

March 7, 2019

VIA EMAIL

The Honorable Ronald D. Kouchi
Senate President
415 South Beretania Street
Hawaii State Capitol, Room 409
Honolulu, Hawaii 96813

VIA EMAIL

The Honorable Scott K. Saiki
Speaker, House of Representatives
415 South Beretania Street
Hawaii State Capitol, Room 431
Honolulu, Hawaii 96813

Re: *Sunrise Analysis: Regulation of Home Inspectors*, Report No. 19-09

Dear President Kouchi and Speaker Saiki:

Please find attached our *Sunrise Analysis: Regulation of Home Inspectors*, Report No. 19-09, along with a copy of the Auditor's Summary, which has also been uploaded to the Legislature's web-based application.

As directed by Senate Concurrent Resolution 27, Senate Draft 1, 2018 Legislative Session, we assessed whether the profession of home inspector should be regulated by the State of Hawaii based on the criteria for licensure in the Hawaii Regulatory Licensing Reform Act, Chapter 26H, Hawaii Revised Statutes.

The report is accessible through our website at:
<http://files.hawaii.gov/auditor/Reports/2019/19-09.pdf>.

The summary is also accessible through our website at:
<http://files.hawaii.gov/auditor/Overviews/2019/19-09AuditorSummary.pdf>.

If you or other Legislators would like a printed version of the report, please let me know.

Very truly yours,

Leslie H. Kondo
State Auditor

LHK:emo
Attachments
ec/attach: Senators
Representatives
Carol Taniguchi, Senate Chief Clerk
Brian Takeshita, House Chief Clerk

Auditor's Summary

Sunrise Analysis: Regulation of Home Inspectors

Report No. 19-09



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Should Home Inspectors Be Regulated?

DURING THE 2018 LEGISLATIVE SESSION, concern that a number of residential home inspections are conducted by under-qualified inspectors led to the introduction of Senate Bill No. 2403, which proposed licensure and regulation for businesses and individuals that provide home inspection services in Hawai‘i. To determine whether regulation is warranted under the criteria of the Hawai‘i Regulatory Licensing Reform Act, Chapter 26H, Hawai‘i Revised Statutes (HRS), the Legislature adopted Senate Concurrent Resolution No. 27, Senate Draft 1, which requested that the Auditor conduct a sunrise review of the proposed regulation.

As of November 2018, Hawai‘i was one of 17 states that does not regulate its home inspection industry. According to the Hawai‘i Association of Realtors, home inspections are conducted for the majority of residential real estate transactions, typically initiated by home buyers who want to know a property’s condition before committing to what could be the single largest purchase of their life. Contracting the services of a qualified home inspector may be a home buyer’s first line of defense.

In Report No. 19-09, *Sunrise Analysis: Regulation of Home Inspectors*, we evaluated whether the profession of home inspecting should require licensure and regulation by the State of Hawai‘i. Our analysis compared



We found no evidence that regulation of home inspectors was reasonably necessary to protect consumers.

the regulation of home inspectors proposed in Senate Bill No. 2403 against criteria provided in the Hawai'i Regulatory Licensing Reform Act. The law states that regulation shall be undertaken only where reasonably necessary to protect the health, safety, and welfare of the consumer of services.

A home inspection is primarily an observation-based, non-invasive review of a residential property that culminates in a written report describing any identified defects. In our review, we found no documented complaints about home inspection businesses or individuals filed with state agencies such as the Office of Consumer Protection, or with non-government organizations like the Better Business Bureau. This lack of data hindered our ability to assess the safety of current industry practices; however, we found no evidence of abuse by home inspectors or that the work of a home inspector reasonably affects the health, safety, and welfare of a home buyer.

Further, we found that home inspectors' work is limited and not intended to assess whether a property complies with local building codes. When potential issues are identified, the homebuyer must often hire another qualified, licensed professional to provide services that go beyond a home inspection. Based on the limited scope of work that home inspectors perform, and an absence of reported complaints, we are unable to conclude that regulation of home inspectors is "reasonably necessary to protect the health, safety, or welfare of consumers," nor can we conclude that the health, safety, or welfare of consumers may be "jeopardized" by the nature of home inspection services.

Based on our assessment, we did not find evidence sufficient to meet the criteria under Section 26H-2, HRS, to require the regulation of home inspectors to protect the health, safety or welfare of consumers.

The threshold issue for determining if regulation is warranted is whether the regulation is reasonably necessary to protect "health, safety, or welfare."

