

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Governmental Oversight and Accountability Committee

BILL: CS/SB's 2210 & 1552

INTRODUCER: Regulated Industries Committee, and Senators Constantine and Fasano

SUBJECT: Appraisers and Appraiser Management Companies

DATE: April 12, 2010 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Fav/CS
2.	McKay	Wilson	GO	Favorable
3.			GA	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill provides for the regulation of Appraiser Management Companies (AMC's) and provides additional requirements for the regulation of appraisers. Appraiser Management Companies are business entities that administer independent appraisers to fulfill real estate appraisal assignments on behalf of lenders. Appraisers are regulated under ch. 475 (Part II), F.S., by the Florida Real Estate Appraisal Board (board) within the Department of Business and Professional Regulation. Appraisers are subject to application requirements, qualifications for licensure, and disciplinary actions and penalties related to performing appraisals. Appraiser Management Companies are not currently regulated by state law. The bill increases the membership of the board from seven members to nine members, and requires that two members of the board must represent the appraisal management industry.

The bill requires that AMC's register with the board. The bill sets forth application requirements, and provides that the application fee for registration may not exceed \$150.00 and the initial registration fee and renewal fees may not exceed \$150.00 each year. Employees of an AMC are not required to obtain a separate registration. The bill exempts an AMC from the registration requirement if no more than 10 percent of the appraisal management company is owned by

persons other than certified or licensed appraisers, or if the AMC is a financial institution, a licensed mortgage lender, or an insurer.

The application requires the disclosure of any person who possesses the authority, directly or indirectly, to direct the management or policies of the AMC, and requires that such persons submit a set of fingerprints to conduct a criminal history record check to determine if the person is statutorily qualified for registration.

The bill provides grounds for the denial of an AMC's application for registration, and for imposing a fine, suspending, or revoking an appraiser license, registration, or certification. It authorizes administrative fines against AMC's that may not exceed \$5,000 for each count or offense.

The bill also requires the board to promulgate rules for the protection and authentication of an appraiser's signature, and requires that appraisal records be maintained for 5 years or according to the Uniform Standards of Professional Appraisal Practice (USPAP), whichever is greater.

The bill provides an effective date of July 1, 2010.

This bill substantially amends the following sections of the Florida Statutes: 475.611, 475.613, 475.614, 475.6147, 475.624, 475.626, and 475.629.

This bill creates sections 475.6235 and 475.6245, Florida Statutes.

II. Present Situation:

Individual real estate appraisers are regulated under ch. 475 (Part II), F.S., by the Florida Real Estate Appraisal Board (board) within the Department of Business and Professional Regulation (department). The board consists of seven members who are appointed by the Governor, subject to confirmation by the Senate, with 4-year terms. The membership of the board is designated as follows:

- Four members must be real estate appraisers who have been engaged in the general practice of appraising real property in this state for at least 5 years immediately preceding appointment;
- One member must represent organizations that use appraisals for the purpose of eminent domain proceedings, financial transactions, or mortgage insurance.
- Two members must be representatives of the general public and shall not be connected in any way with the practice of real estate appraisal, real estate brokerage, or mortgage lending.

Appraisers - Real estate appraisers specialize in estimating the value of real property. Appraisals are made when property is bought, sold, assessed, taxed, condemned, insured, or mortgaged.¹

Real estate appraisers:

- Prepare a written description of the property and make an estimate of its value;

¹ U.S. Department of Labor, Bureau of Labor Statistics. Occupational Outlook Handbook, 2010-11 Edition. Available at: <http://www.bls.gov/oco/ocos300.htm> (Last visited March 18, 2010).

- Obtain land values from county sources and sales information about nearby properties;
- Estimate building replacement costs using building valuation manuals and professional cost estimators;
- Verify legal descriptions of property by county records, measure the property and compare the measurements with the legal descriptions;
- Draw land diagrams and note conditions and special features of buildings; and
- Analyze and evaluate the data and prepare a written report outlining methods by which the fair-market value was estimated.²

Section 475.611(1)(a), defines the term “appraisal” or “appraisal services” to include the following services provided by certified or licensed appraisers or registered trainee appraisers:

1. “Appraisal assignment” denotes an engagement for which a person is employed or retained to act, or could be perceived by third parties or the public as acting, as an agent or a disinterested third party in rendering an unbiased analysis, opinion, review, or conclusion relating to the nature, quality, value, or utility of specified interests in, or aspects of, identified real property.
2. “Analysis assignment” denotes appraisal services that relate to the employer's or client's individual needs or investment objectives and includes specialized marketing, financing, and feasibility studies as well as analyses, opinions, and conclusions given in connection with activities such as real estate brokerage, mortgage banking, real estate counseling, or real estate consulting.
3. “Appraisal review assignment” denotes an engagement for which an appraiser is employed or retained to develop and communicate an opinion about the quality of another appraiser's appraisal, appraisal report, or work. An appraisal review may or may not contain the reviewing appraiser's opinion of value.

Appraisers are classified as registered trainee real estate appraiser, licensed real estate appraiser, or a certified real estate appraiser.³ Section 475.611(1)(n) , F.S., defines a registered trainee real estate appraiser to mean:

a person who is registered with the department as qualified to perform appraisal services only under the direct supervision of a licensed or certified appraiser. A registered trainee appraiser may accept appraisal assignments only from her or his primary or secondary supervisory appraiser.

Section 475.611(1)(m), F.S., defines a licensed appraiser to mean:

a person who is licensed by the department as qualified to issue appraisal reports for residential real property of one to four residential units or on such real estate or real property as may be authorized by federal regulation. After July 1, 2003, the department shall not issue licenses for the category of licensed appraiser.

² *Id.*

³ Section 475.611(1)(f), F.S.

A certified real estate appraiser is either a “certified general appraiser” or a “certified residential appraiser.” A “certified general appraiser” is “a person who is certified by the department as qualified to issue appraisal reports for any type of real property.”⁴

A “certified residential appraiser” is:

a person who is certified by the department as qualified to issue appraisal reports for residential real property of one to four residential units, without regard to transaction value or complexity, or real property as may be authorized by federal regulation.

Appraisers are subject to application requirements,⁵ including the submission of a fingerprint card and a criminal background check.

Section 475.615(6), F.S., provides qualifications for registration, certification, or licensure.⁶ An applicant for registration, certification, or licensure shall be deemed not qualified:

If any applicant has been denied registration, licensure, or certification, or has been disbarred, or the applicant's registration, license, or certificate to practice or conduct any regulated profession, business, or vocation has been revoked or suspended by this or any other state, any nation, or any possession or district of the United States, or any court or lawful agency thereof, because of any conduct or practices which would have warranted a like result under this part, or if the applicant has been guilty of conduct or practices in this state or elsewhere which would have been grounds for disciplining her or his registration, license, or certification under this part had the applicant then been a registered trainee appraiser or a licensed or certified appraiser...

However, the applicant who is disqualified may be qualified by the board if “because of lapse of time and subsequent good conduct and reputation, or other reason deemed sufficient, it appears to the board that the interest of the public is not likely to be endangered by the granting of registration or certification.”⁷

Sections 475.624 and 475.626, F.S., provide disciplinary standards. Individual appraisers must also comply with the Uniform Standards of Professional Appraisal Practice (USPAP).⁸

Typically, an appraiser receives an order from a real estate agent, lender, or mortgage broker to inspect a property. Based on an inspection of the home and comparable sales in the area, they

⁴ Section 475.611(1)(h), F.S.

⁵ Section 475.615, F.S.

⁶ Sections 475.616, F.S., sets forth requirements to sit for appraiser certification examination, and s. 475.617, F.S., sets forth education and experience requirements.

⁷ Section 475.615(6), F.S.

⁸ Section 475.615(5), F.S.

develop an estimated value for the property.⁹ That figure is used by banks to set the home's value as collateral for the mortgage loan. Appraisers are supposed to arrive at a value that is free from improper influence.

However, during the 2005-2007 real estate boom, pressure was placed on real estate appraisers to inflate home values which sometimes led to valuations in support of loans that were more than buyers could afford.¹⁰ Unrealistically high appraisals hurt homebuyers as well as investors.¹¹

Home Valuation Code of Conduct - In response, the New York State Attorney General, the Federal Housing Finance Agency (FHFA), Fannie Mae, and Freddie Mac designed the Home Valuation Code of Conduct (HVCC), to provide added protections for homebuyers, mortgage investors, and the housing market.¹² It establishes standards for solicitation, selection, compensation, conflicts of interest and appraiser independence. The HVCC was established to insulate lenders from the appraisal process in an effort to eliminate their “influence or attempt to influence the development, reporting, result, or review of an appraisal through coercion, extortion, collusion, compensation, inducement, intimidation, [or] bribery.”¹³ Since the effective date of the HVCC on May 1, 2009, Freddie Mac and Fannie Mae no longer purchase mortgages from sellers that do not adopt the HVCC.¹⁴

The implementation of the HVCC and the need to ensure that appraisers remain an independent third-party in the valuation process has resulted in an outsourcing of appraisal functions by many financial institutions to appraisal management companies (AMCs).¹⁵ Appraiser Management Companies are business entities that administer networks of independent appraisers to fulfill real estate appraisal assignments on behalf of lenders. AMCs are not currently regulated by Florida law.

