

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 2016

SPONSOR: Senator Diaz de la Portilla

SUBJECT: Home Inspection Services

DATE: April 13, 2004      REVISED: 03/25/04    04/13/04    \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sumner</u>	<u>Imhof</u>	<u>RI</u>	<u>Favorable</u>
2.	<u>Fournier</u>	<u>Johansen</u>	<u>FT</u>	<u>Fav/2 amendments</u>
3.	<u>DeLoach</u>	<u>Hayes</u>	<u>AGG</u>	<u>Fav/1am</u>
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

The bill provides for the licensure and regulation of home inspectors under the Department of Business and Professional Regulation (department). The intent of the bill is to ensure that consumers of home inspection services can rely on the competence of home inspectors as determined by educational and experience requirements and testing. The bill provides for a Florida Home Inspection Advisory Council whose mission is to provide industry input to the department and assist the department in developing standards of practice and rules pursuant to the bill. It exempts certain licensed professionals from licensure and provides license criteria, penalties, discipline, fees and other provisions usually associated with the licensure of professionals under the department.

This bill creates the following sections of the Florida Statutes: 501.935.

**II. Present Situation:**

Current Florida law does not license or regulate the practice of home inspectors. There are an estimated 3,000 home inspection entities in Florida.<sup>1</sup> Generally, the home inspector provides an inspection to a buyer just prior to the sale of the home. The home inspector looks for visually obvious problems with the home and reports any to the buyer who may consider having them corrected by the seller before closing the sale. A home inspector is not required to report to the customer possible conflicts of interest and is under no obligation to maintain the confidentiality of a home inspection report.

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<sup>1</sup> The department obtained this information from the Florida Association of Building Inspectors.

The existence and level of home inspector regulation varies from state to state<sup>2</sup>. Georgia law requires home inspectors to provide written documents to customers containing certain information, including the scope of the inspection, the structural elements and systems to be inspected, that the inspection is a visual inspection, and that the home inspector will notify, in writing, the person on whose behalf such inspection is being made of any defects noted during the inspection.<sup>3</sup> In Alabama the rules require individuals performing home inspections to be licensed by the Alabama Building Commission.<sup>4</sup> The Alabama Standards of Practice and Code of Ethics are adopted from the American Society of Home Inspectors (ASHI) Standards of Practice and Code of Ethics.<sup>5</sup> The Alabama law also outlines educational and experiential requirements to become licensed, sets license fees and insurance requirements, and defines penalties under which licensure may be suspended or revoked.<sup>6</sup>

### III. Effect of Proposed Changes:

#### Intent

Paragraph (1) of s.501.935, F.S., is created to provide that the intent of the section is to require the licensing of home inspectors and to ensure that consumers of home inspection services can rely on the competence of home inspectors, as determined by educational and experience requirements and testing.

#### Definitions

Paragraph (2) of s.501.935, F.S., is created to define the following terms:

- “Department” means the Department of Business and Professional Regulation.
- “Home” means any residential real property, or manufactured or modular home, that is a single-family dwelling, duplex, triplex, quadruplex, condominium unit, or cooperative unit. The term does not include the common areas of condominiums or cooperatives.
- “Home inspector” means any person who provides or offers to provide a home inspection for a fee or other compensation.
- “Home inspection” means a limited visual examination of one or more of the readily accessible installed systems and components of a home, including the structure, electrical system, HVAC system, roof covering, plumbing system, interior components, exterior components, and site conditions that affect the structure, for the purposes of providing a written professional opinion of the condition of the home.

#### Standards of Practice

Paragraph (3) of s.501.935, F.S., is created to require the department, in consultation with the Florida Home Inspection Advisory Council, to adopt by rule the minimum standards of practice

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<sup>2</sup> The National Association of Certified Home Inspectors (Nachi) reports that there are at least 17 states that license home inspectors.

<sup>3</sup> Ga. Code Unann. s. 8-3-331 (2001).

<sup>4</sup> Alabama Building Commission, Alabama Home Inspectors Registration Program, *Chapter 170-x-24-.03*.

<sup>5</sup> *Id.* at *Chapter 170-x-25-02*.

<sup>6</sup> Al. Code s. 34-14B-1 – 9 (1975).

for home inspectors, which shall be based on nationally recognized industry standards of practice for home inspectors.

### **Florida Home Inspection Advisory Council**

Paragraph (4) of s.501.935, F.S., is created to require the department to appoint a Florida Home Inspection Advisory Council. It consists of eight members who are home inspectors having a minimum of five years experience each, one consumer member, and one nonvoting member from the staff of the department. The mission is to provide industry input to the department and assist the department in developing standards of practice and rules pursuant to this section. It shall assist the department in the review of complaints filed against home inspectors and shall meet at least three times each year.