Section 26H-2(1), HRS

Hawai'i Regulatory Licensing Reform Act

The Hawai'i Regulatory Licensing Reform Act requires the Auditor to analyze proposed regulatory measures that, if enacted, would subject unregulated professions and vocations to licensing or other regulatory controls. The policies that the Legislature adopted regarding regulation of professions and vocations are as follows:

The State may regulate professions and vocations only where reasonably necessary to protect the health, safety, or welfare of consumers, and not that of the regulated profession or vocation;

The State must regulate professions or vocations when the health, safety, or welfare of the consumer may be jeopardized by the nature of the service offered by the provider;

Evidence of abuses by providers of the service must be given great weight in determining whether regulation is desirable;

Regulation must be avoided if it will artificially increase the cost of goods and services to consumers, except in cases where this cost is exceeded by the potential danger to the consumer;

Regulation must not unreasonably restrict entry into professions and vocations by all qualified persons; and

Aggregate costs for regulation and licensure must not be less than the full costs of administering that program.

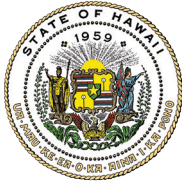
Sunrise Analysis: Regulation of Home Inspectors

A Report to the Governor
and the Legislature of
the State of Hawai'i

Report No. 19-09
March 2019



OFFICE OF THE AUDITOR
STATE OF HAWAII



OFFICE OF THE AUDITOR STATE OF HAWAII

Constitutional Mandate

Pursuant to Article VII, Section 10 of the Hawai'i State Constitution, the Office of the Auditor shall conduct post-audits of the transactions, accounts, programs and performance of all departments, offices and agencies of the State and its political subdivisions.

The Auditor's position was established to help eliminate waste and inefficiency in government, provide the Legislature with a check against the powers of the executive branch, and ensure that public funds are expended according to legislative intent.

Hawai'i Revised Statutes, Chapter 23, gives the Auditor broad powers to examine all books, records, files, papers and documents, and financial affairs of every agency. The Auditor also has the authority to summon people to produce records and answer questions under oath.

Our Mission

To improve government through independent and objective analyses.

We provide independent, objective, and meaningful answers to questions about government performance. Our aim is to hold agencies accountable for their policy implementation, program management and expenditure of public funds.

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We report our findings and make recommendations to the Governor and the Legislature to help them make informed decisions.

For more information on the Office of the Auditor, visit our website:
<http://auditor.hawaii.gov>

Foreword

Our Sunrise Analysis of the Regulation of Home Inspectors was conducted pursuant to Senate Concurrent Resolution No. 27, Senate Draft 1, which requested the Auditor to conduct a sunrise review of the licensure and regulation of home inspectors as proposed under Senate Bill No. 2403. Senate Bill No. 2403 proposes a regulatory framework that includes the creation of a licensing board and requirements for licensure.

Leslie H. Kondo
State Auditor



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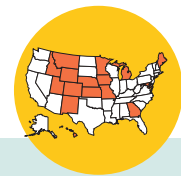


PHOTO: THINKSTOCK.COM

Sunrise Analysis: Regulation of Home Inspectors

HOME INSPECTIONS have been performed since the mid-1950s. By the early 1970s, an increasing number of consumers considered home inspections to be essential to a real estate transaction. The demand was due to a desire by consumers to learn about the condition of a house before buying it. According to the Hawai'i Association of Realtors, home inspections are now used in the great majority of residential real estate sales transactions.

A home inspection is primarily an observation-based, non-invasive review of a residential property's components (a permanently installed or attached fixture such as a faucet) and systems (a combination of components which function as a whole, such as a plumbing system) that results in a written report describing any identified defects. The prospective buyer is typically the person who hires a home inspector. State law does not require a home inspection, although it does require sellers to notify buyers that they have the option to have the property inspected. As of November 2018, Hawai'i was one of 17 states that does not regulate the home inspection industry.



As of November 2018, Hawai'i was one of 17 states that does not regulate the home inspection industry.

Under Senate Concurrent Resolution No. 27, Senate Draft 1, the 2018 Hawai‘i State Legislature requested the Auditor to conduct a sunrise review of the licensure and regulation of home inspectors in Hawai‘i as proposed by Senate Bill No. 2403. Our assessment is based on criteria for the regulation of professions and vocations in the Hawai‘i Regulatory Licensing Reform Act, Chapter 26H, Hawai‘i Revised Statutes (HRS).

