

HOME INSPECTOR LICENSE

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House Bill 6088 (Proposed Substitute H-2)

Sponsor: Rep. Frank Accavitti, Jr.

Committee: Regulatory Reform

Complete to 6-12-08

A SUMMARY OF HOUSE BILL 6088 (SUBSTITUTE H-2 AS PROPOSED)

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.

The bill would apply to inspections of residences that are primarily for family living quarters and designed for occupancy of not more than four families in separate dwelling units. "Residence" as defined in the bill would not include newly constructed buildings or buildings that had not been previously occupied as a dwelling unit.

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 would take effect 12 months after enactment. 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 an exemption from licensure. A title such as "home inspector" could only be used by persons licensed as a home inspector. ("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 60 credit hours of education or equivalent training, supervised participation in at least 200 home inspections, and passage of an approved examination.
- Restrict licensure to persons 18 years or older who have not been convicted of a felony.
- "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 12 months of the bill's effective date.
- Provide for reciprocity for individuals licensed in another state with substantially similar standards and meeting all other relevant state requirements.
- 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.
- 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 requiring a demonstration of continuing competency; requirements for courses offered at seminars and trade conventions; distance learning; standards of performance and practice; a code of ethics; and alternate forms of continuing competency.
- 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.
- 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 affecting a home inspector's ability to conduct an inspection.
- Specify that the home inspector-client relationship was privileged and that all communications between a licensee and client, including the written home inspection report. A person would be prohibited from intentionally or willfully interfering in that relationship or communications arising from that relationship.

- Allow a dispute between a licensee and a client to be resolved by arbitration, if so provided in the contract. Arbitration would have to be conducted in compliance with the rules of the American Arbitration Association.
- 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.
- Establish a statute of limitations for filing administrative or civil complaints against a home inspector of three years from the date of the inspection.
- Define numerous terms, including "home inspection services" and "major deficiency."

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 approximately 120 home inspectors currently active in Michigan. The ASHI 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 also include regular members who've completed at least 100 fee-paid inspections and associate members who have completed 40 hours or training or at least 20 fee-paid inspections.).

It isn't immediately known which members of the two groups would be eligible to obtain a license under the bill, given the bill's requirement that inspectors complete a minimum of 200 inspections. At the very least, the 26 Certified Real Estate Inspectors within NAHI would be eligible for licensure and exempt from the examination requirements, thereby generating \$5,200 in fee revenue, initially, from the \$100 application fee and the \$100 license fee. Given the bill's effective date (12 months after enactment), it is likely more home inspectors would be eligible for licensure. If the remaining 94 members of NAHI and ASHI would be eligible to sit for examination (\$220), the bill would potentially generate an additional \$39,500, bringing total revenue to just under \$45,000, initially, and \$12,000 annually each year thereafter (subject to inflationary license fee increases). The fees would be sufficient to cover the annual costs of the Home Inspectors Board, which would be about \$10,000 annually based on the experience of similar boards.

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. This provision has no real impact on the schedule of license fees. Currently, license fees for occupations regulated under the Occupational Code are set in the State License Fee Act (1979 PA 152, MCL 338.2201 et seq.) and, for other occupations regulated by the Bureau of Commercial Services, in separate licensure/regulation acts.

Further, the bill provides that fees established under the act must be adjusted annually based on inflation. This would only affect the fee schedule for the home inspectors license as, again, other fees are established outside of the Occupational Code.

The bill would create the Occupational Fund, which would receive money from any source including under the Occupational Code and the State License Fee Act and be used by the Department of Labor and Economic Growth for regulatory activities of the Bureau of Commercial Services and departmental overhead costs.

Directing revenue from the State License Fee Act, on its face, appears to be an impermissible amendment by reference, as the State License Fee Act includes a section providing for the disposition of fee revenue. In this regard, the provision would only affect home inspection license and examination fee revenue and fine revenue under the

code. Currently, the State License Fee Act provides that, in general, fee revenue is to be credited to the General Fund and used for the operations of the Department of Labor and Economic Growth. (A portion of fees related to the real estate industry are dedicated to specific restricted funds.) In practice, occupational license fee and fine revenue are already a restricted fund source (Licensing and Regulation Fees) within the Department of Labor and Economic Growth budget.

POSITIONS:

The Michigan Association of Home Inspectors testified in support of the committee-passed version. (6-10-08)

The Department of Labor and Economic Growth testified in support of the committee-passed bill, but did bring up several concerns which appear to have been addressed in the floor substitute (H-2). (6-10-08)

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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.