HB312

189286-1

By Representatives Whorton (R), Ellis, Crawford, Butler, Hanes, Ball, Rowe, Williams (JW), Moore (B) and Ledbetter

RFD: Boards, Agencies and Commissions

First Read: 25-JAN-18
SYNOPSIS: Under existing law, home inspectors and exterior insulation and finish systems (EIFS) inspectors are licensed by the Division of Construction Management within the Department of Finance.

This bill would establish the Alabama Home Inspectors Licensure Board to license and regulate the practice of home inspections and EIFS inspections.

This bill would provide for the composition of the board members and functions of the board.

This bill would specify requirements for the licensing of home inspectors and EIFS inspectors.

This bill would provide for licensing fees and penalties for violations.

Amendment 621 of the Constitution of Alabama of 1901, now appearing as Section 111.05 of the Official Recompilation of the Constitution of Alabama of 1901, as amended, prohibits a general law whose purpose or effect would be to require a
new or increased expenditure of local funds from becoming effective with regard to a local governmental entity without enactment by a 2/3 vote unless: it comes within one of a number of specified exceptions; it is approved by the affected entity; or the Legislature appropriates funds, or provides a local source of revenue, to the entity for the purpose.

The purpose or effect of this bill would be to require a new or increased expenditure of local funds within the meaning of the amendment. However, the bill does not require approval of a local governmental entity or enactment by a 2/3 vote to become effective because it comes within one of the specified exceptions contained in the amendment.

A BILL
TO BE ENTITLED
AN ACT

Relating to home inspectors; to add a new Chapter 14D, commencing with Section 34-14D-1 to Title 34, Code of Alabama 1975; to establish the Alabama Home Inspectors Licensure Board to license and regulate the practice of home inspections and exterior insulation and finish systems inspections; to provide for the composition of the board members and functions of the board; to specify requirements
for the licensing of home inspectors and exterior insulation
and finish systems inspectors; to provide for licensing fees
and penalties for violations; to repeal Chapter 14B of Title
34, Code of Alabama 1975, which provides for the licensure of
home inspectors by the Division of Construction Management
within the Department of Finance; and in connection therewith
would have as its purpose or effect the requirement of a new
or increased expenditure of local funds within the meaning of
Amendment 621 of the Constitution of Alabama of 1901, now
appearing as Section 111.05 of the Official Recompilation of
the Constitution of Alabama of 1901, as amended.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Chapter 14D, commencing with Section
34-14D-1, is added to Title 34, Code of Alabama 1975, to read
as follows:

CHAPTER 34D. INSPECTORS.

§34-14D-1.

As used in this chapter, the following terms have
the following meanings:

(1) BOARD. The Alabama Home Inspectors Licensure
Board.

(2) EXTERIOR INSULATION AND FINISH SYSTEMS (EIFS)
INSPECTION. The physical review of exterior insulation and
finish systems (EIFS) or the inspection of the condition of or
the installation of EIFS of a private, commercial, or other
building.
(3) EXTERIOR INSULATION AND FINISH SYSTEMS (EIFS) INSPECTOR. A person who does any of the following:

a. Performs an EIFS inspection for compensation for another person.

b. Undertakes or offers to undertake the performance of, submits a bid to perform, or who contracts to perform, an EIFS inspection.

c. Assumes charge of, in a supervisory capacity or otherwise, an EIFS inspection.

(4) HOME INSPECTION. The physical review of mechanical and structural components of a residence.

(5) HOME INSPECTOR. A person who does any of the following:

a. Performs a home inspection for compensation for another person.

b. Undertakes or offers to undertake the performance of, submits a bid to perform, or who contracts to perform, a home inspection.

c. Assumes charge of, in a supervisory capacity or otherwise, a home inspection.

(6) LICENSEE. A licensed home inspector or EIFS inspector.

(7) RESIDENCE. A structure, including a site-built home, a condominium, a duplex or multi-unit residential building consisting of not more than four residential units, providing complete independent residential living facilities
for one or more individuals that includes permanent provisions for living, sleeping, eating, cooking, and sanitation.

§34-14D-2.

(a) There is established a Home Inspectors Licensure Board to implement and administer this chapter.

(b) The board shall consist of nine members. The composition of the board shall be as follows:

(1) Two licensed real estate brokers, one appointed by the Governor with an initial term of one year and one appointed by the President Pro Tempore of the Senate with an initial term of two years, each chosen from a list of three nominees furnished by the Alabama Association of Realtors.

(2) Two licensed home builders, one appointed by the Governor with an initial term of three years and one appointed by the Speaker of the House of Representatives with an initial term of one year, each chosen from a list of three nominees furnished by the Home Builders Association of Alabama.

(3) Two licensed home inspectors, one appointed by the President Pro Tempore of the Senate with an initial term of three years and one appointed by the Speaker of the House of Representatives with an initial term of two years, each chosen from a list of three nominees furnished by the Home Builders Association of Alabama.

(4) Two members of the public, one appointed by the President Pro Tempore of the Senate from a list of three nominees furnished by the Alabama Association of Realtors with an initial term of one year, and one appointed by the Speaker
of the House of Representatives from a list of three nominees furnished by the Home Builders Association of Alabama with an initial term of three years.

(5) One building official or inspector currently employed by a municipality, county, or other governmental unit or subdivision having jurisdiction to inspect buildings or regulate residential construction, appointed by the Governor from a list of three nominees furnished by the Code Officials Association of Alabama, with an initial term of two years.

(c) Terms expire December 31 of the year of expiration, and all subsequent terms shall be for three years and until a member's successor has been appointed and qualified.

(d) The appointing authorities shall coordinate their appointments to assure membership is inclusive and reflects the racial, gender, geographic, urban, rural, and economic diversity of the state.

(e) Vacancies in unexpired terms shall be filled in the same manner as original appointments are made.

(f) The board shall elect from its members a chair, vice chair, and secretary who shall serve terms as determined by the board.

(g) The board shall meet at least quarterly, and at such other times as the chair may designate. Five members of the board shall constitute a quorum.

(h) Members of the board shall be compensated in the amount of one hundred dollars ($100) per day, not to exceed
eight days per year, for attending meetings of the board, and shall be allowed travel and per diem expenses at the same rate paid to state employees, to be paid from the funds collected for the administration of this chapter, as funds are available.

(i) The board may hire an executive director and a deputy director. The board shall have the sole authority to determine the salary of the executive director. The board may employ employees as from time to time may be necessary to implement this chapter.

§34-14D-3.

(a) The board shall do all of the following consistent with this chapter:

(1) Issue, renew, suspend, or revoke licenses for home inspectors and EIFS inspectors, which may include more than one type of license or licenses that vary in scope of work authorized or vary in requirements for licensure.

(2) Investigate and conduct hearings, in accordance with the Administrative Procedure Act, upon complaints to determine if disciplinary action is warranted

(3) Establish reasonable licensure fees, including, but not limited to, initial application, renewal, reinstatement, and late fees, provided a license fee may not exceed five hundred dollars ($500).

(4) Impose administrative fines, not to exceed one thousand dollars ($1,000), upon a finding that a licensee
violated this chapter, a board rule, or a condition of a
license.

(b) The board shall adopt rules in accordance with
the Administrative Procedure Act to implement this chapter.
§34-14D-4.

(a) There is created in the State Treasury a fund to
be known as the Alabama Home Inspectors Licensure Fund. All
fees, fines, charges, or other money collected by the board
under this chapter shall be deposited into the State Treasury
to the credit of the Alabama Home Inspectors Licensure Fund
and no funds may be expended for any purpose whatsoever unless
they have been allotted and budgeted in accordance with
Article 4 of Chapter 4 of Title 41, and only in the amounts
and for the purposes provided by the Legislature in the
general appropriation bill or this chapter.

(b) The board shall pay all its expenses from the
Alabama Home Inspectors Licensure Fund, and no expenses shall
be borne by the state from the state General Fund. The board
may retain sufficient funds to meet any emergency that may
affect its efficient operation. All money remaining unexpended
in the Alabama Home Inspectors Licensure Fund at the end of
each fiscal year shall be retained for the following fiscal
year.

§34-14D-5.

(a) A person desiring to be licensed as a home
inspector or EIFS inspector shall apply to the board on forms
provided by the board and pay the appropriate application fee.
An applicant shall submit evidence satisfactory to the board that he or she is a citizen or resident of the United States.

(b) An applicant who has provided all requisite information and fees to the board shall be examined by the board at its next meeting. In examining the applicant, the board shall consider all of the following in determining whether the applicant is qualified:

(1) The character of the applicant.

(2) The business-related financial condition of the applicant.

(3) The applicant's professional qualifications, determined in accordance with board rules.

(4) Proof of insurance by the applicant, determined in accordance with board rules.

(5) The ability and willingness of the applicant to serve the public and preserve and protect public health and safety.

(6) Any other information the board determines, by rule, that is reasonably related to the applicant's ability to perform home inspections or EIFS inspections in a competent manner.

(c) The board may require each applicant to demonstrate, through a written examination process, that he or she possesses an appropriate understanding of the standards of practice and any code of ethics adopted by the board, as well as an adequate knowledge of performing home inspections or EIFS inspections.
(d) If the board finds the applicant is qualified in accordance with subsection (b), has passed a written examination required under subsection (c), and has otherwise complied with this chapter and board rules, the board shall issue the applicant a license along with a registration number.

(e) Upon request in writing, the board shall refund fees erroneously charged. However, the application fee paid by an applicant who is denied a license or who fails to complete the application process is nonrefundable, and any fees paid by a licensee whose license has been revoked are nonrefundable.

(f) The board shall make and preserve a record of each examination described in subsection (b) and the findings of the board pertaining to the examination. An applicant may request to the board and shall receive from the board, upon payment of a reasonable fee, a copy of the applicant's record.

(g) An initial license shall be valid beginning on the date of issue and expiring December 31 of the year in which the license is initially issued. Licenses may be renewed for a term of one year, beginning on January 1 and expiring on December 31. The board shall renew licenses at least 90 days before the expiration date.

(h) The board shall maintain in its office records of licenses and renewals and make the records available to the public.

§34-14D-6.
(a) A licensee who is registered under one name may not engage in business as a home inspector or EIFS inspector under any other name unless the other name is also registered with the board.

(b) All advertisements, contracts for service, correspondence, and other documents prepared by a licensee shall indicate the licensee's registration number, name, and address as registered pursuant to this chapter.

§34-14D-7.

(a) When an insurance policy is issued to a licensee, the licensee shall request the insurance company to notify the board when an insurance policy is terminated.

(b) In the event any insurance coverage required under this chapter lapses or terminates, the licensee shall notify the board, and the board shall suspend the license until the insurance is reinstated or replaced.

§34-14D-8.

(a) A person may not engage or attempt to engage in the practice of home inspections or EIFS inspections, hold himself or herself out to be a licensed home inspector or licensed EIFS inspector, or advertise as a home inspector or EIFS inspector unless he or she is licensed by the board in accordance with this chapter. Any person who violates this section shall be guilty of a Class A misdemeanor, and any contract the person entered into to provide home inspection services or EIFS inspection services shall be null and void.

§34-14D-9.
Any person licensed by the Division of Construction Management in the Department of Finance as a home inspector or EIFS inspector on the effective date of this act shall remain licensed and may continue to conduct inspections in accordance with the license through the term of the license.

Notwithstanding Section 34-14D-5, when licensing applicants who were previously licensed by the Division of Construction Management, the board, by rule, may exempt the applicants from certain qualification or examination requirements as the board deems appropriate.

Section 2. Not more than seven days after the effective date of this act, the Division of Construction Management shall transfer to the board all records or copies of the records relating to persons licensed by the division as of the effective date of this act.

Section 3. The Home Inspectors Licensure Board shall be subject to the Alabama Sunset Law, Chapter 20 of Title 41, Code of Alabama 1975, as an enumerated agency as provided in Section 41-20-3, Code of Alabama 1975, and shall have a termination date of October 1, 2023, and every four years thereafter, unless continued pursuant to the Alabama Sunset Law.

Section 4. Chapter 14B of Title 34, Code of Alabama 1975, which provides for the licensure of home inspectors and EIFS inspectors by the Division of Construction Management within the Department of Finance, is repealed.
Section 5. Although this bill would have as its purpose or effect the requirement of a new or increased expenditure of local funds, the bill is excluded from further requirements and application under Amendment 621 because the bill defines a new crime or amends the definition of an existing crime.

Section 6. This act shall become effective on the first day of the third month following its passage and approval by the Governor, or its otherwise becoming law.