

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 Committee on Regulated Industries

BILL: SB 744

INTRODUCER: Senator Richter

SUBJECT: Property Insurance Appraisal Umpires and Property Insurance Appraisers

DATE: March 12, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Pre-meeting
2.			BI	
3.			AP	

I. Summary:

SB 744 provides for the licensing and regulation of property insurance appraisers and umpires by the Department of Business and Professional Regulation. Property insurance contracts often contain “appraisal” provisions. Appraisal provisions are used when the parties agree that there is a covered loss but disagree as to the amount of the loss. Such provisions typically provide that each party select an appraiser. The two appraisers jointly select an umpire. The two appraisers submit a report to the insurer. If the appraisers agree as to the amount of the loss, the insurer pays the claim. If they do not agree, the umpire resolves the dispute. Current law does not limit or restrict who may act as an umpire and does not provide a method for either party to challenge whether an umpire is fair and impartial.

The bill provides the education and experience qualifications to be an appraiser and an appraisal umpire. The bill provides fees, including a nonrefundable \$200 application fee, a \$200 initial license fee, and a \$500 biennial renewal fee. The fees for appraisers and appraisal umpires are identical. The bill provides continuing education requirements, and provides grounds for the discipline of a license, and ethical standards for appraisers and appraisal umpires.

The bill requires commercial and residential real property insurers to use the property insurance appraisal process when the only issue remaining between an insured and an insurer is the actual cash value, the amount of loss, or the cost of repair or replacement of property for which a claim has been filed. The bill provides the process for the conduct of insurance appraisals.

II. Present Situation:

Property Insurance Appraisers and Umpires

Property insurance contracts often contain “appraisal” provisions. Appraisal provisions are used when the parties agree that there is a covered loss but disagree as to the amount of the loss.¹ Such provisions typically provide that each party select an appraiser. The two appraisers jointly select an umpire. The two appraisers submit a report to the insurer. If the appraisers agree as to the amount of the loss, the insurer pays the claim. If they do not agree, the umpire resolves the dispute.² Current law does not limit or restrict who may act as an umpire and does not provide a method for either party to challenge whether an umpire is fair and impartial.

Public Adjusters

A public adjuster is a person, other than a licensed attorney, who, for compensation, prepares or files an insurance claim form for an insured or third-party claimant in negotiating or settling an insurance claim on behalf of the insured or third party.³ The responsibilities of property insurance public adjusters include inspecting the loss site, analyzing damages, assembling claim support data, reviewing the insured’s coverage, determining current replacement costs, and conferring with the insurer’s representatives to adjust the claim. Public adjusters are licensed by the Department of Financial Services (DFS) and must meet specified age, residency, examination, and surety bond requirements.⁴ The conduct of a public adjuster is governed by statute and by rule.⁵ A company employee adjuster (known as a “company adjuster”) performs the same services as a public adjuster except he or she is employed by the insurer.⁶

The Sunrise Act

Florida does not license or regulate property insurance appraisal umpires and property insurance appraisers.

A proposal for new regulation of a profession must meet the requirements in s. 11.62, F.S., the Sunrise Act. The act prohibits:

- Subjecting a profession or occupation 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; or
- Regulating a profession or occupation by the state in a manner that unnecessarily restricts entry into the practice of the profession or occupation or adversely affects the availability of the professional or occupational services to the public.

¹ See Fla.Jur. Insurance §3292.

² *Citizens Property Insurance Corporation v. Mango Hill Condominium Association 12 Inc.*, 54 So.3d 578 (Fla.3d DCA 2011) and *Intracoastal Ventures Corp. v. Safeco Ins. Co. of America*, 540 So.2d 162 (Fla. 3d DCA 1989), contain examples of appraisal provisions.

³ Section 626.854(1), F.S.

⁴ Section 626.865, F.S.

⁵ See generally, ss. 626.854, 626.8698, 626.876, 626.878, 626.8795 and 626.8796, F.S., and Rule 69B-220, F.A.C.

⁶ Section 626.856, F.S.

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. A response to a sunrise questionnaire was prepared by the proponents of the legislation to assist the Legislature in determining the need for regulation.

The response submitted by the proponents of the bill, the Insurance Appraisers and Umpires Association (IAUA),⁷ states that the unregulated profession poses a substantial harm to the public health, safety, or welfare. In pertinent part, the response provides:

Currently, the state licenses adjusters in three categories, company adjuster, independent adjuster and public adjuster, if an individual is unable to pass these tests, or if they lose their license, they are able to become an insurance property appraisers and/or an insurance property umpire with no regulation. Further, convicted felons are able to become insurance property appraisers and/or insurance property umpires.

The Courts have ruled that a decision of the insurance appraisal panel (any 2 of the 3 members of the panel) is binding on the parties unless fraud is involved, (appraisals are for the dollar amount of the insurance loss and the panels are not empowered to determine coverage).

In the past, the public has been harmed when roofers, contractors and non-insurance people are involved and they don't properly appraise the amount of damages, for example, roofers have been known to appraise the roof of a home only without considering the interior of a home thus injuring the public in that they don't receive the proper insurance funds for the interior of their home and thus they fail to repair the interior making the damages worse and affecting the value of the home.

⁷ More information about the Insurance Appraisers and Umpires Association is available at: <http://www.iaua.us/about-iaua.aspx> (last visited March 13, 2015).

Department of Business and Professional Regulation

The Department of Business and Professional Regulation (department) was established in 1993 with the merger of the Department of Business Regulation and the Department of Professional Regulation.⁸ The department is created in s. 20.165, F.S. Section 20.165(2), F.S., creates the following eleven divisions within the department:

- Division of Administration.
- Division of Alcoholic Beverages and Tobacco.
- Division of Certified Public Accounting.
- Division of Florida Condominiums, Timeshares, and Mobile Homes.
- Division of Hotels and Restaurants.
- Division of Pari-mutuel Wagering.
- Division of Professions.
- Division of Real Estate.
- Division of Regulation.
- Division of Technology.
- Division of Service Operations.
- Division of Drugs, Devices and Cosmetics

Section 20.165(4)(a), F.S., establishes the following boards and professions within the Division of Professions:

- Board of Architecture and Interior Design, created under part I of ch. 481, F.S.
- Florida Board of Auctioneers, created under part VI of ch. 468, F.S.
- Barbers' Board, created under ch. 476, F.S.
- Florida Building Code Administrators and Inspectors Board, created under part XII of ch. 468, F.S.
- Construction Industry Licensing Board, created under part I of ch. 489, F.S.
- Board of Cosmetology, created under ch. 477, F.S.
- Electrical Contractors' Licensing Board, created under part II of ch. 489, F.S.
- Board of Employee Leasing Companies, created under part XI of ch. 468, F.S.
- Board of Landscape Architecture, created under part II of ch. 481, F.S.
- Board of Pilot Commissioners, created under ch. 310, F.S.
- Board of Professional Engineers, created under ch. 471, F.S.
- Board of Professional Geologists, created under ch. 492, F.S.
- Board of Veterinary Medicine, created under ch. 474, F.S.
- Home Inspection Services Licensing Program, created under part XV of ch. 468, F.S.
- Mold-Related Services Licensing Program, created under part XVI of ch. 468, F.S.

The Pilot Rate Review Committee is established under the Board of Pilot Commissioners.⁹ Section 20.165(4)(b), F.S., establishes the following board and commission within the Division of Real Estate:

⁸ Chapter 93-220, L.O.F.

⁹ Section 310.151, F.S.

- Florida Real Estate Appraisal Board, created under part II of ch. 475, F.S.
- Florida Real Estate Commission, created under part I of ch. 475, F.S.
- Florida Building Commission under ch. 553, F.S.

Section 20.165(4)(c), F.S., establishes the Board of Accountancy, created under ch. 473, F.S., within the Division of Certified Public Accounting.

The Florida State Boxing Commission¹⁰ and the Regulatory Council of Community Managers¹¹ are also housed within the department. The department also has regulatory oversight responsibilities over the following professions:

- Child labor under part I of ch. 450, F.S.
- Farm labor contractors under part III of ch. 450, F.S.
- Talent agencies under part VII of ch. 468, F.S.

In addition to administering the professional boards, the department processes applications for licensure and license renewal. The department also receives and investigates complaints made against licensees and, if necessary, brings administrative charges.

Chapter 455, F.S., provides the general powers of the department and sets forth the procedural and administrative frame-work for all of the professional boards housed under the department, the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.

