



**House
Legislative
Analysis
Section**

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LICENSE REAL ESTATE APPRAISERS

House Bill 5335 as enrolled
Sponsor: Rep. Lloyd F. Weeks

House Bill 5439 as enrolled
Sponsor: Rep. Raymond M. Murphy

Second Analysis (10-16-90)
House Committee: State Affairs
**Senate Committee: State Affairs, Tourism, and
Transportation**

THE APPARENT PROBLEM:

Public Law 101-73, the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) was signed into law in 1989 in response to the national savings and loan crisis. Among other things, FIRREA requires the establishment of an Appraisal Subcommittee in the Federal Financial Institutions Examinations Council to address problems in the industry that were allegedly due to inadequate appraisal work. The subcommittee will monitor individual state appraiser certification and licensing systems; appraisal standards and determinations for federal transactions requiring licensed and certified appraisers; and the Appraisal Foundation, a nonprofit corporation drawn from the appraisal industry. After July 1, 1991, only licensed appraisers will be qualified for work on federal transactions involving more than \$1 million in property. Federal regulatory agencies will prescribe other transactions that will require appraisal by state certified appraisers. In order to comply with the act, Michigan's appraisers will have to be licensed or certified by July 1, 1991.

Currently, in Michigan, appraisers are licensed as real estate salespersons or brokers. Continuing education courses and professional designations for appraisers are offered by several organizations, and these organizations — in cooperation with the American Institute of Real Estate Appraisers, the Society of Real Estate Appraisers, the International Association of Assessing Officers, the National Association of Independent Fee Appraisers, the Appraisal Institute of Canada, the American Society of Farm Managers and Rural Appraisers, the American Society of Appraisers, the National Society of Real Estate Appraisers, and the International Right of Way Association — have developed legislation to establish a state certification policy for appraisers.

THE CONTENT OF THE BILLS:

The bills would amend the State License Fee Act and the Occupational Code, respectively, to license and regulate real estate appraisers as an independent occupation. The bills are tie-barred to each other.

House Bill 5335 would amend the State License Fee Act (MCL 338.2203 and 338.2238) to establish a Real Estate Appraiser Education Fund in the state treasury. Under the bill, the fund would be administered by the Department of Licensing and Regulation, and would be used only for the operation of education programs related to licensing. Unexpended balances would be carried forward from fiscal year to fiscal year.

Of each license fee received by the department, \$10 would be credited to the fund. The bill would establish the following license fees:

Application processing fee	\$ 25.00
Examination fee (if the department conducts its own examination)	\$100.00
License fee per year	\$175.00

The license fee would include a fee of up to \$50 per licensee imposed by the federal government under the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA).

House Bill 5439 would amend the Occupational Code (MCL 339.302 et al.) to provide for the licensing of real estate appraisers and to create a Board of Real Estate Appraisers. The bill would differentiate between a real estate valuation specialist, who could perform only those appraisals not involving "federally related transactions" (defined under the bill to mean any real property-related financial transaction in which a federal financial institution regulatory agency or the resolution trust corporation engaged in, and which, under federal laws, required the services of an appraiser); a state certified real estate appraiser, who could perform appraisals of real property, including appraisals for federal transactions; and a state licensed real estate appraiser, who could perform appraisals of residential real property and federal appraisals authorized under FIRREA that required a state licensed real estate appraiser.

Board of Real Estate Appraisers. Under the bill, four of the members of the Board of Real Estate Appraisers who were appraisers would have to be licensed as state certified real estate appraisers, and two as state licensed real estate appraisers. One of these would have to be employed by a state or nationally chartered bank, savings and loan or savings bank, credit union, an entity of the federally chartered farm credit system, or an entity regulated under the Mortgage Brokers, Lenders, and Servicers Licensing Act. The board could promulgate rules regulating educational courses. The board could promulgate rules based on the Uniform Standards of Professional Appraisal Practice (USPAP).

Department of Licensing and Regulation. The department would be required to provide the federal Financial Institutions Examination Council with a list of licensees at least once per calendar year, along with the appropriate fee, as required by FIRREA.

Appraisals. The bill would require that an appraisal be in writing; that any limitations on the type of analysis,

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valuation, or opinion in relation to an appraisal be disclosed; that an appraisal be independently and impartially prepared and that it conform to USPAP and any standards adopted by the board; and that it include an opinion of defined value of adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

Under the bill, an appraisal would mean an opinion, conclusion, or analysis relating to the value of real property, but would not include:

- A market analysis performed by a licensed real estate broker or salesperson solely for the purpose of assisting a customer in determining the potential price of property.
- An assessment of the value of real property performed on behalf of a local unit of government authorized to impose property taxes.

Basic Licensure Requirements. The experience required of license applicants, prior to taking a written examination, would have to:

- Consist of at least 2,000 hours of appraisal experience as prescribed under the bill, and obtained over not less than two calendar years.
- Be obtained while licensed or exempt from licensure under the standards applicable at the time the experience was obtained.
- Be capable of being documented in writing.
- Be obtained while an appraiser, a manager of an appraisal firm or department, or an instructor of approved courses.

In addition, state licensed and certified real estate appraisers would be required to pass a written examination in subjects including, but not limited to: technical terms and economic concepts applicable to real property, problems and standards used in developing an appraisal, basic real property law, and misconduct.

Real Estate Valuation Specialist. In order to be licensed as a real estate valuation specialist, an applicant would have to provide, in addition to the basic licensure requirements, proof of having completed at least 40 clock hours of classroom courses related to developing and communicating appraisals of real property, 15 of which related to USPAP.

State Licensed Real Estate Appraiser License. All applicants for state licensed real estate appraiser licenses would be required to complete the basic licensure requirements. An applicant would also be required to prove that he or she had completed not less than 75 clock hours of precursory classroom courses prescribed by the board.

State Certified Real Estate Appraiser License. In order to be licensed as a State Certified Residential Real Estate Appraiser, an applicant would be required to complete 165 clock hours of classroom courses in certain subjects. The 75 clock hours used to obtain a state licensed real estate appraiser license could be applied toward this requirement.

Until such time as an examination was available, the department could, until December 31, 1991, issue a temporary license to an applicant who met the other requirements.

License Renewals. All applicants for license renewal would be required to complete at least 10 clock hours of continuing education for each year since his or her last renewal. For state licensed real estate appraisers, the continuing education would be focused primarily on residential real

property appraisals; for state certified real estate appraisers, the education would cover both residential and nonresidential real property; for real estate valuation specialists, the education would have to meet the basic precursory requirements of the act. The department could not license an individual whose license had lapsed for a period of more than 3 continuous years, unless the applicant completed the licensing examination.

Nonresident Licenses. The department could issue licenses at the corresponding level without examination to persons licensed by another state if that state's requirements were at least equal to Michigan's, or if the nonresident filed an irrevocable consent to service of process.

Penalties and Violations. One or more of the following violations would be subject to the penalties prescribed in the code:

- Violation of any of the standards for the development and communication of real estate appraisals or a rule promulgated under the bill.
- Failure or refusal without good cause to exercise reasonable diligence in developing or communicating an appraisal.
- Demonstration of incompetence in developing or communicating an appraisal.
- Failure to make available to the department upon request books and records required to be kept under the act.
- Failure by a real estate valuation specialist to disclose that the appraisal could not be used in a federally-related real property financial transaction.
- Performing appraisal services for which the individual was not licensed.

Other Provisions. Within three years after the bill's effective date, the bill would require that each individual appointed to a board be licensed or registered in the occupation licensed or registered by that board. Until then, individuals with either or both of the following qualifications could be appointed by the governor as initial members of a board created, or first appointed, on or after January 1, 1990:

- Was certified or otherwise approved by a national organization that certified or otherwise approved individuals in the occupation to be licensed or registered by the board.
- Had actively practiced in the occupation licensed or registered by the board or had taught in an educational institution that prepared applicants for licensure or registration in that occupation, or a combination of both, for not less than the two years immediately preceding the appointment.

The bill would also provide for staggered terms for initial members of a board created or first appointed after January 1, 1990.

The licensing provisions of the bill would take effect July 1, 1991.

FISCAL IMPLICATIONS:

According to Department of Licensing and Regulation estimates, the bill would result in an annual cost to the state of \$710,970, and a one-time cost of \$1.5 million. The department estimates that it would need 11 FTEs to work with the Board of Real Estate Appraisers to administer the licensing of real estate appraisers and to provide information to the federal Financial Institutions Examination Council. The annual cost of salaries and benefits for the 11 FTEs would be approximately \$201,500, and the cost of the board's expenses would be approximately \$201,500. The

department also estimates that 12,000 applicants will pay the \$100 examination fee and \$25 application fee in the first year, resulting in a one-time revenue of \$1.5 million, which would offset the \$1.5 million cost of start-up expenses. (10-16-90)

ARGUMENTS:

For:

By requiring the licensing and regulation of appraisers, the bills would assure that Michigan's financial institutions comply with federal law by the required date. To assure compliance, the bills reflect federal guidelines, and were drafted with input from the financial, real estate, appraisal, and regulatory communities.

Against:

The bill should be amended to delete the requirement under the Occupational Code that the majority of the members appointed to a licensure board be licensed in the occupation regulated by that board, and to comply with the federal government's recommendation that members of state appraiser certification boards be drawn from the general public, and not from the industry itself. In light of the current savings and loan crisis, it would seem naive, at best, to have the standards and practices of the appraisal business formulated and administered by the members of its own profession. This provision gives more responsibility and power to the profession than is in the best interests of consumers and the public.

Response: House Bill 5439's requirement that the majority of the members appointed to a licensure board of a profession be members of that profession is in compliance with Article Five, Section Five of the State Constitution of 1963. The provision is an assurance that professional boards receive input from experts, and that the Department of Licensing and Regulation does not have excessive power over the licensing and regulation process.