arises. The complaints would be handled through a two-tiered system of conciliation and final independent binding arbitration by the American Arbitration Association or a similar mechanism. Most disputes would be resolved through conciliation by local councils; unresolved disputes would be submitted to binding arbitration by the American Arbitration Association or a similar mechanism developed by the local council and accepted by the national council.

During the first two years of the warranty period, the buyer and the builder deal first with each other; claims must be submitted in writing. If no settlement has been reached within five business days after the written claim has been filed, either party may request the local council to appoint a conciliator to investigate and attempt to bring about an acceptable settlement. If, however, no settlement has been reached within 15 business days after the claim has been filed, either party may initiate arbitration. The arbitrator's award

is upheld as final and binding in most courts although further action by either party cannot be legally precluded. Increasingly, courts have upheld the arbitrator's judgment.

A nominal fee would be paid by the complainant and refunded for the valid complaints. If arbitration is in favor of the purchaser and the seller does not comply, the local council forwards the arbitrator's decision to the national council, which honors the seller's obligation. The non-complying seller automatically is suspended from the council's register.

If a problem arises during the third through the tenth years, the purchaser files a claim directly with the national council accompanied by a refundable fee of \$25. The national council, through its local councils, inspects the home. If the claim is valid, the insurance company pays it. If the council finds the claim invalid, the purchaser may request arbitration in accordance with approved procedures.

You can see that we have gone way beyond one or, even, two years. We would like to really give the public some protection.

I hope that the comments which we have offered will bring to your attention not only our opposition and reasons therefor with regard to A-962 and A-805 but, more significantly, the fact that the New Jersey Builders Association is not opposed to concepts and principles of protection which these Bills attempt to provide and that we believe that we can, more effectively and more practically, offer these same safeguards to the

home-buying public without placing any additional responsibility upon the State office.

Thank you, gentlemen. I'd be happy to answer any questions, if there are any.

ASSEMBLYMAN RYS: I have one, Mr. Paragano.

On page 14, you preempt any license or any ordinances by the municipalities. My question is: Who would be doing the inspections and issuing of the certificates of occupancy?

MR. PARAGANO: The license that we're speaking of, sir, would be any other builder licensing or contractor licensing. So far as inspections of the construction that is performed by the contractor, this will still be performed by the local building inspector, in the same fashion as it is presently.

ASSEMBLYMAN HERMAN: Let me follow that point along for a moment.

How many municipalities, based on your knowledge, presently have requirements for licensing?

MR. PARAGANO: At the last count--and I'm going back to memory now--there were somewhere in the vicinity of 20-some-odd; this goes back a couple years. There are probably close to 50 at this point.

ASSEMBLYMAN HERMAN: What is the average fee per municipality?

MR. PARAGANO: They vary. We have seen them run from a \$25 registration fee to \$250, which was the last figure I had.

ASSEMBLYMAN HERMAN: In how many municipalities does the average home builder in your Association build?

MR. PARAGANO: You must realize that builder licensing, as it stands presently, is spread out in mostly the southern part of the State; and a builder may build in five, six or seven different municipalities and, usually, it's the small builder who does so. These licenses must be renewed yearly, which creates an additional burden upon the builder which is above and beyond the normal call of duty.

ASSEMBLYMAN HERMAN: I have, as you might have thought, a few questions which I would like to ask you; let me get them in order.

By the way, do you carry property liability insurance as a driver?

MR. PARAGANO: Do I?

ASSEMBLYMAN HERMAN: Yes.

MR. PARAGANO: Yes, sir.

ASSEMBLYMAN HERMAN: Just as a matter of curiosity, how much property damage insurance do you carry that would cover your running into someone's home or smashing a car?

MR. PARAGANO: Off hand--that's a good question--I believe I'm somewhere in the vicinity of about \$100,000, sir.

ASSEMBLYMAN HERMAN: That's for personal injury? How about property damage?

MR. PARAGANO: Personal injury is much greater than \$100,000.

ASSEMBLYMAN HERMAN: And yet, under your proposed licensing law, you would have it limited to \$10,000 for a building contract?

MR. PARAGANO: What we're speaking of here is a building contractor for a building--not for any act that he may create.

ASSEMBLYMAN HERMAN: O.K. Let's assume that I build you a house and I build it in an area where there are termites, and those little fellows eat up that house. It's very possible that you could have more than \$10,000 worth of damage. Where is the protection there?

MR. PARAGANO: You have the protection both in the \$10,000 bond that the builder carries and in our home owner warranty program.

ASSEMBLYMAN HERMAN: Alright, assuming that I'm not a member of the Home Builders Association--I don't expect to be doing business in New Jersey but I have to be--or assuming that I'm one of those who elect not to join your Association, notwithstanding all the merits and advantages that your Association may offer, what is the protection for those termites gobbling up my house over \$10,000?

MR. PARAGANO: I might go a step further, sir. The program, as we have it outlined presently, permits the Association to enlist, shall we say, or register builders who are not members of our Association.

ASSEMBLYMAN HERMAN: Forget that. Just address the point in the Bill. The Bill provides, notwithstanding

membership or non-membership, the question of who is licensed. You would provide \$10,000 in your proposed legislation?

MR. PARAGANO: Yes, sir.

ASSEMBLYMAN HERMAN: And if those termites gobble up that house and we lose a \$30,000 or \$40,000 or \$50,000 house, who is to pay the difference?

MR. PARAGANO: This would be paid either by the builder directly or out of the bonding. I might state that I have been involved, not directly but indirectly, with termite protection; and I have not seen a situation of a one family house...

ASSEMBLYMAN HERMAN: Would you like to see a \$40,000 award against a builder who built a new home and had that problem? Come to our office and we'll show you. I might say that the interests of justice prevailed in that situation. In essence, what really happens is that--if I can characterize it--the average property damage which we, as licensed drivers, carry--somewhere in the area of \$15,000 to \$20,000; you say you carry more--is more extensive than the proposal of \$10,000 that you have in your Bill. Mr. Coeuzza is coming to your rescue. Go ahead.

MR. PARAGANO: May I? Isn't it so that in the event the home owner is not satisfied with the award received, he always has additional recourse?

ASSEMBLYMAN HERMAN: What we're talking about is financial responsibility.

MR. PARAGANO: That's right, sir.

ASSEMBLYMAN HERMAN: We're trying to protect the consumer from the ultimate catastrophe; we're trying to see that there's either insurance or a fund in court so we don't have to worry whether that builder is going to go bankrupt as a corporation or not; notwithstanding bankruptcy, the consumer will be able to recover damages. Isn't that what we are talking about?

MR. PARAGANO: Yes.

ASSEMBLYMAN HERMAN: Under your proposal, if that's what Mr. Coeuzza is going to mention, is the fact that you have these 40-some-odd subcontractors; and that's another point to which I want to address myself. I believe that you testified that the total would be somewhere in the area of \$140,000 or \$150,000 worth of spread coverage because of all the subcontractors. Is that correct?

MR. PARAGANO: That's correct, sir.

ASSEMBLYMAN HERMAN: Wouldn't that at the same time require that if I had to sue you--forgetting your Home Warranty Program--under normal standards in order to try to collect all that coverage, I'd have to sue all those 30 or 40 people?

MR. PARAGANO: That's pretty normal procedure, isn't it, counsel?

ASSEMBLYMAN HERMAN: The point is that you're answering yes. Shouldn't the legislative policy in this State be to simplify things? Aren't I dealing with you as a general contractor?

MR. PARAGANO: You are. And here we have a situation where, frankly, if we had \$10,000 of coverage, I don't believe you're going to get that many specific cases that will go in excess of \$10,000.

ASSEMBLYMAN HERMAN: Let me ask you this: In your profession, do you hire architects and engineers?

MR. PARAGANO: Yes, sir.

ASSEMBLYMAN HERMAN: Would you hire an architect or engineer who only had a \$10,000 liability policy for professional malpractice?

MR. PARAGANO: I would say to you that I'd be amazed if one percent of the builders or contractors in the State asked their architects how much coverage they have.

ASSEMBLYMAN HERMAN: I would respond to you that perhaps they ought to and maybe they're not affording their own protection as well as the consumer. If we have a project which goes bad--as a certain ex-owner of a football team could tell you about Chicago--perhaps the public and he would be a lot better off if those people were properly insured.

MR. PARAGANO: You bring out a very good point, and I think I should address myself to it.

ASSEMBLYMAN HERMAN: We would appreciate it if you would.

MR. PARAGANO: We're speaking here of a general builder licensing law. As I testified, approximately 80 percent of our builders are small builders. Surely, when a small builder comes forth and fills out his application for licensing, financial stability is one of the factors that we consider; and surely, financial stability of a small contractor is going to be far different than the financial stability of a large building contractor that has \$500 or \$1,000. So, they are relative.

ASSEMBLYMAN HERMAN: I would like to pursue that point because I think it is an important point. I assume your Association would have no objection to, rather than a posting on a per-home basis, the posting of an omnibus or a blanket coverage policy that would insure people purchasing from within a given county. In other words, you obviously could purchase a larger policy for less money on a blanket basis, couldn't you, rather than having to post a bond on a home-to-home basis?

MR. PARAGANO: It would make it a lot easier, yes.

ASSEMBLYMAN HERMAN: By the way, in this document, Home Warranty Agreement, marked "Specimen," on page 3, under item 13 of B, it says--and I'll read the beginning paragraph-- "The Builder shall not be liable under this Agreement for: (number 13) insect damage of any nature whatsoever." Would this exclude termites?

MR. PARAGANO: That's what it excludes.

ASSEMBLYMAN HERMAN: So, a potential big problem for structural damage is excluded under this policy.

MR. PARAGANO: Not necessarily, sir.

ASSEMBLYMAN HERMAN: Under this policy.

MR. PARAGANO: Well, under this policy, but the incidence of termite problems is rather small.

ASSEMBLYMAN HERMAN: Let me ask you this: If the incidence of termite infestation is rather small, then why not cover it?

MR. PARAGANO: Because it is something that we cannot control after a buyer has entered a home. You can protect; I cannot control what you do with your house after you've moved into it.

ASSEMBLYMAN HERMAN: Isn't that a question of proof?

MR. PARAGANO: It is a question of proof, but then you come down to the question of having the trial again.

ASSEMBLYMAN HERMAN: Aren't we striving here, I assume, to obtain the ultimate in home protection for the buyer?

MR. PARAGANO: Yes we are, sir.

ASSEMBLYMAN HERMAN: In reference to this particular home warranty contract, it does provide, you said, for binding arbitration which I think is good; but who would make up this local council?

MR. PARAGANO: The council would be comprised of members of the State Builders Association.

ASSEMBLYMAN HERMAN: It says, "local council"; I assume that for each Association there would be local membership.

MR. PARAGANO: The way we've discussed it is that we're going to have one throughout the State, and we'll have different bodies working in different locations; but the State Association will be running the entire council.

ASSEMBLYMAN HERMAN: Will there be any representatives of the public on that council?

MR. PARAGANO: Yes, sir.

ASSEMBLYMAN HERMAN: Let me ask you this: In the proposed arbitration proceeding, assuming it is a structural damage claim--for example, you didn't put the roof on right or there is something wrong with the beams in the floor or something else which creates serious structural problems--which will require a burden of proof which will further require me as a home buyer to bring an expert in to testify and say, yes, there is structural damage and it was caused by the home builder because he didn't do such-and-such--the normal type of proof--who would pay for that expert under your program?

MR. PARAGANO: This proof would really not be necessary unless you, as the homeowner, were not satisfied with what the council itself ruled on that particular case.

ASSEMBLYMAN HERMAN: What we're saying is that we're establishing a new set of gospel, "The Gospel of the Council,"

as the overriding protector of the public interest.

Is that what you're saying?

MR. PARAGANO: No, I think we go on to further state that it would not preclude your going to the courts.

ASSEMBLYMAN HERMAN: Alright. I'm not satisfied; I think I got a bum decision; I'm going to arbitration, and I need an expert to prove it. If I'm right and I'm required to bring an expert and I'm required to hire an attorney--not wanting to operate on myself, being a prudent home buyer--who pays for the attorney fees and the expert fees?