There are at least three organizations that offer certification programs for home inspectors in Hawai‘i: the American Society of Home Inspectors (ASHI), the International Association of Certified Home Inspectors (InterNACHI) and the Hawai‘i Association of Home Inspectors (HAHI). Certification programs offer a level of consumer protection through educational, training and examination requirements that help measure and provide a minimal level of competency. Although certification programs are offered to home inspectors in Hawai‘i through the three organizations, we found indications that there are an undetermined number of non-certified individuals who are conducting home inspections in the State. Concerns were also expressed during the 2018 legislative session that a number of under-qualified individuals have been conducting home inspections in Hawai‘i.



The threshold issue for determining if regulation is warranted is whether the regulation is reasonably necessary to protect “health, safety, or welfare.”

Section 26H-2(1), HRS

The threshold issue for determining if regulation is warranted is whether the regulation is reasonably necessary to protect “health, safety, or welfare.” Section 26H-2(1), HRS, explicitly states that regulation **shall be undertaken only where reasonably necessary to protect the health, safety, and welfare of the consumer of the services.** We found no documented complaints regarding home inspection businesses or individual home inspectors in Hawai‘i that were received by State agencies such as the Office of Consumer Protection (OCP) and non-State organizations like the Better Business Bureau (BBB) for the past several years. A lack of data and written documentation hindered our ability to assess whether the current practices being exercised within the home inspection industry in Hawai‘i present a danger to the health, safety and welfare of consumers. Accordingly, we found no evidence that regulation of home inspectors was either “reasonably necessary to protect the health, safety, or welfare of consumers” or that “the health, safety, or welfare of the consumer may be jeopardized by the nature of the service offered” by home inspectors. Nor did we find any evidence of abuse on the part of providers of home inspection services. For these reasons, we do not find that the criteria in the Hawai‘i Regulatory Licensing Reform Act support the regulation of home inspectors.

Objectives of the Study

Provide analysis of the proposed regulation of home inspectors under Senate Bill No. 2403 against the criteria provided in the Hawai'i Regulatory Licensing Reform Act, Chapter 26H, HRS, including its probable effects and identifying alternative forms of regulation.

Sunrise Assessment Criteria

IN THIS SUNRISE REPORT, we assess whether home inspectors should be subject to regulation. Under Section 26H-6, HRS, new regulatory measures being considered for enactment that, if enacted, would subject unregulated professions to licensing or other regulatory controls shall be referred to the auditor for analysis. This analysis “shall set forth the probable effects of the proposed regulatory measure and assess whether its enactment is consistent with the policies set forth in Section 26H-2.” Section 26H-2, HRS, states:

Policy. *The legislature hereby adopts the following policies regarding the regulation of certain professions and vocations:*

- (1) The regulation and licensing of professions and vocations shall be undertaken only where reasonably necessary to protect the health, safety, or welfare of consumers of the services; the purpose of regulation shall be the protection of the public welfare and not that of the regulated profession or vocation;*
- (2) Regulation in the form of full licensure or other restrictions on certain professions or vocations shall be retained or adopted when the health, safety, or welfare of the consumer may be jeopardized by the nature of the service offered by the provider;*
- (3) Evidence of abuses by providers of the service shall be accorded great weight in determining whether regulation is desirable;*
- (4) Professional and vocational regulations which artificially increase the costs of goods and services to the consumer shall be avoided except in those cases where the legislature determines that this cost is exceeded by the potential danger to the consumer;*
- (5) Professional and vocational regulations shall be eliminated when the legislature determines that they have no further benefits to consumers;*
- (6) Regulation shall not unreasonably restrict entry into professions and vocations by all qualified persons; and*
- (7) Fees for regulation and licensure shall be imposed for all vocations and professions subject to regulation; provided that the aggregate of the fees for any given regulatory program shall not be less than the full cost of administering that program.*

Any analysis shall also assess alternative forms of regulation.

Impetus for this Report

The Hawai‘i Regulatory Licensing Reform Act requires the Office of the Auditor to assess legislative proposals that would create regulatory schemes for professions and vocations that are currently unregulated. The law requires the Legislature to refer the request by concurrent resolution that identifies a specific legislative bill to be analyzed. The 2018 Hawai‘i State Legislature passed Senate Concurrent Resolution No. 27, Senate Draft 1, which requested the Auditor to conduct a sunrise review of the licensure and regulation of home inspectors as proposed under Senate Bill No. 2403. Senate Bill No. 2403 proposes a regulatory framework that includes the creation of a licensing board and requirements for licensure.

