

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government
Safeguard individual liberty
Promote personal responsibility

The bill establishes a statutory confirmation program within the department relating to qualifications to work as a home inspector. The bill requires the department to issue a written confirmation statement that any national association that represents home inspectors have adopted specified operational standards. Membership in the association is required if an individual or business desires to conduct home inspections in the state.

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:

Present situation

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 s. 501.935, F.S., as a section of part V of chapter 501, F.S., relating to consumer protection. 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 states that "a person shall not work as a home inspector unless" that person "has evidence of membership in" a national home inspector trade association. The person also could "not work as a home inspector unless" that person "has evidence of adherence to the ethical standards of" the trade association.

The bill specifies that the qualifying trade association must meet the following criteria:

1. Is operated on a not-for-profit basis and is not operated as a franchise;
2. Has members in more than ten states;
3. Requires that a person may not become a full member unless the person has performed or participated in more than 100 home inspections and has passed a recognized or accredited examination testing knowledge of the proper procedures for conducting a home inspection;
4. Requires that its members comply with a code of conduct and attend continuing professional education classes as an ongoing condition of membership; and
5. Has received written confirmation from the Department of Legal Affairs that the national association meets the criteria in this paragraph.

The bill establishes a statutory confirmation program within the department relating to qualifications to work as a home inspector. Guidelines or rule authority for the certification program for home inspectors are not specified but the bill requires the department to evaluate membership and operational criteria of national associations. If the standards are met, the department is authorized to issue a written

confirmation statement that the national association have adopted and implemented these principles. Membership in a confirmed association is necessary to work as a home inspector in Florida.

The bill specifies numerous exemptions from the requirements being imposed. These include,

(1) A construction contractor licensed under chapter 489; (2) An architect licensed under chapter 481; (3) An engineer licensed under chapter 471; (4) A building code administrator, plans examiner, or building code inspector licensed under part XII of chapter 468; (5) A certified real estate appraiser, licensed real estate appraiser, or registered real estate appraiser licensed under part II of chapter 475; (6) An inspector whose report is being provided to, and is solely for the benefit of, the Federal Housing Administration or the Veterans Administration; (7) An inspector conducting inspections for wood-destroying organisms on behalf of a licensee under chapter 482; (8) A firesafety inspector certified under s. 633.081; (9) An insurance adjuster licensed under part VI of chapter 626; (10) An officer appointed by the court; (11) A master septic tank contractor licensed under part III of chapter 489; and (12) A certified energy auditor performing an energy audit of any home or building conducted under chapter 366 or rules adopted by the Public Service Commission.

The bill further specifies that "a home inspector must maintain a commercial general liability insurance policy in an amount of not less than \$300,000." The bill allows a home inspector to provide estimates related to the cost of repair of an inspected property.

The bill prohibits various actions by a home inspector, including: any repairs to a home on which the inspector or the inspector's company has prepared a home inspection report; inspect for a fee any property in which the inspector or the inspector's company has any financial interest; pay for the referral of any business to the inspector or the inspection company; and make an omission or prepare a report in which the inspection or the fee is contingent upon either the conclusions in the report, pre-established findings, or the close of escrow.

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 criteria for operating as a home inspector.

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 complying with the statutory guidelines to provide home inspection services to the public.

D. FISCAL COMMENTS:

The bill establishes a statutory confirmation program within the department relating to qualifications to work as a home inspector. Guidelines or rule authority for the confirmation program for home inspectors are not specified but the bill requires the department to evaluate membership and operational criteria of national associations. If the standards are met, the department is authorized to issue a written confirmation statement that an association has adopted and implemented these principles. Fiscal impacts will result from the operation of this program.

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:

None specified.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES