

1 TO THE HONORABLE SENATE:

2 The Committee on Economic Development, Housing and General Affairs to  
3 which was referred Senate Bill No. 105 entitled “An act relating to home  
4 improvement contracts” respectfully reports that it has considered the same  
5 and recommends that the bill be amended by striking out all after the enacting  
6 clause and inserting in lieu thereof the following:

7 Sec. 1. 9 V.S.A. chapter 102 is amended to read:

8 CHAPTER 102. CONSTRUCTION CONTRACTS

9 § 4001. DEFINITIONS

10 As used in this chapter:

11 (1) “Contractor” means a person or entity which contracts with an owner  
12 to perform work, or provide materials or machinery necessary to perform work  
13 on real property.

14 (2) “Work” means:

15 (A) to build, alter, repair, or demolish any improvement on,  
16 connected with, or on or beneath the surface of any real property, or to  
17 excavate, clear, grade, fill, or landscape any real property or to construct  
18 driveways, private roadways, highways and bridges, drilled wells, septic,  
19 sewage systems, utilities, including trees and shrubbery, or to furnish  
20 materials, for any of such purposes, or to perform any labor upon real property;  
21 and.”~~Work” also includes~~

1           (B) to provide any design or other professional or skilled services  
2 rendered by architects, engineers, land surveyors, landscape architects, and  
3 construction managers.

4           (3) “Owner” means a person or entity having an interest in real property  
5 on which work is performed, if the person or entity has agreed to or requested  
6 such work. “Owner” includes successors in interest of the owner and agents of  
7 the owner acting within their authority. “Owner” shall also include the State of  
8 Vermont and instrumentalities and subdivisions of the State of Vermont  
9 including municipalities and school districts having an interest in such real  
10 property.

11           (4) “Real property” means real estate, including lands, leaseholds,  
12 tenements and hereditaments, and improvements placed thereon.

13           (5) “Construction contract” means any agreement, whether written or  
14 oral, to perform work on any real property located within the State of Vermont.

15           (6) “Subcontractor” means any person or entity which has contracted to  
16 perform work, or provide materials or machinery necessary to perform work  
17 for a contractor or another subcontractor in connection with a construction  
18 contract.

19           (7) “Delivery” means receipt by addressee, including first class,  
20 registered, or certified mail, hand delivered or transmitted by facsimile

1 machine. Mail, properly addressed, shall be deemed delivered three days from  
2 the day it was sent.

3 (8) “Billing period” means the period agreed to by the parties or, in the  
4 absence of an agreement, the calendar month within which work is performed.

5 (9) “Residential home improvement contract” means a contract between  
6 a contractor and an owner for work on residential real estate where the  
7 estimated value of the work and materials exceeds \$5,000.00.

8 (10) “Residential real estate” means a residential structure with one to  
9 four dwelling units and the real property on which it is constructed.

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11 § 4010. RESIDENTIAL HOME IMPROVEMENT CONTRACTS

12 (a) Writing required. A residential home improvement contract, and any  
13 amendment to the contract, shall be in writing.

14 (b) Required provisions. A residential home improvement contract shall  
15 include the following:

16 (1) Contract price. One of the following provisions for the price of  
17 the contract:

18 (A) a maximum price for all work and materials;

19 (B) a statement that billing and payment will be made on a time and  
20 materials basis, not to exceed a maximum price; or

1           (C) a statement that billing and payment will be made on a time and  
2           materials basis and that there is no maximum price.

3           (2) Work dates. A start date and a completion date for work.

4           (3) Scope of work. A description of the work to be performed and a  
5           description of the materials to be used.

6           (4) Warranty. A provision that reads: “In addition to any additional  
7           warranties agreed to by the parties, the contractor warrants that his or her work  
8           is free from faulty materials and is performed in a skillful manner according to  
9           the standards of the building code applicable for this location.”

10          (5) Change order.

11           (A) Unless a residential home improvement contract specifies that  
12           billing and payment will be made on a time and materials basis and that there  
13           is no maximum price, subject to subdivision (5)(B) of this subsection, a  
14           provision that the contractor shall not perform any work or procure materials in  
15           excess of the maximum price of the contract without prior written approval of  
16           the owner.

17           (B) The contract may provide that an owner can approve a change  
18           order verbally or by electronic communication, provided that the owner and  
19           contractor shall memorialize the approval in a signed writing within three days  
20           of the approval.

1        (c) Down payment. Unless a residential home improvement contract  
2        specifies that billing and payment will be made on a time and materials basis  
3        and that there is no maximum price, the contract may require a down payment  
4        of up to one-third of the maximum price of the contract, or the price of  
5        materials, whichever is greater.

6        (d) Enforcement and remedies.

7                (1) A residential home improvement contract shall not include a binding  
8        arbitration requirement or any other provision under which an owner waives  
9        his or her right to pursue remedies to enforce the contract or resolve a dispute  
10       with the contractor.

11               (2) A contract that does not comply with the provisions of this section  
12       shall be unenforceable against an owner.

13       Sec. 2. EFFECTIVE DATE

14       This act shall take effect on January 1, 2016.

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18       (Committee vote: \_\_\_\_\_)

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Senator \_\_\_\_\_

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FOR THE COMMITTEE