Methodology

We reviewed articles, studies, reports, and other documents from the Ohio Department of Commerce, Division of Real Estate and Professional Licensing, the Colorado Department of Regulatory Agencies, the United States General Accounting Office (GAO), the National Association of Realtors and the Franchise Times. Other sources used for this report included ASHI, InterNACHI, HAHI, the Examination Board of Professional Home Inspectors, the Honolulu Board of Realtors, OCP, the Regulated Industries Complaints Office (RICO) of the State of Hawai‘i Department of Commerce and Consumer Affairs (DCCA), and BBB.

We interviewed key state lawmakers associated with the proposed regulation, representatives from the U.S. Department of Labor Bureau of Labor Statistics, the Legal Branch of DCCA’s Insurance Division, the Hawai‘i Association of Realtors, the Honolulu Board of Realtors, the Ohio Department of Commerce, and the Colorado Department of Regulatory Agencies. We surveyed home inspectors who are members of ASHI, InterNACHI, and HAHI as well as designated representatives of each home inspection organization. We also used data provided by ASHI to identify states which regulate home inspectors and those that do not and contacted the appropriate agencies to collect additional information.

We conducted this study from June 2018 to December 2018 in accordance with Sections 26H-2 and 26H-6, HRS.

Home Inspector Organizations

Based on testimony regarding Senate Bill No. 2403, we identified three home inspection organizations that offer certification programs to its members in Hawai‘i.

American Society of Home Inspectors (ASHI)

ASHI is a national professional association established in 1976. It offers three designations of home inspector membership: ASHI Associate, ASHI Inspector, and ASHI Certified Inspector. To gain initial membership, ASHI requires applicants to pass a course on its standards of practice (SOP) and a course about its code of ethics. To gain a higher level of ASHI certification membership, members must pass an approved home inspection examination and conduct either 75 or 250 paid home inspections as well as completing 20 hours of continuing education each year.

International Association of Certified Home Inspectors (InterNACHI)

InterNACHI was founded in 2004 and is also an international membership trade organization. To become an InterNACHI certified home inspector, applicants must become members, pass an online home inspector examination, pass its SOP and code of ethics courses, and submit a minimum number of mock inspection reports. Once the initial requirements are completed, members can actively conduct home inspections as InterNACHI certified inspectors. However, newly-certified home inspectors must complete 12 online training courses during their first year and also finish 24 hours of continuing education to maintain their certified status. Although it appears the required online training takes place after certification is issued, InterNACHI noted that a majority of applicants fail the initial online examination and will often take its training courses in order to pass its test. As a result, many of its members end up completing dozens of training courses before conducting paid inspections as InterNACHI certified home inspectors.

Hawai‘i Association of Home Inspectors (HAHI)

HAHI reportedly began operations in late 2015. Similar to ASHI, it also uses multiple levels of certified membership: Candidate, Certified Inspector Level 1, Certified Inspector Level 2, and Master Home Inspector. Initial membership as a certified Candidate requires passage of its SOP and code of ethics exam. Higher levels of HAHI certification require passage of an approved home inspection examination and completion of a minimum number of paid home inspections that range from 50 to 2,000.

Home Inspector Population

An economist with the U.S. Department of Labor’s Bureau of Labor Statistics said his office was not able to provide data regarding the total number of home inspectors in Hawai‘i because it does not track self-employed businesses—which he suspects represent a significant segment of that work population. Our office attempted to determine an approximate number of home inspectors in Hawai‘i certified by one of the professional organizations by obtaining membership data from ASHI, InterNACHI and HAHI. Acknowledging that membership counts may fluctuate, we found there were roughly 153 certified home inspectors in Hawai‘i as of July-August 2018.

However, we also found an additional 177 individuals who were listed on one of the organization’s membership documents as non-paying home inspector members. One of the home inspection organizations said it does not have authority over the actions of non-members and that these individuals could be engaging in home inspections without any certification. Due to time constraints, our office was not able to contact every non-certified member to verify whether each one was actively conducting home inspections. Due to the large number of non-members, it is likely that many home inspectors in Hawai‘i are not certified by one of the home inspection organizations. And, this does not account for home inspectors who have no affiliation with any of the home inspection organizations.