### **Exemptions**

Paragraph (5) of s.501.935, F.S., is created to provide exemptions to the bill regarding any valuation condition, report, survey, evaluation, or estimate rendered within the scope of practice authorized by the license, except when the person is operating within the scope of this section to:

- A construction contractor licensed under ch. 489, F.S.
- An architect licensed under ch. 481, F.S.
- An engineer licensed under ch. 471, F.S.
- A building code administrator, plans examiner, or building code inspector licensed under part XII of ch. 468, F.S.
- A certified real estate appraiser, licensed real estate appraiser, or registered real estate appraiser licensed under part II of ch. 475, F.S.
- An inspector whose report is being provided to and is solely for the benefit of, the Federal Housing Administration or the Veterans Administration.
- An inspector conducting inspections for wood-destroying organisms on behalf of a licensee under ch. 482, F.S.
- A fire safety inspector certified under s. 633.081, F.S.
- An insurance adjuster licensed under part VI of ch. 626, F.S.
- An officer appointed by the court.

### **License Criteria**

Paragraph (6) of s.501.935, F.S., is created to provide that:

- A person may not provide or represent him or herself as able to perform a professional home inspection for compensation unless the person is licensed in accordance with this section.
- A business entity may not provide or offer to provide home inspection services unless each of the home inspectors employed by the business entity is licensed in accordance with this section.
- A business entity may not use, in connection with the name or signature of the business entity, the title “home inspectors” to describe the business entity’s services unless each of

the home inspectors employed by the business entity is licensed in accordance with this section.

### **Eligibility**

Paragraph (7) of s.501.935, F.S., is created to provide that to be eligible for a license as a home inspector, an applicant must:

- Be of good moral character.
- Have successfully completed high school or its equivalent.
- Have completed a course of study of no less than 90 hours that covers all of the following components of a home: structure, electrical system, HVAC system, roof covering, plumbing system, interior components, exterior components, and site conditions that affect the structure.
- Pass an examination that is psychometrically valid and meets the standards of the Council on Licensure, Enforcement, and Regulation, as determined by the department.

### **Grandfathering**

Paragraph (8) of s.501.935, F.S., is created to provide that for the first year after the enactment of this section, to be eligible for a license as a home inspector, an applicant must:

- Be of good moral character.
- Have successfully completed high school or its equivalent.
- Have been engaged in the practice of home inspection for compensation for not fewer than three years prior to the effective date of the act.
- Have performed not fewer than 250 home inspections for compensation.
- Pass an examination that is psychometrically valid and meets the standards of the Council on Licensure, Enforcement, and Regulation, as determined by the department.

### **Prohibited Acts; Penalties**

Paragraph (9) of s.501.935, F.S., is created to provide that a home inspector, a company that employs a home inspector, or a company that is controlled by a company that also has financial interest in a company employing a home inspector may not:

- Perform or offer to perform, prior to closing, for any additional fee, any repairs to a home on which the inspector or the inspector's company has prepared a home inspection report. This paragraph does not apply to a home warranty company that is affiliated with or retains a home inspector to perform repairs pursuant to a claim made under a home warranty contract.
- Inspect for a fee any property in which the inspector or the inspector's company has any financial or transfer interest.
- Offer or deliver any compensation, inducement, or reward to the owner of the inspected property, or any broker or agent therefore, for the referral of any business to the inspector or the inspection company.

- Accept an engagement to make an omission or prepare a report in which the inspection itself, or the fee payable for the inspection, is contingent upon either the conclusions in the report, preestablished findings or the close of the escrow.

This section also provides that any person who violates any provision of this subsection commits a misdemeanor of the second degree.

### **Complaints; Discipline**

Paragraph (10) of s.501.935, F.S., is created to provide that:

- Complaints concerning home inspectors are referred to the department.
- In lieu of investigation, the department may place in a registry a copy of a complaint received by the department against a licensed home inspector, the inspector's response to the complaint, and a copy of any records of the department concerning the complaint.
- The department shall provide to the home inspector a copy of the complaint no later than 30 days after the date the complaint is received by the department alleging that the inspector has engaged in conduct that is grounds for discipline.
- After receiving a copy of the complaint, the home inspector may place in a registry a statement within 30 days that describes the inspector's view of the correctness or relevance of any of the information contained in the complaint.
- The department shall make the complaint and the home inspector's response to the complaint available to the public.
- The department shall remove all complaints against and other information concerning a home inspector from the registry if, for a period of 2 years from the date of the most recent complaint filed in the registry, no further complaints have been filed against the inspector.
- Unworthy or frivolous complaints shall be discarded and shall not be retained.
- The department may make investigations or conduct hearings pursuant to chapter 120 to determine whether a violation of the section has occurred.
- The department may refuse to grant a home inspector license or may suspend or revoke a home inspector license upon proof to the satisfaction of the department that the applicant or licensee has participated in an unfair business practice relating to the provision of home inspection services.

