

Adverse impact notification sent to Joint Commission on Administrative Rules, House Committee on Appropriations, and Senate Committee on Finance (COV § 2.2-4007.04.C): Yes Not Needed

If/when this economic impact analysis (EIA) is published in the *Virginia Register of Regulations*, notification will be sent to each member of the General Assembly (COV § 2.2-4007.04.B).



Virginia Department of Planning and Budget Economic Impact Analysis

18 VAC 15-40 – Certified Home Inspector Regulations
Department of Professional and Occupational Regulation
Town Hall Action/Stage: 4370/7385
January 5, 2016

Summary of the Proposed Amendments to Regulation

Pursuant to Chapter 411 of the 2015 Acts of the Assembly, the Board of Asbestos, Lead and Home Inspectors (Board) proposes to: 1) promulgate rules for home inspectors who wish to continue inspecting new residential structures, 2) add criteria for approval of new residential structure (NRS) initial training and continuing professional education (CPE) and 3) add to the list of prohibited acts in this regulation.

Result of Analysis

There is insufficient information to ascertain whether benefits will outweigh costs for most proposed regulatory changes. For the proposed requirements for NRS training, prospective providers are unlikely to apply for approval unless they expect the benefits of doing so to outweigh its costs. For one proposed change costs likely outweigh benefits.

Estimated Economic Impact

Before the General Assembly passed legislation in 2015, neither the Code of Virginia nor this regulation required home inspectors to be certified for any home inspection work. Home inspectors who wanted the imprimatur of the state could meet certification criteria, apply for certification and, thereafter, title themselves as certified home inspectors. In order to become certified home inspectors, individuals must be at least 18 years old, have a high school diploma

and one of a number of education/experience combinations approved by the Board, pass a written examination and pay a certification fee. To meet the Board's education/experience criteria an applicant may have completed:

- 1) 35 contact hours of instructional courses, of which no more than half can be distance learning or online courses, and have completed a minimum of 100 home inspections,
- 2) 35 contact hours of instructional courses, of which no more than half can be distance learning or online courses, and have completed a minimum of 50 home inspections under the direct supervision of a certified home inspector,
- 3) 70 contact hours of instructional courses, of which no more than half can be distance learning or online courses, and have completed a minimum of 50 home inspections or
- 4) 70 contact hours of instructional courses, of which no more than half can be distance learning or online courses, and have completed a minimum of 25 home inspections under the direct supervision of a certified home inspector.

In lieu of meeting requirements for instructional courses, applicants may provide documentation of at least 10 years of experience as a home inspector with a minimum of 250 home inspections completed.

Board staff reports that instructional courses required for certification can cost between \$500 and approximately \$3,400. Board staff further reports that individuals who choose to decrease the number of home inspections they must complete, by completing them under the supervision of a certified home inspector, pay approximately \$50 per ride along. Applicants likely can complete more than one inspection per ride along but, assuming one inspection per ride along and 50 supervised home inspections required, applicants would spend \$2,500 to gain the required experience. Applicants who complete more than one inspection per ride along and/or who have to complete only 25 rather than 50 supervised home inspections would have to spend some amount less than \$2,500 to complete their experience requirements. Home inspectors who choose to become certified pay costs for instructional courses and/or supervision of their home inspections as well as an exam fee of either \$200 or \$225 (there are two Board approved exams) and an initial certification fee of \$80. Certified home inspectors who wish to remain certified must renew their certificates every two years. In order to renew, certified home inspectors must complete 16 hours of continuing education (over two years) and pay a \$45

renewal fee. Board staff estimated at the time continuing education was first required to maintain certification that the costs of this education would be \$30 to \$90 per hour. As mentioned above, until recently certification for home inspectors was completely voluntary for all types of home inspection.

Chapter 411 of the 2015 Acts of the Assembly mandates that only certified home inspectors who have additionally completed a NRS inspection specialty may inspect new residential structures. Certified home inspectors who wish to continue inspecting new homes will have to complete an eight hour education course developed jointly by the Board and the Department of Housing and Community Development (DHCD) and pay an \$80 fee. To keep this specialty designation, home inspectors will have to remain certified and will have to complete four hours of continuing education every two years (which will count as part of the 16 hours of continuing education needed to renew home inspector certification) and will have to pay a \$45 renewal fee (in addition to the \$45 certification renewal fee). Board staff does not yet have information on how much continuing education for renewal of the NRS specialty will cost. In order to inspect new homes going forward, already certified home inspectors will incur the explicit costs listed above as well as costs associated with time spent completing training for obtaining the NRS specialty and renewing it every two years. Currently uncertified home inspectors will incur costs listed above for becoming certified, costs associated with time spent completing training and then will also incur costs for obtaining the NRS certification. All of these costs would need to be weighed against any benefits that might accrue on account of this action. If requiring certification and additional training for new home inspectors reduces any harm caused by shoddy inspections, for instance, that would be a benefit that could be weighed against known costs. Since any benefits are at this time unknown, there is insufficient information to know whether benefits for these changes will outweigh costs.

In addition to harmonizing this regulation with Chapter 411 by requiring both certification and the completion of specialty requirements, the Board proposes to set requirements for approval of NRS training courses and for NRS continuing education. Providers of both initial training and continuing education will have to submit an application with information that includes the name and contact information of the provider, the intended course contact hours, a schedule for training, instructor information, training module and material fees and a syllabus. Providers will also have to submit a fee of \$150. This proposed regulation also

includes 1) a list of training course topics that were jointly approved by the Board and DHCD that includes several topics that touch on the Uniform Statewide Building Code (USBC) and the Virginia Residential Code, 2) a requirement that providers provide their students with certificates of completion of required training and 3) a requirement that providers maintain student records for five years. Prospective providers will incur some marginal copying and postage costs for providing the Board with required information and for the approval fee. Individuals will likely not seek program approval if they do not expect the benefits of doing so will outweigh those costs.