MR. PARAGANO: We've reviewed our warranty program; and frankly, it is silent on that particular matter.

ASSEMBLYMAN HERMAN: Would you be so kind as to supply me with the answer to the question of who does pay?

MR. PARAGANO: Yes I shall, sir.

ASSEMBLYMAN HERMAN: I'll tell you quite frankly, although I am somewhat impressed with the home warranty program, that, to me, as in other Bills, is a gaping hole; and I think it ought to be covered.

MR. COEUZZA: If I may, just for a second...

ASSEMBLYMAN HERMAN: Please give us your name for the record.

P H I L I P C O E U Z Z A: Yes, Philip Coeuzza.

I think what's going to happen in the instance you raise is that you won't need experts unless the thing were to actually go to court. What would happen would be this:

The local home warranty council is going to hire people who will do inspections during construction and who will also do inspections whenever there's a claim. The idea is that the home owner's warranty council will be an independent and separate corporation with its own staff. That staff will do the investigative work; and they will, in turn, make a report back to the home owner's council from which the conciliation will proceed. As for the arbitration, I understand the American Arbitration Association, if it does reach arbitration, has its own inspectors; so, at no time will there be a cost for fees unless it were to actually go to court.

Truthfully, Mr. Herman, I'm guessing because I haven't investigated this; but knowing what we do know about the program at this particular point, I think that's the way it's probably going to work.

ASSEMBLYMAN HERMAN: I believe, though, if I'm correct, that, usually, if there is an expert appointed by the American Arbitration Association, those fees are split.

MR. COEUZZA: It depends on how the program is set up. They could either be split or the prevailing party would be reimbursed.

ASSEMBLYMAN HERMAN: We might point out for the record that if there is an independent agency to hire independent experts under these policies, the indirect contributions come from the Home Builders League, don't they?

MR. COEUZZA: No.

ASSEMBLYMAN HERMAN: From whom do they come?

MR. COEUZZA: The cost of the warranty program has an administrative charge built right into the premium.

ASSEMBLYMAN HERMAN: That's the home builder's cost?

MR. COEUZZA: No, it's...

ASSEMBLYMAN HERMAN: It's the home buyer's cost?

MR. COEUZZA: It depends; it's going to be added to the price of the house so, in the final analysis...

ASSEMBLYMAN HERMAN: So, indirectly, it's still a vehicle which has been created as a result of private enterprise through the Home Builders League.

MR. COEUZZA: There's no question about that.

ASSEMBLYMAN HERMAN: I have some other questions, if I may.

Getting back to the question of warranties, does this Home Builders protection policy cover situations where injury is a result of direct defects such as some of the cases to which the courts have directed themselves--for instance, scalding due to inappropriate plumbing design or injury from a step collapsing due to its being put on wrong? It doesn't really cover those implied warranties, does it?

MR. PARAGANO: The program is designed for the protection of the home itself for replacement of whatever has to be done but not for injuries sustained.

ASSEMBLYMAN HERMAN: It wouldn't supplant or substitute for any legislation which would cover the issue of collateral warranties and injuries?

MR. PARAGANO: No, sir. It accepts, or I should say, recognizes, them.

ASSEMBLYMAN RYS: Mr. Paragano, again on page 14, would you list all your numerous corporations for registration rather than the parent corporation as one?

MR. PARAGANO: I beg your pardon.

ASSEMBLYMAN RYS: Let me explain. Would you list for registration, at \$250, the parent company only or all your subsidiaries?

MR. PARAGANO: All must be listed, sir.

ASSEMBLYMAN HERMAN: Following along on the general licensing provisions, how many builders in New Jersey are not members of your Association; and what percentage of the business do they account for? The reverse of that question is how many builders does your Association cover and what is the percentage of home building?

MR. COEUZZA: The best way to describe that is that in numbers of builders, we represent about 25 percent of all the builders in the State of New Jersey; but our builders build about 80 percent of the housing. The bulk of the builders who are not in the Association are very small-type builders who build one or two homes a year, as more or less a sideline. They may be in another business or trade, and there are some large builders who are not members.

ASSEMBLYMAN HERMAN: What percentage of the builders, who are not now members of your Association, do you estimate would be put out of business by their failure to reasonably comply with the licensing standards set forth in your proposed Bill?

MR. COEUZZA: As of today? None, as long as they have been in the business two years.

ASSEMBLYMAN HERMAN: Does your home warranty construction proposal cover home repairs?

MR. COEUZZA: Our builders' licensing does.

ASSEMBLYMAN HERMAN: How about your warranty program? I don't believe it does.

MR. COEUZZA: I don't think it does.

ASSEMBLYMAN HERMAN: What percentage of the gross business of your Association members is done in the home repair market?

MR. COEUZZA: A very small percentage.

ASSEMBLYMAN HERMAN: Would you admit that that is a very large business today?

MR. COEUZZA: It's a large business, yes.

ASSEMBLYMAN HERMAN: Isn't that business one that is fraught with more marginal people than new home construction?

MR. PARAGANO: You're correct, sir; but we have a provision in our proposed Bill of licensing law that would cover the home improvement contractor; and we have a stipulation therein where they would be covered only to

an extent of repair or replacement for a home not in excess of 25 percent of the total value of that house. We are trying to say that we want the builder to actually be doing some additional renovation work if it is necessary. He must have more knowledge; he must have more financial stability to do so.

ASSEMBLYMAN HERMAN: What some of this Bill is proposing to do is to knock out the guy that has the hammer and saw, right?

MR. PARAGANO: Quite to the contrary, sir; just the opposite is true. It's to make the man who has the hammer and saw and has the knowledge of the business more able to operate as opposed to having a man who has no knowledge of the business coming in and undercutting in doing the work, having the problems and then running off.

ASSEMBLYMAN HERMAN: When you say undercutting, do you mean charging less?

MR. PARAGANO: No, undercutting in doing the work.

ASSEMBLYMAN HERMAN: Cheaper materials?

MR. PARAGANO: Cheaper materials or lack of ability, or lack of responsibility or lack of knowledge.

ASSEMBLYMAN HERMAN: In reference to the East Brunswick case--the figure you used in that case was 15 percent, right?

MR. PARAGANO: The initial figure was 15 percent.