III. Effect of Proposed Changes:

The bill creates part XVII of ch. 468, F.S., to provide for the regulation of property insurance appraisal umpires (appraisal umpires), and part XVIII of ch. 468, F.S., to provide for the regulation of property insurance appraisers (appraisers).

Property Insurance Appraisal Umpires

The provisions in part XVII of ch. 468, F.S., relating to the licensing and regulation of appraisal umpires mirror or are comparable to the provisions for the licensing and regulation of appraisers. According to a representative for the IAUA, separate licensing of these professions helps to insure the independence of appraisal umpire professionals.

Property Insurance Appraisal Umpire Licensing Program

The bill creates s. 468.85, F.S., to create the property insurance appraisal umpire licensing program within the department. It provides that part XVII of ch. 468, F.S., applies to residential and commercial residential property insurance contracts and to the umpires and appraisers who participate in the appraisal process. It also authorizes the department to adopt rules to administer part XVII of ch. 468, F.S.

¹⁰ Section 548.003, F.S.

¹¹ Section 468.4315, F.S.

Definitions

The bill creates s. 468.85, F.S., to define the terms “appraisal,” “competent,” “department,” “independent,” “property insurance appraisal umpire,” “umpire,” “property insurance loss appraiser,” “appraiser,” and “uniform application.” These definitions are identical to the definitions provided in s. 468.86, F.S., for part XVIII of ch. 468, F.S., relating to appraisers.

The bill defines the term “appraisal” to mean:

the process of estimating or evaluating actual cash value, the amount of loss, or the cost of repair or replacement of property for the purpose of quantifying the monetary value of a property loss claim when an insurer and an insured have failed to mutually agree on the value of the loss pursuant to a residential or commercial residential property insurance contract that is required in such contracts for the resolution of a claim dispute by appraisal.

The bill defines the terms “property insurance appraisal umpire” or “umpire” to mean:

a competent, independent, licensed, and impartial third party selected by the licensed appraisers for the insurer and the insured to resolve issues that the licensed appraisers are unable to reach an agreement during the course of the appraisal process pursuant to a residential or commercial property insurance contract that is required to provide for resolution of a claim dispute by appraisal.

The bill defines the terms “property insurance loss appraiser” or “appraiser” to mean a:

competent, licensed, and independent and impartial third party selected by an insurer or an insured to develop an appraisal for purposes of the appraisal process under a residential or commercial property insurance contract that provides for resolution of a claim dispute by appraisal.

The bill defines the term “uniform application” to mean:

the uniform application of the National Association of Insurance Commissioners¹² for nonresident agent licensing, effective January 15, 2001, or subsequent versions adopted by rule by the department.

Fees

The bill creates s. 468.851, F.S., to delineate the following maximum fees for appraisal umpires:

- Application: \$200 (nonrefundable)
- Examination: \$200
- Initial license: \$250

¹² The Office of Insurance Regulation is a member of the National Association of Insurance Commissioners (NAIC), an organization consisting of state insurance regulators. As a member of the NAIC, the OIR is required to participate in the organization’s accreditation program. NAIC accreditation is a certification that a state insurance regulator is fulfilling legal, regulatory, and organizational oversight standards and practices. Once accredited, a member state is subject to a full accreditation review every five years.

- Initial certificate of authorization: \$250
- Biennial license renewal: \$500
- Application for inactive status: \$125
- Reactivation of an inactive license: \$250
- Continuing education provide: \$600

These fee are identical to the fees provided in s. 468.8611, F.S., for part XVIII of ch. 468, F.S., relating to appraisers.

License Application Process

The bill creates s. 468.85115, F.S., to provide the application process for an appraisal umpire license. An applicant for an appraiser license must submit a written application under oath. The bill sets forth the information that must be included in the application along with the application fee, including proof of completing the required precicensing course. The applicant must also be fingerprinted, and the fingerprints must be submitted by the department to the Florida Department of Law Enforcement for a state and federal criminal history records check.

The bill requires that the department develop and maintain as a public record a current list of licensed property insurance appraisal umpires.

This application process is comparable to that provided in s. 468.86115, F.S., for appraiser licensing.

Examinations and Qualifications

The bill creates s. 468.8512, F.S., to provide the examination and education requirements to be licensed as an appraisal umpire.

Section 468.8512(1), provides that an applicant must apply to the department for a license after satisfying the examination requirements of part XVII of ch. 468, F.S. Section 468.8512(2), F.S., provides that the applicant must pass the required examination, be of good moral character, and meet the qualification requirements set forth in this section.

To be licensed as an appraisal umpire a person must be currently, or within the past 5 years, licensed, certified, registered, or approved as any of the following professionals:

- An engineer as defined in s. 471.005, F.S., or as a retired professional engineer as defined in s. 471.005, F.S.;
- A general contractor, building contractor, or residential contractor as defined in s. 489.105, F.S.;
- An architect to engage in the practice of architecture pursuant to part I of ch. 481, F.S.;
- A qualified geologist or professional geologist as defined in s. 492.102, F.S.;
- A certified public accountant as defined in s. 473.302, F.S.; and
- A Florida-licensed attorney.

An applicant may also qualify if he or she has received a baccalaureate degree from an accredited 4-year college or university in the field of engineering, architecture, or building construction.

To qualify, these persons must have also taught or successfully completed 4 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedures, appraisal preparation, and any other related material deemed appropriate by the department.

The following persons qualify for an appraisal umpire license without completion of the 4-hour classroom requirement:

- A currently licensed adjuster whose has been licensed for at least 5 years and whose license covers all lines of insurance, except the life and annuities class, and whose license includes the property and casualty class of insurance.
- An applicant who has received a minimum of 8 semester hours or 12 quarter hours of credit from an accredited college or university in the field of accounting, geology, engineering, architecture, or building construction.
- An applicant who has successfully completed 40 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedure, appraisal preparation, property insurance, and any other related material deemed appropriate by the department.

In addition to meeting the education, experience, and license requirements, an applicant for an appraisal umpire license must be:

- Found to be trustworthy and competent;
- A natural person who is at least 18 years of age; and
- A United States citizen or legal alien who possesses work authorization from the United States Citizenship and Immigration Services.

The bill provides that an incomplete application expires six months after the date it is received by the department.

The bill provides that an applicant seeking to become licensed under this part may not be rejected solely by virtue of membership or lack of membership in any particular appraisal organization.

These examination, education and experience qualifications are identical to those provided in s. 468.8512, F.S., for an appraiser license.

Licensure

The bill creates s. 468.8513, F.S., to require the department to license any applicant who it certifies has completed the qualification and examination requirements of ss. 468.8511, 468.85115, and 468.8512, F.S.

The bill prohibits the department from issuing a license by endorsement to any applicant for an appraisal umpire license who is under investigation in another state for any act that would

constitute a violation of part XVII of ch. 468, F.S., until such time that the investigation is complete and disciplinary proceedings have been terminated.

These licensure requirements are identical to those provided in s. 468.8613, F.S., for an appraiser license.

Renewal of License

The bill creates s. 468.8514, F.S., to provide for the biennial renewal of the appraisal umpire license upon the payment of the renewal fee and certification by the department that the licensee has satisfactorily completed the continuing education requirements of s. 468.8515, F.S.

These license renewal provisions are identical to those provided in s. 468.8614, F.S., for an appraiser license.

Continuing Education

The bill creates s. 468.8515, F.S., to require licensees to submit to the department, as a condition of renewal of the license, satisfactory proof that, during the 2 years before his or her application for renewal, the licensee completed at least 30 hours of continuing education in addition to 5 hours of ethics.

The department may prescribe by rule additional continuing professional education hours if a licensee fails to complete the required hours by the end of the renewal period, but those additional hours may not exceed 25 percent of the total required hours.

Umpire course continuing education providers, instructors, and classroom courses must be approved by and registered with the department before prelicensure courses for appraisal umpires may be offered. Each classroom course must include a written examination. A student achieves a grade of at least 75 percent on the examination to receive credit.

These continuing education requirements are identical to those provided in s. 468.8615, F.S., for appraisers.

Inactive license

The bill creates s. 468.8516, F.S., to permit appraisal umpire licensees to place their license on inactive status upon the filing of an application with the department. The license may be reactivated upon application to the department and completion of continuing education requirements prescribed by rule of the department. The continuing education requirements needed to reactivate an inactive license may not exceed 14 hours for each year the license was inactive. The fee to reactivate an inactive license may not exceed \$250, and the fee to renew an inactive license may not exceed \$250.

These requirements for inactive licenses are identical to those provided in s. 468.8616, F.S., for appraisers.

Certification of Partnerships, Corporations, and Other Business Entities

The bill creates s. 468.8517, F.S., to permit appraisal umpire licensees to practice through a partnership, corporation, or other business entity. A corporation or other business entity may not hold a license to practice property insurance appraisal umpire services. A partnership, corporation, or other business entity is not relieved of responsibility for the conduct or acts of its agents, employees, or officers.

These requirements for appraisal umpire partnerships, corporations, and other business entities are identical to those provided in s. 468.8617, F.S., for appraisers.

Grounds for Compulsory Refusal, Suspension, or Revocation of an Umpire's License

The bill creates s. 468.8518, F.S., to provide the grounds for the compulsory denial of an application, the suspension or revocation of a license, and for refusal to renew or continue a license, including engaging in fraudulent or dishonest practices in the conduct of business under the license and having been found guilty of or having plead guilty or nolo contendere to a felony or a crime punishable by imprisonment of 1 year or more under state or federal law or any crime that involves moral turpitude, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of such cases. An appraisal umpire license may also be denied if he or she has had a registration, license, or certification as an umpire revoked, suspended, or otherwise acted against in Florida or any other state or nation.

The compulsory disciplinary provisions for appraisal umpires are identical to those provided in s. 468.8618, F.S., for appraisers.

Grounds for Discretionary Refusal, Suspension, or Revocation of an Umpire's License

The bill creates s. 468.85185, F.S., to provide the grounds for the discretionary denial of an application, the suspension or revocation of a license, and for refusal to renew or continue a license, including failure to timely communicate with the appraisers without good cause, failure to exercise reasonable diligence in submitting recommendations to the appraisers, and violating any ethical standard for property insurance appraisal umpires set forth in s. 468.8519, F.S.

A licensee may be disciplined for failing to inform the department in writing within 30 days after pleading guilty or nolo contendere to, or being convicted or found guilty of, a felony.

The discretionary disciplinary provisions for appraisal umpires are identical to those provided in s. 468.86185, F.S., for appraisers.

Ethical Standards for Appraisal Umpires

The bill creates s. 468.8519, F.S., to provide the following ethical standards for appraisal umpires. An appraisal umpire must:

- Maintain confidentiality of all information revealed during an appraisal except where disclosure is required by law;
- Maintain confidentiality of records;

- Charge fees for appraisal services that are reasonable and consistent with the nature of the case, charge a fee based on actual time spent or allocated, charge for costs actually incurred, and not accept a fee based on a percentage basis or contingent basis.
- Maintain records necessary to support charges for services and expenses and maintain such records for at least 5 years;
- Not engage in false or misleading marketing practices;
- Not engage in any business, provide any service, or perform any act that would compromise the umpire's integrity or impartiality;
- Decline an appointment or selection, withdraw, or request appropriate assistance when the facts and circumstances of the appraisal are beyond the umpire's skill or experience;
- Not give or accept any gift, favor, loan, or other item of value in an appraisal process except for the umpire's reasonable fee; and
- Not solicit or otherwise attempt to procure future professional services during the appraisal process.

The ethical standards for appraisal umpires are identical to those provided in s. 468.8619, F.S., for appraisers.

Property Insurance Appraisers

The provisions in part XVIII of ch. 468, F.S., relating to the licensing and regulation of appraisal umpires mirror or are comparable to the provisions for the licensing and regulation of appraisers.

Property Insurance Appraiser Licensing Program

The bill creates s. 468.86, F.S., to create the property insurance appraiser licensing program within the department. It provides that part XVIII of ch. 468, F.S., applies to residential and commercial residential property insurance contracts and to the appraisal umpires and appraisers who participate in the appraisal process. It also authorizes the department to adopt rules to administer part XVIII of ch. 468, F.S.

Definitions

The bill creates s. 468.86, F.S., to define the terms "appraisal," "competent," "department," "independent," "property insurance appraisal umpire," "umpire," "property insurance loss appraiser," "appraiser," and "uniform application." These definitions are identical to the definitions provided in s. 468.85, F.S., for part XVII of ch. 468, F.S., relating to appraisal umpires.

The bill defines the term "appraisal" to mean:

the process of estimating or evaluating actual cash value, the amount of loss, or the cost of repair or replacement of property for the purpose of quantifying the monetary value of a property loss claim when an insurer and an insured have failed to mutually agree on the value of the loss pursuant to a residential or commercial residential property insurance contract that is required in such contracts for the resolution of a claim dispute by appraisal.

The bill defines the terms “property insurance appraisal umpire” or “umpire” to mean:

a competent, independent, licensed, and impartial third party selected by the licensed appraisers for the insurer and the insured to resolve issues that the licensed appraisers are unable to reach an agreement during the course of the appraisal process pursuant to a residential or commercial property insurance contract that is required to provide for resolution of a claim dispute by appraisal.

The bill defines the terms “property insurance loss appraiser” or “appraiser” to mean a:

competent, licensed, and independent and impartial third party selected by an insurer or an insured to develop an appraisal for purposes of the appraisal process under a residential or commercial property insurance contract that provides for resolution of a claim dispute by appraisal.

The bill defines the term “uniform application” to mean:

the uniform application of the National Association of Insurance Commissioners for nonresident agent licensing, effective January 15, 2001, or subsequent versions adopted by rule by the department.

Fees

The bill creates s. 468.8611, F.S., to delineate the following maximum fees for property insurance loss appraisers:

Application: \$200 (nonrefundable)

Examination: \$200

Initial license: \$250

Initial certificate of authorization: \$250

Biennial license renewal: \$500

Application for inactive status: \$125

Reactivation of an inactive license: \$250

Continuing education provide: \$600

These fees are identical to the fees provided in s. 468.8511, F.S., for appraisal umpires.

License Application Process

The bill creates s. 468.86115, F.S., to provide the application process for an appraiser license. An applicant for an appraiser license must submit a written application under oath. The bill sets forth the information that must be included in the application along with the application fee, including proof of completing the required prelicensing course. The applicant must also be fingerprinted, and the fingerprints must be submitted by the department to the Florida Department of Law Enforcement for a state and federal criminal history records check.

The bill requires that the department develop and maintain as a public record a current list of licensed appraisers.

This application process is identical to that provided in s. 468.85115, F.S., for appraisal umpire licensing.

Examinations and Qualifications

The bill creates s. 468.8612, F.S., to provide the examination and education requirements to be licensed as an appraiser.

Section 468.8612(1), F.S., provides that an applicant must apply to the department for a license after satisfying the examination requirements of part XVIII of ch. 468, F.S.

Section 468.8612(2), F.S., provides that the applicant must pass the required examination, be of good moral character, and meet the qualification requirements set forth in this section.

To be licensed as an appraiser a person must be currently, or within the past 5 years, licensed, certified, registered, or approved as any of the following professionals:

- An engineer as defined in s. 471.005, F.S., or as a retired professional engineer as defined in s. 471.005, F.S.;
- A general contractor, building contractor, or residential contractor as defined in s. 489.105, F.S.;
- An architect to engage in the practice of architecture pursuant to part I of ch. 481, F.S.;
- A qualified geologist or professional geologist as defined in s. 492.102, F.S.;
- A certified public accountant as defined in s. 473.302, F.S.; and
- A Florida-licensed attorney.

An applicant may also qualify if he or she has received a baccalaureate degree from an accredited 4-year college or university in the field of engineering, architecture, or building construction.

To qualify, these persons must have also have taught or successfully completed 4 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedures, appraisal preparation, and any other related material deemed appropriate by the department.

The following persons qualify for an appraiser license without completion of the 4-hour classroom requirement:

- A currently licensed adjuster who has been licensed for at least 5 years and whose license covers all lines of insurance, except the life and annuities class, and whose license includes the property and casualty class of insurance.
- An applicant who has received a minimum of 8 semester hours or 12 quarter hours of credit from an accredited college or university in the field of accounting, geology, engineering, architecture, or building construction.
- An applicant who has successfully completed 40 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedures, appraisal preparation, property insurance, and any other related material deemed appropriate by the department.

In addition to meeting the education, experience, and license requirements, an applicant for an appraiser license must be:

- Found to be trustworthy and competent;
- A natural person who is at least 18 years of age; and
- A United States citizen or legal alien who possesses work authorization from the United States Citizenship and Immigration Services.

