

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: Regulated Industries Committee

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BILL: CS/SB 466

SPONSOR: Regulated Industries Committee and Senator Constantine

SUBJECT: Regulation of Real Estate Appraisers

DATE: February 7, 2006

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
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5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

**Supervisory appraisers --** The committee substitute (CS) requires that a primary or secondary supervisory appraiser must provide training in addition to the supervision required under current law. It defines the terms “direct supervision” and “training” in the context of the supervisory appraiser and register appraiser trainee relationship. It also amends the definition of the term “supervisory appraiser” to provide that the board shall establish, by rule, the minimum qualifications and standards of a licensed or certified appraiser before he or she may act in the capacity of a supervisory appraiser.

The CS provides 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.

**Appraisal reports --** The CS prohibits a person from issuing an appraisal report, whether or not the transaction is federally related, unless certified, licensed, or registered.

The CS requires, in addition to the approval and signature of a certified or licensed appraiser required under current law, that an appraisal report based upon work performed by a person who is not a certified or licensed appraiser, or a registered trainee appraiser must be supervised by a certified or licensed appraiser who has full responsibility for all requirements of the report and valuation report. Additionally, the CS provides that only the certified or licensed appraiser may issue an appraiser report and receive direct compensation for providing valuation services for the appraiser report.

The CS provides that any appraisal report prepared by a full-time degree program graduate student must be issued in the name of the supervisory individual who is responsible for the

report's content. The CS requires that any appraisal report or file memoranda used to support a claim for experience by an applicant be maintenance for not less than five years. It also authorizes the board to implement s. 475.617, F.S., by rule.

**Real estate brokers, sales associates, and broker associates** -- The CS also provides that a Florida licensed real estate broker, sales associate, or broker associate may provide valuation services for compensation. Current law does not include a Florida licensure requirement.

**Certification and registration requirements** -- The CS requires that the Florida Real Estate Appraisal Board (board) conform education and experience requirements to the requirements adopted by the Appraisal Qualifications Board on February 20, 2004.

It requires that by July 1, 2006, an applicant for certification or registration must provide fingerprints in electronic format, and that an application expires one year from the date received.

The CS repeals the education and experience requirements for a licensed appraiser because, pursuant to s. 475.611(1)(l), F.S., the department has not issued licenses for the category since July 1, 2003.

The CS provides that, to be certified as a residential appraiser or a general appraiser, the applicant must present satisfactory evidence to the board that he or she has met the minimum education and experience requirements prescribed by rule of the board. It also requires that the board prescribe education and experience requirements that meet or exceed the qualification criteria adopted by on February 20, 2004 by the Appraiser Qualifications Board.

The CS increases classroom hours the number of classroom hours needed for registration as appraiser trainee (from 75 classroom hours to 100 classroom hours), certification as a residential appraiser (from 125 classroom hours to 200 classroom hours) and general appraiser from 180 classroom hours to 300 classroom hours). The CS requires that the classroom hours for general and residential appraiser must include a 15-hour National Uniform Standards of Professional Appraisal Practice course. It deletes the board's authority to increase the required number of hours for general and residential appraisers, and also increases the maximum number of hours that the board may require for registration from 100 to 125 classroom hours.

The CS requires that each appraiser registered, licensed or certified under part II of ch. 475, F.S., must furnish the department with the firm or business name from which he or she operates in the performance of appraisal services. It also specifies the documentation that must be presented for issuance of a registration or certification.

The CS would take effect July 1, 2006.

This CS substantially amends the following sections of the Florida Statutes: 475.611, 475.612, 475.615, 475.616, 475.617, 475.6221, 475.6222, 475.623, and 475.624.

The CS creates section 475.6171, Florida Statutes.

## II. Present Situation:

The regulation of real estate appraisers is established under part II of ch. 475, F.S. The Florida Real Estate Appraisal Board (“the board”) within the Department of Business and Professional Regulation (“the department”) is the agency responsible for implementing and enforcing the provisions of part II of ch. 475, F.S. The Division of Real Estate (“the division”) within the department provides administrative support to the board. The division is responsible for providing the recordkeeping, examination, legal, and investigative services for the board.

Section 475.611(1)(a), F.S., defines an appraisal as:

the services provided by certified or licensed appraisers or registered trainee appraisers, and includes:

1. "Appraisal assignment" denotes an engagement for which a person is employed or retained to act, or could be perceived by third parties or the public as acting, as an agent or a disinterested third party in rendering an unbiased analysis, opinion, review, or conclusion relating to the nature, quality, value, or utility of specified interests in, or aspects of, identified real property.
2. "Analysis assignment" denotes appraisal services that relate to the employer's or client's individual needs or investment objectives and includes specialized marketing, financing, and feasibility studies as well as analyses, opinions, and conclusions given in connection with activities such as real estate brokerage, mortgage banking, or real estate counseling.

Section 475.611(1)(e), F.S., defines an appraiser as:

any person who is a registered trainee real estate appraiser, licensed real estate appraiser, or a certified real estate appraiser. An appraiser renders a professional service and is a professional within the meaning of s. 95.11(4)(a).

Licensure, certification, or registration is required by ss. 475.612 and 475.615, F.S., before acting as a licensed or certified appraiser or as a registered trainee appraiser.

Section 475.612, F.S., also prohibits a person from issuing an appraisal report in connection with a federally related transaction unless such person is certified, licensed, or registered by the department under part II of ch. 475, F.S. The appraisal report may be based upon work performed by a person who is not a certified or licensed appraiser, or a registered trainee appraiser if the report is approved and signed by a certified or licensed appraiser.

Under part II of ch. 475, F.S., appraisers can be classified as registered trainee appraisers, licensed appraisers, certified residential appraisers, or certified general appraisers. Section 475.617, F.S., delineates the experience and education requirements for each classification.

Section 475.611(1)(l), F.S., defines a licensed appraiser as “a person who is licensed by the department as qualified to issue appraisal reports for residential real property of one to four residential units or on such real estate or real property as may be authorized by federal

regulation.” The definition of licensed appraiser also provides that after July 1, 2003, the department shall not issue licenses for the category of licensed appraiser.

A registered trainee appraiser is defined in s. 475.611(1)(m), F.S., as a person who can only perform appraisal services under the direct supervision of a licensed or certified appraiser. Pursuant to s. 475.6221, F.S., a registered trainee appraiser may only receive payment through or from the primary supervising appraiser.

Section 475.6222, F.S., provides that the “primary or secondary supervisory appraiser of a registered trainee appraiser shall provide direct supervision to the registered trainee appraiser. The role and responsibility of the supervisory appraiser is determined by rule of the board.” Current law does not define the term “direct supervision.”

A supervisory appraiser is defined in s. 475.611(1)(n), F.S., to mean:

a licensed appraiser, a certified residential appraiser, or a certified general appraiser responsible for the direct supervision of one or more registered trainee appraisers and fully responsible for appraisals and appraisal reports prepared by those registered trainee appraisers. The board, by rule, shall determine the responsibilities of a supervisory appraiser, the geographic proximity required, and the maximum number of registered trainee appraisers to be supervised by an individual supervisory appraiser.

A “certified general appraiser” is defined in s. 475.611(1)(h), F.S., as meaning:

a person who is certified by the department as qualified to issue appraisal reports for any type of real property.

A "certified residential appraiser" is defined in s. 475.611(1)(i), F.S., as meaning:

a person who is certified by the department as qualified to issue appraisal reports for residential real property of one to four residential units, without regard to transaction value or complexity, or real property as may be authorized by federal regulation.

In 1989, Congress passed the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA)<sup>1</sup> to address the financial institution crisis known as the Savings and Loan Scandal. According to the Appraisal Foundation:

The regulatory program contained three components: (1) each state government is to establish an appraiser regulatory body to issue licenses and certificates and to address enforcement or disciplinary issues; (2) private-sector expertise regarding appraisal standards and appraiser qualifications is provided by The Appraisal Foundation; and, (3) a small federal government agency (the Appraisal

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<sup>1</sup> Financial Institutions Reform, Recovery and Enforcement Act of 1989, Pub.L. No. 101-73, 101 Stat. 183 (codified as amended in scattered sections of 2, 5, 12, 15, 26, 28, 31, 40, 42 & 44 U.S.C.).

Subcommittee) was created to oversee the program to ensure it remained consistent with the original intent of Congress.<sup>2</sup>

Because the issue of regulating appraisers emanated from concerns about the appraisal of collateral for loans made by financial institutions, Congress entrusted federal oversight to an entity known as the Appraisal Subcommittee of the Federal Financial Institutions Examination Council. The Examination Council is an umbrella organization for all federal financial regulatory agencies, and its primary mission is to ensure that financial institution examiners are trained in a consistent manner. The Appraisal Subcommittee is composed of representatives from six government agencies and meets on a monthly basis.<sup>3</sup>

The Appraisal Qualifications Board (“AQB”) is located within the Appraisal Foundation.<sup>4</sup> The AQB is 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 AQB has adopted changes to the minimum qualification criteria for appraisers. The changes include increased education requirements. The requirements for an appraiser license are increased from 90 hours to 150 hours, for a certified residential appraiser from 120 hours to 200 hours and for a certified general appraiser from 180 hours to 300 hours.<sup>5</sup> Additional college-level requirements are also imposed for the certified residential and certified general classifications. The revised qualification criteria will become effective January 1, 2008.<sup>6</sup>

### III. Effect of Proposed Changes:

**Section 1.** The CS amends s. 475.611, F.S., to provide a definition for the term “direct supervision” in the context of a supervisory appraiser. The CS provides that under “direct supervision” a supervisory appraiser has “control over and detailed professional knowledge of the work being done.” The definition 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 CS amends the definition of the term “supervisory appraiser” in s. 475.611, F.S., to provide that the board shall establish the minimum qualifications and standards of a licensed or certified appraiser before he or she may act in the capacity of a supervisory appraiser.

The CS also amends s. 475.611, F.S., to provide a definition for the term “training,” which the CS defines as “a planned, prepared, and coordinated program, or routine of instruction and education, in appraisal professional and technical skills as determined by the board.”

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<sup>2</sup> See Appraisal Foundation, *A Guide For Understanding the 2008 Real Property Appraiser Qualification Criteria*, located at [http://www.appraisalfoundation.org/s\\_appraisal/bin.asp?CID=98&DID=628&DO](http://www.appraisalfoundation.org/s_appraisal/bin.asp?CID=98&DID=628&DO). (last visited February 7, 2006.)

<sup>3</sup> *Id.*

<sup>4</sup> See. 475.611(1)(b), F.S.

<sup>5</sup> The hours required include completion of a 15 hour National Uniform Standards of Professional Appraisal Practice (USPAP) course.

<sup>6</sup> *Supra* at n. 2.

**Section 2.** The CS amends s. 475.612, F.S., to prohibit a person from issuing an appraisal report, whether or not it is a federally related transaction, unless certified, licensed, or registered.

The CS amends s. 475.612, F.S., to provide additional requirements for an appraisal report that is based upon work performed by a person who is not a certified or licensed appraiser, or a registered trainee appraiser. In addition to the approval and signature of a certified or licensed appraiser, the CS would require that the work be supervised by a certified or licensed appraiser who has full responsibility for all requirements of the report and valuation report.

Additionally, the CS provides that only the certified or licensed appraiser may issue an appraiser report and receive direct compensation for providing valuation services for the appraiser report. The CS further provides that a registered trainee appraiser may receive compensation only from his or her authorized certified or licensed appraiser. This provision is consistent with the current compensation limitation in s. 475.6221(2), F.S., which provides that a registered trainee appraiser may only receive payment through or from the primary supervising appraiser.

Section 475.612(5), F.S., exempts a student who is enrolled in a degree program in a college or university in this state from the requirements of s. 475.612, F.S., if the student is supervised by a licensed or certified appraiser and engaged in activities related to the approved degree program. Current law also requires that the appraisal report must be issued in the name of the supervising individual. The CS amends this subsection to require that the supervising individual be responsible for the report's content.

**Section 3.** The CS amends s. 475.615(1), F.S., to delete the requirement that, at the time of application, a person must furnish evidence of successful completion of required education and experience, if any.

The CS amends s. 475.615(2), F.S., which authorizes the board to waive or modify any education, experience, or education requirements established by this part in order to conform to requirements established by the AQB and recognized by the Appraisal Subcommittee<sup>7</sup> or any successor body recognized by federal law. The CS provides that these requirements include any requirements adopted by the AQB on February 20, 2004. The CS requires that the board implement this section by rule.

