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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Board for Asbestos, Lead, and Home Inspectors
Virginia Administrative Code (VAC) citation(s)	18 VAC 15-40
Regulation title(s)	Certified Home Inspector Regulations
Action title	Establishment of New Construction Home Inspection Training Programs (House Bill 2103)
Date this document prepared	June 2, 2015

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Subject matter and intent

Please describe briefly the subject matter, intent, and goals of the planned regulatory action.

The Certified Home Inspector program is a voluntary regulatory program administered by the Board for Asbestos, Lead, and Home Inspectors. Chapter 411 of the 2015 Virginia Acts of the Assembly, which was a result of HB 2103, requires anyone who conducts a home inspection on a new residential structure to be certified by the Board and to have successfully completed a training module developed by the Board in conjunction with the Department of Housing and Community Development. The training module must be based on the International Residential Code component of the Virginia Uniform Statewide Building Code. Certification would become mandatory for those individuals who wish to conduct a home inspection on new residential structures.

The Board is required to develop regulation to implement Chapter 411 of the 2015 Virginia Acts of Assembly for implementation on July 1, 2016. The Act further requires the Board to develop the training module prior to July 1, 2016, and make such training module available for use in accordance with this Act.

Legal basis

Please identify the (1) the agency (includes any type of promulgating entity) and(2) the state and/or federal legal authority for the proposed regulatory action, including the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable. Your citation should include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

The promulgating entity is the Virginia Board for Asbestos, Lead, and Home Inspectors.

Section 54.1-201.5 of the *Code of Virginia* (<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+54.1-201>) states that the Board has the power and duty "To promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) necessary to assure continued competency, to prevent deceptive or misleading practices by practitioners and to effectively administer the regulatory system administered by the regulatory board. The regulations shall not be in conflict with the purposes and intent of this chapter or of Chapters 1 (§ 54.1-100 et seq.) and 3 (§ 54.1-300 et seq.) of this title.

Section 54.1-501 (7) (<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+54.1-501>) states that the Board shall promulgate regulations regarding the professional qualifications of home inspectors applicants, the requirements necessary for passing home inspectors examinations in whole or in part, the proper conduct of its examinations, the proper conduct of the home inspectors certified by the Board, the implementation of exemptions from certifications requirements, and the proper discharge of its duties.

Section 54.1-503 (E) states that it shall be unlawful for any person who is not a certified home inspector and who has not successfully completed the training module required by § 54.1-517.2 to conduct a home inspection on any new residential structure. Such training module shall be developed by the Board in conjunction with the Department of Housing and Community Development and be based on the International Residential Code component of the Virginia Uniform Statewide Building Code.

The imperative form of the verb "shall" is used, making the Board's authority to regulate mandatory rather than discretionary.

Purpose

Please describe the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, please explain any potential issues that may need to be addressed as the regulation is developed.

This regulatory action is not discretionary, but rather mandated by Chapter 411 of the 2015 Virginia Acts of the Assembly.

Substance

Please briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

The Board will need to develop a mechanism to annotate those certified home inspectors who have completed the building code training program and, therefore, are qualified to conduct home inspections on new residential structures. To be qualified, a certified home inspector shall have successfully

completed a training module based on the International Residential Code component of the Virginia Uniform Statewide Building Code developed by the Board in conjunction with the Department of Housing and Community Development.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

Chapter 411 of the 2015 Virginia Acts of the Assembly and the Code of Virginia mandates this regulatory action. Therefore, no alternatives exist to evaluate.

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments. Please include one of the following choices: 1) a panel will be appointed and the agency's contact if you're interested in serving on the panel is _____; 2) a panel will not be used; or 3) public comment is invited as to whether to use a panel to assist in the development of this regulatory proposal.

The agency is seeking comments on this regulatory action, including but not limited to: ideas to be considered in the development of this proposal, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation.

The Board will appoint a committee of Board members and subject matter experts to review and develop any proposed changes. The Board will use the participatory approach to develop a proposal if it receives at least 15 written requests to use the participatory approach prior to the end of the public comment period. Persons requesting the agency use the participatory approach and interested in assisting in the development of a proposal should notify the department contact person by the end of the comment period and provide their name, address, phone number, email address and their organization (if any). Notification of the composition of the advisory committee will be sent to all applicants.

The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include: projected reporting, recordkeeping, and other administrative costs; the probable effect of the regulation on affected small businesses; and the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email, or fax to Trisha L. Henshaw, Executive Director, Board for Asbestos, Lead, and Home Inspectors, 9960 Mayland Drive, Suite 400, Richmond, Virginia 23233, fax to (866) 350-5354, or email to alhi@dpor.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

A public hearing will be held following the publication of the proposed stage of this regulatory action and notice of the hearing will be posted on the Virginia Regulatory Town Hall website

(<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time.