On October 8, 2009, the Appraisal Institute, a global membership association of professional real estate appraisers, proposed a model act to register and regulate AMCs.¹⁶ The model was developed by the Appraisal Institute, the American Society of Appraisers, the American Society of Farm Managers and Rural Appraisers, and the National Association of Independent Fee Appraisers. According to the Appraisal Institute, laws based upon the model have recently been enacted in Arkansas, Louisiana, Nevada, California, New Mexico, and Utah.

⁹ U.S. Department of Labor at: <http://www.bls.gov/oco/ocos300.htm> (Last visited March 18, 2010).

¹⁰ See Federal Housing Finance Agency (FHFA) “Strengthening Appraiser Independence and Improving the Valuation Process. Update on Enterprise Implementation of the Home Valuation Code of Conduct,” July 22, 2009. FHFA was created by the Housing and Economic Recovery Act of 2008. Available at: www.fhfa.gov/webfiles/14611/hvcc_NOTICE_7-22-09F.pdf (Last visited March 18, 2010).

¹¹ See Florida Real Estate Appraisal Boards disciplinary actions against individual appraisers at: <http://www.myfloridalicense.com/dbpr/re/FREABDARs.html> (Last visited March 18, 2010).

¹² A copy of the Home Valuation Code of Conduct (HVCC) is available at: the website of Freddie Mac located at: http://www.freddie.com/singlefamily/home_valuation.html (Last visited March 18, 2010).

¹³ See s. I(B) of HVCC.

¹⁴ *Id.*

¹⁵ See National Association of Realtors, *National Association of Realtors Regulatory Issue Brief, Home Valuation Code of Conduct* at:

http://www.realtor.org/wps/wcm/connect/1f0951804dff1387af19bf4eb13ae60f/government_affairs_2009_regulatory_brief_HVCC_050509.pdf?MOD=AJPERES&CACHEID=1f0951804dff1387af19bf4eb13ae60f (Last visited March 18, 2010).

¹⁶ See www.appraisalinstitute.org/newsadvocacy/downloads/modelprovisionsAMC.pdf (Last visited March 18, 2010).

The Sunrise Act - A proposal for new regulation of a profession or occupation must meet the requirements in s. 11.62, F.S., the Sunrise Act, which sets forth the framework for the legislative review. The Sunrise Act provides the intent of the Legislature “that no profession or occupation be subject to regulation by the state unless the regulation is necessary to protect the public health, safety, or welfare from significant and discernible harm or damage and that the police power of the state be exercised only to the extent necessary for that purpose.” The act also provides that no profession or occupation be regulated in a manner that unnecessarily restricts entry into the profession or occupation or adversely affects the availability of the professional or occupational services to the public.¹⁷

In determining whether to regulate a profession or occupation, s. 11.62, F.S., requires the Legislature to consider the following:

- Whether the unregulated practice of the profession or occupation will substantially harm or endanger the public health, safety, or welfare, and whether the potential for harm is recognizable and not remote;
- Whether the practice of the profession or occupation requires specialized skill or training, and whether that skill or training is readily measurable or quantifiable so that examination or training requirements would reasonably assure initial and continuing professional or occupational ability;
- Whether the regulation will have an unreasonable effect on job creation or job retention in the state or will place unreasonable restrictions on the ability of individuals who seek to practice, or who are practicing, a given profession or occupation to find employment;
- Whether the public is or can be effectively protected by other means; and
- Whether the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers, will be favorable.

Section 11.62, F.S., requires the proponents of regulation to submit information, which is structured as a sunrise questionnaire to document that the regulation meets these criteria.¹⁸ A response to a sunrise questionnaire was prepared by the Appraisal Institute, which is a proponent of the regulation of AMC's, to assist the Legislature in determining the need for regulation.¹⁹ In pertinent part, the response submitted by the Appraisal Institute provides:

The most important public protection issue is the degradation in the quality of appraisals as a result of the involvement of AMCs. Because of the reduced fees that are paid to appraisers, only the least qualified and least competent appraisers are asked to complete assignments on behalf of AMCs. The lower quality appraisals have resulted in lenders making poor underwriting decisions (i.e. putting people in homes that they cannot afford). In addition, the real estate and home building industries have reported that poor quality appraisals have resulted in deals being killed. This is having an impact on economic recovery efforts.

¹⁷ Section 11.62(2), F.S.

¹⁸ Section 11.62(4), F.S.

¹⁹ A copy of the Appraisal Institute's response to the Sunrise Questionnaire is on file with the Senate Committee on Regulated Industries.

The response also provides the following:

- The Appraiser Institute stated that there have been reported instances of appraisers with a prior appraiser license revocation forming an appraisal management company. The Appraisal Institute notes at least one of these cases occurred in Florida;
- Appraisal Management Companies do not require specialized skill or training, but the regulatory program in the bill does not include any specific training or examination requirements;
- The regulation of appraisal management companies would not place unreasonable restrictions on appraisers that work for AMCs or members of the public that work in a direct capacity for the AMCs;
- The AMCs operations would be minimally impacted by the registration requirements and compliance costs; and
- It is not likely that there will be a direct increase for consumers in cost for an appraisal.

According to the Appraisal Institute, there are approximately 300 AMCs operating in the United States, and approximately 100 to 150 of those entities do business in Florida.

The board has not provided comment on the proposed regulation of AMCs. According to the department, it could not find any reported incidences of a consumer being harmed by an AMC. The department stressed that it can take action against a licensed appraiser, and it doesn't matter whether the appraiser works for a bank, AMC, realtor or other entity. The licensee is responsible for the work performed and signs the appraisal. The department believes that it has the appropriate authority to discipline if there is a violation, and does not see any additional benefit to more regulation.

III. Effect of Proposed Changes:

The bill provides for the regulation of the practice of appraisal management by the board.

Definitions – The bill amends s. 475.611, F.S., to define the terms “appraisal management company,” “appraisal management services,” “appraisal panel,” “client,” and “signature.”

“Appraisal management company,” is defined in s.475.611(1)(c), F.S., to mean a person²⁰ who performs appraisal management services.

The term “appraisal management services” is defined in s.475.611(1)(d), F.S., to mean the coordination or management of appraisal services for compensation by:

1. Employing, contracting with, or otherwise retaining one or more appraisers to perform appraisal services for a client; or
2. Acting as a broker or intermediary between a client and one or more appraisers to facilitate the client’s employing, contracting with, or otherwise retaining the appraisers.

²⁰ Section 1.01(3), F.S., defines the word “person” to include “individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.”

“Appraisal panel,” is defined in s.475.611(1)(i), F.S., to mean “a group of appraisers selected by an appraisal management company to perform appraisal services for clients on behalf of the company.”

“Client,” is defined in s.475.611(1)(m), F.S., to mean “a person who contracts with an appraiser or appraisal management company for the performance of appraisal services.”

“Signature” is defined in s.475.611(1)(s), F.S., to mean “personalized evidence indicating authentication of work performed by an appraiser and the acceptance of responsibility for the content of an appraisal, appraisal review, or appraisal consulting service or conclusions in an appraisal report.”

Florida Real Estate Appraisal Board – The bill amends s. 475.613(1), F.S., to increase the membership of the board from seven members to nine members, and to require that two members of the board must represent the appraisal management industry.

Protection of an Appraiser’s Signature – The bill creates subsection (2) of s. 475.614, F.S., to require the board to promulgate rules regarding how an appraiser’s signature is to be affixed to an appraisal report or other work performed by the appraiser in order to ensure the protection and authentication of the appraiser’s signature.

Fees – The bill amends s. 475.6147, F.S., to set forth the fees for the registration of AMCs. The bill provides that the application fee may not exceed \$150.00 and the initial registration and renewal fees may not exceed \$150.00 each year.

Registration of Appraisal Management Company and Exemptions – The bill creates s. 475.6235, F.S., to provide requirements for the registration of AMC’s and to provide exemptions. Section 475.6235(1), F.S., provides that a person may not engage in appraisal services for compensation or advertise themselves as an appraisal management company or similar title unless first registered with the department. Employees of the AMC are not required to obtain a separate registration.

Exemption. Section 475.6235(1)(b), F.S., exempts an AMC from the registration requirement if:

- No more than 10 percent of the appraisal management company is owned by persons other than certified or licensed appraisers; or
- The AMC is a financial institution as defined in s. 655.005, F.S.,²¹ a mortgage lender licensed under s. 494.0061, F.S., or an insurer as defined in s. 624.03, F.S.²²

²¹ Section 655.005(1)(h), F.S., defines a “financial institution” as:
a state or federal savings or thrift association, bank, savings bank, trust company, international bank agency, international banking organization, international branch, international representative office, international administrative office, or credit union, or an agreement corporation operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 et seq. or Edge Act corporation organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 et seq.

²² Section 624.03, F.S., defines “insurer” to include “every person engaged as indemnitor, surety, or contractor in the business of entering into contracts of insurance or of annuity.”

Application Requirements. The application must be submitted in a format designed by the department. Section 475.6235(2), F.S., requires that the application must, at a minimum, include:

- The firm or business name;
- The mailing address, street address, and telephone number of the AMC's principal location;
- The AMC's federal employer identification number;
- The AMC's type of business organization: corporation, partnership, limited liability company, or sole proprietorship;
- If the AMC is incorporated, a statement indicating whether the AMC is foreign or domestic, date of incorporation, state incorporated, charter number, and if the AMC is a foreign corporation, the date that the corporation first registered with the Department of State to conduct business in this state;
- The full name, street address, telephone number, corporate title, social security number or federal employer identification number of any person who possesses the authority, directly or indirectly, to direct the management or policies of the AMC, including but not limited to:
 - Each officer or director if the AMC is a corporation;
 - Each general partner if the AMC is a partnership;
 - Each manager or managing member if the AMC is a limited liability company;
 - The owner if the AMC is a sole proprietorship; and
 - Each person who, directly or indirectly, owns or controls 10% or more of an ownership interest in the AMC;
- The name of any firm or business under which any of the listed above conducted business as an AMC within the 5 years preceding the date of application; and
- The AMC's registered agent for service of process in this state.

The AMC must notify the department of any changes to the required information within 10 days of the change.

In addition to the appropriate fees, s. 475.6235(3), F.S., requires that the application include a set of fingerprints for each person listed in the application. The fingerprint must be forwarded to the Division of Criminal Justice Information Systems within the Florida Department of Law Enforcement (FDLE), and to the Federal Bureau of Investigation (FBI), to determine whether the person has a criminal history record and is statutorily qualified for registration. According to the FDLE, the bill's reference to fingerprints would not permit the electronic submission of fingerprints.

Section 475.6235(4), F.S., requires that each person listed on the application as a person who possesses the authority, directly or indirectly, to direct the management or policies of the AMC must also:

- Sign a pledge to comply with the Uniform Standards of Professional Appraisal Practice upon registration; and
- Indicate in writing that she or he understands the types of misconduct for which disciplinary proceedings may be initiated.

Section 475.6235(4), F.S., also provides that the application shall expire 1 year after the date received. The effect or purpose of this provision is unclear. It not clear whether the effect of this provision is to require the annual resubmission of an application for registration, or whether the application must expire if not approved within 1 year. Regarding the later interpretation, s. 120.60(1), F.S., requires that every application for a license must be approved or denied within 90 days after receipt of a completed application unless a shorter period of time for agency action is provided by law. If not approved or denied with the 90-day period, the application is deemed approved.

Section 475.6235(5), F.S., requires that each person listed in the application be competent and qualified to engage in appraisal management services. The bill provides that any person listed will not be qualified if:

- The person has been denied registration, licensure, or certification as an appraiser;
- The person has been disbarred;
- The person's registration, license, or certificate to practice or conduct any regulated profession, business, or vocation has been revoked or suspended by this or any other state, nation, possession, or district of the US, or any court or lawful agency thereof because of any conduct or practices that would have warranted a like result; or
- The person has been guilty of conduct or practices in this state or elsewhere that would have been grounds for disciplining his/her registration, license, or certification as a registered trainee appraiser or a licensed or certified appraiser.

Any person disqualified for the above listed reasons can be found qualified if the board determines that because of lapse of time, subsequent good conduct and reputation, or any other reason deemed sufficient, the granting of the registration is not likely to endanger the public interest.

Section 475.6235(6), F.S., provides that an appraisal management company registration application may not be rejected solely by virtue of membership or lack of membership of any person or any employee of the company in any particular appraisal organization.

Non-Florida Residents. Section 475.6235(7), F.S., provides for the registration of applicants who are not Florida residents. The bill requires that any applicant who is not a Florida resident must file an irrevocable consent that suits and actions may be commenced in any county in Florida that the plaintiff resides and that service of any process or pleadings may be made by delivering the process or pleading to the director of the Division of Real Estate²³ by certified mail, return receipt requested. Service of process must also be delivered by registered mail to the AMC's principal business location or to the AMC's registered agent if the AMC's principal business location is within Florida.

The bill specifies that the service must be taken and held by all the courts as valid and binding upon the AMC as if made upon the company in Florida within the jurisdiction of the court in

²³ Section 20.165(2)(h), F.S., creates the Division of Real Estate within the Department of Business and Professional Regulation.

which the suit or action is filed. The bill further specifies that the irrevocable consent must be in a form designated by the department and signed before a notary.

Renewal of Registrations. Section 475.6235(8), F.S., provides that the department must renew the registration of an AMC upon receipt of the renewal application and designated fee. It also provides that, at least every 4 years, the department shall adopt rules establishing a procedure for renewal of an AMC registration.

Discipline of Appraisers – The bill amends the discipline provisions in s. 475.624, F.S., which authorize the board to deny an application or fine, suspend, or revoke a license, registration, or certification under part II of ch. 475, F.S., to limit the application of the section to licensed, registered, or certified appraisers.

It also amends s. 475.624, F.S., to reference an appraiser registered, licensed, or certified instead of an appraiser registrant, licensee, or certificateholder.

Discipline of Appraisers – The bill creates s. 475.6245, F.S., to provide grounds for the denial of an application for AMC registration; investigate actions; reprimands or imposing an administrative fine. The bill provides that a administrative fine may not to exceed \$5,000 for each count. It authorizes the board to conditionally or unconditionally revoke or suspend an AMC registration for a period of not more than 10 years, or to place an AMC on probation if the board finds that the AMC or any person listed in s. 475.6235(2)(f) has:

- Violated any provisions of this part or s. 455.227(1), F.S., however AMC's are exempt from s. 455.227(1)(i), F.S.,²⁴
- Been found guilty of fraud, misrepresentation, concealment, false promises, false pretenses, dishonest conduct, culpable negligence, or breach of trust in any business transaction;
- Violated a contractual duty in an appraisal assignment;
- Aided, assisted, or conspired with another person to engage in such appraisal misconduct;
- Formed an intent, design, or scheme to engage in such appraisal misconduct and committed an overt act in furtherance of such intent, design, or scheme;
- Advertised services in a fraudulent, false, deceptive or misleading manner;
- Violated any lawful order issued under this part or chapter 455;
- Been convicted, or pled guilty or non contendere to a crime which directly relates to the activities of an AMC, moral turpitude, or fraudulent or dishonest conduct;
- Had a registration, license, or certification as an appraiser or AMC revoked, suspended, or acted against;
- Had her or his registration, license, or certificate or application for such to practice or conduct any regulated profession, business, or vocation revoked or suspended;

²⁴ Section 455.227(1), F.S., sets forth the disciplinary provisions, including prohibited conduct and authorized penalties, for the professions regulated by the Department of Business and Professional Regulation. Section 455.227(1)(i), F.S., authorizes disciplinary action for failing “to report to the department any person who the licensee knows is in violation of this chapter, the chapter regulating the alleged violator, or the rules of the department or the board.” An identical exemption to s. 455.227(1)(i), F.S., is also provided in s. 475.624, F.S., for appraisers.

- Become temporarily incapacitated from acting as an AMC with safety to those in a fiduciary relationship with her/him because of drunkenness, drug use, or temporary mental derangement;
- Lost the ability to be entrusted to safely deal with the public or in a confidential capacity due to mental disease or deterioration or confinement in a county jail, state or federal prison, or mental institution;
- Failed to inform the board in writing within 30 days after pleading guilty or nolo contendere to or being convicted or found guilty of, any felony;
- Been found guilty, for a second time, of any misconduct that warrants disciplinary action;
- Been found guilty of conduct or practice which shows that she/he is incompetent, negligent, dishonest, or untruthful to an extent that no person may safely sustain a confidential relationship with him/her;
- Made or filed a report or record with the AMC knows to be false, willfully failed to file a required report or record, or has willfully impeded or obstructed such filing;
- Obtained or attempted to obtain an AMC registration by fraud, misrepresentation, or deceit;
- Paid money or valuable consideration, except as required by this section, to any member or employee of the board to obtain a registration;
- Instructed an appraiser to violate any standard or provision of the USPAP;
- Engaged in the development of an appraisal or the preparation of an appraisal report;
- Failed to communicate an appraisal without good cause;
- Accepted an appraisal assignment if the employment itself is contingent upon the AMC reporting a predetermined result, analysis, or opinion, or if the fee to be paid for the performance is contingent upon the opinion, conclusion, or valuation reached;
- Failed to timely notify the department of any change in principal business location;
- Influenced or attempted to influence the development, reporting, or review of an appraisal through coercion, extortion, collusion, compensation, instruction, inducement, intimidation, bribery, or any other means, including, but not limited to:
 - Withholding or threatening to withhold timely payment for an appraisal, if the nonpayment is based on the specific quality or other service issues that constitute noncompliance with the appraisal engagement agreement;
 - Withholding or threatening to withhold future business from an appraiser;
 - Expressly or impliedly promising future business, promotions, or increased compensation for an appraiser;
 - Conditioning a request for appraisal services or the payment of an appraisal fee, salary, bonus upon the opinion, conclusion, or valuation to be reached or upon a preliminary estimate or opinion requested from an appraiser;
 - Requesting that an appraiser provide an estimated, predetermined, or desired valuation in an appraisal report or provide estimated values or comparable sales at any time before the appraiser's completion of appraisal services;
 - Providing an appraiser an anticipated, estimated, encouraged, or desired value for a subject property or a proposed or target amount to be loaned to the borrower, except that a copy of the sales contract for purchase transactions may be provided;
 - Providing an appraiser or relative to the appraiser stock or other financial or nonfinancial benefits;
 - Allowing the removal of an appraiser from an appraiser panel without prior written notice to the appraiser;

