

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 159 Regulation of Real Estate Appraisers
SPONSOR(S): McInvale and others
TIED BILLS: IDEN./SIM. BILLS: SB 466

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Business Regulation Committee, Livingston, Liepshutz.

SUMMARY ANALYSIS

The Florida Real Estate Appraisal Board (board) under the Division of Real Estate within the Department of Business and Professional Regulation (DBPR) administers regulation of real estate appraisers. The bill addresses several provisions of the real estate appraisers' statutes, part II of chapter 475, F.S.

The Appraisal Qualifications Board ("AQB") acts as the entity charged with the adoption of minimum federal standards for real estate appraiser licensure. A person licensed in Florida must meet these federal standards in order to appraise property that has federal financial backing. The bill requires the board to prescribe education and experience requirements that meet or exceed the real property appraiser qualification criteria established by the AQB in order to be qualified as a "residential appraiser" or as a "general appraiser."

The bill specifies the duties for supervisory appraisers to perform when supervising the work of trainee appraisers. The bill provides for statutory definitions of "direct supervision," "supervisory appraiser," and "training." These definitions are designed to guide supervisory appraisers when supervising the work of trainee appraisers.

The bill prohibits a supervising appraiser from being employed by a person who is in training or a company owned by the trainee. The bill specifies that "a supervisory appraiser may not be employed by a trainee or by a company, firm, or partnership in which the trainee has a controlling interest."

Current law, as a part of the definition of "licensed appraiser," creates an automatic repeal of the appraiser license requirement and thus creates a gradual phase out of this regulatory category. Operating as an appraiser would be authorized under the categories of certified general appraiser or certified residential appraiser in lieu of the "license" category. The bill modifies various references to the terms license, licensing and licensed to clarify the application of these terms to currently licensed individuals.

No significant fiscal impact is anticipated as a result of the provisions of the bill.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

- | | | | |
|--------------------------------------|------------------------------|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" 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 checked="" type="checkbox"/> | N/A <input 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:

3. Expand individual freedom - The bill prohibits a supervising appraiser from being employed by a person in training or a company owned by the trainee. The bill specifies that "a supervisory appraiser may not be employed by a trainee or by a company, firm, or partnership in which the trainee has a controlling interest."

B. EFFECT OF PROPOSED CHANGES:

Regulation of real estate appraisers is established under part II of chapter 475, F.S. The board under the Division of Real Estate of the DBPR administers this program. Regulation is designed to assure the minimal competency of real estate appraisers in order to protect the public from potential financial harm. Applicants for licensure must meet character and educational requirements, submit to a background check, and pass an examination.

Several themes are prevalent in the bill and are supported by various changes to statutory text.

Present Situation

Compliance with changing federal standards

The definitions section of part II of chapter 475, F.S., provides that an "appraisal report" is "any written or oral analysis, opinion, or conclusion issued by an appraiser relating to the nature, quality, value, or utility of a specific interest in, or aspect of, identified real property...." The definition specifically states, "However, in order to be recognized in a federally related transaction, an appraisal report must be written."

"Federally related transaction" is defined as "any real estate-related financial transaction which a federal financial institutions regulatory agency or the Resolution Trust Corporation engages in, contracts for, or regulates, and which requires the services of a state-licensed or state-certified appraiser." Additionally, "appraisal foundation" or "foundation" is defined by statute to mean "the Appraisal Foundation established on November 20, 1987, as a not-for-profit corporation under the laws of Illinois."

The Appraisal Qualifications Board ("AQB") is located within the Appraisal Foundation and acts as the entity charged with the adoption of minimum federal standards for real estate appraiser licensure. Therefore, a person licensed in Florida must meet these federal standards in order to appraise property that has federal financial backing. The AQB has adopted changes that will become effective January 1, 2008 to the minimum qualification criteria for appraisers.

The bill deletes the statutory criteria to be certified as a "residential appraiser" [2,500 hours of experience and 120 classroom hours of education] or as a "general appraiser" [3,000 hours of experience and 180 classroom hours of education].

