



- clarifies that the Home Inspector Licensing Act does not apply to persons who qualify for at least one of the exempted practices or professions rather than requiring qualification for every exemption,
- strikes “judicial review of the board’s decisions” from licensing, revocation, and suspension proceedings conducted by the board, and
- inserts “a reinstatement fee, not to exceed two hundred dollars (\$200)...” as a charge collected by the board.

Synopsis of HRPAC Substitute

House Bill 166, as substituted by the House Regulatory and Public Affairs Committee, establishes the New Mexico Home Inspectors Board to regulate and administer licensing of home inspectors. The board is administratively attached to RLD. The board will consist of five members, appointed by the governor, who have been residents of the state for at least three consecutive years. Three members must be current licensed home inspectors, one member will be a licensed real estate qualifying or associate broker, and one member will be an unlicensed public member. Board members will serve for five years or until their successors are appointed and qualified. The governor may remove members for cause and appoint members to fill vacant unexpired terms. The bill establishes staggered terms for initial appointees to the board.

This bill creates the Home Inspector Licensing Act and charges the board with adopting rules; adopting a code of ethics and standards of practice; issuing, renewing, suspending, modifying, or revoking licenses; adopting rules defining the list of specific residential real property components and systems to be inspected; establishing standards for training, experience, and continuing education; establishing and administering fees; adopting and approving a licensing examination; conducting criminal background checks on license applicants; performing other functions to maintain the board; and disciplining home inspectors who violate the provisions of the Home Inspector Licensing Act.

The bill requires that all pre-inspection agreements must state in all capital letters that a home inspector will not determine whether the components and systems of the home that has been inspected conforms to local or state building code requirements.

The bill would exempt licensed engineers, architects, real estate qualifying or associate brokers, real estate appraisers or certified appraisers, residential real estate appraisers or pest control operators, when acting within the scope of the person’s license. It also excludes electricians, contractors, heating and air conditioning technicians, plumbers, insurance adjusters, code enforcement officials, persons inspecting property for warranty purposes, and energy auditors from licensure as home inspectors. Any unlicensed entity is prohibited from using any title, abbreviation, letters, figures, or signs that indicate the entity is a licensed home inspector.

Applicants for home inspector licensure must submit all documentation required by the board, be a legal U.S. citizen at least 18 years old, provide fingerprints for a criminal background check, provide proof of continuous insurance coverage, complete 80 hours of classroom training, pass a national home inspector licensing examination, and complete 80 hours of field training. Applicants have the right to inspect records if licensure is denied. Records are to be kept confidential.

Licenses will be valid for no more than three years. A minimum of 60 classroom hours of board-approved continuing education every three years is required for license renewal. The board may issue a license to a foreign home inspector if the applicant's resident state license requirements are similar to requirements set forth in the Home Inspector Licensing Act. The board may negotiate agreements with other states or licensing jurisdictions to allow for reciprocity regarding licensure. The bill outlines conditions for denial, suspension, or revocation of a license.

The board may solicit sealed, competitive proposals from insurance carriers to provide a group insurance policy for licensees with errors and omissions coverage and professional liability coverage. All licensees and their employers must either contract with the group policy provider or carry their own errors and omissions insurance and professional liability insurance at all times.

The bill sets license and application fees, which will be deposited into a nonreverting "home inspector fund" administered by the board. The attorney general or a district attorney may prosecute persons in violation of the Home Inspector Licensing Act and recover a civil penalty up to \$5,000 for attorney fees and costs for each violation.

Provisions of this bill will take effect on January 1, 2017. Certain sections will not apply to a person who has worked as a home inspector in each of the 24 months prior to the effective date.

### **FISCAL IMPLICATIONS**

In addition to any fees to cover reasonable and necessary administrative expenses, this bill provides for the following fees to be collected by the New Mexico Home Inspectors Board:

- license application or renewal fee, not to exceed \$150;
- state and national criminal background check fee, not to exceed \$100;
- three-year license fee, not to exceed \$350;
- reactivation fee, not to exceed \$200; and
- duplicate license fee for a lost or destroyed license, not to exceed \$50.

According to RLD, the board will collect an estimated \$88 thousand initially based on required fees collected from 160 potential home inspector licensees (reported in a study of home inspector licensing pursuant to Senate Memorial 2 from the 2011 legislative session). The bill establishes a three-year licensing cycle for licensees, so revenues realized in the years following the initial year of licensure would be significantly lower. Initial costs for establishing the board under RLD would be \$14.9 thousand, and recurring operating costs would be \$56.7 thousand annually.

### **SIGNIFICANT ISSUES**

A May 2006 study on home inspector licensure, done by Belmont Technical College for the Education and Research Advisory Committee of the Ohio Real Estate Commission, surveyed differences between three states with home inspector licensure (Arizona, Texas, and New Jersey) and three states without home inspector licensure (Michigan, Ohio, and Missouri). The study did not find any significant difference in the number of inspection reports rated inadequate by real estate agents between states with home inspection licensing and those without. The study also concluded, "There does not appear to be a difference between licensing and non-licensing states in real estate agents' ratings of the number of buyers in 10 who report problems."

Other questions to agents produced similar conclusions, indicating no difference on the following rankings:

- Agents' ranking of the accuracy of the home inspection report
- Agents' ranking of the inspectors' knowledge of building construction
- Agents' ranking of the professionalism of the inspection report
- Agents' ranking of the satisfaction of the home inspection client

The survey of home inspectors produced results showing no significant difference between licensed inspectors and non-licensed inspectors in the following categories:

- Percentage of home inspectors who indicated home inspection as their primary occupation
- Number of inspections performed in a year
- Number of hours spent on a typical home inspection
- Number of hours of continuing education completed in the past year
- Percentage of inspectors who carry errors and omissions insurance

Ohio homeowners' answers were compared to the real estate agent data in licensed states only and revealed no significant difference in the following questions:

- Rating of home inspector's knowledge of building construction
- Rating of professionalism of home inspectors' reports

The Ohio survey summary states: "The raw survey data show little overall difference between states with home inspection licensing and those without. The intention of this statistical analysis was to determine if the small difference that may exist is significant for comparable numeric data. In virtually every case, the difference was not significant."

([http://com.ohio.gov/documents/real\\_2005.0001FinalPaper.pdf](http://com.ohio.gov/documents/real_2005.0001FinalPaper.pdf))

## **TECHNICAL ISSUES**

This bill does not indicate whether members of the board may be reimbursed as provided in the Per Diem and Mileage Act (Section 10-8-1 through 10-8-8 NMSA 1978) or receive other compensation, perquisite, or allowance for performing their duties or functions under the Home Inspector Licensing Act.

## **OTHER SUBSTANTIVE ISSUES**

A report produced by the U.S. Department of the Treasury, Council of Economic Advisers, and U.S. Department of Labor recommended that licensing requirements be limited "to those that address legitimate public health and safety concerns" and called for "comprehensive cost-benefit assessments of licensing laws to reduce the number of unnecessary or overly restrictive licenses." The paper found that over 25 percent of U.S. workers required licensure for their job, and state licensing had risen fivefold since the 1950s. New Mexico ranked ninth in the nation for percent of workforce licensed by the state (approximately 25.9 percent) and ranked 12th in average education or experience time required for licensure (about 413 days). The paper also found that unlicensed workers earned 10 percent to 15 percent lower wages than similar licensed workers, and licensing laws increased prices for goods and services between 3 percent and 16 percent without increasing the quality of goods and services.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

New Mexico will continue to be one of 16 states in the country that does not license home inspectors.

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