

HOME INSPECTORS LICENSE

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House Bill 4162

Sponsor: Rep. Richard LeBlanc

Committee: Regulatory Reform

Complete to 1-15-10

A REVISED SUMMARY OF HOUSE BILL 4162 AS INTRODUCED 2-4-09

The bill would prohibit a person from providing residential home inspection services without a license issued by the Department of Energy, Labor, and Economic Growth (DELEG)¹; establish application, examination, and licensing fees for a home inspector license; create the Occupational Fund to fund the operation of the DELEG, Bureau of Commercial Services; and establish civil and criminal penalties for violations of the licensure requirements.

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, except that it would not include residences that are 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 4162 would add Article 14 to the Occupational Code, 1980 PA 399, to do the following:

- 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

¹ Michigan currently is one of 15 states that currently do not have some form of state regulation (licensure, certification, registration, or practice standards) for home inspectors, according to the Examination Board of Professional Home Inspectors, which administers the National Home Inspector Examination (NHIE), [http://www.homeinspectionexam.org/state_regulations.php].

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. [Section 1403(1)]

- Create a home inspectors board. [Section 1402]
- Restrict licensure to persons 18 years or older who have not been convicted of a felony. [Section 1403(2)(d)]
- "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. [Section 1403(3)]
- Provide for reciprocity for individuals licensed in another state with substantially similar standards and meeting all other relevant state requirements. [Section 1403(4)].²
- 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. [Section 1408]
- Require the Department of Energy, Labor and Economic Growth (DELEG) to promulgate rules to provide various means to ensure the continuing competency of licensees; requirements for continuing education courses; distance learning; standards of performance and practice; a code of ethics; and alternate forms of continuing competency. [Section 1407].
- Require the home inspector to disclose to the client (1) whether the home inspector, or immediate family member, had an ownership interest in the home being inspected; (2) the scope of the home inspection services provided; and (3) a statement that the inspector cannot repair or offer to repair a residence subject to inspection. [Section 1404(4) - 1404(6)]
- 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. [Section 1405(4)]
- 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

² According to the licensing database of the Indiana Professional License Agency, there are three active licensees from Michigan, with the licenses of another three Michigan licensees expired. This provision could also apply to a number of Indiana licensees in Northern Indiana and Wisconsin licensees in Northeastern Wisconsin who offer services in Michigan. See the Indiana Professional Licensing Agency, Home Inspector Licensing Board website, [<http://www.in.gov/pla/hi.htm>]. See, also, the Wisconsin Department of Licensing and Regulation home inspectors website, [<http://drl.wi.gov/prof/homi/def.htm>]. Ohio does not currently license home inspectors, although legislation has been introduced in the General Assembly for the past few legislative sessions, including SB 14 during the 2009-2010 session, [http://www.legislature.state.oh.us/bills.cfm?ID=128_SB_14].

would include the conditions affecting a home inspector's ability to conduct an inspection. [Section 1405(5) and 1405(6)]

- 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. [Section 1405(10)]
- 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. [Section 1405(9)]
- 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. [Section 1405(8)]
- 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. [Section 1406]
- Establish a statute of limitations for filing administrative or civil complaints against a home inspector of three years from the date of the inspection. [Section 1405(11)]

Occupational Fund. The bill would also amend Article 4 of the Occupational Code to 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 the department.

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 Occupational 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.

FISCAL IMPACT:

At this point, the bill would have an indeterminate fiscal impact on the Department of Energy, Labor, and Economic Growth (DELEG), largely due to uncertainties concerning the exact number of individual home inspectors that would be subject to the licensing requirements imposed by the bill.

Recent studies in Colorado, Ohio, and Washington provide a useful illustration of the problem in determining the exact scope of home inspection industry within a state. In a November 2007 study, the Washington State Department of Licensing found that, home inspectors that are not members of an industry association "account for a large portion of the Home Inspectors in the state" and noted that "around 70% of Home Inspectors in Washington State are not required to recognize *any* Standards of Practice or Code of Ethics, nor are they required to pass *any* exam measuring their level of competency."³

Similarly, in a 2001 study reviewing the proposed licensure of home inspectors, the Colorado Department of Regulatory Agencies noted that the state chapters of the National Association of Home Inspectors and the American Society of Home Inspectors noted that the two groups, by their own assertion, accounted for approximately 25%-30% of the total number of home inspectors in Colorado.⁴

On the other hand, as part of a survey of six states, a 2006 report prepared by Belmont Technical College in Ohio for the Ohio Real Estate Commission, found that 20.7% of survey respondents (home inspectors) from Michigan reported that they were not a member of a home inspector association.⁵

³ *Home Inspectors Licensure*, Washington State Department of Licensing, Sunrise Review, November 2007, [<http://www.dol.wa.gov/about/reports/SunriseHomeInspector.pdf>]. Under Washington state law, RCW 18.118.010 et seq., the Department of Licensing conducts "sunrise" reviews of proposals to regulate a particular profession. The purpose of the sunrise reviews is to limit state regulation of a profession to only when (1) the unregulated practice can clearly harm or endanger the health, safety, or welfare of the public, and the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument; (2) the public needs and can reasonably be expected to benefit from an assurance of initial and continuing professional ability; and (c) the public cannot be effectively protected by other means in a more cost-beneficial manner. Ultimately, the department recommended by home inspectors be licensed in the state, based on "the testimony by stakeholders from many disciplines, the evidence of consumer harm, the lack of methods of recourse, the lack of any form of standardization in education and experience, the potential for collusion between the real estate and home inspection profession, and the evidence of inconsistency in services provided."

⁴ *Home Inspectors: 2001 Sunrise Review* Colorado Department of Regulatory Agencies, Office of Policy and Research, October 15, 2001, [<http://www.dora.state.co.us/opr/archive/2001HomeInspectors.pdf>]. Under Colorado state law, CRS § 24-34-104.1, prior to the enactment of legislation regulating an occupation or profession, the Department of Regulatory Agencies, upon request from industry representatives, reviews the proposed regulation and determines, (1) whether the unregulated practice of the occupation or profession clearly harms or endangers the health, safety, or welfare of the public, and whether the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument; (2) whether the public needs, and can reasonably be expected to benefit from, an assurance of initial and continuing professional or occupational competence; and (3) whether the public can be adequately protected by other means in a more cost-effective manner. Ultimately, the department recommended that the General Assembly not license home inspectors.

⁵ *Home Inspector Licensure: Feasibility Study for the State of Ohio*, Belmont Technical College, prepared for the Education and Research Advisory Council of the Ohio Real Estate Commission, Ohio Department of Commerce, Division of Real Estate and Professional Licensing, May 2006, The report is available at,

At various times, based on the experience in other states, the department has estimated that roughly one-third of Michigan home inspectors are members of a home inspector association, meaning that two-thirds of them are non-members. It's not immediately known what impact a licensure requirement would have in bringing non-member inspectors into the fold, as some percentage of them would simply walk away from the industry or would continue to act as a home inspector notwithstanding the licensure requirements. (There would be penalties, consistent with other provisions in the Occupational Code, related to the practice of a regulated occupation without a license.)⁶

According to the membership lists of the National Association of Home Inspectors (NAHI)⁷, the Michigan Association of Home Inspectors (MAHI)⁸, the National Association of Certified Home Inspectors (NACHI)⁹, the American Society of Home Inspectors (ASHI)¹⁰, the Great Lakes Chapter of the American Society of Home Inspectors¹¹, the American Association of Home Inspectors,¹² and the Indiana Professional License Agency¹³ there are approximately 344 Michigan-based home inspectors¹⁴ currently active in Michigan, simply based on their membership in one (or more) of the several industry associations or licensure in Indiana¹⁵. Based on this figure, the bill would generate approximately \$34,400 in revenue from the \$100 application fee and an additional \$34,400 from the \$100 annual license fee.

It isn't immediately known which home inspectors, of the above group, would be eligible to obtain a license under the bill, given the bill's requirement that inspectors complete a minimum of 200 paid inspections. Both the NAHI and ASHI certify members who complete at least 250 full-paid inspections, successfully pass an examination, and meet

[http://com.ohio.gov/real/docs/real_2005.0001FinalPaper.pdf]. In the report, BTC compiled a list of 341 Michigan home inspectors using phone book records and the Internet. (Entries that did not contain a business name and mailing address were disregarded.) BTC then surveyed 100 home inspectors (randomly chosen). Of the 100 surveys sent to Michigan home inspectors 28 were returned, with 29 responses to a question asking whether the respondent was a member of an industry association. Six respondents (20.7%) said no.

⁶ On this point, the Ohio study notes, "Because of the present lack of regulation among home inspectors in Ohio, one of the primary issues is the concern over 'fly-by-night' home inspectors. These inspectors may be defined as practitioners who are not committed to a long-term career in home inspection but rather see an opportunity to make 'easy' money without having sufficient qualifications. In the event that a different opportunity comes along or in a worst case scenario, that they are accused of negligence, the 'fly-by-night' inspector moves on to another venture. Without regulation, there is nothing preventing such an inspector from preparing inspection reports for a fee." Further some home inspectors may end up dropping out given the general decline in housing industry.

⁷ <http://www.nahi.org/mi-michigan-home-inspector.asp>

⁸ <http://www.michahi.org/areacodelist.htm>

⁹ Provided to the House Fiscal Agency in June 2008 by the association.

¹⁰ <http://www.ashi.org/find/default.aspx>

¹¹ <http://www.ashi-glc.com/inspectors/mi/index.html>

¹² <http://aahionline.com/states/mi.htm>

¹³ <https://extranet.in.gov/WebLookup/Search.aspx>.

¹⁴ U.S. Bureau of Labor Statistics data estimate that, as a whole, there are about 2,500 construction and building inspectors in the state. Home inspectors would be a subset of this group.

¹⁵ There could also be a number of Indiana, Wisconsin, and Ohio home inspectors offering services in Michigan. It's not immediately known whether there are any Michigan-based home inspectors licensed by the Wisconsin Department of Regulation and Licensing. Ohio does not currently license home inspectors.

continuing education requirements. Based on the number of NAHI "certified real estate inspectors", perhaps less than half of the above group could potentially be "grandfathered" and eligible for a license without the necessary examination. On the other hand, the Ohio study reports that, of the Michigan home inspectors responding to the survey (28), 24 respondents (85.7%) reported that they have completed at least 500 inspections, meaning the vast majority of the potential home inspector licensees could be "grandfathered". Additionally, committee testimony indicated the number of home inspectors to be "nearly 600".

The remaining members of the group (association members) would be required to sit for the examination, potentially generating an additional \$10,780-\$37,840 in revenue. (Given the bill's effective date, however, it's possible many of these inspectors could also complete the requirements to be grandfathered prior to the deadline - i.e., 12 months after the bill's effective date.)

The real unknown, as noted above, is to what extent home inspectors who are not currently members of any of the industry associations operate in which, and to what extent they would be brought into a regulatory structure. Assuming that association members account for one-third of the total population (as DELEG has said previously), there could be approximately an additional 688 home inspectors subject to licensure under the bill, bringing the total number to approximately 1,032. If, on the other hand, non-members account for 20.7% of the total population, as based on the responses to the 2006 Ohio survey, there potentially could be another 90 home inspectors, bringing the total to 434. Additionally, testimony in committee by an individual representing the Michigan Coalition of Professional Inspectors indicated the number of home inspectors to be "nearly 600".¹⁶

It's not clear how many non-members would continue to act as home inspectors, once regulated by DELEG. Based on these figures, the application fee and annual fee would generate an additional \$18,000-\$137,600 in revenue. Again, it's not immediately known how many non-members would be grandfathered in but, given the assumptions above, the amount of examination fee revenue could range from \$3,000 to \$75,000.

The estimated revenue would support approximately one full-time equivalent (FTE) position to administer the program. Additional staff support, the department notes, would be provided by the Bureau of Commercial Services, licensing and enforcement divisions. The department has not provided information concerning its administrative costs under the bill.

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 for most occupations regulated under the code by the Bureau of Commercial Services. Currently, license fees

¹⁶ See, statement of Randall Aldering, Michigan Coalition of Professional Inspectors, before the Michigan House of Representatives, Committee on Regulatory Reform, 26 August 2009, [<http://www.house.mi.gov/SessionDocs/2009-2010/Testimony/Committee19-8-26-2009.pdf>].

for regulated occupations are established under the State License Fee Act (1979 PA 152, MCL 338.2201 et seq.) and, for many other occupations regulated by the Bureau of Commercial Services, in separate regulatory acts.¹⁷

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 would be used by the Department of Energy, Labor, and Economic Growth for the regulatory activities of the Bureau of Commercial Services and departmental overhead costs. Directing revenue from the State License Fee Act appears to have no real impact on the Occupational Fund, as the State License Fee Act already 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. It seems that a corresponding amendment to the State License Fee Act directing revenue generated under the act to the Occupational Fund would be needed. Currently, Section 3 of the State License Fee Act, MCL 338.2203, provides that, in general, fee revenue is to be credited to the General Fund and used for the operations of the Department of Energy, 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 Energy, Labor, and Economic Growth budget. If the home inspector fees were established within the State License Fee Act, any associated revenue would similarly be restricted as Licensing and Regulation Fees used to support departmental regulatory operations.

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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.

¹⁷ To be consistent with other regulated occupations, one alternative would be to establish the fee schedule for home inspectors in the State License Fee Act.