Home Inspection Defined

Senate Bill No. 2403 defines “home inspection” as a written evaluation of two or more major components of a residential or commercial building. The bill’s definition does not provide much guidance as to whether a home inspection is expected to be a technically thorough review or more of a casual run-through of the premises. A 2004 GAO study reported that home inspections generally consist of a visual examination of a home’s readily accessible systems and components, such as the plumbing system, which results in a report to the buyer describing what the inspector observed.¹

We found that roughly a third of the states that regulate home inspectors define or describe a home inspection as a visual examination. Some states also make clear a home inspection does not involve extensive analysis or invasive methods. For example, Louisiana defines a “home inspector” as an individual who “examines any component of a building,

¹ The General Accounting Office was re-designated the Government Accountability Office in July 2004; both offices were known by the same acronym, GAO.

through visual means and through normal user controls, without the use of mathematical sciences.” Washington State describes the duties of a licensed home inspector as being “responsible for performing a visual and noninvasive inspection of...readily accessible systems and components of a home.”

An inspection agreement form provided to us by a Hawai‘i home inspector states that a home inspection “is not a building code inspection” and “is limited only to visual observation of apparent conditions existing at the time of the Inspection.” Survey responses from ASHI, InterNACHI, and HAHI representatives all agreed that home inspections are based primarily on observation with limited physical testing. We found it reasonable to conclude that a home inspection, as that term is used in Senate Bill No. 2403, is based on what an inspector can easily see, is non-invasive, and does not involve extensive testing of a home’s components and systems that require technical expertise.

Overview of Home Inspection Process

A 2001 joint study by ASHI and the National Association of Realtors (NAR) estimated nearly 4.9 million home inspections were conducted in the U.S. in 2000. The study found that home inspections were conducted in more than 77 percent of all home sales. A 2004 study by the GAO reported an even higher usage rate of 86 percent among homebuyers who used Federal Housing Administration-insured mortgages in 2002.²

The Hawai‘i Association of Realtors said home inspection services, generally, are ordered after a property is “under contract” and in escrow. Within 10 days after a real estate purchase contract has been accepted, Hawai‘i law requires the seller to provide a disclosure statement to the buyer which notifies the buyer that he or she has the right to obtain a professional inspection of the property.

The buyer then has 15 days to examine the disclosure statement and decide whether to cancel the purchase contract. One real estate agent, who has worked in Hawai‘i for 14 years, told us that if a buyer chooses to hire a home inspector, the inspection and any subsequent price adjustment agreements must be completed within the 15-day review period unless both parties agree to extend the period.

² U.S. General Accounting Office, April 2004, *Home Inspections: Many Buyers Benefit from Inspections, but Mandating Their Use Is Questionable*.

Disclosure Statement

Section 508D-1, HRS, defines a “disclosure statement” as a written statement prepared by the seller, or at the seller’s direction, that claims to fully and accurately disclose all material facts related to the residential property that the seller is aware of or can be observed from visible, accessible areas. If the disclosure statement fails to disclose a material fact—which is any fact, defect, or condition that a reasonable person would expect to measurably affect the value of the residential property—the buyer has the right to rescind the agreement prior to closing the purchase contract.



Residential Resales Typically Involve Home Inspections

The ASHI Hawai'i Chapter President said home inspectors examine all types of residential properties such as existing single-family homes, new family homes, condominiums and townhouses. Home inspectors may also examine commercial properties. A 2004 GAO study estimated 93 percent of buyers of existing homes get home inspections compared with roughly 58 percent of buyers of new homes. The total number of residential resales—which are single-family homes, condominiums and townhouses—on O'ahu in 2017 was 9,732.¹

¹ Annual resales data provided by Honolulu Board of Realtors.

The 2004 GAO study on home inspections reported that a “large majority” of homebuyers who used Federal Housing Administration (FHA) financing relied on a referral from a real estate agent, lender, friend or relative to find an inspector. The Hawai'i Association of Realtors said, generally, real estate agents provide referrals of several home inspectors to prospective buyers, but that, ultimately, it is the buyer who selects the home inspector and is responsible for paying for the services. Once an inspection is completed, the home inspector usually presents the findings in a written report to the client either on-site or soon thereafter.

Assessment of Impact on Health, Safety, or Welfare

Under the Hawai'i Regulatory Licensing Reform Act, our review is required to assess whether regulation and licensing of professions and vocations is reasonably necessary to protect the health, safety, or welfare of consumers of those services. Further, the law makes clear that regulation—whether full licensure or other restrictions—is appropriate only where reasonably necessary to protect the health, safety or welfare of the consumer.

The 2004 GAO study reported that one of the most frequently cited reasons for getting a home inspection was to ensure there were no serious problems with the house and that a primary benefit was the ability to renegotiate the sales price of the property. In addition, the 2004 GAO study found that one in five buyers reported that they benefited from their home inspection because it allowed them to learn about home maintenance. Aside from the financial and educational benefits, the 2004 GAO study did not include health and safety concerns as a cited benefit or reason for obtaining a home inspection.

