

BOARD FOR ASBESTOS, LEAD, AND HOME INSPECTORS

AGENCY RESPONSE TO DPB's ECONOMIC IMPACT ANALYSIS

18 VAC 15-40

Town Hall Action/Stage 4370/7385

Agency Response to Economic Impact Analysis Performed by the Virginia Department of Planning and Budget Regarding the Certified Home Inspectors Regulations:

Concur with the approval.

Amendment of the Certified Home Inspectors Regulations to incorporate provisions restricting who may perform inspections on new residential structures, and the qualifications of such individuals, was mandated pursuant to Chapter 411 of the 2015 Acts of the Assembly. The statutory amendment clearly specifies that only certified home inspectors may perform home inspections on new residential structures and that, in order to do so, such certified home inspectors performing inspections on new residential structures shall have completed a training module based on the International Residential Code component of the Virginia Uniform Statewide Building Code¹. These amendments to the Code were, presumably, enacted to protect the health, safety, and welfare of the public and their derivative effect on the regulations is not discretionary.

In amending the regulations, the Board for Asbestos, Lead, and Home Inspectors (Board) formed a committee of stakeholders and subject matter experts including: certified home inspectors; a local building code official; a Jack A. Proctor Virginia Building Code Academy instructor; representatives of the Home Builders Association of Virginia, the Virginia Association of Real Estate Inspectors, and the Board for Contractors; and a citizen member. In addition, the Director of the Jack A. Proctor Virginia Building Code Academy with the Department of Housing and Community Development provided technical assistance to the Committee and Board staff. The diversity of the stakeholders' subject matter knowledge helped to ensure that the newly-required provisions were developed in a manner that 1) were consistent with the statutory mandate, 2) ensured protection of the public, and 3) were not overly-burdensome on those who choose to obtain the necessary credential to perform home inspections on new residential structures.

The Economic Impact Analysis includes a summary of the current requirements to become a certified home inspector. Included in the summary is reference to the cost of

¹ Pursuant to guidance from the Department of Housing and Community Development-- the agency responsible for administering the promulgation of the Virginia Uniform Statewide Building Code (USBC) by the Board of Housing and Community Development--the portions of the USBC applicable to new residential structures are the provisions of the Virginia Construction Code applicable to R-5 residential structures, including provisions of the International Residential Code as amended by the Virginia Board for Housing and Community Development.

courses and “ride alongs”. Such ride alongs are used by “individuals who choose to decrease the number of home inspections they must complete, by completing them under the supervision of a certified home inspector, pay approximately \$50 per ride along.” This statement makes it appear that the only way an individual can reduce the number of home inspections completed under the supervision of a certified home inspector is through a fee-based ride along, and that the fee is “*per ride along*,” In fact, however, an individual may *work under* the supervision of a certified home inspector to obtain the required number of inspections (i.e., via an employee-employer relationship or other contractual relationship).

More importantly, because home inspector certification is voluntary, an individual can legally conduct home inspections without any credentials and those inspections may, in turn, be used to qualify for certification. The ride along system, when used, is an informal mechanism for conducting home inspections under the supervision of a certified home inspector, with variable negotiated fees that often include more than one home inspection per ride-along. In addition, some training programs include ride alongs as a part of the course. Given this context, the estimated total cost of ride alongs in the Economic Impact Analysis, which assumes an individual had not previously conducted *any* home inspections, of \$2,500 appears to be over-inflated.

Further, the summary of current entry requirements states that “instructional courses required for certification can cost between \$500 and approximately \$3,400.” It should be noted that the Board does not pre-approve instructional courses that are part of the entry requirements for certification. The regulations require that the applicant completes a certain number of instructional course hours (variable based on the number of home inspections completed by the applicant) and that the “instruction courses shall cover the content areas of the board-approved examinations.”² While the Economic Impact Analysis is based on a sample of three of the formal home inspector training providers in Virginia, more than 60 content areas are covered on the examinations, and half of the required instructional course hours may be completed using distance-learning technology—providing far more options for an individual to obtain the necessary course hours than is suggested by the analysis.

