

MEMORANDUM

January 15, 2019

TO: Public Safety Committee

FROM: Amanda Mihill, Legislative Attorney *amihill*

SUBJECT: Bill 31-18, New Home Warranty and Builder Licensing - Amendments

PURPOSE: Worksession – Committee to make recommendations on Bill

Those expected to attend this worksession include:

- Eric Friedman, Director, Office of Consumer Protection
- Erin Ashbarry, Office of the County Attorney

Bill 31-18, New Home Warranty and Builder Licensing - Amendments, sponsored by Lead Sponsor Councilmember Rice, was introduced on September 18. A public hearing was held on October 9 at which the lone speaker Eric Friedman testified in support of the Bill on behalf of then-County Executive Leggett. To Council staff's knowledge, the Council has not received any other testimony or correspondence on Bill 31-18.

Bill 31-18 would require new home builders and new home sellers to register with the Office of Consumer Protection, require new home builders and new home sellers to provide buyers with a new home warranty, and require the Office of Consumer Protection to administer and enforce County law related to new home builders and new home sellers. The first portion of Bill 31-18 deletes all provisions of Chapter 31. New language added to the Chapter begins on ©16.

Background

Bill 31-18 accomplishes several goals:

1. Address business model changes in the industry.

This is one of the most important changes in Bill 31-18. As Council staff understands the history of the business practice, when Chapter 31C was first enacted, the business model was that a builder would build and sell a house. Now, however, some new home builders form multiple, single-purpose Limited Liability Corporations (LLC) to construct or sell new homes. Bill 31-18 would require all new home builders *and new home sellers* to register with the Office of Consumer Protection.

A significant problem that could arise is if there are issues in the new home that should be addressed in the new home warranty that is required of the home builder. The warranty provisions are on ©25-27. Under current law, a builder is required to provide a warranty. However, if a builder sells the home to a single-purpose LLC that then disbands, there is no recourse for the homeowner. To address this, Bill 31-18 would require the seller and the builder to provide the warranty. The content of the warranty is substantially similar to the warranty provided under current law.

2. Clarify the procedures for reviewing new home builder registration applications, and the procedures and basis for revoking a registration.

Current law specifies certain procedures for home builders to be licensed. Bill 31-18 would require “registration” instead of “licensing” and clearly lays out the procedures for registering (©21-23) and renewing a registration (©23-24), including allowing a conditional registration, and provides more guidance to the Office of Consumer Protection regarding denying or revoking a registration. Reasons for denying or revoking a registration are specified on ©28-30 and include if an applicant or registrant:

- made a misstatement of material fact on an application for registration or renewal;
- did not provide the new home warranty;
- diverted funds that were received for the completion of a construction project to another project or operation;
- attempted to (or successfully did) obtain a residential home construction permit by falsely representing that the applicant was seeking a permit to construct a home to be occupied by the applicant;
- engaged in fraud, deception, or omissions of material facts related to new home building contracts; or
- engaged in a pattern of poor workmanship as evidenced by unresolved building code violations or unsatisfied arbitration awards or judgments in favor of a consumer.

Bill 31-18 also clearly lays out the role of the Board of Registration (©20-21, lines 498-522).

3. Ensures that building permits are issued by the Department of Permitting Services to registered new home builders

Under current law, Permitting Services must not issue a building permit to any builder that is not licensed under Chapter 31C. Section 31C-11 also specifies that a license is not required if a person is constructing a building that is to be used as a residence for use of that person or the immediate family of that person. Current law requires a person must sign a statement that the work for which the permit is to be used is for that person or the immediate family of that person.

Bill 31-18 would strengthen this to ensure that permits are not issued to homeowners or unregistered builders who falsely represent that they are constructing a new home for their personal occupancy. Bill 31-18 would require the person seeking to construct a home for their personal use to:

- receive a waiver from the Office of Consumer Protection to apply for and receive a permit from Permitting Services without being registered;

- sign a statement affirming that any permits issued by Permitting Services are issued only for the purpose of that person performing work on that person's own property; and
- sign a statement that the work for which the permit is issued is for that person (©19-20, lines 474-485).

4. Provides general updates to the law.

In addition to the more substantive changes, Bill 31-18 also:

- removes outdated references regarding the County's former 10-year warranty law;
- removes outdated references regarding the County's 3rd party warranty enrollment mandate;
- removes references to the New Home Warranty Security Fund which was phased out in 1995; and
- establishes greater uniformity with the State Home Builder Registration law, which was enacted in 2000 (the County law predates the state law).

Staff Amendment

Attached on ©40-43 is an amendment proposed by Council staff that would make several clarifying changes to address issues raised by Executive staff and the Office of the County Attorney. The 2 most significant changes are:

- removing language regarding service of process/notice of administrative hearings. The bill as introduced specified that notice of the hearings must be by certified mail or regular mail. However, the bulk of the bill defers to the County's Administrative Procedures Act for administrative hearings which requires certified mail or personal service. The amendment would remove that confusion and as a result, the APA will govern administrative hearings.
- removing language regarding the builder and seller being jointly and severally liable to the homeowner for the warranty. The amendment would instead require that as a condition of being registered, both the home seller and the home builder must provide a warranty to the consumer. The warranty would run with the property so even if the buyer sells the house within the warranty period, the new homeowner retains the warranty.

Councilmember Rice, the Lead Sponsor of Bill 31-18, supports the staff amendment. **Council staff recommendation: enact Bill 31-18 with the staff amendment on ©40-43.**

This packet contains:

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Bill No. 31-18
Concerning: New Home Warranty and
Builder Licensing - Amendments
Revised: 1/7/2019 Draft No. 8
Introduced: September 18, 2018
Expires: March 18, 2020
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By Lead Sponsor: Councilmember Rice

AN ACT to:

- (1) require new home builders and new home sellers to register with the Office of Consumer Protection;
- (2) require new home builders and new home sellers to provide buyers with a new home warranty;
- (3) require the Office of Consumer Protection to administer and enforce County law related to new home builders and new home sellers; and
- (4) generally amend County law related to new home builders and new home sellers.

By amending

Montgomery County Code
Chapter 2A, Administrative Procedures Act
Section 2A-2

By repealing

Chapter 31C, New Home Warranty and Builder Licensing
Sections 31C-1, 31C-2, 31C-3, 31C-4, 31C-5, 31C-6, 31C-7, 31C-8, 31C-9, 31C-10,
31C-11, 31C-12, 31C-13, and 31C-14

By adding

Chapter 31C, New Home Builder and Seller Registration and Warranty
Sections 31C-1, 31C-2, 31C-3, 31C-4, 31C-5, 31C-6, 31C-7, 31C-8, 31C-9, 31C-10, 31C-11, and 31C-12

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Chapter 31C (Sections 31C-1, 31C-2, 31C-3, 31C-4, 31C-5, 31C-6, 31C-7, 31C-8, 31C-9, 31C-10, 31C-11, 31C-12, 31C-13, and 31C-14) is repealed and Chapter 31C (Sections 31C-1, 31C-2, 31C-3, 31C-4, 31C-5, 31C-6, 31C-7, 31C-8, 31C-9, 31C-10, 31C-11, and 31C-12) is added as follows:

[Chapter 31C. New Home Warranty and Builder Licensing.

31C-1. Definitions.

In this Chapter, the following words have the meanings indicated:

- (1) Board. "Board" means the board of registration.*
- (2) Builder. "Builder" means any person or business organization:*
 - a. That is engaged in the business of erecting or otherwise creating a new home; or*
 - b. To whom a completed new home is conveyed for resale in the course of the business of the person or business organization.*
- (3) Director. "Director" means the Director of the Office of Consumer Protection.*
- (4) Dispute settler. "Dispute settler" means an independent contractor with building construction expertise hired by the Office.*
- (5) The fund. "The fund" means the new home warranty security fund, which is moneys contributed by participating builders in the warranty program administered by the County.*
- (6) Load-bearing portions of the home. "Load-bearing portions of the home" means:*
 - a. Foundation system and footings;*
 - b. Beams;*
 - c. Girders;*
 - d. Lintels;*
 - e. Columns;*

- 28 *f. Walls and partitions;*
- 29 *g. Floor systems; and*
- 30 *h. Roof framing system.*
- 31 (7) *Major structural defect. "Major structural defect:"*
- 32 *a. Means any actual damage to load-bearing portions of the home*
- 33 *that:*
- 34 *(i) Affects its load-bearing function; and*
- 35 *(ii) Vitally affects or is immediately likely to vitally affect use of*
- 36 *the home for residential purposes;*
- 37 *b. Includes damage due to subsidence, expansion, or lateral*
- 38 *movement of the soil; and*
- 39 *c. Does not include damage caused by movement of the soil caused*
- 40 *by flood or earthquake.*
- 41 (8) *New home. "New home" means every newly constructed private dwelling*
- 42 *unit and the fixtures and structure that are made a part of a newly*
- 43 *constructed private dwelling unit at the time of construction.*
- 44 (9) *Office. "Office" means the Office of Consumer Protection.*
- 45 (10) *Owner. "Owner:"*
- 46 *a. Means any person for whom the new home is built or to whom the*
- 47 *home is sold for residential occupation by:*
- 48 *(i) That person or the family of that person as a home; and*
- 49 *(ii) The successors of that person in title to the home or*
- 50 *mortgage in possession;*
- 51 *b. Does not mean:*
- 52 *(i) Any development company, association, or subsidiary*
- 53 *company of the builder; or*

(ii) *Person or organization to whom the home may be conveyed by the builder for any purpose other than residential occupation by that person or organization.*

(11) *Warranty date. "Warranty date" means the first day that the owner occupies or settles on the new home, whichever first occurs.*

31C-2. Licensing.

(a) *Requirement.*

(1) *A builder must not engage in the business of constructing new homes or act in the capacity of a building contractor in the County unless the builder is licensed by the Office.*

(2) *The Office must provide application forms for licensing and prescribe the information to be included.*

(3) *Each application must be accompanied by:*

a. *A reasonable fee sufficient to cover the cost of administration of this Chapter; and*

b. *Additional information as the County Executive requires by executive regulations.*

(4) *Within 60 days after submission of a complete application for a license, unless the time is extended for good cause, the Board must certify to the Director whether:*

a. *The applicant and the organization of the applicant are qualified to comply with the building code and laws of the County and State, and to fully perform building contracts; and*

b. *The applicant should be licensed.*

(5) *The Director must notify the applicant of the certification or denial of certification within 75 days of submission of a completed*

application. If the Director fails to notify the applicant within 75 days of submission, the applicant is deemed certified.

(6) If the applicant is denied certification, the Director must:

a. In writing notify the applicant of the denial and the reasons for the denial; and

b. Mail the denial by certified mail to the address on the application.

(7) An applicant may appeal a denial to the County Board of Appeals.

(b) Licensing. Each license is valid for a period of 2 years from the date of issue.