In order to be qualified as a certified “residential appraiser” or as a “general appraiser,” the bill requires the board to “prescribe education and experience requirements that meet or exceed the real property appraiser qualification criteria established by the Appraisal Qualifications Board of the Appraisal Foundation.” This language is designed to allow changes at the state level to reflect future changes in federal qualifications for licensure and not conflict with the potential challenge as an unlawful delegation of legislative authority. See section A. CONSTITUTIONAL ISSUES and section B. RULE-MAKING AUTHORITY of this analysis.

Present Situation

Supervisor/trainee direct supervision requirements

The current definition section of part II of chapter 475, F.S., defines “supervisory appraiser” to mean a licensed appraiser or a certified residential or general appraiser who directs the supervision of one or more registered “trainees.” The definition, gives the board rule authority to limit the number of trainees whose work a supervisor may oversee and limit, by rule, the geographic area within which a supervisor may work. The terms “direct supervision” and “training” are not currently defined.

Section 475.6221, F.S., requires “the primary or secondary supervisory appraiser of a registered trainee appraiser shall provide direct supervision and training to the registered trainee appraiser.” This section further provides that “the role and responsibility of the supervisory appraiser is determined by rule of the board.”

The bill specifies requirements for supervisory appraisers to perform when supervising the work of trainee appraisers. The bill provides for statutory definitions of “direct supervision,” “supervisory appraiser,” and “training.” These definitions are designed to guide supervisory appraisers when supervising the work of trainee appraisers.

The bill defines “direct supervision” as “the degree of supervision overseeing the work of a trainee appraiser” [allowing] “control over and detailed professional knowledge of the work being done.” The definition continues and provides that “direct supervision is achieved when a registered trainee appraiser has regular direction, guidance, and support from a supervisory appraiser who has the competencies as determined by rule of the board.”

The bill defines “training” to mean “the process of providing for and making available to a registered trainee appraiser, under direct supervision” [which is newly defined in the bill] “a planned, prepared, and coordinated program, or routine of instruction and education, in appraisal professional and technical skills.”

Present Situation

Supervisor/trainee business relationship restrictions

In addition to the direct supervision requirements noted above, s. 475.6221, F.S. also requires that “a registered trainee real estate appraiser may only receive compensation through or from the primary supervisory appraiser.”

The bill amends s. 475.6221, F.S., to prohibit a supervising appraiser to be employed by a person in training or a company owned by the trainee. The bill specifies that “a supervisory appraiser may not be employed by a trainee or by a company, firm, or partnership in which the trainee has a controlling interest.”

The bill also amends s. 475.612, F.S., to repeat the requirement that “a registered trainee appraiser may only receive compensation from his or her authorized certified or licensed appraiser.”

Present situation

Licensing nomenclature

Section 475.612, F.S., currently prohibits a person from using the title "certified real estate appraiser," "licensed real estate appraiser," or "registered trainee real estate appraiser," or any abbreviation or words to that effect, or issue an appraisal report **"in connection with any federally related transaction"** unless that person is certified, licensed, or registered by the DBPR.

Current law, as a part of the definition of "licensed appraiser," creates an automatic repeal of the appraiser license requirement and thus creates a phase out of this regulatory category. The definition provisions prohibit the DBPR from issuing any more licenses for the licensed appraiser category after July 1, 2003. The renewal of licenses would continue but no new licenses will be issued. Reference to the term license would continue until all licenses expire for failure to renew or are revoked under disciplinary proceedings. Operating as an appraiser would be authorized under the categories of certified general appraiser or certified residential appraiser in lieu of the "license" category.

The bill deletes the reference **"in connection with any federally related transaction"** and, as a result, the prohibition against using the specified titles of "certified real estate appraiser," "licensed real estate appraiser," or "registered trainee real estate appraiser," would apply to **all** real estate appraisal transactions.

The bill modifies various references to the terms license, licensing and licensed to clarify the application of these terms to the dwindling universe of these licensed practitioners.

C. SECTION DIRECTORY:

Section 1. Amends s. 475.611, F.S., relating to definitions.