ASSEMBLYMAN HERMAN: The courts did not say that 5 percent would be unreasonable.

MR. COEUZZA: We did go back a second time on the 5 percent; I don't recall whether they directed their comments to that at that time.

ASSEMBLYMAN HERMAN: Let me just cover that point. For instance, 5 percent of \$50,000--would that be an average single family home today excluding town houses, apartments, condominiums, etc?

MR. COEUZZA: That's an average.

ASSEMBLYMAN HERMAN: Five percent of that is only \$2,500, right? Yet, you use as an example the surety bond of a plumber that's \$3,000. If my math is correct, I think \$2,500 is less than \$3,000.

MR. PARAGANO: Yes, but if the builder's building 18 of those houses in one year's time, it's multiplied by 18.

ASSEMBLYMAN HERMAN: The point is that you object to a multiplicity of posting. I assume that you would not object to a more extensive policy covering larger amounts if it were an omnibus or blanket policy.

MR. PARAGANO: That's exactly what we're proposing, sir.

ASSEMBLYMAN HERMAN: I assume that as for those builders who do not have the good taste, in your opinion, to belong to your Association, you would not object, as a matter of legislative policy, whether it be through private enterprise or through public encouragement that omnibus or blanket coverage be provided.

MR. PARAGANO: I don't think so.

ASSEMBLYMAN RYS: Mr. Paragano, what is the difference between fair market value of a home and true value when you're building a new home?

MR. PARAGANO: That's a good question. Fair market value is what someone would be willing to pay for it, and true market value is what someone does pay for it.

ASSEMBLYMAN RYS: Let me put words in your mouth, then. Would you consider your construction costs and your profit as true value in both ways?

MR. PARAGANO: Are you speaking of a home that is contracted or of a home that is for sale?

ASSEMBLYMAN RYS: I'm asking you the questions. Those are your words.

MR. PARAGANO: Let me give you two examples. If we're speaking of a situation where I have a home already sold or I have a tract of homes where the houses sell at "X" number of dollars per house, that is the figure we would use. If we're speaking of a home that I am building for speculative purposes, and I'm going to ask "X" number of dollars but I know that I'm going to be satisfied with "Y" number of dollars, I may use the "Y" figure as opposed to the "X" figure.

ASSEMBLYMAN RYS: In other words, you're talking about an inflated price.

MR. PARAGANO: Conceivably, yes.

ASSEMBLYMAN HERMAN: Just a few more questions, if I may.

You say that your proposed legislation is patterned after that of a number of states.

MR. PARAGANO: Yes.

ASSEMBLYMAN HERMAN: May I ask you this: After which one is it mostly patterned?

MR. PARAGANO: Actually, it has excerpts from each one of them; but, I guess, the Hawaii one would most closely resemble it.

ASSEMBLYMAN HERMAN: Let me ask you this: Without having to skip and hop through all the pieces of legislation that have been adopted in those states mentioned, what is contained in your proposed licensing law that is not contained in any of them; or how is it modified, if at all?

MR. PARAGANO: In one--I believe it's Florida--it's mostly registration and goes no further. In Hawaii, I think we're pretty similar to what they have. The California laws--unfortunately, I didn't bring them with me--but we've taken excerpts from each one of them and incorporated them into this.

ASSEMBLYMAN HERMAN: I'm anxious to know whether there is anything innovative in it; in other words, is there anything in addition to what is contained in the others?

MR. PARAGANO: Yes, I think there is, sir.

ASSEMBLYMAN HERMAN: That is the question I'm asking you. Do you know what is innovative about it?

MR. PARAGANO. Yes, I think the fact that we have broken it down and provided a bonding feature makes it innovative.

ASSEMBLYMAN HERMAN: I have just one or two more questions.

MR. COEUZZA: Can I just give you a note of caution on that?

ASSEMBLYMAN HERMAN: Yes. This is only a proposal?

MR. COEUZZA: This is not even a proposal. This was prepared, actually, for the Board of Directors meeting which was over yesterday.

ASSEMBLYMAN HERMAN: For the record, we are referring to the booklet, Here's How: A Report to the Board on the Home Owners Warranty Program.

MR. COEUZZA: As you can see, it talks about a lot of people who are meaningless to you. I think what is really the most important part of that whole document is on the page entitled, "What HOW Is."

ASSEMBLYMAN HERMAN: I am getting to exactly that point. Thank you for giving me a leading question.

On that particular page, in the section entitled, "What HOW Provides," which is page 3, under the subchapter, "Conciliation and Arbitration," I believe you generally mention a \$25 fee. However, if I read it correctly, the \$25 fee is for review by the local council; and then there is a \$75 fee to submit it to arbitration.

MR. COEUZZA: These are both refunded.

ASSEMBLYMAN HERMAN: They are refunded if you win, right?

MR. COEUZZA: Correct, if it has merit.

ASSEMBLYMAN HERMAN: I assume that the emphasis here is on the fact that the home owner should be made whole, right?

MR. PARAGANO: That is correct, sir.

ASSEMBLYMAN HERMAN: I assume that in an arbitration proceeding or any court proceeding, the home builder usually would be represented.

MR. PARAGANO: Not necessarily. In this particular instance we are trying to cut our costs as well as the buyer's costs.

ASSEMBLYMAN HERMAN: If there was a structural defect and you needed an expert, you would bring one, wouldn't you?

MR. PARAGANO: If I felt that it was necessary, yes. In the same fashion, the buyer would bring one if he felt it was necessary.

ASSEMBLYMAN HERMAN: Isn't it the purpose of this Bill to make the buyer whole?

MR. PARAGANO: Yes. Are you desirous of putting into it some reasonable fee structure? We would have no objection to that.

ASSEMBLYMAN HERMAN: I am desirous of including any provision in the proposal which would guarantee that the buyer would remain whole.

MR. PARAGANO: If he prevails?

ASSEMBLYMAN HERMAN: If he prevails.

MR. PARAGANO: I have no objection to that.

ASSEMBLYMAN HERMAN: I think this is a basic fault in our whole system of law.

MR. PARAGANO: By the same token, would that be reciprocal to the builder?

