

Legislative Analysis



HOME INSPECTOR REGISTRATION

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House Bill 4076 (Substitute H-2)

House Bill 4077 (Substitute H-1)

Sponsor: Rep. Frank Accavitti, Jr.

Committee: Regulatory Reform

First Analysis (8-8-06)

BRIEF SUMMARY: The bills would amend the Occupational Code to provide for the voluntary registration of home inspectors who meet certain qualifying criteria.

FISCAL IMPACT: House Bill 4076 will result in an increase in State of Michigan expenditures to cover the cost of a new nine-member Home Inspectors Board. Board members will be compensated on a per diem basis established annually by the Legislature. In addition, travel and other Board expenses will require additional expenditures. Since fees generated from the related House Bill 4077 are expected to total \$50,000.00 to \$60,000.00 annually, the added expenditures should fall within this same range. House Bill 4077 will increase State restricted revenue by requiring various fees for licensed home inspectors. Since such inspectors are not currently licensed, the number of persons who will seek such licensure can be approximated by using the 160 members of the Michigan Association of Home Inspectors as a base. Therefore, the expected annual revenue increase is expected to fall within the range of \$50,000.00 to \$60,000.00.

THE APPARENT PROBLEM:

Home inspections are increasingly a routine part of the home buying process, and are an essential tool for prospective home buyers to assess the physical condition of a home prior to closing. Typically, home inspections for sales of existing residential property are visual, non-invasive inspections of the home's major components, including the roof, insulation, plumbing system, electrical system, the heating and air conditioning systems, and the structural integrity of the home. Qualified home inspectors can identify defects that may be quite costly to repair in the future, defects which a potential homebuyer may use as a factor in negotiating the purchase price or in ultimately deciding to not purchase the home. However, critics say many home inspectors are not qualified, which raises serious consumer protection concerns. Some individuals reportedly need little more than a handful of business cards and word of mouth to operate as home inspectors. For homeowners who unwittingly rely on the work these unqualified inspectors, the consequences can be financially disastrous.

In recent years, in an apparent attempt to provide some consumer protection within this industry, about 30 states – including Indiana, Illinois, and Wisconsin – have enacted

legislation requiring home inspectors to be licensed or registered by the state.¹ Michigan is one of the few states not requiring licensure or registration, and it has been suggested that Michigan, too, provide registration for individuals within this industry.

THE CONTENT OF THE BILLS:

House Bill 4076 would establish a new Article 14 within the Occupational Code providing for the creation of a home inspectors board and voluntary registration of home inspectors, and House Bill 4077 would establish application, examination, and registration fees for a home inspector registration. A "home inspector" would mean a person engaged in, or offering to engage in, the business of providing services that are designed to identify and disclose the functional condition of major systems (heating and air conditioning, electrical, plumbing, and structural) and accessories in a residence. The bills are tie-barred to each other, and would be effective October 1, 2006.

House Bill 4076

Home Inspectors Board. The bill would create a home inspectors board. Under the provisions of Article 3 of the Code, the board would be created within the Department of Labor and Economic Growth and would consist of nine voting members, with six members being registered home inspectors and three members representing the general public. Initial members who would be registered home inspectors would have to be certified or otherwise approved by a national organization that certifies the occupation of home inspector or would have to have actively engaged in the business of home inspector for at least two years. Members would be appointed by the Governor, with the advice and consent of the Senate.

Article 3 further provides that the duties of boards created by the Code shall include the interpretation of licensure or registration requirements under the Code and, if necessary, assisting the department in investigating complaints

Registration. The bill provides that persons seeking registration as a home inspector would have to submit an application and appropriate fees to the Department of Labor and Economic Growth (DLEG). Individuals who are at least 18 years of age, have completed a high school education, achieved a passing score on a board-approved examination, have completed at least 50 home inspections, and are of good moral character could apply for and obtain registration as a home inspector.² The bill also "grandfathers" individuals

¹ A review of the various laws and regulations concerning the licensure of home inspectors can be found on the websites of the National Association of Home Inspectors (NAHI) and the American Society of Home Inspectors (ASHI), two of the primary national accrediting associations for the home inspection industry. The websites for both organizations – www.nahi.org and www.ashi.org – also include each organization's standards of practice, code of ethics, and policy statement on the regulation of home inspectors. The NAHI also includes model legislation for licensure/registration of home inspectors.

² The Occupational Code defines "good moral character" to mean the propensity on the part of the person to serve the public in the licensed area in a fair, honest, and open manner. Also, Article 3 of the Code allows a board and the department to adopt an examination developed by another agency if they determine that the examination or test

currently engaged in the home inspection business by providing them a registration, through one year after the bill's effective date, if they are of good moral character, and have conducted at least 500 home inspections and have conducted inspections for at least five years. To renew a registration, registrants would have to retake the exam and complete 18 hours of continuing education courses.

