

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

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

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### 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 by rule 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" and "training" and amends the definition of "supervisory appraiser." 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.

This bill does not appear to have a significant fiscal impact on state government.

The bill provides an effective date of July 1, 2006.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

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:

##### Background

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.

##### **Compliance with changing federal standards**

##### Present Situation

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.

##### Effect of proposed changes

In order to be qualified as a certified "residential appraiser" or as a "general appraiser," the bill requires the applicant to present evidence that he or she "has met the minimum education and experience requirements prescribed by rule of the board." The bill requires the board to "prescribe by rule education and experience requirements that meet or exceed the real property appraiser qualification criteria adopted on February 20, 2004, by the Appraisal Qualifications Board of the Appraisal Foundation." These provisions are designed to allow changes at the state level to reflect future

changes in federal qualifications for licensure which will be based upon those already adopted by the AQB.

The bill increases the statutory number of classroom hours of academic courses that are required to be certified. The changes include an increase from 120 classroom hours to 200 for a residential appraiser and an increase from 180 classroom hours to 300 for a general appraiser. The bill also increases the number of hours for a trainee appraiser from 75 hours to 100.

## **Supervisor/trainee direct supervision requirements**

### Present Situation

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."

### Effect of proposed changes

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" and "training" and amends "supervisory appraiser." 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 registered 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 as determined by rule of the board."

## **Supervisor/trainee business relationship restrictions**

### Present Situation

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."

### Effect of proposed changes

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.”

## **Regulatory nomenclature**

### Present situation

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.

### Effect of proposed changes

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. Effective July 1, 2006, an applicant must provide fingerprints in electronic format.

## **C. SECTION DIRECTORY:**

Section 1. Amends s. 475.611, F.S., relating to definitions; creates definitions for “direct supervision” and “training” and amends “supervisory appraiser.”

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. 475.616, F.S., to correct references.

Section 5. Amends s. 475.617, F.S., to address education and experience requirements and to increase the required number of classroom hours.

Section 6. Creates s. 475.6171, F.S., to summarize the requirements for registration and certification.

Section 7. Amends s. 475.6221, F.S., to prohibit a trainee from employing a supervisory appraiser.

Section 8. 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 9. Amends s. 475.623, F.S., to require registration of a firm or business name in addition to the location of their operations.

Section 10. Amends s. 475.624, F.S., to correct references.

Section 11. Provides an effective date of July 1, 2006, for the bill.

## 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:

There may be a minimal effect on how certain licensees structure their business entities.

### D. FISCAL COMMENTS:

There is no significant fiscal impact to the Department of Business and Professional Regulation.

## 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.

### B. RULE-MAKING AUTHORITY:

The bill specifically authorizes rules to be adopted by the board to support: the definition of "direct supervision" and "training", s.475.611, F.S.; the implementation of changing federal guidelines, s.475.615 and s. 475.617, F.S.; and the documentation for qualifying to be registered or certified, 475.6171, F.S.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

The Business Regulation Committee adopted a strike all amendment on January 26, 2006, and passed the bill by a unanimous vote. The CS differs from the original bill as follows.

- The CS inserts the reference to “by rule” in several provisions to clarify rule authority of the board.
- It requires fingerprints to be submitted in electronic form starting on July 1, 2006.
- It increases the required number of classroom hours for a trainee, residential, and general appraiser.
- The CS corrects several references to the term license where the phasing out of this classification is appropriate.

The staff analysis reflects the CS.