Section 2. Amends s. 475.612, F.S., to address reporting and valuation services, as well as, the direct payment of compensation to certified or licensed appraisers.

Section 3. Amends s. 475.615, F.S., to revise qualifications for registration or certification.

Section 4. Amends s. 475.617, F.S., to address education and experience requirements.

Section 5. Amends s. 475.6221, F.S., to prohibit a trainee from employing a supervisor appraiser.

Section 6. Amends s. 475.6222, F.S., to require a primary or secondary supervisor appraiser to provide training, in addition to direct supervision, to an appraiser trainee.

Section 7. Amends s. 475.623, F.S. to require registration of a firm or business name in addition to the location of their operations.

Section 8. Effective date - July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None anticipated.

2. Expenditures:

None anticipated.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

No significant economic impact on the private sector is anticipated.

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:

The DBPR points out that a “primary focus of the bill is making sufficient changes to the current state regulatory schemes in order to comply with future federal requirements for the licensing of appraisers.” In part, the bill is designed to reflect revisions to federal appraiser licensing requirements under Florida rule making procedures in an attempt to avoid the potential constitutional question of the unlawful delegation of legislative authority.

House bill drafting services looks to the following guidelines when reviewing legislation authorizing authority to track federal guidelines:

Federal laws or rules in existence at the time of the adoption of the statute may be used as standards and guidelines, but the Legislature may not prospectively adopt future federal law. *Brazil v. Division of Administration, Department of Transportation*, 347 So.2d 755 (Fla. 1st DCA 1977), concerned a statute that gave the Department of Transportation the power to enforce restrictions on billboards "subject to current federal regulations." The District Court of Appeal held that it would be an unconstitutional delegation of legislative power for the Legislature to adopt in advance any federal act or federal administrative rule. The court therefore applied a limiting construction to the statute, construing the term "current" to mean in effect as of the date of the adoption of the Florida statute.

The Florida Supreme Court has considered this issue in the context of criminal prohibitions of controlled substances. In *State v. Welch*, 279 So.2d 11 (Fla. 1973), the court held that a provision of the drug abuse law that included within controlled substances "all drugs controlled by drug abuse laws of the United States, now or in the future" was an unlawful delegation of legislative power in that it attempted to incorporate by reference future federal legislation. The court applied a limiting construction to the statute that had the effect of invalidating the incorporation of future federal acts.

Also see *Florida Industrial Commission et al. v. State ex rel. Orange State Oil Co.*, 21 So.2d 599 (Fla. 1945).

B. RULE-MAKING AUTHORITY:

The bill specifies that

"To be certified as a residential appraiser [and to be certified as a general appraiser], an applicant must present satisfactory evidence to the board that she or he has met the minimum education and experience requirements prescribed by the board. The board shall prescribe education and experience requirements that meet or exceed the real property appraiser qualification criteria established by the Appraisal Qualifications Board of the Appraisal Foundation."

The authority of the board may be clearer if the bill specifies that prescribed education and experience requirements be adopted by rule.

The DBPR notes that "definitions are provided to define specific legal requirements for supervisory appraisers to perform when supervising the work of trainee appraisers. In the case of "training" the definition requires a planned, prepared, and coordinated program or routine of instruction and education, but does not specifically vest the Florida Real Estate Appraisal Board with the authority to promulgate rules."

C. DRAFTING ISSUES OR OTHER COMMENTS:

See B. above.

Additionally, various definitions specified in part II of chapter 475, F.S., currently include substantive provisions within definitional text. The bill also includes substantive authority within definitional text. As a common practice substantive provisions, such as rule making authority, are included in statutory text rather than as a part of the definitional meaning of specified terms or phrases. See definitions at line 89 (direct supervision), line 103 (licensed appraiser), and line 115 (supervisory appraiser).

The DBPR states that "changes in Section 5 located on page 111 [actually page 11], Line 298 provide that a supervisory appraiser may [actually "may not"] be employed by a trainee or by a company, firm, or partnership in which the trainee has an interest. However, this language does not address situations where the relationship between the supervisory appraiser and the trainee resembles an independent contractor status."

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES