



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Carrie Kuruc, Director

MEMORANDUM

TO: Edward Woodruff, Division of Real Estate & Professional Licensing,
Ohio Department of Commerce

FROM: Emily Groseclose, Senior Policy and Business Advocate

DATE: November 14, 2019

RE: CSI Review – Ohio Licensed Home Inspectors (OAC 1301:17-1-01, 1301:17-1-02, 1301:17-1-03, 1301:17-1-04, 1301:17-1-05, 1301:17-1-06, 1301:17-1-07, 1301:17-1-08, 1301:17-1-09, 1301:17-1-10, 1301:17-1-11, 1301:17-1-12, 1301:17-1-13, 1301:17-1-14, 1301:17-1-15, 1301:17-1-16, 1301:17-1-17, 1301:17-1-18, 1301:17-1-19, 1301:17-1-20, 1301:17-1-21 and 1301:17-1-22)

On behalf of Lt. Governor Jon Husted, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Agency as provided for in ORC 107.54.

Analysis

This rule package contains 22 new rules submitted by the Ohio Department of Commerce (Department). The rule package was submitted to the CSI Office on September 27, 2019, and the public comment period was held open through October 7, 2019. No comments were received during this time. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI office on September 27, 2019.

The proposed rules implement the new home inspector license required under recently enacted Chapter 4764 of the Revised Code. The rules cover the topics of public notice for rulemaking, open meetings, fees for applicants, licensees and education providers, application process, background checks, pre-licensure and continuing education, pre-licensure experience, canons of ethics, standards of practice, prohibitions on license lending, stenographic records as part of an

adjudication hearing, mediation, disciplinary actions, and settlements.

As part of early stakeholder outreach, the Department published the proposed rules on its website and emailed them to a list of interested parties, including home inspectors and representatives of some institutions of higher education, who requested notification. The rules and comments received were presented at meetings with the Ohio Home Inspector Board (Board) in August 2019, during which the Board also heard oral testimony. The Department received many written comments, as well as oral statements made via phone and during Board testimony. The Department and Board made some revisions to standards of practice and education qualifications based off that feedback. No comments were received during the CSI public comment period.

The rules impact home inspector license applicants and licensees, institutions or organizations providing pre-licensure or continuing education, and entities sponsoring home inspector peer reviews. Adverse impacts include an application and license to be a home inspector, applications to offer pre-licensure and continuing education, fees, exams, reporting of certain information, and potential sanctions for failing to comply.

CSI identified nine fees throughout the rules that could apply to applicants or licensees. The fees, listed below, are in addition to the cost of completing the required pre-licensure education.

- **\$235** initial application fee
- Up to **\$15** for the home inspector recovery fund
- **\$235** renewal fee, every three years
- **\$175** late renewal fee (additional)
- **\$25** to receive a certificate of license or replacement license
- **\$25** to update the licensee's information on file
- **\$100** fee for approval of continuing education courses not previously approved
- **\$50-\$75** fee estimated by the Department for an applicant to have the criminal records check completed
- **\$100** penalty for a check returned due to insufficient funds
- **\$25-\$100** fee estimated by the Department for an applicant to participate in a peer review

Applicants are also subject to multiple examinations, including exams to successfully complete a qualifying home inspector education course, a peer review and exam, and the National Home Inspector Examination as required by statute.

An applicant must complete 80 hours of pre-licensing education. Also, if applying via curriculum of experience, an applicant must have a least 40 hours of home inspector experience, including the

completion of an experience log that must be submitted to the Department, and must complete a peer review session. If applying via the parallel inspection route, an applicant must complete ten parallel inspections as required by statute. Licensees are required to complete 14 continuing education hours annually, which is also required by statute.

Additionally, CSI noted that licensees could be subject to sanctions, including monetary penalties, mandated education courses, and license suspension or revocation, as well as criminal penalties. These penalties are statutory.

Institutions or organizations that wish to offer pre-licensure or continuing education for home inspectors must complete an application prescribed by the Board and pay a \$600 fee to offer pre-licensure education, a \$100 fee to offer classroom-based continuing education, and a \$200 fee to offer online continuing education. Each of these approvals is also subject to a \$50 fee for any amendments or changes to the curriculum or materials (or to the time/location of classroom courses), as well as a \$50 penalty for a new continuing education course offering or change of instructor or course content submitted less than 30 days prior to the offering date. Approved pre-licensure and continuing education is valid for three years.

The Department estimates about 600 “grandfathering” applications and 200-300 additional applications will be made, and that the program will cost \$490,000 annually to operate. The Department asserted that the rules are statutorily required to ensure that Ohio home inspector licensees are properly trained and educated with necessary skills and knowledge, as their services directly affect real property transactions.

Recommendations

CSI recognizes that unnecessary, burdensome regulations are often the result of statutory mandates that do not offer flexibility to the agencies tasked with enforcing them. We also acknowledge the effort the Department has undertaken to find balance in the new regulatory structure it is required to implement. When the law requires regulations, agencies must be careful to adopt the smallest amount of regulation necessary to implement the mandate in order to prevent unjustified, bureaucratic barriers that make it harder for qualified, skilled workers to find jobs. In the case of licensing requirements, agencies should strive to make them easy to understand and simple to follow. In light of these considerations, the CSI Office makes the following recommendations to the Department.

I. Examinations

The proposed home inspector licensing rules require multiple exams throughout the licensure process—an exam for each education course, a peer review exam option in addition to

statutorily required peer review, and a national exam. Only one of these exams—the national home inspector examination—appears to be required by statute, ORC 4764.07(D)(4). While exams are important to demonstrate an applicant’s competency, exam requirements should not be duplicative or unnecessarily burdensome. Therefore, CSI recommends that the Department revisit home inspector license exam requirements to ensure that the number of exams do not create an unjustified adverse impact to business.

II. Fees

The fee structure of a licensing body should be closely tailored to its cost of issuing licenses. CSI recommends that the Department review its proposed fees to ensure there is clear and consistent justification for each charge. For example, the proposed rules require education providers that wish to provide classroom and online pre-licensure and continuing education to pay multiple fees per offering. There is a \$600 fee to offer pre-licensure education, a \$100 fee to offer *classroom-based* continuing education, and a \$200 fee to offer *online* continuing education. In addition, the proposed rules require a \$50 fee each time a provider simply amends the time or location of a classroom-based course. CSI asks the Department to consider consistent fees for online continuing education and classroom-based continuing education and to provide justification for charging a fee when a provider needs to make a change to its classroom schedule.

III. Redundant Rules

Rules should be as easy to read as the subject matter allows, and agencies should avoid unnecessary repetition of information. Therefore, CSI recommends that the Department consider consolidating OAC 1301:17-1-08 with 1301:17-1-09 and 1301:17-1-11 with 1301:17-1-12, as both pairs of rules contain a significant amount of similar language.

IV. Duplicative Application Process

Simplifying an application process is one of the best ways to ease regulatory burden. The proposed rules appear to require an education provider to complete different applications in order to provide online education versus classroom-based education. CSI recommends that the Department consider streamlined applications for education providers to minimize the difficulty of seeking the approval required by law and consider accepting applications in an electronic format that is less burdensome for the applicant.

V. Clear Requirements

OAC 1301:17-1-14(C) says “The applicant shall not perform any home inspections for compensation or other valuable consideration during the parallel inspection period.” ORC 4762.04(A) says “No person shall knowingly conduct a home inspection or represent a qualification to conduct a home inspection for compensation or other valuable consideration unless that person is licensed pursuant to this chapter as a home inspector or performing a parallel inspection.” The Department stated that its intention with the rule language is to prohibit applicants who are not licensed home inspectors from being compensated by a client, and that if they are being compensated for a parallel inspection, it should be paid by the licensed home inspectors overseeing the applicant. CSI is concerned that the rule language does not accurately reflect the Department’s regulatory intent and could be confusing for prospective licensees. Therefore, CSI recommends that the Department clarify the rule language to prevent potential confusion.

Conclusion

Based on its review of the proposed rule package, the CSI office concludes that the Ohio Department of Commerce should review its proposed rules based on the recommendations above prior to filing with the Joint Committee on Agency Rule Review. CSI looks forward to continued communication with the Department.