The bill provides that an incomplete application expires six months after the date it is received by the department.

The bill provides that an applicant seeking to become licensed under this part may not be rejected solely by virtue of membership or lack of membership in any particular appraisal organization.

These examination, education and experience qualifications are identical to those provided in s. 468.8612, F.S., for an appraisal umpire license.

Licensure

The bill creates s. 468.8613, F.S., to require the department to license any applicant who it certifies has completed the qualification and examination requirements of ss. 468.8611, 468.86115, and 468.8612, F.S.

The bill prohibits the department from issuing a license by endorsement to any applicant for an appraiser license who is under investigation in another state for any act that would constitute a violation of XVIII of ch. 468, F.S., until such time that the investigation is complete and disciplinary proceedings have been terminated.

These licensure requirements are identical to those provided in s. 468.8512, F.S., for an appraisal umpire license.

Renewal of License

The bill creates s. 468.8614, F.S., to provide for the biennial renewal of the appraiser license upon the payment of the renewal fee and certification by the department that the licensee has satisfactorily completed the continuing education requirements of s. 468.8615, F.S.

These license renewal provisions are identical to those provided in s. 468.8514, F.S., for an appraisal umpire license.

Continuing Education

The bill creates s. 468.8615, F.S., to require appraiser licensees to submit to the department, as a condition of renewal of the license, satisfactory proof that, during the 2 years before his or her application for renewal, the licensee completed at least 30 hours of continuing education in addition to 5 hours of ethics.

The department may prescribe by rule additional continuing professional education hours if a licensee fails to complete the required hours by the end of the renewal period, but those additional hours may not exceed 25 percent of the total required hours.

Appraiser continuing education course providers, instructors, and classroom courses must be approved by and registered with the department before precursory courses for appraisers may be offered. Each classroom course must include a written examination. A student achieves a grade of at least 75 percent on the examination to receive credit.

These continuing education requirements are identical to those provided in s. 468.8515, F.S., for appraisal umpires.

Inactive license

The bill creates s. 468.8616, F.S., to permit appraisers to place their license on inactive status upon the filing of an application with the department. The license may be reactivated upon application to the department and completion of continuing education requirements prescribed by rule of the department. The continuing education requirements needed to reactivate an inactive license may not exceed 14 hours for each year the license was inactive. The fee to reactivate an inactive license may not exceed \$250, and the fee to renew an inactive license may not exceed \$250.

These requirements for an inactive license are identical to those provided in s. 468.8516, F.S., for appraisal umpires.

Certification of Partnerships, Corporations, and Other Business Entities

The bill creates s. 468.8617, F.S., to permit appraiser licensees to practice through a partnership, corporation, or other business entity. A corporation or other business entity may not hold a license to practice property insurance appraisal services. A partnership, corporation, or other business entity is not relieved of responsibility for the conduct or acts of its agents, employees, or officers.

These requirements for appraiser partnerships, corporations, and other business entities are identical to those provided in s. 468.8517, F.S., for appraisal umpires.

Grounds for Compulsory Refusal, Suspension, or Revocation of an Appraiser's License

The bill creates s. 468.8618, F.S., to provide the grounds for the compulsory denial of an application, the suspension or revocation of a license, and to refuse to renew or continue a license, including engaging in fraudulent or dishonest practices in the conduct of business under the license and having been found guilty of or having plead guilty or nolo contendere to a felony or a crime punishable by imprisonment of 1 year or more under state or federal law or any crime that involves moral turpitude, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of such cases. An appraiser license may also be denied if he or she has had a registration, license, or certification as an umpire revoked, suspended, or otherwise acted against in Florida or any other state or nation.

These compulsory disciplinary provisions for appraisers are identical to those provided in s. 468.8518, F.S., for appraisal umpires.

Grounds for Discretionary Refusal, Suspension, or Revocation of an Appraiser's License

The bill creates s. 468.86185, F.S., to provide the grounds for the discretionary denial of an application, the suspension or revocation of a license, and for refusal to renew or continue a license, including failure to timely communicate with the appraisers without good cause, failure to exercise reasonable diligence in submitting recommendations to the appraisers, and violating any ethical standard for property insurance appraisers set forth in s. 468.8619, F.S.

A licensee may be disciplined for failing to inform the department in writing within 30 days after pleading guilty or nolo contendere to, or being convicted or found guilty of, a felony.

These discretionary disciplinary provisions for appraisers are identical to those provided in s. 468.85185, F.S., for appraisal umpires.

Ethical Standards for Appraiser

The bill creates s. 468.8619, F.S., to provide the following ethical standards for property insurance appraisers. An appraiser must:

- Maintain confidentiality of all information revealed during an appraisal except where disclosure is required by law;
- Maintain confidentiality of records;
- Charge fees for appraisal services that are reasonable and consistent with the nature of the case, charge a fee based on actual time spent or allocated, charge for costs actually incurred, and not accept a fee based on a percentage basis or contingent basis.
- Maintain records necessary to support charges for services and expenses and maintain such records for at least 5 years;
- Not engage in false or misleading advertising or marketing practices;
- Not engage in any business, provide any service, or perform any act that would compromise the appraiser's integrity or impartiality, including being available to promptly commence the appraisal and thereafter devote his or her time to its completion in the manner expected by all involved parties;
- Decline an appointment or selection, withdraw, or request appropriate assistance when the facts and circumstances of the appraisal are beyond the appraiser's skill or experience;
- Not give or accept any gift, favor, loan, or other item of value in an appraisal process except for the appraiser's reasonable fee; and
- Not solicit or otherwise attempt to procure future professional services during the appraisal process.

The above ethical standards for appraisers are identical to those provided in s. 468.8519, F.S., for appraisal umpires.

The bill also provides that an appraiser must communicate with all parties in the manner agreed to by the parties. The bill prohibits communications in which a party dictates to an appraiser the

results of the proceedings, the matters or elements that must be included or considered by the appraiser, or the actions that the appraiser may take.

Residential or Commercial Property Insurance Loss Appraisal

The bill creates s. 468.862, F.S., to require commercial and residential real property insurers to use the property insurance appraisal process when the only issue remaining between an insured and an insurer is the actual cash value, the amount of loss, or the cost of repair or replacement of property for which a claim has been filed. The bill provides the process for insurance appraisals, including the required time frames for the appraisers and umpires.

The bill provides that the umpire's appraisal award is binding on the insurer and the insured with regard to the amount of the loss, but, if the insurance policy so provides, the insurer may assert that there is no coverage under the policy for the loss as a whole or that there has been a violation of the policy conditions with respect to fraud, lack of notice, or failure to cooperate.

The bill requires that each party must pay for their own appraiser. However, if the final determination of the amount of the loss is 50 percent greater than the insurer's preappraisal estimate of the loss communicated to the insured in writing, the insurer must pay all the expenses, including any fees and expenses charged by the insured's appraiser and all fees and expenses of the umpire. This requirement does not apply to the insured's claim for attorney fees.

The bill also provides that the Florida Arbitration Code does not apply to residential and commercial residential property insurance loss appraisal proceedings.

Effective Date

The bill provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

The bill provides the following license fees for property insurance appraisal umpires and appraisers:

- Application: \$200 (nonrefundable)
- Examination: \$200
- Initial license: \$250
- Initial certificate of authorization: \$250
- Biennial license renewal: \$500
- Application for inactive status: \$125
- Reactivation of an inactive license: \$250
- Continuing education provide: \$600

B. Private Sector Impact:

Applicants for an appraiser license and for an appraisal umpire license would be required to pay the application and license fees specified in the bill, including the cost of fingerprinting for a criminal history records check. According to FDLE, the cost for a state and national criminal history record check is \$38.75.

C. Government Sector Impact:

According to the department, it estimates revenues from licensing fees of \$2,467,000 and expenditures of \$1,001,936 for FY 2015-2016; revenues of \$1,850,250 and expenditures of \$918,023 for FY 2016-2017; and revenues of \$2,304,500 and expenditures of \$918,203 for FY 2017-2018.

The department also indicated the need for additional FTE's to implement the new licensing requirements.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 468.85, 468.8519, 468.86, 468.862, 468.851, 468.8511, 468.85115, 468.8512, 468.8513, 468.8514, 468.8515, 468.8516, 468.8517, 468.8518, 468.85185, 468.861, 468.8611, 468.86115, 468.8612, 468.8613, 468.8614, 468.8615, 468.8616, 468.8617, 468.8619, 468.8618, and 468.86185.

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

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