(c) Amendment. A builder must amend the license within 30 days of any material change in the information provided in the most recent application or amendment.

(d) Building permits. The Department of Permitting Services must not issue building permits for a residence to any builder who does not possess a valid license under this Chapter.

(e) Denial of license. The Office must not issue a license to a builder who has or had any legal interest in a previously licensed firm who has or had a license revoked or suspended for any reason listed in Section 31C-8.

(f) Register of applicants. The Director must maintain a register for the Board of all applicants and licenses.

(g) Certificate of inspection. A builder must provide to a purchaser at the time of occupancy or settlement, whichever first occurs, a statement signed by the builder, that all county-required inspections have been performed.

31C-3. New home warranty.

(a) *Warranty required. A builder must give an owner a written warranty that provides the warranty coverage required by this Chapter before entering into a contract to sell or build a new home. The Executive may issue regulations governing the form and content of the warranty.*

(b) *Performance standards.*

(1) *The terms of a new home warranty are established by executive regulation.*

(2) *The warranty must include minimum performance standards for the construction and quality of the components of a new home.*

(3) *When minimum performance standards are not provided, industry standards for good building practice determine compliance with the new home warranty.*

(c) *Duration of warranty. The builder must warrant the new home that:*

(1) *For one year, starting on the warranty date, the new home must be free from any defect in materials or workmanship as defined in the minimum performance standards.*

(2) *For 2 years, starting on the warranty date, the new home must be free from any defect in the electrical, plumbing, heating, cooling, ventilating, and mechanical systems.*

(3) *For 5 years, starting on the warranty date, the new home must be free from any major structural defect.*

(d) *Exclusions.*

(1) *The written warranty may exclude:*

a. *Damage to real property which is not part of the home covered by the warranty and which is not included in the purchase price of the home;*

b. *Bodily injury or damage to personal property;*

c. *Any defect in, or caused by, materials or work supplied by anyone other than the builder, or its employees, agents, or subcontractors; and*

d. *Any loss or damage which the owner has not taken timely action to minimize.*

(2) *The Executive may issue regulations permitting additional exclusions.*

(e) *Statutory warranties. The statutory warranties required by this Chapter are in addition to all other implied or express warranties imposed by law or agreement. Each builder must disclose the information required by, and otherwise comply with, Sections 10-601 through 10-610 of the Real Property Article of the Maryland Code.*

(f) *Financial security.*

(1) *Before entering into a contract to sell or build a new home, a builder must:*

(A) *inform the buyer in writing whether any bond, insurance, or other financial security is responsible for or guarantees the builder's performance under the warranty required by this Chapter;*

(B) *provide proof of any such bond, insurance, or security to any buyer on request; and*

(C) *include the following notice in the sales contract immediately before the disclosure required by subparagraph (A):*

NOTICE TO BUYER

Montgomery County law does not require this builder to furnish any bond, insurance, or other financial security to guarantee the builder's performance of its

warranty obligations. If a builder has promised you any other bond, insurance, or security to guarantee the performance of its warranty obligations, that bond, insurance, or security must be listed here:

- (2) The buyer must acknowledge in writing that the buyer has read and understands the notice required under paragraph (1)(C).

31C-4. Board of registration.

(a) Appointment of board.

(1) This section creates the board of registration.

(2) The board consists of five (5) members that the county executive appoints and the county council confirms.

(3) No more than two (2) members of the board must be active in the residential construction field at the time of their appointment.

(b) Voting. A simple majority vote is required for all board decisions.

(c) Term. The term for each member is 3 years. A vacancy is filled for the remainder of the unexpired term. Unless a member is removed for good cause, each member holds office until the term of the member expires or a successor is appointed and confirmed.

(d) Operation of the board.

(1) The board must elect from its members a chairperson, vice-chairperson, and secretary.

(2) In exercising the powers and duties of the board, three (3) members constitute a quorum.

(3) The board must:

- a. Keep minutes of its proceedings and meetings;
- b. Put its decisions in writing; and
- c. Submit an annual report of its proceedings to the director.

(4) The county attorney serves as counsel to the board.

(5) *Board members do not receive compensation for serving on the board.*

31C-5. New home warranty security fund.

(a) *Establishment.*

(1) *This Section establishes the County new home warranty security fund.*

(2) *The Department of Finance maintains the fund, and the Director administers the fund.*

(b) *Purpose. The purpose of the fund is to provide sufficient funds to pay claims by owners against builders who participate in the fund for any defect in new homes covered by the new home warranty.*

(c) *Amount.*

(1) *The Director must establish the amount payable by participating builders and may change the amount from time to time.*

(2) *Participating builders must pay the amount to the Department of Finance.*

(3) *The Department of Finance must:*

a. *Account for the amounts;*

b. *Credit the amounts to the fund;*

c. *Hold, manage, and invest the fund; and*

d. *Credit earned income to the fund.*

(d) *Termination. If the fund is terminated, all money remaining in the fund must revert to the County general fund.*

(e) *Processing of claims. The Executive must issue regulations for the implementation and processing of claims under the fund.*

(f) *Phaseout.*

(1) *The Director must not enroll any new home in the fund after December 31, 1995.*

(2) *The Director must not enroll a new home in the fund if the buyer signed the contract to build the home on or after April 1, 1995.*

31C-6. Private new home warranty security programs.

The Executive may issue regulations for the operation of private programs for homes enrolled in any program before April 1, 1995.

31C-7. Warranty claims.