ASSEMBLYMAN HERMAN: You are the one who is supplying the policy; and I assume that under your proposal, the buyer is also the one who is paying for the policy. I believe that, according to that old song from the show, "Candide," "we just pass it along."

If there are no further questions or comments at this time, I would like to take a five-minute break.

(Short Recess)

(After Recess)

ASSEMBLYMAN HERMAN: Before you leave, Mr. Paragano, I have one question that I forgot to ask you before the break.

ASSEMBLYMAN HERMAN: One of the proposals in your Bill would preempt the State and eliminate other bonds that would be imposed municipally. Does that include performance bonds for subdivisions and the various other bonds that would be required under PUD legislation?

MR. PARAGANO: No, it does not, sir.

ASSEMBLYMAN HERMAN: Your Bill does not specify that.

MR. PARAGANO: I believe it does, sir. On page 27 of the proposed Bill, paragraph 13, we refer to N.J.S. 40:55-1.21.

ASSEMBLYMAN HERMAN: That statement is, "Nor shall the municipality require the posting of any bond other than those required under N.J.S. 40:55-1.21 et. seq." Is that the subdivision section of the General Planning Section?

MR. PARAGANO: I think it is.

ASSEMBLYMAN HERMAN: Perhaps the Committee will have to give that some further review because I am not sure that it does not possibly affect PUD bonds and other considerations.

MR. PARAGANO: The legislation, as we propose it, is not to preclude that type of bonding--either performance

or subdivision bonding or any other type of bonding, other than bonding as it pertains to builder licensing.

ASSEMBLYMAN RYS: Mr. Paragano, I asked you that question. When I was talking about licensing, which is the same thing as bonding, I possibly missed that statement on page 27.

MR. PARAGANO: I'm sorry; what is the question, sir?

ASSEMBLYMAN RYS: There is no question; I am trying to rectify your testimony. I asked the question about extra licensing, and you said that there would be none, except under the State.

MR. PARAGANO: Yes.

ASSEMBLYMAN HERMAN: Thank you. We have Mr. Papparone waiting.

MR. PARAGANO: Thank you, gentlemen.

ASSEMBLYMAN HERMAN: Thank you for coming.

T H O M A S A . P A P A R O N E :

My name is Thomas Papparone and I am President, Home Builders League of South Jersey. We cover Camden, Gloucester and Burlington Counties. I brought with me Mr. Walter Riley of the Scarborough organization, who has chaired our certification committee for several years and who, I feel, could be considered an expert in consumer concerns related to home building. He will be available to answer any questions you might have.

I would first like to thank the Committee for inviting me here to speak. I will be very brief since Mr. Paragano very ably presented the proposal. I would like to offer some additional information which I think the Committee should consider.

The Committee's stated objective for A-962 and A-805 is to assure new home purchasers of complete and competent construction. We, the Home Builders League of South Jersey, are of the opinion that they will not accomplish this objective, but will only serve to add to the inflationary spiral which our industry is facing and cause more people to be eliminated from the possibility of ever owning a home.

We contend that your objectives can be pursued and should be pursued, but in a more feasible fashion. The current proposals before us will continue to burden our industry with over legislation. Our and your objectives may be accomplished by supporting such programs as the National Association of Home Builders' ten year warranty program and the proposed builder licensing program prepared by the State of New Jersey Home Builders Association. Both of these proposals were prepared within the industry itself with their objectives being complete, competent construction and protection for the consumer.

I wish to offer your Committee some proof that a program designed and policed by our industry can be effective.

The South Jersey Home Builders League was formed in May of 1940. By the 1950's, the association saw the need for assisting new home owners when an unfortunate impasse developed with the builder of their home. They developed a program, which they called a Certified Builder Program; and when notified, the association would investigate problems and attempt to resolve consumer issues concerning its builder members.

In May of 1971, after over a year of study and effort, the local association introduced a Home Owner's Service Policy. It was our first attempt at defining home owner maintenance and builder responsibilities. The results of this program have been excellent. All of our builders--and we have 325 members in the three counties including approximately 70 building companies--distribute this warranty to their buyers. I would like to leave a copy with you, if you so wish.

We have been trying to measure the effect of this warranty each year; and in 1973, our association delivered approximately 4,000 living units in Burlington, Camden and Gloucester Counties. This represented between 50 and 75 percent of construction, depending upon which figures you want to use as a basis. During this time our association received some 30 letters of complaint from new buyers. This number represents only 3/4 of one percent, which really means that the policy was, for the most part, serving to resolve some 99.25 percent of our consumer concerns.

This has been accomplished without a 5 percent or 15 percent bond to secure competent builder response to consumer issues. Such bonds would only serve as an unnecessary financial burden, not only to our builders, but to the most important person, the consumer, as well.

Therefore, we strongly urge that you reconsider these two Bills in light of the national program of a ten-year warranty and the State licensing program. We would rather have you help the industry lead itself and not further burden the industry with legislation that does not accomplish the objectives which are sought; namely, safe and adequate shelters which are constructed and completed in the most efficient and competent manner.

I thank you for the opportunity to present what our association has been doing over the last three years.

I admit there are builders that are not members, but we think we are an example of what can be done within the industry; and our State association could lead the way to better housing throughout the State.

ASSEMBLYMAN HERMAN: Do you have any questions, Mr. Rys?

ASSEMBLYMAN RYS: I have only one question. I understand you do quite a bit of building in South Jersey. Does your organization take a soil evaluation or have a program where you test the soil before building rather than building upon land that is watery?

MR. PAPANONE: If you are familiar with the preliminary subdivision requirements, most towns require that certain soil borings be performed--so many per acre. We have also experienced a situation where we approach an area which is questionable; it would be--I use the word--mucked out until we reach a firm base and replaced by better soil. This is a practice we try to keep. No doubt there will always be problems with settlement; but if it is an obvious, detrimental problem, we try to avoid that area initially, in the preliminaries.

W A L T E R B. R I L E Y, J R.:

If a water problem does develop in any home of a builder member of our association, we do require that he correct it. If it cannot be corrected by grading or other means, he is required to put a sump pump in the basement.

ASSEMBLYMAN RYS: A pump would not be the solution there. I like to think that if you had this evaluation program, you would be putting the home on pilings.

