



Occupational Licensing Review

Board Questionnaire

Board Name Ohio Home Inspector Board

Point of Contact Rachael Carl, Legislative Director

Describe the board's primary purpose and its various goals and objectives

Pursuant to O.R.C. 4764.04 and 4764.04, the Ohio Home Inspector Board ("Board") regulates the licensure and performance of home inspectors in Ohio, while Home Inspector Law is administered by the Superintendent of the Division of Real Estate & Professional Licensing ("Division") at the Ohio Department of Commerce.

Specifically, the Board is required to adopt rules regarding license requirements for conducting inspections, standards of practice and ethical conduct, including prohibitions against conflicts of interest; fees for obtaining and maintaining a home inspector license and approval of education curriculum and providers; setting a special assessment amount in order to fund the Home Inspection Recovery Fund; approval of experience curriculum for pre-licensure; and licensure of non-resident home inspectors.

The Board is also required to hold hearings for alleged violations of the Home Inspector Law and hear appeals from any order or determination made by the Superintendent.

Describe and identify the board's past and anticipated workload, number of staff required to complete workload, and total number of staff

The Board was created through the enactment of Senate Bill 255 of the 132nd General Assembly, which has a November 1, 2019, effective date. While awaiting the effective date for the Home Inspector Program ("Program"), the Division is borrowing resources from the Division's other programs and has worked diligently to draft rules, create forms, implementing necessary IT solutions, and begin receiving and processing "grandfather" applications. Once the Program is operational, the Division expects to have four full-time employees fulfilling these needs. As with the other programs for which the Division has responsibility, the superintendent, legal and other support staff will provide proportional administrative support.

While the total number of future licensees is unknown, the Division already has received over 500 "grandfather" applications and expects between 700-800 licensees. (Approximately 490 individuals are licensed in Kentucky and Indiana has approximately 690 active licensees.)

Describe and identify the board's past and anticipated budgets and its sources of funding

The Program is not effective yet, so there is not a past budget for the Program. When fully operational, the Board/Program will be supported through fees for licensure application and obtainment, license renewal, and pre-licensure and continuing education courses. Additionally, Senate Bill 255 created the Home Inspection Recovery Fund, which will consist of a special annual assessment between \$3 and \$5 per year depending on prior year fund balances, to each licensee applying for an initial license or a renewal of a home inspector license. The fund is to be used to pay uncollectable, unsatisfied judgments against home inspectors when a final judgment is granted by a court.

Although it is difficult to estimate the anticipated revenue since the Program is not fully operational yet, the Division's budget appropriates \$300,000 in both FY 2020 and FY 2021 for the Home Inspectors Fund and \$200,000 in both FY2020 and FY2021 for the Home Inspection Recovery Fund.

Identify the number of members of its governing board or other governing entity and their compensation, if any

As outlined in O.R.C. 4764.04, the Board, which received its last initial appointment on September 12, 2019, consists of seven members. Five members who are licensed home inspectors are appointed by the Governor and one public member is appointed by each the Speaker of the House of Representatives and the President of the Senate. The Director of Commerce serves as ex officio the executive officer of the Board but may designate the Superintendent as the executive officer.

Board members will receive no compensation beyond reimbursement for actual expenses (i.e. travel, parking, etc.).

Is the preservation of the board necessary to protect the public's health, safety, or welfare? If so, is the authority of the board narrowly tailored to protect the public's health against present, recognizable, and significant harms to the public's health safety and welfare?

Yes, preservation of the Board is necessary to protect the public's health, safety, and welfare. This program was established to give potential homebuyers, making arguably the biggest purchase of their lives, confidence that any inspector they plan to hire is knowledgeable, properly trained and adheres to a standard of practice and ethics that is in the public interest.

Yes, the Board's authority is narrowly tailored to protect the public's health against present, recognizable, and significant harms to the public's health safety and welfare.

Could the public be protected or served in an alternate or less restrictive manner?

No, it is not likely that the public could be protected or served in an alternate or less restrictive manner. Having minimum requirements to obtain licensure helps to ensure that those working as a home inspector have sufficient education, training, and experience to perform such work competently and safely. Moreover, the Board's use of background checks to screen out applicants who have been convicted of certain violent offenses, crimes of moral turpitude, and disqualifying offenses also helps to ensure the public's health, safety, and welfare.

Does the board serve a specific private interest?

No, the Board does not serve a specific private interest.

Are the board's rules consistent with the legislative mandate expressed in the statutes that created and empowered the board?

Since the Program is not fully operational, no rules have been formally promulgated yet. However, the proposed rules as adopted by the Board are consistent with the legislative mandate expressed in the recently adopted statute that created the Program/Board. As part of the rulemaking process, these rules have gone through the public comment process, including specific vetting with industry stakeholders, as well as public and stakeholder input during the Board's adoption process. The rules are now in the process of being filed with the Common Sense Initiative Office for further review and eventually onto the Joint Committee on Agency Rule Review to ensure they are consistent with the Board's legislative mandate.