The bill also prohibits an individual from using the term "registered home inspector," "RHI," or any other similar title that connotes registration, beginning on the bill's effective date.³

Standards of Practice. The bill would adopt, by reference, the 2006 Standards of Practice and Code of Ethics established by the Michigan Association of Home Inspectors. The board and department could, by rule, update or amend these standards.

Reciprocal Registration. Individuals licensed, registered, or otherwise regulated in another state that has substantially the same standards would be eligible for a Michigan registration, provided that the home state offers reciprocity to Michigan registrants.

Inspections. The bill would require home inspectors to inspect major systems of a residence subject to a contract for home inspection services only to the extent that those services are readily accessible and visible. An inspector who inspects a residence could not repair, or offer to repair, the residence, unless the repair is under a home warranty provided by the inspector.

Disclosure. The bill would require home inspectors to provide clients (i.e. the person on whose behalf the home is inspected) with a disclosure statement describing the scope of the inspection and a statement that the inspector cannot repair or offer to repair the residence unless under a home warranty provided by the inspector. Additionally, inspectors would be required to disclose whether they or their employees or immediate family members have an ownership interest in the residence being inspected.

Contract. The contract for home inspection services would have to include a description of the services provided, any disclaimers, and a statement that defects not reasonably apparent by visual inspection and major systems that aren't operable at the time of the inspection will not be included as part of the inspection.

Written Report. Following an inspection, an inspector would give the client a written reporting containing the inspector's findings, including a list of systems inspected and any conditions affecting or limiting the ability of the inspector to provide inspection services as required by the contract. The report would state that defects not reasonably apparent

serves as the basis for determining whether a person has the knowledge and skills to perform the occupation with competence.

³ As written, it appears that this prohibition would also apply to individuals who are registered under the bill. The bill does not, for example, state that unless the person is registered, they are prohibited from stating that they are registered. Additionally, Article 6 (MCL 299.601) prohibits an individual from engaging in or attempting to engage in an occupation regulated under the Code or using a title conveying that he or she is registered or licensed under the Code without possessing a required license or registration.

by visual inspection and major systems not operable at the time of the inspection are excluded. The inspector would have to retain a copy of the report for at least three years.

Damages. A client suffering damages due to a violation of the bill could bring an action for damages in a court of competent jurisdiction, and remedies provided by the bill would be cumulative and would not bar the use of any other remedy provided by law.

House Bill 4077

The bill would add a new section to the State License Fee Act (MCL 338.2214) to set fees for a person registered or seeking registration as a home inspector. The application processing fee would be \$40; the examination fee would be \$50; the examination review fee would be \$30; and the registration fee would be \$210 annually.

BACKGROUND INFORMATION:

House Bill 4076 adopts, by reference, the 2006 Standards of Practice and the Code of Ethics of the Michigan Association of Home Inspectors. Among other things, the standards provide the following:

- The Standards are limited to the inspection of buildings from one to four dwelling units.
- The Standards apply to a visual inspection of the readily accessible areas of the specified items, components, and systems of a home to determine if, at the time of the inspection, they are performing their intended function without regard to life expectancy.
- The purpose of the inspection is to identify visible defects and/or conditions that, in the judgment of the inspector, adversely affect the function and/or integrity of the components and systems.
- Inspections performed under the Standards shall not be construed as a compliance inspection of any code, governmental regulation, or manufacturer's installation instructions or procedures.
- Inspections performed under the Standards are primarily visual and rely upon the opinion, judgment, and experience of the inspector, and are not intended to be technically exhaustive.
- Inspections performed under the Standards exclude any item that is concealed or not readily accessible to the inspector, and the inspector is not required to move furniture or personal or stored items; lift floor coverings; move attached walls, ceiling coverings, or panels, or perform any test or procedure that could damage or destroy the items being evaluated.
- The following items are excluded from the scope of the inspection: appliances, recreational facilities, alarms, intercoms, speaker systems, hot tubs, radio controlled devices, security devices, and lawn irrigation systems.

Additionally, the MAHI Code of Ethics provides the following, among other things:

- Inspections shall conform to the MAHI Standards of Practice.
- Inspectors shall not accept compensation for an inspection from more than one party without written disclosure to the client.
- Inspectors shall not directly or indirectly compensate real estate agents, or other parties having a financial interest in real estate transactions, for the referral of inspections or for the inclusion in a list of recommended inspectors or preferred providers, or for similar arrangements.
- Inspectors shall not disclose inspection results or client information without client approval, although they may, at their discretion, disclose observed immediate safety hazards to occupants exposed to such hazards.
- Inspectors may recommend or offer products or additional services to the client consistent with the Code of Ethics. Inspectors shall advise clients to obtain competitive bids and make a written disclosure to the client of their interest in the transaction if the services or products will: (1) be purchased from or provided by the inspector or its agents or employees or any organization in which the inspector has an interest and (2) result in any financial or other benefit to the inspector.