- Obtaining, using, or paying for a second or subsequent appraisal or ordering an automated valuation model in connection with a mortgage financing transaction unless there is a reasonable basis to believe that the initial appraisal was flawed or tainted and such basis is clearly and appropriately noted in the loan file, or unless such appraisal or automated valuation model is issued pursuant to a bona fide prefunding or postfunding appraisal review or quality control process; or
- Any other act that impairs or attempts to impair an appraiser's independence, objectivity, or impartiality;
- Has altered, modified, or otherwise changed a completed appraisal report; or
- Has employed, contracted with, or otherwise retained an appraiser whose registration, license, or certification is suspended or revoked to perform appraisal services or appraisal management services.

Section 475.624(2), F.S., authorizes the board to reprimand, conditionally or unconditionally suspend, or revoke any registration, or impose administrative fines not to exceed \$5,000 for each count or offense against an AMC, if the board determines that the AMC is attempting to perform, has performed, or has attempted to perform any of the following acts:

- Committing any act in violation of this part II of ch. 475, F.S.;
- Violating of any rule adopted by the board under part II of ch. 475, F.S.; or
- Obtaining an AMC registration by fraud, misrepresentation, or deceit.

Section 475.624(3), F.S., provides that an AMC is not prohibited from requesting that an appraiser provide additional information about the basis of a valuation, or that the appraiser correct objective factual errors in an appraisal report.

Violations and Penalties – Section 475.626, F.S., sets forth additional practices and conduct that appraisers are prohibited from committing, and provides penalties. The bill amends this section to include AMC's.

The bill amends s. 475.626(1)(c), F.S., relating to the prohibition against any conduct or practice set forth in s. 475.624, F.S., to limit this provision to registered trainee appraisers, or a licensed or certified appraisers.

The bill also creates a new paragraph (d) in s. 475.626(1), F.S., to prohibit AMC's from committing any conduct or practice set forth in s. 475.6245, F.S.

Retention of Records - The bill amends s. 475.629, F.S., which sets forth records retention requirements for appraisers, to include AMC's. Current law requires that appraisal records be retained for a period of 5 years. The bill requires that appraisal records be maintained for 5 years or according to the Uniform Standards of Professional Appraisal Practice (USPAP), whichever is greater.

The bill provides that the department may not inspect or copy the records of an AMC except in connection with a pending investigation or complaint.

The bill further specifies that the period for retention of the records runs from the date of the submission of the appraisal report to the client, except as otherwise specified in the USPAP.

Effective Date - Provides an effective date of July 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article II, section 3 of the Florida Constitution creates the three branches of Florida's government, and prohibits one branch from exercising the powers of another branch. This separation of powers doctrine includes a prohibition on one branch delegating its constitutionally assigned powers to another branch.²⁵ Therefore, statutes granting power to the executive branch "must clearly announce adequate standards to guide ... in the execution of the powers delegated. The statute must so clearly define the power delegated that the [executive] is precluded from acting through whim, showing favoritism, or exercising unbridled discretion."²⁶

This bill grants authority to the Florida Real Estate Appraisal Board to adopt rules that include requirements for protecting the security of an appraiser's signature and prohibiting practices that may discredit the use of an appraiser's signature to authenticate" the appraisers work. Though it is unclear what "practices" may be prohibited by the board, if the "practices" are within the kinds of actions related to affixing a signature, there should not be a constitutional problem with this delegated authority.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

²⁵ *Chiles v. Children A, B, C, D, E & F*, 589 So.2d 260, 264 (Fla.1991)

²⁶ *Fla. Dep't of State, Div. of Elections v. Martin*, 916 So.2d 769, 770 (Fla. 2005), citing *Lewis v. Bank of Pasco County*, 346 So.2d 53, 55-56 (Fla.1976)

B. Private Sector Impact:

The department estimates that 700 appraisal management companies will apply and be registered under the bill. The bill requires that Appraiser Management Companies applying for registration to submit an application with an application fee capped at \$150, and pay an initial registration fee capped at \$150. Annual renewal fees are also capped at \$150 per year. The department will establish a two-year registration period, which is consistent with other licensed professions. Therefore, the required initial registration for the first two year period would be \$300, and \$300 would be required for renewal every two years. Applicants for registration are also required to pay a special fee of \$5.00 for the enforcement of unlicensed activity.²⁷

Persons who must be identified on an AMC registration application because they possess the authority, directly or indirectly, to direct the management or policies of the AMC would be required to submit their fingerprints for a criminal history record check to determine if they are statutorily qualified. According to the Florida Department of Law Enforcement (FDLE), the cost of obtaining fingerprints for an application submission is \$43.25.