The CS amends s. 475.615(3) to require that by July 1, 2006, an applicant for certification or registration must provide fingerprints in electronic format.

The CS amends s. 475.615(5), F.S., to provide that an application expires one year from the date received. Under current law, the application expires one year from the date received, if the applicant for registration, licensure or certification fails to take the appropriate examination.

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<sup>7</sup> The Appraisal Subcommittee is defined in s. 475.611(1)(e), F.S., as “the designees of the heads of the federal financial institutions regulatory agencies established by the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. ss. 3301 et seq.), as amended.”

The CS also deletes the terms “licensed” and “licensure.” Pursuant to s. 475.611(1)(l), F.S., the department is prohibited from issuing licenses for the category of licensed appraiser after July 1, 2003.

**Section 4.** Section 475.616(5), F.S., specifies that an applicant for licensure or certification as an appraiser must have the knowledge of theories and methods of real estate appraisal that are appropriate for the licensure or certification for which application is made. The CS deletes the qualification that the knowledge and methods specified must be appropriate for the licensure or certification for which application is made. It also deletes a reference to the term “licensed” in this section.

**Section 5.** The CS amends s. 475.617, F.S., to repeal the education and experience requirements for a licensed appraiser. Pursuant to s. 475.611(1)(l), F.S., the department has been prohibited from issuing licenses for the category of licensed appraiser since July 1, 2003.

The CS also amends s. 475.617, F.S., to provide that, to be certified as a residential appraiser or a general appraiser, the applicant must present satisfactory evidence to the board that he or she has met the minimum education and experience requirements prescribed by rule of the board. It also requires that the board prescribe education and experience requirements that meet or exceed the qualification criteria adopted on February 20, 2004 by the AQB.

The CS increases, from 75 to 100 classroom hours, the number of classroom hours needed for certification as a trainee appraiser. It also increases the maximum number of hours that the board may require for registration from 100 to 125 classroom hours.

The CS increases, from 120 to 200 classroom hours, the number of classroom hours needed for certification as a residential appraiser, and specifies that this must include a 15-hour National Uniform Standards of Professional Appraisal Practice course. It also deletes the board’s authority to increase the required number of hours to not more than 165 hours.

The CS also increases, from 180 to 300 classroom hours, the number of classroom hours needed for certification as a general appraiser, and specifies that this must include a 15-hour National Uniform Standards of Professional Appraisal Practice course. It also deletes the board’s authority to increase the required number of hours to not more than 225 hours.

The minimum classroom hours required by the CS for residential and general appraisers are identical to the criteria adopted by the AQB that will become effective January 1, 2008.

The CS requires that any appraisal report or file memoranda used to support a claim for experience must be maintained by the applicant for no less than five years from the date of certification. The CS authorizes the board to implement this section by rule.

**Section 6.** The CS creates s. 475.6171, F.S., to specify the documentation that must be presented for issuance of a registration or specification. The specified documentation includes:

- A completed application.
- Proof of successful course completion.

- Proof of experience for certification
- Proof of passing a written examination. if required.

The CS provides that no certification shall be issued based upon examination results obtained more than 24 months from the date of examination. The CS requires that the board implement this section by rule.

**Section 7.** The CS amends s. 475.6221, F.S., to provide that a supervisory appraiser may not be employed by a trainee or by a company, firm, or partnership in which the trainee has an interest. According to the department, this provision does not address situations in which the relationship where the supervisory appraiser is an independent contractor and not an employee of the trainee.

**Section 8.** The CS amends s. 475.6222, F.S., to provide that a primary or secondary supervisory appraiser must provide training in addition to the supervision required under current law.

**Section 9.** The CS amends s. 475.623, F.S., to require that each appraiser registered, licensed or certified under part II of ch. 475, F.S., must furnish the department with the firm or business name from which he or she operates in the performance of appraisal services. Current law only requires that the business address be provided. Licensees, certificateholders, and registered trainees must also notify the department of a change in business name along with any change of address within 10 days.

**Section 10.** The CS amends s. 475.624, F.S., to delete the term “licensure” in relation to the board’s authority to deny an application, and corrects cross references.

**Section 11.** The CS would take effect July 1, 2006.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.



B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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## **VIII. Summary of Amendments:**

None.

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