MR. PAPANONE: But that would make the cost factor...

ASSEMBLYMAN RYS: I realize that; but at the same time, the cost would be greater throughout the years by pumping water each and every day. An equalization program in ten years...

MR. PAPANONE: It is hard enough for the customer to put the down payment on a house; and if it had to be on pilings, he could never afford it. We try to be as

practical as we can with our solutions with the least expense, and we find that the pump solution is the best we know of today.

ASSEMBLYMAN HERMAN: In fact, a lot of Cherry Hill is built that way, right?

MR. PAPARONE: It is continuing; we are trying to improve the situation.

MR. RILEY: We don't pretend to be without problems. Our organization alone--when I speak of our organization, I mean our building company which is Scarboro Corporation--has spent somewhere between \$50,000 and \$75,000 in one year to correct basic water problems. We have since taken additional measures to do this at the time of construction, but it has been necessary to correct some conditions that did develop.

ASSEMBLYMAN HERMAN: I have a few questions for you, Mr. Paparone, if I may.

As I have directed to the previous witness, obviously you are encouraging the developing and instituting of the home warranty program that would only apply to builder members.

MR. PAPARONE: That is correct.

ASSEMBLYMAN HERMAN: What would protect the rest of the public?

MR. PAPARONE: It is my understanding that many of the savings and loan institutions and other financial institutions may, in the future, consider very strongly

dealing with those builders that live and work by some type of warranty program. This would eventually cause the other builders to fall in line.

ASSEMBLYMAN HERMAN: If I am a builder and I don't want to join your association, what protects the consumer who purchases a home from me, a non-member?

MR. PAPARONE: The consumer has a choice of builders; and if he knows the facts and what is offered by one builder and what is offered by another, he is free to choose.

ASSEMBLYMAN HERMAN: In other words, what you are trying to say is that without legislation we would encourage membership in your organization or in such organizations that would have home warranty programs.

MR. PAPARONE: That is correct.

ASSEMBLYMAN HERMAN: Don't you think that would encourage a monopoly or anti-trust situation?

MR. PAPARONE: If our objectives are one and the same, I think it is encouraging better housing for the State of New Jersey.

ASSEMBLYMAN HERMAN: I assume that your answer would be the same if we had a law that permitted the development of either a State-mandated public policy warranty program or, in the alternative, one supplied by private enterprise that was equal or better. I assume that your association would have no objection to that type of legislation.

MR. PAPARONE: I don't believe there would be any objection.

ASSEMBLYMAN RYS: May we have a copy of your warranty, please?

MR. PAPARONE: I will leave one.

ASSEMBLYMAN HERMAN: I would like to follow that with just one or two observations.

As outlined by the previous witness, there may be things in your home warranty program, which is privately funded and privately sponsored, which may not be in total agreement with proposed public policy. Would you object or disagree if the Legislature felt that there should be more in a home warranty program and wanted to include some of the things we mentioned; e.g., the payment of expert fees and, perhaps, termite certification?

MR. PAPARONE: If they are reasonable amendments that you want to add, I see no objection to them.

ASSEMBLYMAN HERMAN: Getting to this question of over legislation, you, too, I assume--not wanting to be facetious--carry automobile insurance.

MR. PAPARONE: Yes.

ASSEMBLYMAN HERMAN: What are your property limits?

MR. PAPARONE: To be quite frank, I'm embarrassed; I don't know the total figure of our coverage; but on our homes, we have certain home owners insurance...

ASSEMBLYMAN HERMAN: I am talking about your automobile policy.

MR. PAPARONE: Around \$50,000 or something like that.

ASSEMBLYMAN HERMAN: The point is that we recognize that the whole point in licensing and in these warranties is the creating of financial responsibility, right?

MR. PAPARONE: Correct.

ASSEMBLYMAN HERMAN: That is the whole point behind insurance or bonds; it is a question of creating financial responsibility.

MR. PAPARONE: Yes. The objectives are to make sure the home owner is protected, the service is performed and the home owner does not have to go through a lot of red tape to get to the end result, which is to fix the product so he can accept it and live in it. I do not know how many new homes in the State of New Jersey are in such a state that they are uninhabitable or unsafe to live in. I do know that the homes built in our area pass that criterion very easily. Usually, the complaints are on cosmetic items, misunderstandings, poor communications, etc.

ASSEMBLYMAN HERMAN: What we would call knudnik items?

MR. PAPARONE: Yes, I guess that's a good word.

ASSEMBLYMAN HERMAN: One or two more questions, if I may.

How many builders or contractors would you say, in South Jersey, taking in the five or six county area, are in the home repair market?

MR. RILEY: I would say that about 50 percent of the carpenters who are out of work get into the home repair business. Is that what you mean?

ASSEMBLYMAN HERMAN: Forgetting people who are out of work or do it on a seasonable basis or as a sideline, how many home repair contractors would you say there are in South Jersey?

MR. RILEY: Your estimate would differ from mine.

MR. PAPARONE: It's a hard figure to pin down.

ASSEMBLYMAN HERMAN: I understand, but would you give me a ballpark figure based on your best "guesstimate?"

MR. PAPARONE: We have 325 members in our association of which 70-some-odd are building companies, some of which do remodeling. Of those 75, I wouldn't say that any more than eight or ten are involved with remodeling.

ASSEMBLYMAN HERMAN: Perhaps we are missing the point. Forgetting people who belong to your association, how many people are doing remodeling work as an every-day trade in South Jersey?

MR. PAPARONE: I could not even venture a guess.

ASSEMBLYMAN HERMAN: Would it be, certainly, far in excess of the total number that belong to your association?

MR. RILEY: Very definitely, yes.

MR. PAPARONE: With all the small contractors, sure.

ASSEMBLYMAN HERMAN: In fact, it is an on-going, non-regulated affair subject to a great deal of abuse.

MR. PAPANONE: If you want to put it that way, it's up to you.

ASSEMBLYMAN HERMAN: We are here to be candid; and hopefully, the legislation and policies that will come out of this will cover all areas of the home construction market.

MR. PAPANONE: Remodeling as well as new homes, right.

ASSEMBLYMAN HERMAN: Are there any other questions?