ARGUMENTS:

For:

For many individuals, buying a home is the largest financial transaction they will make in their lifetime. It is essential to the homebuyer that the home, including its major systems, be sound in physical condition and proper working order, to prevent potentially financially disastrous expenses to repair unanticipated major defects. It is important, then, that the home be inspected prior to closing by a qualified home inspector. Unfortunately, many homebuyers do not know who is qualified and who is not. Reportedly, anyone can market himself or herself as a home inspector with a limited amount of training. While there a number of professional organizations that certify home inspectors, such as the National Association of Certified Home Inspectors, American Society of Home Inspectors, and the National Association of Home Inspectors, many homebuyers are not aware of these organizations or do not understand what certification by one of these organizations means.

House Bill 4076 aims to protect consumers from unqualified and unscrupulous home inspectors by establishing a statewide registry. This registry creates a central location where homebuyers can locate qualified home inspectors who have, in accordance with the bill, demonstrated the knowledge and skill necessary to properly perform a home inspection.

To obtain a registration, the bill requires applicants to perform at least 50 home inspections, which demonstrates that the applicant has the necessary experience and training. [For individuals currently engaged in the business of inspecting homes, the bill provides a registration, without the examination, to those who have been in business at least five years and have conducted at least 500 inspections.] The bill also requires that applicants successfully pass an examination approved by the home inspectors board, which, again, demonstrates that the applicant possesses the knowledge necessary to

perform a home inspections. Finally, the bill requires that registrants complete at least 18 hours of continuing education courses to renew a registration, which ensures that that registrants stay current with changing practices within the homebuilding industry.

Against:

The chief complaint about House Bill 4076 is that the registration is not mandatory. Critics say that unless registration is required of all home inspectors, the bill doesn't really mean anything and likely undermines the bill's purported efforts to protect consumers. Many home inspectors are certified by a national organization whose certification/membership requirements are more stringent than the bill's registration requirements. The bill just creates another certification agency that confuses homebuyers. Is a DLEG-certified home inspector better or more qualified than one certified by NACHI, ASHI, or NAHI? Most consumers wouldn't know. Given the authority a DLEG-certification carries, however, it's likely that homebuyers would look to these inspectors first without fully understanding the differences between DLEG's registration requirements and those of the several national organizations. Many home inspectors certified by these national organizations may deem it unnecessary to obtain a state registration when certification by a national organization better demonstrates that it has the experience and skill to properly conduct home inspections. Some believe that voluntary registration established by the bill may, in fact, undermine consumer protection efforts because it may actually prompt many unqualified home inspectors to seek registration, giving credence to their business, when they wouldn't be eligible for certification by the national organizations.

Against:

Other criticisms of the House Bill 4076 include:

- The requirement that examination be retaken annually to renew an examination is not necessary, particularly given that the registration is not mandatory and costs money. Reexamination could be done less frequently, say, every five years. It is sufficient that the bill requires continuing education credits to ensure that home inspectors stay current with industry practices.
- The "disclosure statement" provided at the time of the written report can be easily confused with the seller's disclosure statement already required. Also this information is typically already provided to the client in the pre-inspection agreement and contract. The separate statement is unnecessary.
- The requirement that inspectors retain copies of the written inspection report for "at least" three years is vague. A specific number of years, rather than a minimum number, should be stated.
- The "grandfather" provision providing a registration to existing inspectors is too stringent. Many long-time inspectors, particularly those in rural areas, may have the necessary experience, but have not completed 500 inspections necessary to obtain a registration without taking the exam.
- The bill's definition of "home inspection services" includes inspection of "accessories" – i.e., appliances that are fixtures in the residence, including built-in appliances and vacuum systems. The MAHI Standards of Practice, however, specifically excludes appliances and other fixtures (alarms, intercoms, speaker

systems, etc) from inspection. Further, central vacuum systems are typically not inspected either.

- The bill prohibits inspectors from repairing a home subject to inspection unless services are provided under a home warranty provided by the inspector. The MAHI Code of Ethics does not seem to prevent inspectors from making such repair, but simply requires inspectors to advise clients to obtain competitive bids and disclose their interests in providing the service.
- The bill's definition of "major deficiency" – a defect in a major system or accessory that reasonably causes occupants to vacate a home for at least three days or causes the system or accessory to be inoperable – is vague. A "major deficiency," as construed under the bill, actually varies from person to person; what one person considers being a major defect may not be considered a major defect by another person. Moreover, the bill requires that the disclosure statement include a description of the major deficiencies an inspection is designed to reveal. However, inspections identify adverse conditions or defects that affect the function and integrity of the component or system of the home and that may affect a homebuyer's evaluation of the home. These defects need not be "major."

POSITIONS:

The Michigan Association of Realtors supports the concept of the bills. (7-11-06)

The Michigan Association of Home Inspectors would support the bills if the registration were mandated, rather than optional. (7-7-06)

The Department of Labor and Economic Growth does not support the bills. (7-11-06)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.