The Economic Impact Analysis includes a summary of the proposed regulatory provisions that provide for the approval of training by the Board necessary to obtain the New Residential Structure (NRS) specialty. Because the statute specifically references the training module that must be completed, the Committee recommended, and the Board adopted, provisions for the approval of the training provider as well as the training content. The provisions for training module approval are consistent with other similar regulatory boards under the purview of the Department that pre-approve training. In addition, it should be noted that the \$150 fee required with the application for training module approval is a *one-time* fee. There are no provisions for renewal or reaccreditation fees in the proposed regulations, thus reducing the cost-burden on training providers who choose to seek Board-approval.

² See 18 VAC 15-40-30.2

Finally, the Economic Impact Analysis includes a number of references to a proposed amendment to the prohibited acts which states “having cited, stated or represented that there exists a violation of the Virginia Uniform Statewide Building Code in a home inspection report or other document prepared relative to a home inspection.” While the Analysis suggests an interpretation of a provision in the Uniform Statewide Building Code (Chapter 6 of Title 36 of the *Code of Virginia*), such interpretation is not consistent with the application of such provisions by the Department of Housing and Community Development, the agency responsible for administration of the USBC. Section 36-105.A. of the Code of Virginia states in part that “Enforcement of the provisions of the Building Code for construction and rehabilitation shall be the responsibility of the local building department. There shall be established within each local building department a local board of Building Code appeals whose composition, duties and responsibilities shall be prescribed in the Building Code.” In order for a violation to be cited, the USBC requires 1) a condition to exist that may constitute a defect; 2) an inspection by a certified code official wherein a determination is made that the condition is in fact a defect; 3) notification of the defect to the responsible party and an opportunity to correct is provided; and 4) failure of the responsible party to make the correction and issuance of a formal Notice of Violation by the code official. Until those steps are completed, a defect is not a violation and, even then, this does not include the appeals process.

The subject matter experts on the Committee, as well as the Board, agreed that it is not appropriate or within jurisdictional bounds for a certified home inspector to infer a violation of the building code. Given the many variables and exceptions to the building code, only a properly trained building code official has the knowledge and authority to cite a violation of the building code. For this reason, there are specific requirements that a building code official must meet and maintain in order to carry out his duties in accordance with the Virginia Uniform Statewide Building Code³.

It should also be emphasized that while the amendment to the statute, and subsequently the proposed regulations, requires that an individual conducting a home inspection on a new residential structure possess a certificate as a home inspector with the NRS specialty, it is not mandatory that a home inspection be conducted on new residential structures. During construction of a residential structure, an average of 25 inspections are conducted by the building code official throughout the construction process (with more depending on the size and specific features of the residential structure). It is through the inspection process that the building code official is responsible for enforcement of the building code and approval of any modifications made consistent with the building code. A certified home inspector may not know that a modification was approved and improperly identify a building code violation.

³ Part I Virginia Uniform Statewide Building Code includes qualifications of a building official, including specific building experience, completion of the Virginia Building Code Academy or equivalent. The Virginia Building Code Academy includes instruction specific to the building code (48 to 120 hours), an examination, as well as continuing education every two years and code change training every three years. This does not include any additional requirements that may be established by the local governing body.

To ensure that certified home inspectors who are conducting inspections on new residential structures can properly assist their clients when there is an issue that *may be* in conflict with the building code, the training module includes specific topics to aid a home inspector, including roles of the building code official as well as an overview of a building code official's discretion in the administration and enforcement of the building code. This will allow a certified home inspector to understand the process for advising a client on how to properly proceed with the local building code office if there is a potential building code issue identified. Further, the regulations include specific items that must be addressed in the certified home inspection report and those items do not include citations of building code violations.