C. Government Sector Impact:

The bill requires that Appraiser Management Companies applying for registration to submit an application with an application fee capped at \$150, and pay an initial registration fee capped at \$150. Annual renewal fees are also capped at \$150 per year. The department will establish a two-year registration period, which is consistent with other licensed professions. The department estimates that there will be negative net revenue every other year. These negative net revenue years will be off-set by the positive net revenue years. However, when initial licensing fees and renewal fees are viewed on an annual basis, the net revenue in the first year would be approximately \$171,158 because of revenue from initial license fees and license applications. In subsequent years, the annual revenue would be about \$76,497 because the department does not expect additional initial license applications, just license renewals.

According to the department, the minimum number of licensees needed to make the AMC registration program self supporting is 150 registrants. In its answers to the Sunrise Questionnaire, the Appraisal Institute states that there are approximately 300 AMCs operating in the United States, and that approximately 100-150 of those entities do business in Florida.

According to the FDLE, the cost of obtaining fingerprints for submission with an application is \$43.25, of which \$24 goes into the FDLE Operating Trust Fund, and \$19.25 is forwarded to the FBI.

VI. Technical Deficiencies:

None.

²⁷ See s. 455.2281(1), F.S.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Regulated Industries on April 7, 2010:

The committee substitute (CS) combines SB 2210 and SB 1552. The bills are substantively similar. The CS differs from SB 2210 and SB 1552 as follows:

- It amends s. 475.613(1), F.S., to increase the membership of the Florida Real Estate Appraisal Board (board) from seven members to nine members and to require that two members of the board must represent the appraisal management industry.
- It does not provide a registration exemption for certain appraisal management companies (AMC's) as specified in s. 475.3235(1)(b), F.S., of the bills;
- It amends the fingerprints requirement in s. 475.6235(3), F.S., to reference "a complete set of fingerprints" and "fingerprints" instead of "fingerprint card;"
- It amends s. 475.6235(7), F.S., to provide for service of process or pleading to the AMC's registered agent if the company's principal business location is in Florida;
- It amends s. 475.624, F.S., to limit the discipline provisions in this section to appraisers by deleting references to AMC's;
- It also amends s. 475.624, F.S., to reference an appraiser registered, licensed, or certified instead of an appraiser registrant, licensee, or certificateholder.
- It creates s. 475.6245, F.S., to provide for the discipline of appraisal management companies and for the denial of an AMC registration application. It includes additional grounds for discipline and denial of a registration application in paragraphs (b) through (q) of s. 475.6245(1), F.S. Paragraphs (r) through (u) of s. 475.6245(1), F.S., and subsections (2) and (3) of s. 475.6245, F.S., of the CS are substantively similar to paragraphs (s) through (v) of s. 475.624(1), F.S., and s. 475.624(2), F.S., in the bills, except that the CS limits the application of these disciplinary provisions to AMC's, except that:
 - It does not prohibit an AMC from demoting, terminating, or threatening to demote or terminate an appraiser, as provided in s. 475.624(1)(t)3., F.S., of the bills; and
 - Section s. 475.6245(1)(s)1., F.S., of the CS differs from s. 475.624(1)(t)2., F.S., of the bills by permitting an AMC to withhold or threaten timely payment for an appraisal if the nonpayment is based on the specific quality or other service issues that constitute noncompliance with the appraisal engagement agreement;
- Section 475.626(1)(a), F.S., of the CS does not cross-reference the registration exemptions in s. 475.6235(1)(b), F.S., which are provided in the bills but not in the CS;
- It amends s. 475.626(1)(c), F.S., relating to the prohibition against any conduct or practice set forth in s. 475.624, F.S., to limit this provision to registered trainee appraisers, or a licensed or certified appraisers.

- It creates a new paragraph (d) in s. 475.626(1), F.S., to prohibit AMC's from committing any conduct or practice set forth in s. 475.6245, F.S.
- It amends the retention of records provisions in s. 475.629, F.S., to provide that the department may not inspect or copy the records of an AMC except in connection with a pending investigation or complaint.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