If applicable, please identify any licenses or functions of the board that could be eliminated or consolidated

There are no licenses or functions of the Board that could be eliminated or consolidated.

Describe the extent to which the board's jurisdiction and programs overlap or duplicate those of other boards, the extent to which the board coordinates with those other boards, and the extent to which the board's programs could be consolidated with the programs of other state departments or boards.

The Home Inspector Board, when fully operational, will be the only entity in the state that regulates the profession of home inspection. There are licensed professions that are tangentially related, specifically architects and engineers, however, both professions are exempt from licensure under the Home Inspector Law when performing work within the scope of the architect and engineer license.

How many other states regulate the occupation or occupations under the board's jurisdiction? Is a license required to engage in that occupation or those occupations in other states? Are the initial licensing and license renewal requirements for the occupation or occupations substantially equivalent in every state? How does the amount of regulation exercised by the board compare to the regulation of the occupation or occupations, if any, in other states?

According to the National Conference State Legislatures, Ohio is one of 33 states that require home inspectors to be licensed. 17 states do not require home inspectors to be licensed, registered, or certified by the state. Of the 33 states that do license home inspectors, the licensing requirements in Ohio are substantially equivalent to other states.

Would significant changes in the board's rules prevent an individual licensed in Ohio from practicing, or allow an individual licensed in Ohio to practice, the same occupation in another jurisdiction without obtaining an occupational license for that occupation in that other jurisdiction?

Yes, significant changes to the Board's proposed rules could potentially prevent an individual licensed in Ohio from practicing the same occupation in another jurisdiction without obtaining an occupational license for that occupation in the other jurisdiction. However, a license in one state does not automatically qualify someone for a license in another state. As such, significant changes in the Board's proposed rules wouldn't have an immediate impact on the person's licensure with another state, but it could make Ohio's requirements less uniform, or possibly more or less onerous by comparison.

Does the board recognize national uniform licensure requirements for one or more occupations under the board's jurisdiction?

No, the Board does not recognize national uniform licensure requirements for one or more occupations under its jurisdiction, because no such national standard exists. However, the Board did incorporate a majority of components into the Standards of Practice rule from the two professional member organizations' standards, both of which have been in existence for decades and commonly accepted nationwide.

Could private contractors be used, in an effective and efficient manner, either to assist the board in the performance of its duties or to perform these duties instead of the board?

The Board's proposed rules would use private contractors to assist it in those duties where the General Assembly determined private contractors would be effective or efficient, including providers of continuing education courses, training agencies, and providers offering the examination for applicants to obtain their license. It is unlikely that private contractors could be used in an effective and efficient manner to assist the Board in its performance of any other of its duties.

Has the operation of the board inhibited economic growth, reduced efficiency, or increased the cost of government?

With the last initial board appointment only being made on September 12, 2019, the Board does not believe that its operation will inhibit economic growth or reduce efficiency. Being that this is a brand-new program, it will slightly increase the cost of government.

Describe the authority of the board regarding fees, inspections, enforcement, and penalties.

The Board's authority to charge fees is set forth in R.C. 4764.05, the Board's enforcement authority (including investigations) is set forth in R.C. 4764.12, and the Board's authority to issue discipline to licensees and civil penalties for unlicensed activity is set forth in R.C. 4764.13.

Describe the extent to which the board has permitted qualified applicants to serve the public.

The Board will grant licenses to any individual or business so long as they meet the requirements under Chapter 4764 of the Revised Code. Generally speaking, all license types will require a combination of the following elements: completion of an application form, payment of the application fee, proof of minimum competency, completion of background check, and have complied with R.C. 4764 and rules promulgated thereunder. So long as the applicant meets all of the criteria, they will be issued a license allowing them to serve Ohio's public.

Describe the extent to which the board has permitted individuals to practice elements of the occupation without a license.

As outlined in O.R.C. 4764, there exists a method by which home inspectors residing and licensed in other states to apply for and obtain an Ohio license. Additionally, there is an exemption for individuals operating within the scope of another professional license, including the following: certified building code personnel, certified architects, registered professional engineers, individuals licensed as a specialty contractor with OCILB, licensed real estate appraisers, licensed commercial applicator of pesticide, public insurance adjuster holding a valid certificate of authority, or a licensed real estate broker, real estate salesperson, foreign real estate dealer, or foreign real estate salesperson.

Assess the cost-effectiveness of the board in terms of number of employees, services rendered, and administrative costs incurred, both past and present.

The Program is in the process of becoming fully operational. Currently, the Board does not have dedicated staff and utilizes resources dedicated to other programs within the Division. Moving forward, the Board will strive to promote an efficient licensing process for those working in the home inspection field. Furthermore, the Board will continue to share some responsibilities with other Division programs to increase efficiency and reduce indirect costs.

Has the board's operation been impeded or enhanced by existing statutes and procedures and by budgetary, resource, and personnel practices?