(No questions)

MR. PAPANONE: Thank you very much.

ASSEMBLYMAN HERMAN: Is Mr. Ferguson here? I beg your pardon, Mr. Young, please.

A R T H U R T. Y O U N G:

Mr. Chairman, my name is Arthur Young; and I represent the Building Contractors Association of New Jersey.

We have a peripheral interest in the measure, A-962.

Our Association represents 400 general contractors, subcontractors and suppliers engaged in commercial and industrial construction. The membership participates in 58 percent of all this type building completed annually in the State of New Jersey.

Our Association feels that the intent of Assembly Bill 962 is excellent. It is our understanding that the Contractor Licensing Acts that exist in California, Florida, New York, Hawaii and several other states act to preserve

the integrity of the construction industry and as standards of excellence helping to preserve the general welfare of the public.

We feel the problem with A-962 is that it is inadequate as a vehicle to accomplish the above mentioned aims. This type of legislation usually is inclusive of all facets of construction and extends into the subcontractor trades as well as being applied to the firm performing the general contracting. There is usually provision for examination, prequalification, classification and very elaborate definitions of the various limits of responsibilities within each contractor field.

Our Association is familiar with the work of the New Jersey Builders Association in this field and has recently obtained copies of their proposed licensing legislation. We have agreed to provide that association with input that directs itself to the requirements general contractors would like to have included under such a law. Their proposed legislation has also been distributed to the leading subcontractor associations in the State for their opinions and specialized input.

We would further recommend to the Committee that a study be made of the various licensing laws throughout the country and that the sponsors of this type of legislation take advantage of the knowledge and experience that exists within our industry if they decide to draft such legislation. It would be impossible to state today

whether or not the industry might support such legislation; however, at this time most everyone is willing to consider the matter.

We have no comment on A-805, which is directly related to home building, except that we believe a comprehensive Contractor Licensing Law, coupled with the establishment of a Statewide Building Code, might eliminate much of the necessity for future legislation directed at special deficiencies that could no longer exist under the broad based program described herein.

We would add that if Assembly Bill 962 is moved in its present form, we would like to be excluded from the act. We have, we think, in the general contractor field sufficient safeguards already in industrial and commercial building. We have prefile qualification; we have bonding requirements; we have elaborate contractual arrangements; and actually, we have no complaints from our customers. We think we are being drawn into legislation that is essentially directed at home building; but because of the way the law is written, it requires registration on our part; we think it could be burden without benefit.

ASSEMBLYMAN HERMAN: Are there any questions?

ASSEMBLYMAN RYS: No.

ASSEMBLYMAN HERMAN: I think that we have covered all the questions with our prior speakers. I want to thank you for attending.

MR. YOUNG: Thank you.

(Hearing Concluded)

ASSEMBLYMAN HERMAN: At this time, I would like to have made part of the record the testimony of the New Jersey Association of Realtors, which is in written form. It is the statement of Robert F. Ferguson, Jr., Executive Vice President of the New Jersey Association of Realtors.

Mr. Rys, do you have any closing remarks you would like to make for the record?

ASSEMBLYMAN RYS: First of all, I would like to thank all the builders and all the other people who appeared before us today. I think this was a very good hearing. With the input that we have, I think we will be reviewing all the testimony that has been given to us; and most likely, we will come up with a comprehensive plan.

ASSEMBLYMAN HERMAN: I would like to make one or two closing remarks.

I echo Mr. Rys' sentiments in expressing our thanks to the sponsors, Mrs. Totaro and Mrs. Wilson, for taking time to appear before the Committee as well as all the other experts and people who have offered testimony before us today.

I think the testimony cumulatively shows that there is a definite need for the State of New Jersey to establish some legislative direction and provide some format, whether that be through private industry or public regulation or a combination of both, to develop a parity--equality--in the home buying market and the

home repair market, as well. The people who purchase homes and the people who have them repaired could then be guaranteed that if there is a problem, there will be a fund in court and adequate remedies through which they can seek reimbursement.

I believe that the testimony and the questions that have been raised leave room for a great deal of study; and our subcommittee will be meeting in the near future, after we receive the transcript, to review all the questions that have been raised.

I would like to say that I think the topic before the Committee is an extremely important one. It is one that has long been in need of legislation and legislative direction. I think we should do our utmost to enact legislation that is fair and equitable and will establish a balance between the needs of the large builder and the small builder and, at the same time, maintain proper safeguards.

To those ends, again I extend my thanks; and without overburdening the record with comments that I have already made, I think it has been a worthwhile hearing; and hopefully, a lot of good will come out of it.

I thank you on behalf of Mr. Rys and myself and the other members of the Committee, who were unable to attend the hearing.

The meeting is officially adjourned.

APPENDIX

R O B E R T F . F E R G U S O N , J R . :

I am Robert F. Ferguson, Jr., Executive Vice President of the New Jersey Association of Realtors.

The New Jersey Association of Realtors is a trade Association of real estate licensees numbering in excess of 10,000.

The Association maintains offices at 46 Parsonage Road, Edison, New Jersey.

NJAR is opposed to Assembly Bill 805 which has been designated the "Single Family Dwelling Warranty Act."

I would like to point out that while the vast majority of our members are not directly involved with the building or sale of new single family dwellings, we are concerned with the ability of the housing industry to produce single family units. While NJAR recognizes the problem that Assemblywoman Totaro is seeking to address through Assembly Bill 805, we feel the Bill, if enacted into law, would result in the demise of the home building industry as we now know it in New Jersey.

Small builders, who are the backbone of the single family housing industry in New Jersey, would find it impossible to secure the surety bond as required under Section 5, lines 5 and 6, and would be forced to post cash equal to 15 percent of the "fair market value of the unit."

The small builder would find it virtually impossible to comply with the cash requirements, thus forcing him out of the industry.

NJAR feels an exodus of the small builder will serve only to intensify New Jersey's housing problems.

We feel it is also important to point out that the cost to provide the "warranty" as provided under A-805 will be passed on to the consumer through higher prices. THIS WE DON'T NEED. THERE ARE ALREADY TOO MANY UNNECESSARY COSTS BEING PASSED ON TO THE CONSUMER.

