

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1395 w/CS Real Estate Appraisers

SPONSOR(S): McInvale

TIED BILLS:

IDEN./SIM. BILLS: SB 2238

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Trades, Professions, & Reg. Business (Sub)</u>	<u>6 Y, 0 N</u>	<u>Livingston</u>	<u>Liepshutz</u>
2) <u>Business Regulation</u>	<u>27 Y, 1 N w/CS</u>	<u>Livingston</u>	<u>Liepshutz</u>
3) <u>Appropriations</u>			
4)			
5)			

SUMMARY ANALYSIS

The Florida Real Estate Appraisal Board (board) under the Division of Real Estate within the Department of Business and Professional Regulation (DBPR) administers regulation of real estate appraisers. The bill addresses several provisions of the real estate statutes, chapter 475, F.S.

The bill amends the definition section and various other sections of the statutes to eliminate reference to the regulatory category of "registered assistant appraisers" and redesignates the term as "registered trainee appraisers." It provides definitions for the terms "appraisal review assignment," "appraisal review," "supervisory appraiser," "valuation services," and "work file." The bill amends the definition of "licensed appraiser" to instruct the DBPR to cease issuing licenses and thus phase out this regulatory category beginning July 1, 2003.

The bill authorizes the board to adopt rules to establish standards for, and to regulate, supervisory appraisers. It requires the board by rule to prescribe post-licensure education requirements for registered trainee appraisers.

The bill requires the primary supervisor, rather than the registered trainee, to register the names of the supervisors with the DBPR. It prohibits the registered trainee from receiving compensation from anyone other than through the primary supervisor. The bill creates a new section that gives the board rulemaking authority to define the role of the supervisory appraiser in directing the work of a registered trainee.

The bill grants the board the discretion to enter into written agreements with similar licensing or certification authorities of other states to ensure Florida licensees nonresident licensure opportunities comparable to those afforded to nonresidents by Florida law. It provides that licensees of another jurisdiction who apply for nonresident licensure in Florida must meet education, experience, and examination requirements substantially comparable to those required by the other jurisdiction of Florida-certified appraisers who apply for nonresident certification in the other state.

The DBPR estimates a negative fiscal impact of \$100,000 relating to increased administrative expenses and rule making costs associated with the requirements of the bill.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|----------------------------------------|-----------------------------------------|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

1. Reduce government - The state of Florida does not have reciprocity agreements with practitioners in other states. The bill creates a regulatory scheme for out of state practitioners to be licensed and operate in Florida. It provides rulemaking authority to the board relating to the regulation of nonresident appraisers.
3. Expand individual freedom - The bill limits the individual freedom of a registered assistant to collect compensation from anyone other than through the primary supervisor. The bill limits the number of trainees a supervisory appraiser may supervise, as well as, the geographic area in which that supervisor may supervise, as determined by rule of the board (also applies to 1. above).

B. EFFECT OF PROPOSED CHANGES:

Present situation

Regulation of real estate appraisers is established under part II of chapter 475, F.S. The board under the Division of Real Estate of the DBPR administers this program. Regulation is designed to assure the minimal competency of real estate appraisers in order to protect the public from potential financial harm. Applicants for licensure must meet character and educational requirements, submit to a background check, and pass an examination.

An "appraisal report" is "any written or oral analysis, opinion, or conclusion issued by an appraiser relating to the nature, quality, value, or utility of a specific interest in, or aspect of, identified real property...." A person may not issue an appraisal report in connection with certain real estate transactions, unless that person is authorized to perform appraisal services. A report or other appraisal document must contain the appraiser's registration, license or certification number, as appropriate, his or her official title and the work product must be signed by the appraiser.

An appraiser is any person who is a registered assistant real estate appraiser, licensed real estate appraiser, or a certified real estate appraiser. A licensed appraiser is one whom the DBPR has licensed and given authority to develop and communicate appraisal reports on residential real property, provided the property does not exceed four units.

Additionally, a "certified general appraiser" is defined in s. 475.611(1)(g), F.S., as meaning a person who is certified by the department as qualified to issue appraisal reports for any type of real property.

A "certified residential appraiser" is defined in s. 475.611(1)(h), F.S., as meaning a person who is certified by the department as qualified to issue appraisal reports for residential real property of one to four residential units, without regard to transaction value or complexity, or real property as may be authorized by federal regulation.

A registered assistant appraiser is one who registers with DBPR, and is qualified to perform appraisal services, but must work under the supervision of a licensed or certified appraiser. A registered assistant

may only have two supervisors, primary and secondary, who must work out of the same business address. Currently, registered assistants are required to register their supervisors with the DBPR. In addition, registered assistants may receive payment from a client if a supervisor agrees to the payment arrangement.

Currently, there is no limit as to the number of registered assistants that a supervisory appraiser(s) may supervise and there is no limit to the geographic area within which a supervisory appraiser may operate while supervising assistants.

The board may impose discipline pursuant to section 475.624, F.S. The board may deny or refuse to renew an application for licensure, registration, or permit. The board may impose probation; suspend a license, registration, or permit; revoke a license, registration, or permit; impose an administrative fine not to exceed \$5,000 for each count or separate offense; or issue a reprimand. Any person who violates any provision of section 475.626, F.S., is guilty of a misdemeanor of the second degree.

Effect of proposed Changes

The bill amends the definition section and various other sections of the statutes to eliminate reference to the regulatory category of “registered assistant appraiser” and redesignates it as “registered trainee appraiser.” The bill amends the definition of “licensed appraiser” to create an automatic repeal of the license requirement and thus phase out this regulatory category. The definition provisions prohibit the DBPR from issuing any more licenses for the licensed appraiser category after July 1, 2003. The renewal of licenses would continue but no new licenses will be issued.

Additionally, the bill adds “real estate consulting” to the definition of “analysis assignment;” amends the definition section to add the definition of “appraisal review assignment,” as an agreement for which an appraiser reviews the quality of another appraiser’s work, with or without providing an opinion of value; adds the definition of “supervisory appraiser” to mean a certified, residential or general appraiser who directs the supervision of one or more registered “trainees;” by definition, gives the board rule authority to limit the number of trainees whose work a supervisor may oversee and limit the geographic area within which a supervisor may work; adds the definition of “valuation services,” to mean services pertaining to aspects of property value; adds the definition of “work file,” to mean the documentation necessary to support an appraiser’s analysis, opinions, and conclusions.

The bill amends s. 475.622, F.S., to require the primary supervisor, rather than the registered trainee, to register the names of the supervisors with the DBPR. It amends s.475.6221(2), F.S., to prohibit the registered trainee from receiving compensation from anyone other than through or by the primary supervisor. The bill creates a new section that gives the board rulemaking authority to define the role of the supervisory appraiser in directing the work of a registrant.

The bill creates section 475.631, F.S., to grant the board the discretion to enter into written agreements with similar licensing or certification authorities of other states, territories, or jurisdictions of the United States to ensure Florida licensees nonresident licensure opportunities comparable to those afforded to nonresidents by Florida law. Whenever the board determines that another jurisdiction does not offer nonresident licensure to Florida licensees substantially comparable to those afforded to licensees of that jurisdiction by this section, those jurisdiction’s licensees who apply for nonresident licensure in Florida must meet education, experience, and examination requirements. These requirements must be substantially comparable to those required by the other jurisdiction of Florida-certified appraisers who apply for nonresident certification in the other state.

The bill requires that nonresident applicants must file an irrevocable consent to suits and actions in this state. Nonresident applicants must also consent to allowing the director of the division to accept service of process on behalf of the applicant in any suit or action filed against the nonresident applicant in this state.

The bill would require any state-certified appraiser who becomes a nonresident to notify the board of a change of residency within 60 days of a change in residency, and to comply with nonresident requirements. The bill authorizes the board to adopt rules necessary for the regulation of nonresident appraisers and licensees.

C. SECTION DIRECTORY:

Sections 1, 2, 5, 6, 7, 8, 11, 12, 13, 16, 17, 18, and 19, amend s. 475.01, 475.011, 475.613, 475.6147, 475.615, 475.617, 475.619, 475.620, 475.624, 475.626, 475.627, and 475.6295, F.S., to eliminate reference to the regulatory category of "registered assistant appraisers" and designates the category as "registered trainee appraisers" and to correct references.

Section 3. Amends s. 475.611, F.S., relating to real estate definitions.

Section 4. Amends s. 475.612, F.S., to provide authority for evaluation services by real estate licensees.

Section 9. Creates s. 475.6175, F.S., to address postlicensure education requirements.

Section 10. Amends s. 475.618, F.S., to address continuing education.

Section 14. Amends s. 475.6221, F.S., to address employment and compensation requirements.

Section 15. Creates s. 475.6222, F.S., to provide rule making authority to the DBPR for supervision of registered trainee appraisers.

Section 20. Creates s. 475.631, F.S., to create a nonresident certification scheme.

Section 21. Effective date - July 1, 2003.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The DBPR estimates that it will experience approximately \$100,000 fiscal impact associated with the rulemaking requirements of the bill during the first fiscal year following passage. The DBPR states, that no additional fiscal impact is anticipated.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

No significant impact is anticipated.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Yes. The board will have to establish a procedure for the supervision of registered trainees and for regulation of foreign licensees. The bill authorizes the board to adopt rules to establish standards for, and to regulate, supervisory appraisers. It requires the board by rule to prescribe post-licensure education requirements for registered trainee appraisers. In addition, it will require rulemaking to provide for substantive conforming changes.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

The Committee on Business Regulation adopted a strike everything amendment at its meeting on April 14, 2003 and passed the bill favorably with a committee substitute. The bill w/CS differs from the original bill in the following areas.

Reestablishes the regulatory category of "licensed appraiser" and amends the definition of "licensed appraiser" to prohibit the DBPR from issuing any more licenses for the licensed appraiser category after July 1, 2003.

Reinstates language removed in the original bill relating to education and experience requirements to be a licensed appraiser.

Removes four year license requirement.

Changes "supervisor" to "supervisor appraiser."