

## GOP blocks Northam appointee amid senator's crusade to soften oversight of contractors

By **Ned Oliver** - January 30, 2019



*The Department of Professional and Occupational Regulation oversees 45 professions, including contractors, who represent half of their annual case load. (Pixabay)*

When a troubling crack appeared on his bathroom wall, Pete Grosbach called up a foundation repair company whose ads he'd seen on television.

And when that company never procured a promised building permit and failed a subsequent inspection, he called up the state regulators who oversee contractors and filed a complaint.

"Foolish me," said Grosbach, a retiree who lives with his wife in Henrico County. "I did all of this because I watched their advertisement. And it said they know everything there is to know about foundation repair."

What Grosbach didn't know is that his contractor, JES Construction, had a powerful ally working behind the scenes on its behalf: Sen. Bill DeSteph, R-Virginia Beach, who emailed top administrators at the Department of Professional and Occupational Regulation and told them to suspend disciplinary proceedings against the company until they met with him to discuss the case.

It's one of several dozen messages his office sent on behalf of contractors facing disciplinary actions, in some cases advocating for companies the department's

leader considered “very bad actors,” according to emails and records provided by the department in response to a Freedom of Information Act Request.

The records show the department refused DeSteph’s request to halt the investigation, saying doing so would be contrary to “the legally prescribed procedures and timeframes.”

The case moved forward and the Board of Contractors fined JES \$5,000 – the board’s eighth disciplinary action against them.

## **Overzealous enforcement or consumer protection?**

The case is just one example of DeSteph’s running conflict with the department, which he views as overzealous and needlessly punitive.

“A lot of folks will tell you if DPOR is coming to visit you, they’re going to find a violation somewhere or they’re going to keep digging until they do, and I don’t think that’s appropriate,” DeSteph said in an interview. “In 80 percent of cases, there’s no consumer harm. It’s things as little as they left a paragraph out of the contract when they had it retyped.”

The case is also an example of what some lawmakers and officials view as DeSteph’s unusual attempts to intervene in investigations in search of leniency for businesses who faced consumer complaints.

*Sen. Bill DeSteph, R-Virginia Beach.  
(Senate of Virginia)*

The conflicting views about how the department should do its work appear to be at the heart of a decision by Republicans this year to fire its director, Jay DeBoer, by blocking his reappointment by Gov. Ralph Northam.

The department oversees a total of 45 professions, ranging from [barbers](#) to [professional wrestlers](#). The bulk of their time, however, goes toward contractors, who represent about half of the department’s annual case load.

The Senate pulled DeBoer’s appointment last week with no public discussion. The House of Delegates is likely to follow suit this week.

A spokeswoman for Northam, Alena Yarmosky, says the administration objects to the move.

“Mr. DeBoer serves ably as the Commissioner of DPOR,” she wrote in an email.

A former Democratic member of the House of Delegates and one-time “Jeopardy!” contestant, DeBoer has overseen the department for 10 years under three

governors. Through his deputy, Mary Broz-Vaughan, he declined to comment on the dispute. She said it's difficult to respond "because no one's really given a public rationale beyond just a partisan line."

But she characterized DeSteph's involvement in regulatory actions as atypical and a source of concern within the department.

"We would not want to treat any case differently as a result of a legislator's interest," she said. "Nor would we want state employees to feel as though their actions were subject to a different scrutiny as a result."

## **Director called interventions 'grossly improper'**

In addition to his inquiries on behalf of JES, records show DeSteph's office became deeply involved in two other cases brought against contractors. In one, DeSteph instructed the department not to interview any witnesses before contacting him first. In another, he directed all communication to go through his office and had an investigatory meeting rescheduled so he could sit in on it — a first for the department.

In an email to his superior, then-Secretary of Commerce Todd Haymore, DeBoer said it would be "grossly improper" for him to dictate how the investigation would proceed at the request of a lawmaker.

As for DeSteph's decision to sit in on a meeting, DeBoer wrote that it was "the first time, I think, that we have had a legislator participate in an investigation (that wasn't of him)."

In two of the three cases, his interventions were on behalf of substantial campaign donors. JES has contributed more than \$12,000 to DeSteph, including an in-kind contribution of a billboard advertisement, according to campaign finance records compiled by the Virginia Public Access Project. Larry Hill, the contractor whose investigatory meeting he sat in on, donated \$2,500. And, generally, construction and real estate businesses were his largest overall supporters, contributing a combined \$108,000 since 2016, according to VPAP.

DeSteph, a retired Navy intelligence officer [who ran on](#) making the state more business friendly, characterized his inquiries as old-fashioned constituent service and said the fact that they were sometimes on behalf of donors is irrelevant. He said he's gone to bat against the agency for plenty of people who haven't supported his campaign.

"One of the harshest cases and biggest disputes I've gotten in with DPOR was someone who didn't even live in my district," he said. "Literally from Franklin to

Virginia Beach and from all over the state I was working with DPOR as the go-to person. I will tell people, 99 percent of them didn't donate to my campaign."

Still, the interactions strike some longtime lawmakers as unusual, bordering on improper.

"I can't think of a single time in 28 years that I've reached out to the director of an agency and tried to influence them," said Sen. Creigh Deeds, D-Bath, who served with DeBoer in the House of Delegates.

## **Audit faulted regulators for dropping cases**

DeSteph's disputes with the office are widely known at the Capitol. He's filed a half dozen bills over the years seeking to rein in the agency and last year proposed a budget amendment to cut its enforcement funding by 75 percent.

His latest effort, which would have allowed contractors like JES to have disciplinary records expunged, was voted down on the Senate floor 12-27. Some lawmakers panned the idea.

"This bill seeks to once again give more power to hide bad actors," said Sen. Jeremy McPike, D-Woodbridge, during a floor debate. "We need more transparency, more protection for consumers."

While several lawmakers have privately pointed to DeSteph as the force behind DeBoer's removal, DeSteph says he's just one person in a body of 40 senators and 100 delegates and can't do anything without their support.

But if there are other concerns with the department, so far none of DeSteph's fellow Republicans have raised them or otherwise commented publicly, even as they removed DeBoer's name from a packet of nominees forwarded by Northam and Democrats challenged the maneuver in a committee meeting and on the Senate floor.

The department was the subject of a less-than-glowing [review](#) by the General Assembly's Joint Legislative Audit and Review Commission, which, among other things concluded that "leadership has not sufficiently addressed long-standing agency problems," including a poorly functioning IT system and staffing shortages.

But as to charges that the department was too aggressive in its dealings with businesses, the review came to the opposite conclusion, finding that in some instances enforcement was lacking and that the department closed cases prematurely.

"This creates a risk that regulants who have committed serious rule violations will not be held accountable for potentially harmful practices," the auditors wrote.

For his part, Grosbach, the Henrico home owner with the cracked bathroom wall, said he appreciated the department's work on his case, though he says he's still concerned about his foundation and his wall isn't looking any better.

JES's president, Jesse Waltz, would not comment for this story, but, according to correspondence and case files, the company argued the rules covering building permits are confusing and vary from locality to locality. They acknowledged mistakes, but said they were corrected.

They appealed the Board of Contractor's ruling in the case first to Virginia Beach Circuit Court and then to the Virginia Court of Appeals, which in a ruling last month upheld the fine and a two-year probation assessed by the department.

Grosbach is not sympathetic.

"Of course, in my opinion the punishment was not harsh," he said. "When you say you're going to do a job and you're a professional, then by golly you ought to do the job."

#### **Ned Oliver**

Ned, a Lexington native, has a decade's worth of experience in journalism, beginning at The News-Gazette in Lexington, and including stints at the Berkshire Eagle, in Berkshire County, Mass., and the Times-Dispatch and Style Weekly in Richmond. He also has the awards to show for it, including taking a pair of first-place honors at the Virginia Press Association awards earlier this year for investigative reporting and feature writing. He is a graduate of Bard College at Simon's Rock, in Great Barrington, Mass. Contact him at [noliver@viriniamercury.com](mailto:noliver@viriniamercury.com)

