

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 315 CS

Home Inspection Services

SPONSOR(S): Allen

TIED BILLS:

IDEN./SIM. BILLS: SB 1830

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Business Regulation Committee</u>	<u>15 Y, 2 N, w/CS</u>	<u>Livingston</u>	<u>Liepshutz</u>
2) <u>Civil Justice Committee</u>	<u>(W/D)</u>	<u></u>	<u></u>
3) <u>State Administration Appropriations Committee</u>	<u>(W/D)</u>	<u></u>	<u></u>
4) <u>Commerce Council</u>	<u>9 Y, 0 N</u>	<u>Livingston</u>	<u>Bohannon</u>
5) <u></u>	<u></u>	<u></u>	<u></u>

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.

“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 successfully completed a course of study.... provided through a non-profit organization or a community college or university, in home inspections which is not less than 80 hours....The course of study must include subjects relating to: structure, electrical system, roof covering, plumbing system, interior components, exterior components, site conditions that affect the structure, and heating, ventilation, and cooling systems. The bill also requires eight hours of continuing education annually relating to home inspections.

The bill requires written disclosures to be provided to customers prior to contracting for or commencing a home inspection. The statements must identify that: the home inspector meets the education and examination requirements of the bill; the home inspector maintains the commercial general liability insurance policy required by the bill; the scope or parameters of the home inspection; and identify the approximate number of home inspections the home inspector has performed for a fee or the number of years of experience as a home inspector.

A business entity may not provide home inspection services or use the title of home inspector(s) unless each of the home inspectors employed by the business satisfies the requirements of the bill. The bill requires a home inspector to maintain a commercial general liability insurance policy in an amount of not less than \$300,000.

The bill specifies numerous exemptions from the requirements being imposed.

It is not anticipated that the bill would have a significant 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.

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DATE: 4/20/2005

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government
Safeguard individual liberty
Promote personal responsibility

The bill establishes a statutory program relating to qualifications to work as a home inspector. The bill requires a person to have specified credentials in order to work as a home inspector. The credentials include passing an eighty hour course of study in home inspections and annually completing continuing education.

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 successfully completed a course of study.... provided through a non-profit organization or a community college or university, in home inspections which is not less than 80 hours....The course of study must include subjects relating to: structure, electrical system, roof covering, plumbing system, interior components, exterior components, site conditions that affect the structure, and heating, ventilation, and cooling systems. The bill also requires eight hours of continuing education annually relating to home inspections.

The bill requires written disclosures to be provided to customers prior to contracting for or commencing a home inspection. The statements must identify that: the home inspector meets the education and examination requirements of the bill; the home inspector maintains the commercial general liability insurance policy required by the bill; the scope or parameters of the home inspection; and identify the approximate number of home inspections the home inspector has performed for a fee or the number of years of experience as a home inspector.

A business entity may not provide home inspection services or use the title of home inspector(s) unless each of the home inspectors employed by the business satisfies the requirements of the bill.

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 - January 1, 2006.

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:

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:

None

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:

NA.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The CS by Business Regulation Committee differs from the original bill as follows.

The CS removes: intent language, rule authority of the DBPR to establish minimum standards of practice, provisions creating the Florida Home Inspection Advisory Council, licensure criteria, licensure grandfather language, processing of complaints, fees, and an appropriation of \$642,463.

The CS adds penalties of a first degree misdemeanor for a second offense and a third degree felony for a third or subsequent offense.

In place of the standards of practice specified in the bill, the CS imposes "requirements for practice." A person may not work as a home inspector unless he or she has evidence of membership in and adherence to the ethical standards of a qualified national association of home inspectors. The CS specifies what is necessary for the association to qualify.

On April 20, 2005 the Commerce Council adopted two amendments and passed the bill as a Council Substitute. The CS removed language that established a statutory confirmation program within the Department of Legal Affairs relating to qualifications to work as a home inspector.

The CS inserted language to establish a statutory program relating to qualifications to work as a home inspector. The bill requires a person to have specified credentials in order to work as a home inspector. The credentials include passing an 80 hour course of study in home inspections and annually completing continuing education. The effective date was changed from July 1, 2005 to January 1, 2006.