

Legislative Analysis



MAKE STATE LAW ON REAL ESTATE APPRAISERS COMPLY WITH FEDERAL REGULATIONS

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4234 as introduced
Sponsor: Rep. David Nathan
Committee: Banking and Financial Services

First Analysis (3-16-09)

BRIEF SUMMARY: The bill would repeal a requirement that real estate appraisers retake the licensing examination if a license has lapsed for three or more continuous years.

FISCAL IMPACT: The bill has no budgetary impact on the Department of Energy, Labor, and Economic Growth.

THE APPARENT PROBLEM:

State real estate appraiser regulatory programs are overseen by the Appraisal Subcommittee of the federal Financial Institutions Examination Council (ASC) under Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. Under Title XI, states are required to ensure that persons licensed to conduct commercial and residential real estate appraisals meet the Appraiser Qualifications Board's (AQB) minimum examination, education, and experience qualifications for the certification level sought.

Meeting the AQB's credentialing criteria enables appraisers to conduct appraisals of real property that involve a federally-related transaction, such as a mortgage or loan backed by Freddie Mac, Fannie Mae, HUD, etc. States may adopt their own regulations as long as they are at least as stringent as federal AQB regulations and don't conflict with them.

The AQB adopted significant changes to their qualifications criteria in 2004, with the new regulations taking effect January 1, 2008. Since then, the ASC has identified a section of the Michigan's Occupational Code that conflicts with the changes in continuing education requirements for license renewals and relicensure after a license lapses. The ASC has notified the Department of Energy, Labor, and Economic Growth that if the conflict is not resolved soon, the ASC will begin the process of downgrading the credentials of any certified appraiser failing to provide documentation of meeting ASC's new continuing education criteria. Specifically, ASC would recall the appraiser's certification and reissue it with the phrase "Not Eligible to Appraise Federally Related Transactions."

Since the majority of appraisals done in the state are for federally-related mortgages or loans, the ability of an appraiser to practice the profession would be severely curtailed if this were to happen. Legislation has been offered to repeal the conflicting provision.

THE CONTENT OF THE BILL:

The bill would amend the Occupational Code to repeal Section 2629, which applies to licensed real estate appraisers. That section says (1) that the continuing education requirements under Section 2627 of the code do not apply to an individual renewing a license in the year in which the original license is issued; and (2) requires real estate appraisers to retake the licensing examination if a license has lapsed for three or more continuous years.

Section 2627, cited above, requires a licensee to complete the minimum continuing education requirements described in the AQB criteria as a condition for renewing a license as a limited real estate appraiser, a certified general real estate appraiser, a certified residential real estate appraiser, or a state licensed real estate appraiser. By repealing Section 2629, the bill would do away with the continuing education exemption in current law.

MCL 339.2629

ARGUMENTS:

For:

Changes in federal regulations pertaining to minimum continuing education requirements for persons engaging in real estate appraisals necessitates a corresponding change in state law to negate a conflict between state and federal regulations. Left unchecked, the conflict would result in a federal regulatory agency downgrading the credentialing of state licensed appraisers that would render them ineligible to appraise properties with "federally related financial transactions." As mentioned earlier, the majority of real estate transactions conducted in the state involve federal mortgage or loan programs such as HUD or Fannie Mae. Indeed, the certification of roughly 80 percent of the state's appraisers is at risk. By repealing the section of the Occupation Code identified by the federal regulators as causing the conflict, the bill would address the problem.

For:

Specifically, the section of law to be repealed exempts an individual renewing a license in the year in which the original license was issued from meeting the AQB continuing education requirements. This is unacceptable to the AQB and also conflicts with Section 2605 of the Occupational Code that requires DELEG to utilize the AQB criteria regarding education, examination, and experience for licensure under the code.

In addition, the provision to be repealed also requires a person whose license has been inactive for at least three years to retake the licensing exam for the type of license sought. AQB's criteria requires a person to complete all the continuing education requirements for the number of years the license was lapsed – another potential conflict if the state statute were interpreted to mean the person would only have to retake the exam to reactivate the license.

Clearly, repealing the offending section would resolve the conflict and protect the credentialing of the state's licensed appraisers. Though the bill would remove the mandate that a person whose license was inactive for more than three years must retake the licensing exam, Section 411 of the code (MCL 339.411) gives permissive authority to DELEG to require in rules or procedures that a person retake the exam in whole or in part if the license had expired more than three years earlier. According to DELEG, it is the department's current policy to require such retesting. In addition, the person would have to meet criteria required by AQB. Therefore, an appraiser who had not actively practiced his or her profession for a while would have to become current by completing the required amount of continuing education credits and demonstrate competency by examination before being able to conduct appraisals again.

POSITIONS:

The Department of Energy, Labor, and Economic Growth supports the bill. (3-12-09)

The Michigan Association of Realtors indicated support for the bill. (3-12-09)

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Mark Wolf

■ 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.