However, representatives from two of the three home inspection organizations we surveyed said the main purpose of conducting a home inspection is both to identify problems in need of repair or replacement that may increase costs for the buyer and to identify issues that may present a risk to the health, safety or welfare of the occupants. The third home inspection organization responded that the main purpose for a home inspection is to primarily identify health and safety risks. The Hawai'i Association of Realtors agreed that home inspections can identify health and safety issues such as mold, faulty electrical wiring and structural problems.

Despite these representations, we found that there is a lack of data and evidence as to the impact of home inspection services on the health, safety, or welfare of consumers. Our survey asked the three home inspection organizations whether each maintains any data about whether conducting home inspections has proven to be more beneficial than not conducting home inspections in identifying potential health and safety threats. All three said they do not. The Hawai‘i Association of Realtors also said it does not maintain or track data to show whether conducting a home inspection helps protect the health, safety, or welfare of consumers. In lieu of this data, we attempted to conduct this assessment by reviewing each home inspection organizations’ SOP. These guidelines help members identify which home systems and components they are required to inspect; what they are not required to inspect; and the types of issues to review. The guidelines state that an inspection is not technically exhaustive and does not identify concealed or latent defects in the home. Certified home inspectors are also not required to determine the existence of environmental hazards or determine whether a home’s systems and components will fail in the future. A number of certified home inspectors are required to report to their clients any deficiencies that need further evaluation by a qualified professional, tradesman, or service technician beyond that provided by a home inspector. However, due to the lack of impact data, coupled with the limitations of the services provided by home inspectors, we did not find sufficient evidence to demonstrate that regulation is “reasonably necessary” to protect the health, safety, or welfare of consumers.

Assessment of Evidence of Abuse

Evidence of abuse by providers of the services in question is given great weight under state law in determining whether regulation is merited. As previously noted, the 2018 Hawai‘i State Legislature received testimony from individuals who argued that some home inspections were being conducted by unqualified people and thereby, presented a danger to consumers. We contacted stakeholders as well as key consumer protection agencies to determine whether there have been similar public complaints as shown in Exhibit 1.

Exhibit 1: Home Inspection Complaints

Organization	Complaints Received
Office of Consumer Protection (OCP)	No home inspection complaints were received from 2015 to July 2018.
Better Business Bureau Northwest-Pacific (BBB)	No Hawai'i home inspection complaints were received from November 2015 to November 2018.
Honolulu Board of Realtors	May receive as many as four home inspection complaints by phone per year but does not maintain any complaint records.
Hawai'i Association of Realtors	Does not receive complaints regarding home inspection services and plays no role in resolving complaints.
ASHI	Defers complaints to the parties involved and does not get directly involved. Does not maintain complaint records.
InterNACHI	Maintains complaint records but reported no complaints regarding any Hawai'i home inspector members in 2017.
HAHI	Maintains complaint records but reported no complaints regarding any Hawai'i home inspector members in 2017.

Source: Office of the Auditor

We did not find any documented complaints received or maintained by OCP, BBB, the Honolulu Board of Realtors or the Hawai'i Association of Realtors. Further, two home inspection organizations reported no complaints were received regarding their Hawai'i members in 2017, and a third home inspection organization reported it does not maintain complaint records. In addition, 28 of the 34 home inspectors who responded to our survey said that complaints are typically handled privately between the individual home inspector and the client and do not involve a third party.

We found the lack of documented complaints collected or reported by key consumer protection agencies and the home inspection organizations hindered our ability to assess whether there are clear indications that the current practices within the home inspection industry are placing consumers at risk of harm on a widespread basis. However, the lack of documented complaints and the typically informal resolution of disputes suggest that the health, safety, or welfare of consumers is not usually placed in jeopardy via the home inspection process.

Assessment of Impact to Access to Profession

The Hawai‘i Regulatory Licensing Reform Act also requires us to assess whether regulation would unreasonably restrict entry into the home inspection industry by qualified persons. Licensure—as proposed under Senate Bill No. 2403—is the most restrictive form of regulation. It involves requirements that may be viewed as barriers to entry—such as completion of a prescribed educational program and passing an examination that is designed to measure a minimal level of competency.

Senate Bill No. 2403 proposed four initial requirements for obtaining a home inspector license: 1) passing the National Home Inspector Examination or a HAHI certified inspector examination; 2) completing at least two supervised single-family home inspections and at least two supervised condominium inspections; 3) meeting additional work experience in fields related to home inspection as determined by the licensing board; and 4) meeting educational requirements as determined by the licensing board. The bill also requires 30 hours of continuing education each biennium for license renewal.

