

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 979 w/CS Home Inspection Services

SPONSOR(S): Allen

TIED BILLS: **IDEN./SIM. BILLS:** SB 2016

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Trades, Professions, & Reg. Business (Sub)</u>	<u>11 Y, 0 N</u>	<u>Livingston</u>	<u>Liepshutz</u>
2) <u>Business Regulation</u>	<u>31 Y, 3 N w/CS</u>	<u>Livingston</u>	<u>Liepshutz</u>
3) <u>Insurance</u>	<u></u>	<u></u>	<u></u>
4) <u>Finance & Tax</u>	<u></u>	<u></u>	<u></u>
5) <u>Commerce & Local Affairs App. (Sub)</u>	<u></u>	<u></u>	<u></u>
6) <u>Appropriations</u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

Currently, home inspectors are not regulated. The Department of Business and Professional Regulation (DBPR) estimates there are approximately 3,000 home inspection entities currently operating.

The bill creates a ten member "Home Inspection Services Study Group" under the direction of the DBPR to analyze issues and report findings by January 1, 2005.

The bill specifies that the DBPR appoint a study group to consist of three members who are practicing home inspectors having a minimum of 5 years' experience each, one member of the Construction Industry Licensing Board, one member of the Florida Building Code Administrators and Inspectors Board, one member of the Florida Board of Architecture and Interior Design, one member of the Florida Real Estate Appraisers Board, one member of the Florida Board of Professional Engineers, one member who is licensed under part I of chapter 475, F.S., (a real estate licensee), one consumer member, and one non-voting member from the staff of the DBPR.

The study group is charged with the responsibility to study whether regulation of this occupation may be appropriate or whether there may be better alternatives to regulation and licensure. The study report is due by January 1, 2005, and is to be submitted to the Speaker of the House of Representatives, President of the Senate, the Secretary of the DBPR and the Executive Office of the Governor.

The bill is not anticipated to have a fiscal impact on state or local governments.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0979b.br.doc

DATE: April 16, 2004

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 type="checkbox"/> | N/A <input checked="" 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 bill creates a ten member Home Inspection Services Study Group to analyze issues and report findings by January 1, 2005.

B. EFFECT OF PROPOSED CHANGES:

Home Inspection in General

Currently, home inspectors are not regulated. The DBPR estimates there are approximately 3,000 home inspection entities currently operating.

A building inspection is often confused with a home inspection. A building inspection is a legally required act, performed by a local governmental entity for the purpose of determining whether a structure complies with the appropriate building code at the time of construction. By contrast, a home inspection is a discretionary endeavor, often contracted for after construction is complete. A home inspection is typically contracted for by a potential purchaser of a home, although home inspections are sometimes contracted for by the current owner of a home to determine its condition, by a homeowner about to sell a home who wishes to avoid potential problems, or by a purchaser of a new home who wants to ensure that the house was constructed properly. A home inspection is performed by private industry, rather than by local government.

The Florida Deceptive and Unfair Trade Practices Act

The Florida Deceptive and Unfair Trade Practices Act (Act) is included in Part II of Chapter 501, F.S. The intent of the Act is to “simplify, clarify, and modernize the law governing consumer protection, unfair methods of competition, and unconscionable, deceptive, and unfair trade practices . . . protect the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce . . . [and] to make state consumer protection and enforcement consistent with established policies of federal law relating to consumer protection.”

The Act provides that “[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful. . . . It is the intent of the Legislature that . . . due consideration and great weight must be given to the interpretations of the Federal Trade Commission and the federal courts relating to the Federal Trade Commission Act.” This Act is sometimes referred to as the “Little FTC Act.”

The Act gives primary enforcement authority to the state attorney for the circuit in which an unfair or deceptive practice occurred. An enforcing authority may bring an action for a declaratory judgment to declare that the practice violates the Act, an action for injunction, or an action on behalf of consumers

to recover actual damages. A willful violation of the Act may also subject the violator to a civil penalty of up to \$10,000 for each violation, or \$15,000 if a victim was elderly or handicapped.

A person may bring a private action for a declaratory judgment that a practice violates the Act, and may recover actual damages plus court costs and attorney's fees.

Related Regulated Professions

Although home inspectors are not regulated by any statute or agency, several professions dealing with construction are regulated. Regulated professions include construction contractors, architects, engineers, building code administrators, plans examiners, building code inspectors, and appraisers, among others.

Effect of Proposed Changes

The bill creates a ten member "Home Inspection Services Study Group" under the direction of the DBPR to study issues and report findings by January 1, 2005.

The bill defines "home inspection" to mean "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 opinion of the condition of the home."

The bill specifies that the DBPR appoint a study group to consist of three members who are practicing home inspectors having a minimum of 5 years' experience each, one member of the Construction Industry Licensing Board, one member of the Florida Building Code Administrators and Inspectors Board, one member of the Florida Board of Architecture and Interior Design, one member of the Florida Real Estate Appraisers Board, one member of the Florida Board of Professional Engineers, one member who is licensed under part I of chapter 475, F.S., (a real estate licensee), one consumer member, and one non-voting member from the staff of the DBPR.

The study group is charged with the responsibility to study whether regulation of this occupation may be appropriate or whether there may be better alternatives to regulation and licensure. The study report is due by January 1, 2005, and is to be submitted to the Speaker of the House of Representatives, President of the Senate, the Secretary of the DBPR and the Executive Office of the Governor.

The bill specifies that the Home Inspection Services Study Group shall cease to exist upon submission of its' report or January 1, 2005 whichever occurs first.

C. SECTION DIRECTORY:

Section 1. Creates s.501.935, F.S., to establish a study group to address issues relating to home inspections.

Section 2. Effective date - July 1, 2004.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None anticipated at this time..

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None noted.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None noted.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

The bill w/CS removes provisions of the original bill and in their place creates a nine member "Home Inspection Services Study Group" to analyze issues and report findings by January 1, 2005.