

Legislative Analysis



HOME INSPECTOR LICENSE

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House Bill 6088

Sponsor: Rep. Frank Accavitti, Jr.

Committee: Regulatory Reform

Complete to 6-9-08

A SUMMARY OF HOUSE BILL 6088 AS INTRODUCED 5-8-08

The bill would prohibit a person from providing home inspection services of residential property without a license; establish application, examination, and licensing fees for a home inspector license; create the Occupational Fund to fund the operation of the Bureau of Commercial Services; establish civil and criminal penalties for violations; and establish application, license, and examination fees.

A "home inspector" would mean a person engaged in, or offering to engage in, the business of providing home inspection services. It would exclude persons doing inspections for compliance with local, state, or federal health and safety laws and regulations and construction or building laws, codes, or regulations. Licensing requirements would also not apply to persons licensed, registered, or certified under the building, mechanical, and trade codes when doing inspections within the scope of their regulated professions.

The bill has an effective date of October 1, 2008. A more detailed summary follows.

House Bill 6088 would add Article 14 to the Occupational Code (33.303 et al.) to do the following:

- Beginning on October 1, 2008, prohibit a person from providing or offering to provide home inspection services without a license or exemption from licensure. ("Home inspection services" means services provided to a client, for consideration, designed to identify and disclose the functional condition of major systems in a residence at the time of the inspection. It would not include inspections designed only to disclose compliance with local, state, or federal building or construction laws, codes, or regulations; compliance with health and safety laws or regulations; and the presence of pests such as insects or rodents.)
- Create a home inspectors board.
- Establish minimum standards for education and experience for licensure eligibility that would include at least 20 credit hours of education or equivalent training, supervised participation in at least 200 home inspections, and passage of an approved examination.

- Require the Department of Labor and Economic Growth (DLEG) to promulgate rules to provide various means to ensure the continuing competency of licensees, such as continuing education courses, requirements for courses offered at seminars and trade conventions, distance learning, and alternate forms of continuing competency.
- Provide for reciprocity for individuals licensed in another state with substantially similar standards and meeting all other relevant state requirements.
- "Grandfather-in" individuals currently providing home inspection services who meet specified eligibility criteria. Application for licensure under this provision would have to be made within two years of the bill's effective date.
- Require certain information to be disclosed by the home inspector to the client including whether the home inspector had an ownership interest in the home being inspected.
- Prohibit a home inspector from repairing or offering to repair a residence that the home inspector inspected, unless the repair was covered under a home warranty provided by the home inspector.
- Require a contract to be in writing, detail the terms for the home inspection services, and provide certain information, such as a description of the services to be provided.
- Require a written report of the results of the home inspection to be given to the client. Statements required to be included in the report are detailed in the bill and would include the conditions of the residence affecting a home inspector's ability to conduct an inspection.
- Require a home inspector to retain a copy of the contract for a home inspection and the written home inspection report for at least three years after the date of the report.
- Subject a home inspector who did not conform to the bill's provisions to a civil suit by a client to recover damages, administrative license sanctions, restitution, and/or criminal penalties. (For example, conducting a home inspection without a license would be a misdemeanor offense punishable by a fine of at least \$5,000 but not more than \$25,000 and/or imprisonment for up to one year for a first offense, and for a second or subsequent offense, punishable by a fine of the same amount and/or imprisonment for not more than two years.) The remedies would be cumulative, and the use of a remedy would not bar the use of any other remedy provided by law.
- Define numerous terms, including "home inspection services" and "major deficiency."

- Establish fees for a person seeking licensure as a home inspector. The application processing fee would be \$100; the examination fee, if applicable, would be \$200; the examination review fee, if applicable, would be \$20; and the annual license fee would be \$100.

Occupational Fund. The bill would also create the Occupational Fund within the state treasury. Funds could only be expended, upon appropriation, for the operation of the Bureau of Commercial Services and indirect expenses of DLEG that include (but are not limited to) the purchase and sale of printed laws and rules to the general public.

Money or other assets from any source could be deposited into the Fund, including money generated under the Occupational Code and the State License Fee Act. Investments would be directed by the state treasurer and interest and earnings from Fund investments would be credited to the Fund. Money in the Fund at the close of a fiscal year would remain in the Fund and not lapse to the General Fund.

Under the bill, fees established within the Occupational Code should bear a reasonable relation to the cost, including overhead, of the service or action and would have to be deposited into the Fund to offset the department's costs associated with administration of the act.

Further, the DLEG would have to adjust the fees contained in the code on an annual basis to reflect inflationary changes as specified in the bill.

FISCAL IMPACT:

According to the membership lists of the National Association of Home Inspectors (NAHI) and the American Society of Home Inspectors (ASHI), there are currently approximately 120 home inspectors active in Michigan. The bill, then, would generate at most \$240,000 in revenue initially from the \$100 application fee and the \$100 license fee.

(It is assumed that, initially, home inspectors would either be exempt from the examination requirements or not be eligible to sit for the examination. The ASHI only requires members to pass two examinations and conduct at least 50 inspections. The NAHI certifies members who've completed at least 250 inspections, complete an examination, and take continuing education courses. The NAHI membership lists 26 members as Certified Real Estate Inspectors. Members of the NAHI include regular members who've completed at least 100 inspections and associate members who have completed 40 hours of training or at least 20 inspections.)

Going forward, the bill provides that fees established within the Occupational Code should bear a reasonable relation to the department's costs of regulation and administering the act, and provides that fees established under the act be adjusted annually based on inflation. (This provision appears to conflict with itself in that an annual adjustment for inflation may not result in the fee schedule bearing a reasonable relationship to the department's regulatory costs.) In this regard, the fee schedule

established in the bill for home inspectors would increase annually by the rate of inflation, although license fees for other occupations regulated by the Occupational Code are established by the State License Fee Act (1979 PA 152, MCL 338.2201 et seq.) or separate licensure acts and, therefore, would not be affected by the bill. The bill would create the Occupational Fund, which would receive money from any source under the Occupational Code and the State License Fee Act. Directing revenue from the State License Fee Act appears, on its face, to be an impermissible amendment by reference, as the State License Fee Act includes a section providing for the disposition of fee revenue.

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