In order to assess how the proposed regulation might affect the estimated population of home inspectors in Hawai‘i who are certified by one of the home inspection organizations, we compared the certification requirements of all three organizations that offer certification programs for home inspectors in Hawai‘i against the licensing requirements described in Senate Bill No. 2403 as shown in Exhibit 2.

Exhibit 2: Proposed Licensing Requirements Met Under Current Certification Requirements

Number	Senate Bill No. 2403	ASHI	InterNACHI	HAHI
1	National Home Inspector Exam or HAHI Exam	✓	✗	✓
2	Two supervised inspections apiece of a home and a condo	✗	✗	✓
3	Additional work experience related to home inspection	✗	✗	✗
4	Educational requirements*	✗	✗	✗
5	Continuing education**	✗	✗	✗

*To be determined by proposed licensing board action as to whether current certification requirements fulfill this licensing category.

**Proposed continuing education requirement is for license renewal.

Source: Office of the Auditor

We found that the roughly 153 home inspectors in Hawai‘i who are certified by one of the organizations would largely not qualify for licensure as proposed in Senate Bill No. 2403. However, we note that two of the proposed licensing requirements—education and work experience—would be subject to licensing board action, so it is possible that the licensing board may decide that requirements for certification by the home inspection organizations meet these two criteria. For example, two home inspection organizations operate tiered certification programs which require members to complete a minimum number of paid home inspections that increase with each ascending certification level. It would be at the discretion of the licensing board to determine whether higher level certified members would fulfill the additional work experience requirement. Further, although two of the three home inspection organizations have continuing education requirements for certification renewal that would fulfill the 30 total hours proposed in Senate Bill No. 2403, a third organization does not.

Therefore, this raises the possibility that individuals currently working in Hawai‘i who are certified by one of the home inspection organizations may have to suspend their respective home inspection services until they meet licensing requirements, thereby reducing the number of home inspectors for an unknown period of time.

Some states include a grandfather provision to address this concern.³ “Grandfathering” assumes established home inspectors are generally qualified to be licensed and allows them to receive a license without fulfilling all of the typical requirements of new inspectors, as long as they provide some documentation of their credentials. Some states also include a “sunset” date that limits the period when the grandfather provision can be used.

State law also requires us to assess the cost impact of the proposed regulation. This includes fees as well as identifying any potential impact to consumers. Based on membership data provided by the home inspection groups in July-August 2018, we provided two population totals to DCCA: total number of known paying members of the three home inspection organizations and total number of known paying and non-paying members. This was done to capture an estimated cost range of potential home inspector licensees, as shown in Exhibit 3, below.

Exhibit 3: Licensing Cost Estimates

Population	Start-Up Cost Estimate	One-Time Start-up Cost Per Licensee	Annual Operational Costs	Annual Cost Estimate for Per Licensee
153 paying home inspector members	\$334,980	\$2,189	\$258,641	\$1,764
330 paying and non-paying home inspector members	\$334,980	\$1,015	\$258,641	\$858

Source: Office of the Auditor

DCCA estimated a one-time start-up cost for a home inspector licensing program of about \$335,000 as well as annual recurring costs totaling more than \$258,000. Based on the estimated population figures—the one-time start-up cost for each licensee would be about \$1,015 to \$2,189 and the annual cost for each licensee would run between \$858 and \$1,764. DCCA noted that the annual operational cost estimates would pay for four full-time positions including an executive officer, a secretary and two office assistants; and essential furniture and

³ We found at least three states that included a “grandfather” provision in their home inspection regulations: Alabama, Louisiana and Maryland.

equipment for each of those positions. Other cited operational costs included administrative overhead and travel expenses for members of the licensing board.