The Board also proposes to add four prohibited acts to the list of grounds for disciplinary action. These prohibited acts are 1) inspecting a new home without a NRS specialty, 2) failure to maintain required insurance, 3) failing to report changes required to be reported by 18 VAC 15-40-160¹ and 4) “having cited, stated or represented that there exists a violation of the Virginia Uniform Statewide Building Code in a home inspection report or other document prepared relative to a home inspection.” Board staff reports that the last of these is being added because the committee created by the Board to discuss regulatory changes believed that the Code of Virginia prohibits anyone other than local building code official from citing a violation of the building code. Section 36-105.1 of the Code of Virginia reads, in relevant part, “Inspections of buildings other than state-owned buildings under construction and the review and approval of building plans for these structures for enforcement of the Uniform Statewide Building Code shall be the sole responsibility of the appropriate local building inspectors.” While this code does give local code inspectors sole responsibility for enforcing the USBC, it does not appear to prohibit other individuals, including home inspectors, from taking notice that a code violation exists. Board staff reports that the training that certified home inspectors receive on the USBC is minimal and cursory and much less extensive than the training received by local code inspectors. Local residential code inspectors must complete 48 hours of initial training and pass a national exam and must also complete 16 hours of continuing education every two years and attend code change training every three years.

While the points are well taken that home inspectors do not receive much information on the USBC in training required by the Board and that home inspectors can point out issues with a

¹ Certificate holders are required to report any name change or change of home address. Any reported name change must be accompanied by supporting documentation (marriage certificate, divorce decree or other court order).

home without also pointing out that those areas of the house are not up to code, individual home inspectors may have independent knowledge of the USBC that their clients would benefit from if the Board does not prohibit them from passing that knowledge along. A client who is buying an older home with an eye toward renovation, for instance, would likely greatly benefit from knowing what parts of the house would need to be brought up to current code requirements as a part of any renovation. Home inspectors and their clients would likely benefit from either completely eliminating the proposed prohibited act of referencing the USBC or only prohibiting home inspectors from falsely representing the USBC or giving advice outside of their knowledge base.

Businesses and Entities Affected

Board staff estimates that there are approximately 300 uncertified home inspectors and reports that there are 363 currently certified home inspectors offering home inspection services in the Commonwealth. Any of these individuals who wish to be eligible to inspect new residential structures going forward, as well as any individuals who may wish to newly work at home inspection in the future, will be affected by this regulation as well as its underlying statute.

Localities Particularly Affected

No locality will be particularly affected by this regulatory change.

Projected Impact on Employment

It is likely that the costs of mandatory home inspector certification and additional new home inspector specialty education/testing requirements for individuals who wish to inspect new residential structures will cause fewer individuals to work at that particular type of home inspection. These requirements will likely disproportionately affect home inspectors who currently do not have state certification (as they will have to gain both home inspector certification as well as the new home inspection specialty designation) but may also lead some smaller number of currently certified home inspectors to not seek the new home inspection specialty designation if the costs for gaining that specialty outweigh any current profits they are earning from inspecting new homes specifically.

Effects on the Use and Value of Private Property

The anticipated decrease in the number of individuals allowed to inspect new homes in the Commonwealth will likely lead to increased prices for those individuals' services. This, in

turn, will likely increase the cost of buying a new home in Virginia for individuals who wish to employ a home inspector.

Real Estate Development Costs

This proposed regulation will affect real estate development costs only to the extent that back end costs associated with the sale of new residential structures are considered part of development costs.

Small Businesses:

Definition

Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.”

Costs and Other Effects

Uncertified small business home inspectors will incur costs for becoming certified and for gaining the new home inspection specialty if they wish to inspect new homes going forward. Currently certified home inspectors will only have to incur costs for gaining the new home inspection specialty in order to be eligible to inspect new homes going forward. In both cases, fewer home inspectors may choose to inspect new homes as for some the costs associated with qualifying to inspect new homes will likely outweigh the anticipated profits from those inspections. All certified home inspectors and their clients may be adversely impacted by the proposed addition of referencing violations of the USBC in a home inspection report or other home inspection document to the list of prohibited acts.

Alternative Method that Minimizes Adverse Impact

Home inspectors and their clients would likely benefit from either completely eliminating the proposed prohibited act of referencing the USBC or only prohibiting home inspectors from falsely representing the USBC or giving advice outside of their knowledge base.

Adverse Impacts:**Businesses:**

Uncertified home inspectors will incur costs for becoming certified and for gaining the new home inspection specialty if they wish to inspect new homes going forward. Currently certified home inspectors will only have to incur costs for gaining the new home inspection specialty in order to be eligible to inspect new homes going forward. In both cases, fewer home inspectors may choose to inspect new homes as for some the costs associated with qualifying to inspect new homes will likely outweigh the anticipated profits from those inspections.

Localities:

Localities in the Commonwealth are unlikely to see any adverse impacts on account of this proposed regulatory change.

Other Entities:

Individuals who purchase new homes in the Commonwealth will likely see an increase in the cost of hiring a home inspector and, as a consequence, marginally fewer individual new home buyers will be likely to hire new home inspectors.

Legal Mandates

General: The Department of Planning and Budget has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order Number 17 (2014). Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

Adverse impacts: Pursuant to Code § 2.2-4007.04(C): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance within the 45-day period.

If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a

proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

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