NJAR feels the general public is entitled to greater protection than is now afforded the purchaser of a new home. Yet, we feel A-805 is not the responsible approach.

Over the past 18 months, NJAR has attended a series of meetings with representatives of the New Jersey Builders Association and the Division of Consumer Affairs on the subject of new home warranties. During that period the National Association of Home Builders developed a program, which had its genesis in Great Britain, which we feel deserves close legislative review.

The home owners warranty program (HOW), which should be available in New Jersey in the near future, appears to offer the type of protection for a period of time that the consumer is expecting when he purchases a new home.

NJAR does not intend to imply that the HOW program is perfect or it cannot be improved upon; however, we do

feel that the Legislature should secure sufficient data to evaluate the program before recommending legislative action on the subject.

Assembly Bill 962 by Assemblywoman Wilson, which is designated the "Building Contractors Registration and Security Act," is a meaningful start in an area of State regulation which is timely in light of the Legislature's concern with greater protection for the New Jersey consumer.

Reluctantly, NJAR is forced to oppose A-962 because we feel the measure is not as comprehensive as it should be.

Several years ago NJAR was contacted by the building industry to assist them in drafting similar legislation. Our advice was sought due to the fact that the real estate industry has been regulated by the State since 1921.

NJAR has played an important role in the updating of the Real Estate License Law through the years.

However, once we became involved in working with the building industry, it became apparent that, because of the scores of specialists that operate within the confines of the building field, any legislation which sought to regulate in an effective manner would, by its own nature, have to be all inclusive; and Assembly Bill 962 fails to meet the test in this area because it fails to recognize the specialist or subcontractor.

Those who perform the work should be covered by any licensing Bill or the public interest is not adequately protected.

Assembly Bill 962, in our opinion, is not specific enough and will only serve to create a false impression with the general public.

Assembly Bill 962 also requires the posting of a bond or cash equal to 5 percent of the value of the improvement. As stated previously, we feel this requirement will have a negative reaction and force smaller builders out of business.

We urge this Committee, in its review of the area of builder licensing, to consider creating a special legislative study commission as a viable alternative to Assembly Bill 962.

In conclusion, I would like to state that while the legislation under discussion here today does not directly affect our members, we are genuinely concerned with any legislation that would unreasonably drive out of the building industry responsible individuals who, because of their size, may not find it possible to meet the bonding or cash deposit requirements of A-805 or A-962.

NJAR urges a comprehensive review of the National Association of Home Builders' home warranty program and the creation of a legislative study commission to deal with the complex subject of builder licensing.

NJAR feels that the public is entitled to greater protection when purchasing a new home; however, we feel that there must be found a responsible middle road wherein the public interest can be served and the building industry allowed to grow to meet our housing requirements.

We hope our remarks will assist this Committee in reaching a determination that will accomplish the goals cited above.

Thank you.



State of New Jersey

DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW

1100 RAYMOND BOULEVARD

NEWARK, N. J. 07102

May 17, 1974

WILLIAM F. HYLAND
ATTORNEY GENERAL

The Honorable Martin A. Herman, Chairman
Subcommittee of the Assembly Commerce,
Industry and Professions
State House
Trenton, New Jersey 08625

Re: A-962

Dear Assemblyman Herman:

You have requested our views and comments on the above captioned bill now pending in your committee. We have examined the same from both a policy and technical perspective, and for the reasons hereinafter set forth we cannot recommend its adoption. While the Division of Consumer Affairs is in agreement with the basic premise that regulation of certain types of contractors rendering construction and home repair work to the public is needed, our approach to the problem would differ in several material respects.

The present bill would apply to any person who contracts with the owner of real property "to construct a building..." It would appear that the language would include builders engaging in large commercial construction as well as residential structures. The need for regulation would appear to be most directly felt in those areas of immediate consumer impact. Accordingly, it would seem appropriate to limit initial regulatory activity to builders and home repair contractors constructing or rendering work upon single family and owner occupied residences.

The pending bill would also establish a 7 member State Board of Registration of Building Contractors upon which part-time members would sit, deciding both initial registration questions, as well as enforcement actions to revoke or suspend a registration. We believe that the scope and dimension of the foreseeable problems in this regulatory area call for full time enforcement activity and, therefore, would recommend consideration of the creation of an appropriate office within the Division of Consumer Affairs to administer and enforce the act.

The proposed provisions contained in Section 9 (a) create only four relatively narrow bases upon which a registration may be suspended or revoked. Apart from technical deficiencies contained in such provisions* a broader statement of unlawful

* The concept of "willful" negligence would appear to be internally contradictory. The same may also be said of the proposed language "willfully committed fraud." While this office believes that a registration should be subjected to suspension and/or revocation for continuous negligent workmanship, the expressed standard would not so provide.

practices should be inserted. On this point, it would appear that the same practices which would subject a person to be charged under the Consumer Fraud Act should also support an action aimed at the builder's registration. Therefore, it is suggested that the provision of N.J.S.A. 56:8-2 be used as the basis for registration revocation or suspension.

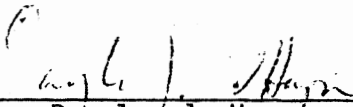
In view of the large number of builders and home repair contractors now operating within this State, it is predictable that a substantial number of the same simply will not register and will continue to render shoddy workmanship. In order to protect against such practices and to stimulate compliance via registration, a private remedy available to a consumer should be created. In this regard, consideration is suggested toward the creation of a provision which would prohibit any recovery upon a contract made by a person who is not registered as required by statute. Furthermore, to avoid a windfall in such a situation, the private remedy should be limited to denying the profit which would have been earned by the contractor had he been properly registered.

Finally, the penalty provisions in our judgment are simply too limited. Section 14 should, therefore, be amended so as to make the penalty provisions consistent with those contained in the Consumer Fraud Act, to wit: first offense--up to \$2,000, second and subsequent offenses--up to \$5,000. While the bill also contains a major provision regarding the deposit of certain security monies, we believe that our comments submitted to you in relation to Assembly Bill 805 cover the considerations raised thereby.

Very truly yours,

WILLIAM F. HYLAND
ATTORNEY GENERAL

BY:



Douglas J. Harper
Deputy Attorney General
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