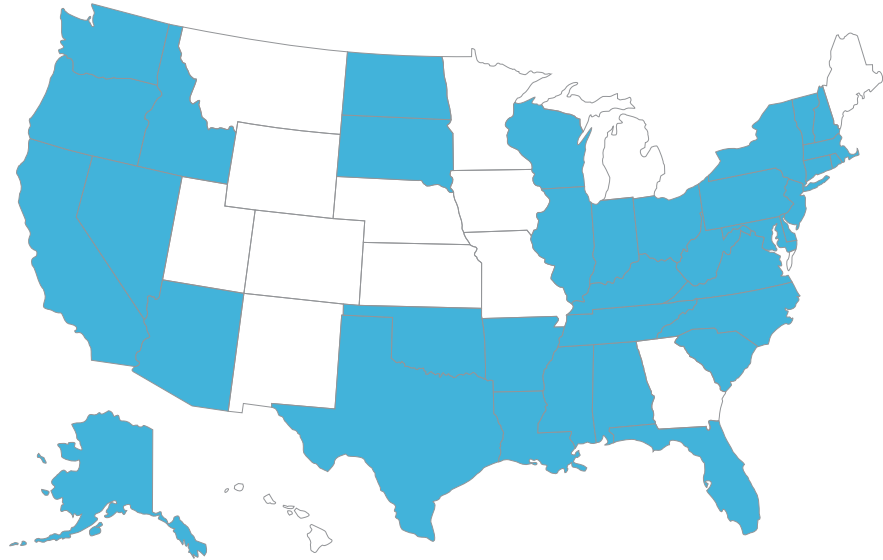
Two of the three home inspection organizations surveyed said the proposed regulation would result in higher costs for home inspection businesses and that those costs would likely be passed on to consumers.

Alternative Forms of Regulation

The Hawai'i Regulatory Licensing Reform Act also requires our office to assess alternative forms of regulation. As of January 4, 2019, we identified at least 33 states with some form of regulation regarding home inspectors. See Exhibit 4, below.

While some states have implemented a full licensing program, others have chosen to pursue more limited forms of regulation.

Exhibit 4: States That Regulate Home Inspectors



*Ohio's legislature passed a bill in December 2018 to regulate home inspectors and was awaiting final action from the state's governor as of January 4, 2019.

** Rhode Island has had home inspection regulations since 2000 but has not enforced them due to a lack of administrative rules.

Graphic: Office of the Auditor

For example, Texas utilizes a tiered licensing program that includes three classifications: apprentice inspector, real estate inspector, and professional inspector. Each classification has a different set of requirements which become more demanding as far as work experience and educational requirements. Nevada also uses a tiered licensing

program that not only involves different sets of requirements for each license classification, but also places restrictions on the types of properties that are allowed to be inspected. For example, an individual licensed as a certified residential inspector is allowed to inspect residential structures of four units or fewer or commercial properties of 10,000 square feet or less. A higher inspector license classification is required to be authorized to inspect larger residential and commercial properties. We identified at least eight states that use a tiered licensing program for home inspectors.

North Dakota on the other hand, has arguably the most straightforward licensing programs requiring applicants to be at least 18 years old, pass an approved examination, and have insurance coverage.

Pennsylvania regulations do not require home inspectors to be licensed at all. However, its statutes do require each home sales agreement include a provision stating that a buyer has the right to obtain a home inspection. If the buyer elects to get a home inspection, Pennsylvania law requires the inspection be conducted by a member of a national home inspection association with established examination and work experience requirements. The Pennsylvania model is arguably similar to a *certification* program which typically involves a non-governmental entity—in this case, a home inspection association—that establishes training requirements and administers an examination.

Registration programs offer a less intrusive form of regulation. These programs typically involve an individual needing to meet non-practice requirements—such as having insurance—and enable the public to identify which individuals are providing services in a specific profession or vocation in its state. Although Mississippi operates a home inspector licensing program, its regulations also include a basic aspect of a registration program by requiring a roster of the names and addresses of all licensed home inspectors be maintained and posted on its real estate commission's web site.

Conclusion

For many people, buying a home arguably represents the single largest purchase they will make in their lives and contracting the services of a qualified home inspector may be a first line of defense. State law currently requires sellers to provide prospective buyers a disclosure statement of any defects about which the home owner is aware that may affect the value of a residential property. A home inspection may supplement the seller's disclosure statement by identifying other potential issues about which the home owner is not aware.

This report finds that work performed as part of a home inspection is limited. A home inspection is an **observation-based** review of a residential property, a review that is non-invasive; is not intended to assess whether a property is in compliance with local building codes; and when potential issues are identified, often require the home buyer to hire a qualified, licensed professional to provide services that go beyond a home inspection. Based on the limited scope of work that home inspectors perform, coupled with an absence of reported complaints against home inspectors or home inspection businesses that might indicate the profession presents a risk to home buyers' health, safety, and welfare, we are unable to conclude that regulation of home inspectors is "reasonably necessary to protect the health, safety, or welfare of consumers," nor can we conclude that the health, safety, or welfare of consumers may be "jeopardized" by the nature of home inspection services.

Based on our assessment, we find there is insufficient evidence to meet the criteria under Section 26H-2, HRS, to require the regulation of home inspectors to protect the health, safety or welfare of consumers.