### **Fees**

Paragraph (11) of s.501.935, F.S., is created to require the department by rule to establish fees for licensure, renewal of licensure, and other services provided by the department under this section. The fees may not exceed amounts sufficient to defray the administrative costs to the state under this section and shall be comparable to those charged for other similar, regulated professions.

**Insurance**

Paragraph (12) of s.501.935, F.S., is created to require that a home inspector maintain a commercial general liability insurance policy in an amount of not less than \$300,000.

**Repair Cost Estimates**

Paragraph (13) of s.501.935, F.S., is created to provide that home inspectors are not required to provide estimates related to the cost of repair of the inspected property.

**Reciprocity**

Paragraph (14) of s.501.935, F.S., is created to require the department to issue a home inspector license to any person who holds a valid license, certificate, or registration issued by another state, territory, or possession of the United States or the District of Columbia that has standards and licensing requirements substantially equivalent to or exceeding those of this state, as determined by the Florida Home Inspection Advisory Council, upon payment of the fee imposed and submission of the written application provided by the department.

**Continuing Education Requirements**

Paragraph (15) of s.501.935, F.S., is created to require that a home inspector complete 14 hours of department-approved continuing education during each calendar year in order to maintain his or her license.

**Statute of Limitations**

Paragraph (16) of s.501.935, F.S., is created to provide that ch. 95, F.S., governs when an action to enforce an obligation, duty, or right arising under the section must be commenced.

**Enforcement of violations**

Paragraph (17) of s.501.935, F.S., is created to provide that any violation of the section constitutes a deceptive and unfair trade practice, punishable as provided in part II of ch. 501, F.S.

**Effective date**

The act shall take effect July 1, 2004.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

Licensure fees are to be set by department rule.

B. Private Sector Impact:

Home inspectors will incur the cost of licensure if they wish to continue to provide home inspection services to the public.

C. Government Sector Impact:

According to the department, there will be an impact to the Professional Regulation and Service Operations programs associated with administering a council, testing and licensing individuals conducting investigations, and administrative overhead. The implementation over two years will require 4.0 FTE positions and \$1,192,478.

The department determined that there are approximately 3,000 home inspection entities in Florida.<sup>7</sup> The department estimated that 1.0 FTE position (Government Analyst II) and \$79,812 will be required to provide support to the newly created council during the first year. These costs and the recurring costs (\$76,765 and \$78,325 in the following years) include council members' compensation, travel, and miscellaneous start-up costs for the first year.

In addition, 2.0 FTE positions (Investigation Specialist II) and \$131,726 will be required to support the compliance and enforcement functions during the first year. The recurring costs in the following years are \$94,791 and \$97,043.

Service Operations Program: An additional 1.0 FTE position (Regulatory Specialist II) and \$80,924 will be required for the Central Intake and Customer Contact Center to handle the increased number of licensees during the first year. The recurring costs in the following years are \$37,335 and \$38,249. An amount of \$350,000 will be required for the development and implementation of exam testing. The recurring cost for this will be \$75,000 per year.

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<sup>7</sup> *Supra* note 1.

**VI. Technical Deficiencies:**

According to the department, the bill provides that the department “may” make investigations or conduct hearings pursuant to ch. 120, F.S. The department is a state administrative agency and, as such, is required to conduct all of its activities pursuant to ch. 120, F.S. The bill also provides that the department shall make the complaint and inspector response available to the public. However, the bill makes no provisions for a probable cause procedure pursuant to ch. 455, F.S. Pursuant to s. 455.225, F.S., disciplinary proceedings are exempt from ss. 119.07(1) and 286.011, F.S., absent a finding of probable cause.

**VII. Related Issues:**

None.

**VIII. Amendments:**

#1 by Finance and Taxation:

This amendment provides that a certified energy auditor performing an energy audit conducted under ch. 366, F.S., or rules adopted by the Public Service Commission is not required to comply with the provisions of this statute.

#2 by Finance and Taxation:

This amendment provides that a master septic tank contractor licensed under part III of chapter 489, F.S., is not required to comply with the provisions of this statute.

#1 by Appropriations Subcommittee on General Government:

This amendment provides four positions and \$642,463 from the Professional Regulation Trust Fund to the Department of Business and Professional Regulation to administer the licensing and regulatory activities associated with home inspection services.