The Board was only recently created through the enactment of Senate Bill 255 last General Assembly, so its operation has not experienced an impediment by statutes, budgetary, resource, and personnel practices.

Has the board recommended statutory changes to the general assembly that would benefit the public as opposed to the persons regulated by the board, if any, and have those recommendations and other policies been adopted and implemented?

No. The Board only received its last initial appointment to the board on September 12, 2019, and has not recommended statutory changes to the General Assembly that would benefit the public as opposed to persons regulated by the Board.

Has the board required any persons it regulates to report to it the impact of board rules and decisions on the public as they affect service costs and service delivery?

As part of every rulemaking proposal, the Division proactively and affirmatively solicits feedback from the public and any persons it will regulate regarding the impact of its rules and decisions on the public and licensees in terms of service costs and service delivery. The Division issues a newsletter discussing issues before the Division and inviting industry and public feedback and provides time sensitive information and updates via an email listserv.

Are persons regulated by the board, if any, required to assess problems in their business operations that affect the public?

No, neither persons regulated by the Board or others are required to assess problems in their business operations that affect the public.

Has the board encouraged public participation in its rule-making and decision-making?

The Division and Board have proactively solicited and encouraged public participation and received many comments both prior to the Board review and adoption of proposed rules and at each meeting held to accomplish the adoption of those rules. The Division ensures that the Board adopts, amends, reviews, and rescinds rules in accordance with Chapter 119 of the Revised Code and follows the accompanying requirements and procedures for public participation (e.g., public notice, public hearing). For any proposed rule adoptions, amendments, or rescissions, the Division send a copy of the proposed rules to stakeholders for comment. Furthermore, hearings of the Board, where decisions involving license applications, renewals, and other matters coming before the Board, are open to the public and notice of the meetings is provided to encourage such participation.

Assess the efficiency with which formal public complaints filed with the board have been processed to completion.

The Division/Board does not have enforcement authority until November 1, 2019, so no formal complaints have been filed yet. In general, the Division will investigate complaints received from the public. After an investigation is completed, the findings of the investigator and the complaint are provided to the Board at its next scheduled Board meeting for consideration. At that time, if the Board votes to issue a notice of opportunity for hearing to the alleged violator, the matter will then proceed through the Chapter 119 administrative review process.

Has the purpose for which the board was created been fulfilled? Has it changed? Does it still exist?

The Board is in the process of implementing the Home Inspector Program in alignment with the purpose for which it was created, to give potential homebuyers, making arguably the biggest purchase of their lives, confidence that any inspector they plan to hire is knowledgeable and properly trained.

Does federal law require that the board be renewed in some form?

No, federal law does not require that the Board be renewed in some form.

Assess the administrative hearing process of a board if the board has an administrative hearing process, and whether or not the hearing process is consistent with due process rights.

The Board's statutes and rules reference Chapter 119 of the Revised Code with regard to the administrative hearing procedure. As such, the due process rights of individuals affected by the decisions of the Board are protected by the processes established in Chapter 119.

Is the requirement for the occupational license or licenses under the board's jurisdiction consistent with the policies expressed in section 4798.02 of the Revised Code? Does the license serve a meaningful, defined public interest? Does it provide the least restrictive form of regulation that adequately protects the public interest?

Yes, the requirements for a home inspector license ensure competition within the industry and increase economic opportunities amongst its members while protecting consumers in all aspects of the home buying and selling transaction.

Assess the extent to which licensing ensures that practitioners have occupational skill sets or competencies that are substantially related to protecting consumers from present, significant, and substantiated harms that threaten public health, safety, or welfare, and the impact that those criteria have on applicants for a license, particularly those with moderate or low incomes, seeking to enter the occupation or profession.

Generally speaking, the home inspector license will require a combination of the following elements: completion of an application form, payment of the application fee, proof of minimum competency, completion of a criminal history check, and complying with R.C. 4764 and rules promulgated thereunder. These criteria strike the appropriate balance to ensure that applicants are competent to perform the work while not overly restricting the pool of available inspectors in the field.

The applicant's competency to practice as a home inspector is assessed by passing the national home inspector examination, completing a curriculum of education that is currently being developed by the Board, and proof that the applicant has experience in the field. With respect to applicants with moderate or low incomes, all applicants are eligible to sit for the examination once they are 18 years old and have graduated from high school, have a GED or equivalent. No advanced education is required.

Assess the extent to which the requirement for the occupational license stimulates or restricts competition, affects consumer choice, and affects the cost of services.

The requirements for the Division's occupational licenses do not restrict competition, affect consumer choice, or affect the cost of services. To the contrary, possession of the license provides a means by which an individual in the field may distinguish him or herself from that of unlicensed persons, thereby being more marketable to those looking to have such work performed.

Are changes needed in the enabling laws of the board in order for it to comply with the criteria suggested by the considerations listed in this questionnaire?

No, changes are not needed in the enabling laws of the Board in order for it to comply with the criteria suggested by the considerations listed in this questionnaire.

Additional Notes

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