

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 315

Home Inspection Services

SPONSOR(S): Allen

TIED BILLS:

IDEN./SIM. BILLS: SB 1830

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Business Regulation Committee		Livingston	Liepshutz
2) Civil Justice Committee			
3) State Administration Appropriations Committee			
4) Commerce Council			
5) _____			

SUMMARY ANALYSIS

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

The bill provides for the licensure and regulation of home inspectors under the DBPR. 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 regulatory provisions.

The DBPR projects: "The proposed legislation will require additional staff and expenses for the Department of Business & Professional Regulation. An adequate fee structure will be required to support the program."

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government
Ensure lower taxes
Safeguard individual liberty
Promote personal responsibility

The bill establishes a regulatory program for home inspectors. The bill creates an eight member Florida Home Inspection Advisory Council. The bill requires the DBPR in consultation with the Florida Home Inspection Advisory Council to adopt by rule the minimum standards of practice for home inspectors. The bill requires the DBPR by rule to establish fees for licensure, renewal of licensure, and other services provided by the DBPR. The bill creates penalties as a violation of the deceptive and unfair trade practice act, punishable as provided in part II of chapter 501, F.S

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 defines various terms:

“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

The bill requires the DBPR to appoint a Florida Home Inspection Advisory Council (AC). The bill specifies that the AC consist of nine voting members - eight members who are home inspectors having a minimum of five years experience each and one consumer member. The bill provides for one nonvoting member from the staff of the DBPR. The mission is to provide industry input to the DBPR and assist the DBPR in developing standards of practice and rules. It is required to assist the DBPR in the review of complaints filed against home inspectors.

The bill requires the DBPR in consultation with the AC to adopt by rule the minimum standards of practice for home inspectors, which shall be based on nationally recognized industry standards of practice for home inspectors.

The bill specifies 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; and pass an examination that is psychometrically valid and meets the standards of the Council on Licensure, Enforcement, and Regulation, as determined by the DBPR.

The bill provides for grandfathering licensure for current practitioners. It provides that for the first year after the enactment of this section a practitioner is eligible for a license, the practitioner 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; and pass an examination that is psychometrically valid and meets the standards of the Council on Licensure, Enforcement, and Regulation, as determined by the DBPR.

The bill requires the DBPR by rule to establish fees for licensure, renewal of licensure, and other services provided by the DBPR 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.

The bill requires the DBPR 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. The bill requires payment of the fee imposed and submission of the written application provided by the DBPR.

The bill provides that any violation of the section constitutes a deceptive and unfair trade practice, punishable as provided in part II of chapter 501, F.S.

C. SECTION DIRECTORY:

Section 1. Creates s.501.935, F.S., to establish a regulatory program for home inspectors.

Section 2. Effective date - July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See D., below.

2. Expenditures:

See D., below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

NA

2. Expenditures:

NA

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

The DBPR estimates:

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. 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.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None noted.

B. RULE-MAKING AUTHORITY:

The bill requires the DBPR in consultation with the AC to adopt by rule the minimum standards of practice for home inspectors, which shall be based on nationally recognized industry standards of practice for home inspectors.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES