

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1288

SPONSOR: Comprehensive Planning, Local and Military Affairs Committee and Senator Sullivan

SUBJECT: Home Inspection Services

DATE: April 12, 2000 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cooper</u>	<u>Yeatman</u>	<u>CA</u>	<u>Favorable/CS</u>
2.	<u>Overcash</u>	<u>Poole</u>	<u>AG</u>	<u>Fav/3 Amendments</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

## I. Summary:

The Committee Substitute (CS) provides for the regulation of home inspectors by requiring disclosure of credentials, a notice explaining the limitations of the inspection, disclosure of any conflicts of interest that could adversely affect the client, and a written statement or agreement declaring the scope, limitations, terms, and conditions of the services offered. Under the provisions of the bill, home inspectors may not represent themselves as board-certified home inspectors unless they have passed the National Home Inspector Examination, or other examination deemed valid by the Secretary of Business and Professional Regulation.

This CS creates section 501.935 of the Florida Statutes.

## II. Present Situation:

### Home Inspection in General

A home inspection is an examination of the mechanical and physical components of a residential structure. Currently, home inspectors are not regulated in Florida. The American Society of Home Inspectors (ASHI) estimates that there are between 800 and 900 home inspectors statewide.

A "home inspection" is not a "building inspection." A building inspection is a legally required act, performed by a local governmental entity to determine whether a structure complies with the appropriate building code at the time of construction or reconstruction. By contrast, a home inspection is discretionary, often contracted for after construction or reconstruction is completed. A home inspection is typically contracted for by a potential purchaser or seller of a home, and is performed by private industry rather than by local government.

### **National Certification of Home Inspectors**

There are private voluntary organizations that home inspectors may join, some of which have promulgated standards of practice and certification examinations. The largest organization is ASHI, with approximately 5,500 members nationwide, including 340 members statewide. The Examination Board of Professional Home Inspectors, an organization created by ASHI, developed the National Home Inspector Examination. The National Home Inspector Examination is a four-hour multiple-choice examination that tests the following areas: structural components, exterior, roofing, plumbing, heating, cooling, electrical, insulation and ventilation, interiors, fireplaces and solid fuel burning appliances, professional practice, good residential building construction practices, common building defects which can be visually detected, and good inspection and reporting principles.

The second largest national organization for home inspectors is the National Association of Home Inspectors, with an estimated 800 to 900 members nationwide.

### **Regulation of Home Inspectors in Other States**

Currently, an estimated eight states have state certification programs for home inspectors. Such programs usually have an appointed governmental oversight body that, among other things, processes complaints and dispenses discipline on licensed practitioners. An estimated 16 states have lesser forms of regulation, typically requiring some or all of the following: disclosure of credentials, a notice explaining the limitations of the inspection, disclosure of any conflicts of interest that could adversely affect the client, and a written statement or agreement declaring the scope, limitations, terms, and conditions of the services offered.

### **The Florida Deceptive and Unfair Trade Practices Act**

The Florida Deceptive and Unfair Trade Practices Act (Act) is part II of chapter 501, F.S. Section 501.204, F.S., provides that “[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.” Section 501.203(2), F.S., designates enforcement responsibility to the state attorney for the circuit in which an unfair or deceptive practice occurred, or the Attorney General if an unfair or deceptive practice occurred in two or more circuits, if the state attorney defers to the Attorney General, or the state attorney fails to act within 90 days of receipt of a complaint.

Section 501.207, F.S., allows an enforcing authority to bring an action for a declaratory judgment to declare that the practice violates the Act, an action for injunction, or an action on behalf of consumers to recover actual damages. A willful violation of the Act may also subject the violator to a civil penalty of up to \$10,000 for each violation, or \$15,000 if a victim was elderly or handicapped (ss. 501.2075, and 501.2077, F.S., respectively). A person may bring a private action for a declaratory judgment that a practice violates the Act, and may recover actual damages plus court costs and attorney’s fees (s. 501.211, F.S.).

## **III. Effect of Proposed Changes:**

**Section 1** creates s. 501.935, F.S., to regulate home inspectors by requiring disclosure of credentials, a notice explaining the limitations of the inspection, disclosure of any conflicts of

interest that could adversely affect the client, and a written statement or agreement declaring the scope, limitations, terms, and conditions of the services offered.

Prior to entering into a contract for home inspection and prior to performing any home inspection, a home inspector must provide the potential client with the home inspector's credentials and a statement as to whether or not the inspector is board certified. Home inspectors may not represent themselves as a "board-certified home inspector" unless they have passed the National Home Inspector Examination offered by the Examination Board of Professional Home Inspectors, or any other examination deemed to be psychometrically valid by the Secretary of Business and Professional Regulation. The Standards of Practice of the American Society of Home Inspectors, or any other consensus-based home inspection standard deemed equivalent by the Secretary of Business and Professional Regulation, is declared to be the minimum standard of practice for all home inspectors.

In addition, a home inspector must provide the potential client with a caveat in conspicuous type that states:

**AN INSPECTION IS INTENDED TO ASSIST IN EVALUATION OF THE OVERALL CONDITION OF A HOME. THE INSPECTION IS BASED ON OBSERVATION OF THE VISIBLE AND APPARENT CONDITION OF THE BUILDING AND ITS MECHANICAL AND PHYSICAL COMPONENTS ON THE DATE OF THE INSPECTION. THE RESULTS OF THIS HOME INSPECTION ARE NOT INTENDED TO MAKE ANY REPRESENTATION REGARDING LATENT OR CONCEALED DEFECTS THAT MAY EXIST, AND NO WARRANTY OR GUARANTEE IS EXPRESSED OR IMPLIED. IT SHOULD BE UNDERSTOOD THAT A HOME INSPECTION IS A GENERAL OVERVIEW OF THE CONDITION OF THE BUILDING AND COMPONENTS. THE HOME INSPECTOR IS NOT NECESSARILY A PROFESSIONAL WITH LICENSES AUTHORIZING THE RENDERING OF DETAILED OPINIONS REGARDING ANY OR ALL OF THE ITEMS OR SYSTEMS INCLUDED IN THE INSPECTION. YOU MAY WISH TO SEEK AN OPINION FROM AN APPROPRIATELY LICENSED PROFESSIONAL AS TO ANY DEFECTS OR CONCERNS MENTIONED IN THE REPORT.**

The home inspector must also provide a written disclosure of any conflict of interest or relationship of the home inspector which may affect the client, and a written statement declaring the home inspector's scope of services, limitations, terms, and conditions regarding the home inspection.

Within three working days after the inspection, or at any other time agreed upon by both parties, a home inspector must provide to the client a written report of the results of the home inspection. The relevant part of the inspector's report, when requested, must be provided to the home owner if the report is used by the buyer as a reason to void, modify, or refuse to close on a contract for sale and purchase of the home.

Home inspectors may not accept any commission, allowance, gift, or other thing of value from another party dealing with a client of the inspector which relates to the inspection or conditions reported by the home inspector; offer any commission, allowance, gift, or other thing of value to another party dealing with a client of the inspector which relates to the inspection; perform, or

offer to perform, for a fee, remedial work on a property which the inspector has inspected in the preceding 12 months; or disclose, without the client's written consent, a home inspection report to any person other than the client.

Failure to comply with any provisions in the CS constitutes a deceptive and unfair trade practice, in addition to any other remedy provided by law. A court may order a person who has failed to comply with these provisions to cease using the title "board certified home inspector" for a reasonable period of time and may require the person to inform any potential client of the existence of such injunction.

Complaints against home inspectors may be referred to the Division of Consumer Services of the Department of Agriculture and Consumer Services, who must maintain records and compile statistics regarding such complaints.

Finally, the CS provides legislative intent regarding home inspection, and defines related terms. Construction contractors, architects, engineers, building code administrators, plans examiners, and building code inspectors, certified, licensed, and registered assistant real estate appraisers, and inspectors whose report is provided for the benefit of the Federal Housing Administration or Veteran's Administration, are exempt from the requirements of the CS.

**Section 2** provides that the act will take effect July 1, 2000.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Economic Impact and Fiscal Note:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

Individual home buyers are likely to be better informed as to the qualifications of persons representing themselves as home inspectors and the scope and limitations of the services they provide.

**C. Government Sector Impact:**

The Department of Agriculture and Consumer Services reports that complaints filed with the Division of Consumer Services can be handled by present personnel and resources of the Division.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

In 1998, regulation of industrial hygienists and safety professionals was established in s. 501.937, F.S. That regulation was generally similar to the CS in that industrial hygienists and safety professionals were required to accurately disclose their credentials, certain titles were reserved for use by qualified individuals only, and failure to comply was made a deceptive and unfair trade practice.

**VIII. Amendments:**

#1 By Agriculture and Consumer Services:

Retitles subsection (3) of s. 501.935, F.S., from "HOME INSPECTION SERVICES ; QUALIFICATIONS; STANDARDS" to "HOME INSPECTION SERVICES; STANDARDS OF PRACTICE."

Requires the Secretary of Business and Professional Regulation to develop and adopt by rule a "Standards of Practice for Home Inspectors" by July 1, 2001, which shall be the minimum standards of practice for home inspectors.

Deletes the requirement for home inspectors to pass the National Home Inspector Examination offered by the Examination Board of Professional Home Inspectors, or other examination deemed valid by the Secretary of Business and Professional Regulation.

Deletes the Standards of Practice of the American Society of Home Inspectors, or other consensus-based home inspection standard deemed equivalent by the Secretary of Business and Professional Regulation as the minimum standard of practice for home inspectors.

#2 By Agriculture and Consumer Service:

Deletes language regarding board certification as part of a home inspector's disclosure of credentials.

#3 By Agriculture and Consumer Services:

Deletes language regarding deceptive and unfair trade practices that relates to using the title “board-certified home inspector.”

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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