(a) *Notification.*

(1) *Before making a claim against the fund for any defect covered by the warranty, an owner must notify the builder of the defect and allow a reasonable time for its repair.*

(2) *If the repair is not made within a reasonable time or does not correct the defect, an owner may file a claim against the fund in the form and manner as the Director prescribes.*

(b) *Conciliation.*

(1) *The Office must administer a dispute settlement procedure between the owner and the builder.*

(2) *Any claim submitted by an owner to the Office must first be reviewed through a conciliation procedure.*

(3) *If the owner and the builder cannot reach a conciliation agreement, or do not comply with an agreement, the owner or the builder may submit a request for a dispute settler to handle the claim.*

(c) *Dispute settler procedure.*

(1) *The dispute settler must investigate each claim that an owner or builder submits to determine the validity of the claim and the extent of builder responsibility.*

(2) *If the dispute settler determines that repairs are to be made, the dispute settler must notify the builder.*

(3) *If the builder is unable or refuses to make the necessary repairs within a reasonable time, the dispute settler must determine the exact amount of the award to be paid out of the fund to the owner based on actual bids for completion of the repairs.*

(4) *The total amount of payments from the fund for any new home must not exceed the purchase price of the home.*

(5) *After the Director certifies the amount of the award, the Director must notify the Department of Finance. The Department of Finance must make payment to the owner from the fund.*

(d) *Payment from fund.*

(1) *A claim may not be brought against the fund after 3 years from the date that the owner occupies or settles on the new home, whichever first occurs.*

(2) *A claim may not be brought against the fund by a spouse or other immediate relative of a licensed builder if the claim involves a new home constructed by that builder.*

(3) *A claim may not be for payment of consequential, personal injury, or punitive damages, attorney fees, court costs, or interest.*

(4) *When the Department of Finance makes a payment from the fund, the Director may:*

a. *Proceed against the builder under Section 31C-8 of this Chapter; and*

- 266 b. *Request the office of the County Attorney to initiate legal*
 267 *action against the builder.*
- 268 (5) *If the fund is insufficient to satisfy outstanding awards and*
 269 *anticipated awards for the succeeding year, the Director may:*
- 270 a. *Require participating builders to pay additional amounts to*
 271 *replenish the fund; and*
- 272 b. *Require payment of surcharges by the builders who are*
 273 *responsible for an unreasonable number of awards against*
 274 *the fund.*
- 275 (6) *If the fund is insufficient to satisfy any award, when sufficient*
 276 *money has been deposited in the fund, the Director may satisfy the*
 277 *unpaid awards in the order in which the claims were originally*
 278 *filed.*
- 279 (7) *When the Department of Finance makes a payment from the fund,*
 280 *the builder responsible for the award must fully compensate the*
 281 *fund the full amount paid to the owner plus interest from date of*
 282 *payment. The rate of interest is the amount that the County*
 283 *Executive designates by executive order.*
- 284 (8) *The County is not required to contribute money to the fund. The*
 285 *County does not have any liability to a person who has received*
 286 *an award when the amount in the fund is insufficient to pay the*
 287 *award.*
- 288 (9) *The fund does not limit the availability of other legal or equitable*
 289 *remedies but provides an additional and cumulative remedy for*
 290 *owners.*
- 291 (e) *Private new home warranty program.*

(1) *An owner who has a warranty claim against a builder who is participating in a private new home warranty program must make the claim under the procedures established by that program.*

(2) *The Director may investigate any complaints against a private program for failing to honor the terms of the warranty.*

(3) *This subsection does not limit the investigative power of the Director under any other law.*

31C-8. Investigation and hearings.

(a) Investigation.

(1) *The Director may conduct an investigation into allegations made against any builder who is required to be licensed under this Chapter.*

(2) *The Office may:*

- a. Hold hearings;*
- b. Subpoena the attendance of witnesses;*
- c. Administer oaths;*
- d. Require the production of evidence relating to any matter under investigation;*
- e. Inspect relevant books, papers, records, or documents of the builder at the place of business of the builder during business hours; and*
- f. Conduct inspections of new home construction sites and models.*

(b) *Conduct of hearings. After giving a builder the opportunity for a hearing under subsection (c), the Board may deny, suspend, refuse to renew, or revoke the license of the builder, if the Board finds that the builder:*

- 318 (1) *Made a misstatement of material fact in the application for license*
319 *or renewal;*
- 320 (2) *Committed fraud in connection with any building activity*
321 *conducted under the requirements of this Chapter;*
- 322 (3) *Committed gross negligence in connection with any building*
323 *activity conducted under the requirements of this Chapter;*
- 324 (4) *Violated the building code or laws of the County or State;*
- 325 (5) *Did not provide the new home warranty required by this Chapter;*
- 326 (6) *Did not correct or settle a claim arising out of a defect that is*
327 *covered by the warranty required by this Chapter;*
- 328 (7) *Did not file an amendment to a license application within 30 days*
329 *of any material change in the information provided in the most*
330 *recent application or amendment;*
- 331 (8) *Incurred an excessive number of awards against the fund;*
- 332 (9) *Aided, abetted, or knowingly combined or conspired with an*
333 *unlicensed person with the intent to evade this Chapter;*
- 334 (10) *Abandoned or willfully failed to perform, without justification, a*
335 *contract for construction of a building that is to be used as a*
336 *residence;*
- 337 (11) *Willfully deviated from or disregarded plans or specifications in*
338 *any material way without consent of the owner;*
- 339 (12) *Did not comply with this Chapter in any material way;*
- 340 (13) *Diverted funds or property that were received for the completion*
341 *of a construction project, and used the funds or property for*
342 *another project, operation, obligation, or purpose, with intent to*
343 *defraud or deceive creditors or the owners; or*

(14) *Served as an officer, Director, or stockholder for a builder whose license was revoked or suspended under this Chapter.*

(c) *Notification.*

(1) *Before revoking or suspending any license, the Board must afford the builder an opportunity for a hearing under the Administrative Procedures Act.*

(2) *The builder may appeal a decision of the Board to the Montgomery County Board of Appeals.*

31C-9. Liability of builder.

(a) *A builder of a new home is liable to the owner during the period when the new home warranty is in effect.*

(b) *The builder is liable for any defect in the home which is covered by the warranty.*

(c) *The liability of a builder under the new home warranty is limited to the purchase price of the home in the first good faith sale.*

(d) *The owner may recover any damages due from a builder under this Section by filing a civil action in any court with jurisdiction.*

31C-10. Administration.

(a) *The Director administers this Chapter.*

(b) *Reasonable costs for administration of the fund must be covered through both licensing fees and the fund.*

31C-11. Applicability of chapter.

(a) *This chapter applies only to construction work under the building code and laws of the county and state.*

(b) *Fees paid may not be refunded for any reason.*

(c) *A license is not required by a person who constructs a building that is to be used as a residence for use of that person or the immediate family of*

that person. The person must sign a statement that the work for which the permit is to be used is for that person or the immediate family of that person.

- (d) If a builder grants an improvement to an intermediate purchaser to evade liability to an owner under this chapter, the builder is liable on the subsequent sale of the improvement by the intermediate owner as if the builder sold the improvement without regard to the intervening grant.
(1986 L.M.C., ch. 49, § 1.)

31C-12. Compliance with building code generally.

This chapter does not exempt any construction work in the county from the requirement that it comply with the building code.

31C-13. Violations and penalties.

- (a) A builder is subject to punishment for a class A violation under section 1-19 of this Code if that builder violates any provision of this chapter.
(b) Each day a violation continues to exist is a separate offense.

31C-14. Regulations.

The county executive may adopt regulations to implement this chapter under method (2) of section 2A-15 of this Code.]

Chapter 31C. New Home Builder and Seller Registration and Warranty.

31C-1. Definitions.

In this Chapter, the following words have the meanings indicated:

Board means the Board for Registration of Building Contractors.

Consumer means a consumer as defined in Chapter 11 or a contract purchaser of a new home for use as a personal family residence or rental.

Contract purchaser means a person or legal entity who has entered into a contract with a new home builder or a new home seller to purchase a new home, but who has not yet settled on the purchase of the new home.

Director means the Director of the Office of Consumer Protection or the Director's designee.

Homeowner or owner means:

- (1) any person for whom a new home is built or to whom a new home is sold for residential occupation; and
- (2) the successors of that person in title to the home or mortgage in possession;

Homeowner does not mean:

- (1) any development company, association, or subsidiary company of the builder; or
- (2) a person or organization to whom the home may be conveyed by the builder for any purpose other than use by that person or organization.

Load-bearing portions of the home means:

- (1) foundation system and footings;
- (2) beams;
- (3) girders;
- (4) lintels;
- (5) columns;
- (6) walls and partitions;
- (7) floor systems; and
- (8) roof framing systems.

Major structural defect means any actual damage to load-bearing portions of the home that:

- (1) affects its load-bearing function; and
- (2) vitaly affects or is immediately likely to vitaly affect use of the home for residential purposes.

Major structural defect includes damage due to subsidence, expansion, or lateral movement of the soil. Major structural defect does not include damage caused by movement of the soil caused by flood or earthquake.

Maryland Home Builder Guaranty Fund means the Home Builder Guaranty Fund in Title 4.5 of the Business Regulation Article of the Maryland Code.

New home means a newly constructed residential dwelling unit and the fixtures and structure that are made a part of a newly constructed private dwelling unit at the time of construction. New home includes any detached house, custom home as defined in Section 10-501 of the Real Property Article of the Maryland Code, townhouse, modular home, condominium unit, or cooperative apartment.

New home builder or builder means any person, sole proprietor, business organization, or legal entity, including but not limited to, a corporation, limited liability corporation, or trust:

- (1) that is engaged in the business of erecting, constructing, or otherwise creating a new home;
- (2) to whom a completed new home is conveyed for resale in the course of the business of the person or business organization;
- (3) that undertakes to sell a new home in Montgomery County;
- (4) that applies for a building permit to construct a new home in Montgomery County;
- (5) that is engaged as a general contractor in the business of erecting, constructing, or otherwise creating a new home; or
- (6) that enters into a contract with a contract purchaser under which the seller agrees to provide the contract purchaser with a new home.

New home builder does not include:

- (1) a subcontractor or other vendor hired by a new home builder or a consumer to perform services or supply materials for the construction of

a new home if the subcontractor or vendor does not otherwise meet the requirements of this Chapter;

(2) the manufacturer of a residential mobile home, unless the manufacturer also installs the mobile home;

(3) a real estate developer who does not construct or enter into contracts with a consumer to sell or construct new homes;

(4) a financial institution that lends funds for the construction or purchase of residential dwellings in Montgomery County;

(5) a buyer's agent when representing a prospective buyer in the purchase of a new home; or

(6) a person who is conducting a foreclosure sale.

New home seller or seller means a person, sole proprietor, or legal entity that:

(1) has legal title to the property on which the new home is constructed; and

(2) is the person or legal entity listed on the sales contract with the contract purchaser to whom the property and new home are being sold and conveyed.

New home seller includes a corporation, limited liability corporation, or trust.

Office means the Office of Consumer Protection.

Warranty date means the first day that the homeowner occupies or settles on the new home, whichever first occurs.

31C-2. Applicability of Chapter.

(a) This Chapter applies only to construction work under the building code and laws of the County and [[state]] State.

(b) This Chapter does not apply to a person who constructs a building that is to be occupied as a personal residence for use of that person, if the person:

(1) receives a waiver from the Office to apply for and obtain any permits from the Montgomery County Department of Permitting

Services to construct a new home without being registered as a new home builder or a new home seller;

(2) signs a statement affirming that any permits issued by the Department of Permitting Services are issued solely for the purpose of that person performing work on that person's own property; and

(3) signs a statement that the work for which the permit is issued is for that person.

31C-3. Compliance with building code generally; building permits.

(a) Compliance with building code. This Chapter does not exempt any construction work in the County from the requirement that it comply with the building code.

(b) Building permits. The Department of Permitting Services must not issue any building permit for a residence to any new home builder or new home seller who is not registered with the Office under this Chapter.

(c) Certificate of inspection. A new home builder and new home seller must provide to a contract purchaser at the time of occupancy or settlement, whichever first occurs, a statement signed by the builder and seller, that all County-required inspections have been performed.

31C-4. Board of Registration.

(a) Appointment of Board.

(1) There is a Board of Registration.

(2) The Board consists of 5 members appointed by the County Executive and confirmed by the County Council.

(3) No more than 2 members of the Board may be active in the residential construction field at the time of their appointment.

(b) Term. The term for each member is 3 years. A vacancy is filled for the remainder of the unexpired term. Unless a member is removed for good cause, each member holds office until the term of the member expires or a successor is appointed and confirmed.

(c) The Director may designate up to 2 Office employees as ex officio, nonvoting members to promote coordination with the Office's activities.

(d) Operation of the Board; powers and duties of the Board.

(1) The Board must elect from its members a chairperson, vice-chairperson, and any other officers it deems necessary.

(2) The Board must:

(A) make recommendations to the Director whether a registration applicant, including a renewal applicant, should be registered with the Office;

(B) put its recommendations in writing; and

(C) by July 1 each year, submit an annual report of its proceedings to the Director.

(e) The County Attorney or the County Attorney's designee serves as counsel to the Board.

(f) Board members do not receive compensation for serving on the Board.

31C-5. Registration process; fees.

(a) Registration required. A new home builder or a new home seller must not engage, or offer to engage, in the business of constructing, selling, or advertising a new home for sale or act in the capacity of a building contractor in the County unless the builder or seller are first registered by the Office.

(b) Application. Each application for registration must be on a form the Director requires and:

- (1) provide information as to character, references, experience, education, and training in or related to erecting, constructing, or otherwise creating a new home or selling a new home;
- (2) disclose that the applicant agrees that any service of process from the Office to the applicant will be satisfied by mailing via regular mail and certified mail, to the applicant at the most current address listed on the application form; and
- (3) include any additional information required by regulation.

(c) Fees.

- (1) Each application must be accompanied by an application fee.
- (2) Any application fee paid is not refundable.

(d) Board recommendation. Within 60 days after receiving a completed registration application, the Board must recommend to the Director whether:

- (1) the applicant is qualified to comply with the building code and laws of the County and State, and to fully perform new home building and new home sales contracts; and
- (2) the applicant should be registered or receive a conditional registration that stipulates specific requirements to which the applicant must comply before the applicant's registration can be fully recommended to the Director.

(e) Director decision.

- (1) Within 75 days after receiving a completed application, the Director must notify the applicant of the [[of the]] Board's recommendation and the Director's final action regarding registration, conditional registration, or denial of registration. If the

Director fails to notify the applicant within 75 days of submission, the application is deemed approved.

(2) If the applicant is denied registration approval, the Director must:

(A) notify the applicant in writing of the denial and the reasons for the denial; and

(B) mail the denial by certified mail to the address on the application.

(3) The Director must not approve a registration for a builder or seller who has or had any legal interest in a previously licensed firm who has or had a license or registration revoked or suspended for any reason listed in Section 31C-10.

(f) Expiration of license. Unless renewed under the procedures in 31C-6, a registration expires on the second anniversary of its effective date. Once a registration expires, it cannot be renewed. The former registrant must submit a new application for registration.

(g) Amendment. A new home builder or a new home seller must amend the registration within 30 days of any material change in the information provided in the most recent application or amendment.

31C-6. Registration Renewal.

(a) A registered new home builder or new home seller may apply to renew their registration before the current registration expires by:

(1) submitting a completed renewal application;

(2) paying the required renewal fee; and

(3) making a payment to the Maryland Home Builder Guaranty Fund as required under State law.

(b) At least 60 days before a new home builder or new home seller registration is set to expire, the Office must provide notice to the

registrant by electronic mail or regular mail sent to the last known address of the registrant. This notice must contain:

- (1) a renewal application form or online link to the renewal form;
- (2) the date on which the current registration expires;
- (3) the date by which the Office must receive the renewal application;
- and
- (4) information regarding the required fees associated with the renewal.

(c) A registrant must submit a completed renewal application to the Office no later than 30 days before the registration is set to expire.

(d) The Director may request that the Board review any renewal application to ensure the applicant continues to meet the criteria in Section 31C-5.

(e) By the date on which a registration is set to expire, the Director must notify the applicant of the of the Board's recommendation, if any, and the Director's final action regarding renewal of a registration. If the Director fails to notify the applicant by this date, the renewal application is deemed approved.

(f) If the applicant is denied registration approval, the Director must:

- (1) notify the applicant in writing of the denial and the reasons for the denial; and
- (2) mail the denial by certified mail to the address on the application.

(g) A renewal registration is valid for 2 years.

31C-7. Enforceability of contracts.

A contract for the performance of any act for which a home builder registration is required is not enforceable unless the home builder was registered at the time that the contract was signed by the contract purchaser.

31C-8. New home warranty.

(a) Warranty required. A new home builder or a new home seller must give a consumer a written warranty that provides the warranty coverage required by this Chapter before entering into a contract to sell or build a new home.

(b) Liability. The new home builder and new home seller are jointly and severally liable for honoring the terms of the warranty and cannot discharge this warranty obligation by providing a third-party new home warranty plan to the homeowner.

(c) Performance standards.

(1) The warranty must include minimum performance standards for the construction and quality of the components of a new home.

(2) If specific minimum performance standards are not provided, industry standards for good building practice determine compliance with the new home warranty.

(d) Duration of warranty. The new home builder and the new home seller are jointly and severally liable and must warrant to the homeowner, and all subsequent homeowners during the warranty period, the new home that:

(1) For 1 year, starting on the warranty date, the new home must be free from any defect in materials or workmanship as defined in the minimum performance standards.

(2) For 2 years, starting on the warranty date, the new home must be free from any defect in the electrical, plumbing, heating, cooling, ventilating, and mechanical systems.

(3) For 5 years, starting on the warranty date, the new home must be free from any major structural defect.

(e) Exclusions. The written warranty may exclude:

- (1) damage to real property which is not part of the home covered by the warranty and which is not included in the purchase price of the home;
- (2) bodily injury or damage to personal property;
- (3) any defect in, or caused by, materials or work supplied by anyone other than the builder, or its employees, agents, or subcontractors;
- (4) any loss or damage which the homeowner has not taken timely action to minimize; and
- (5) any additional exclusions permitted by Regulation.

(f) Statutory warranties. The statutory warranties required by this Chapter are in addition to all other implied or express warranties imposed by law or agreement. Each new home builder or new home seller must disclose the information required by, and otherwise comply with, Sections 10-601 through 10-610 of the Real Property Article of the Maryland Code.

(g) Financial security.

- (1) Before entering into a contract to sell or build a new home, a new home builder or a new home seller must:
 - (A) inform the consumer in writing whether any bond, insurance, or other financial security is responsible for or guarantees the builder's performance under the warranty required by this Chapter;
 - (B) provide proof of any such bond, insurance, or security to any buyer on request; and
 - (C) include the following notice in the sales contract immediately before the disclosure required by subparagraph (A):

NOTICE TO BUYER

Montgomery County law does not require this builder to furnish any bond, insurance, or other financial security to guarantee the builder's performance of its warranty obligations. If a builder has promised you any other bond, insurance, or security to guarantee the performance of its warranty obligations, that bond, insurance, or security must be listed here:

(2) The buyer must acknowledge in writing that the buyer has read and understands the notice required under paragraph (1)(C).

(3) A new home builder or new home seller may be required to post a bond if the Director determines that the builder constructed and sold a home without being registered.

31C-9. Liability of builder and seller.

(a) A new home builder and new home seller are jointly liable to the homeowner during the period when the new home warranty is in effect.

(b) The builder and seller are jointly liable for any defect in the home which is covered by the warranty.

(c) The liability of a builder and seller under the new home warranty is limited to the purchase price of the home in the first good faith sale.

(d) The homeowner may recover any damages due from a builder or seller under this Section by filing a civil action in any court with jurisdiction.

31C-10. Complaints, investigations, and administrative hearings.

(a) Complaint. A consumer or homeowner may file a written complaint with the Director. A complaint should state the name and address of the builder or seller alleged to have committed a violation of this Chapter, describe the violation, and provide any other information that the Office requires. The Director may act on a complaint that is not complete.

(b) Investigation. The Office may:

- (1) investigate any complaint made against any person or legal entity who is operating as a new home builder or new home seller and who is or should be required to be registered under this Chapter;
- (2) investigate any potential violation of and enforce this Chapter without receiving a complaint;
- (3) hold hearings or refer any matter to a hearing officer designated by the Chief Administrative Officer for an administrative hearing;
- (4) subpoena the attendance of witnesses and documents;
- (5) administer oaths;
- (6) require the production of evidence relating to any matter under investigation;
- (7) inspect relevant books, papers, records, or documents of the builder or seller at the place of business of the builder and seller during business hours; and
- (8) conduct inspections of new home construction sites and models.

(c) Hearing.

- (1) Before denying, suspending, refusing to renew, or revoking any registration, the Director must afford the builder or seller an opportunity for a hearing before a hearing officer designated by the Chief Administrative Officer for an administrative hearing.
- (2) After giving a builder or seller the opportunity for a hearing, the Director may deny, suspend, refuse to renew, or revoke the registration of a new home builder or new home seller if the Director finds that the builder or seller:
 - (A) made a misstatement of material fact in the application for registration or renewal;

- 717 (B) committed fraud or misrepresentation in connection with
718 any building activity conducted under the requirements of
719 this Chapter;
- 720 (C) committed gross negligence in connection with any
721 building activity conducted under the requirements of this
722 Chapter;
- 723 (D) violated the building code or laws of the County or State;
- 724 (E) did not provide the new home warranty required by this
725 Chapter;
- 726 (F) did not correct or settle a claim arising out of a defect that is
727 covered by the warranty required by this Chapter;
- 728 (G) did not file an amendment to a registration application
729 within 30 days of any material change in the information
730 provided in the most recent application or amendment;
- 731 (H) aided, abetted, or knowingly combined or conspired with an
732 unregistered person or legal entity to evade this Chapter;
- 733 (I) abandoned or willfully failed to perform, without
734 justification, a contract for construction of a building that is
735 to be used as a residence;
- 736 (J) willfully deviated from or disregarded plans or
737 specifications in any material way without consent of the
738 consumer or homeowner;
- 739 (K) did not comply with this Chapter in any material way;
- 740 (L) diverted funds or property that were received for the
741 completion of a construction project, and used the funds or
742 property for another project, operation, obligation, or

743 purpose, with intent to defraud or deceive creditors or the
 744 contract purchaser;

745 (M) served as an officer, Director, owner, member, principal, or
 746 stockholder for a builder or seller whose registration was
 747 revoked or suspended under this Chapter;

748 (N) engaged in a pattern of unfair or deceptive trade practices in
 749 violation of Chapter 11;

750 (O) obtained or attempted to obtain a residential home
 751 construction permit by falsely representing that the
 752 applicant was seeking a permit to construct a home to be
 753 occupied by the applicant as a personal residence;

754 (P) failure to satisfy final judgments or liens in favor of a
 755 contract purchaser, homeowner, subcontractor, or
 756 government;

757 (Q) engaged in fraud, deception, misrepresentation, or knowing
 758 omissions of material facts related to new home building
 759 contracts;

760 (R) engaged in a pattern of poor workmanship as evidenced by
 761 unresolved building code violations or unsatisfied
 762 arbitration awards or judgments in favor of a consumer; or

763 (S) violated a term or condition of a conditional registration.

764 (3) The Director may refer a complaint or a violation to a hearing
 765 officer designated by the Chief Administrative Officer for an
 766 administrative hearing.

767 (4) Service of process must be by regular and certified mail to the new
 768 home builder, new home seller, or the applicant's most current
 769 address provided on their application form.

(d) Hearings, generally. Any hearing held under this Section must be conducted under the Administrative Procedures Act.

(e) Appeals. A person aggrieved by a decision of the hearing examiner or Director to deny, suspend, refuse to renew, or revoke a registration may seek judicial review of the decision in the Circuit Court under the applicable Maryland Rules of Procedure governing judicial review of administrative agency decisions. A party aggrieved by the decision of the Circuit Court may appeal that decision to the Court of Special Appeals.

31C-11. Violations and penalties.

Any violation of this Chapter is a Class A violation.

31C-12. Administration; regulations.

(a) The Director administers and enforces this Chapter.

(b) The Executive must adopt Method (2) regulations to implement this Chapter. The regulations must:

- (1) set one or more fees appropriate to cover the cost of administering this Chapter;
- (2) provide for the form and content of the warranty required by Section 31C-8;
- (3) set forth the terms of the warranty required by Section 31C-8;
- (4) describe other allowable warranty exclusions the Executive deems necessary;
- (5) include standards under which a person may receive a waiver under Section 31C-2; and
- (6) includes standards by which a person may be deemed qualified to comply with County and State law, as required in Section 31C-5.

Sec. 2. Section 2A-2 is amended as follows:

2A-2. Applicability.

This Chapter governs the following administrative appeals and proceedings and applies whether a hearing is conducted by a hearing examiner or another designated official.

* * *

(g) Complaints and actions filed with or by the Office of Consumer Protection under Chapter 31C-10 when a hearing is required or provided.

(h) Such other hearings as hereinafter provided for by law or executive regulations which are specifically designated as being governed hereby. In this regard, the County Executive is hereby authorized to add or delete additional quasi-judicial authorities from time to time by executive regulation adopted under method (2) of section 2A-15 of this Code.

Approved:

Nancy Navarro, President, County Council

Date

Approved:

Marc Elrich, County Executive

Date

This is a correct copy of Council action.

Megan Davey Limarzi, Esq., Clerk of the Council

Date

LEGISLATIVE REQUEST REPORT

Bill 31-18

New Home Warranty and Builder Licensing - Amendments

DESCRIPTION:	Bill 31-18 would require new home builders and new home sellers to register with the Office of Consumer Protection, require new home builders and new home sellers to provide buyers with a new home warranty, and require the Office of Consumer Protection to administer and enforce County law related to new home builders and new home sellers.
PROBLEM:	Chapter 31A needs updated to address business model changes in the industry and to remove outdated references.
GOALS AND OBJECTIVES:	To establish greater uniformity with state law, ensure that building permits are issued by DPS to registered new home builders, and not issued to homeowners or unregistered builders who falsely represent that they are constructing a new home for their personal occupancy, clarify the procedures for reviewing new home builder registration applications, and the procedures and basis for revoking a registration, address business model changes in which some new home builders form multiple, single-purpose Limited Liability Corporations to construct or sell new homes, and delete any outdated references regarding Montgomery County's former 10-year warranty law and 3rd party warranty enrollment mandate.
COORDINATION:	Office of Consumer Protection; Department of Permitting Services
FISCAL IMPACT:	To be requested
ECONOMIC IMPACT:	To be requested
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Amanda Mihill, Legislative Attorney 240-777-7815
APPLICATION WITHIN MUNICIPALITIES:	To be researched.
PENALTIES:	Any violation of the Chapter would be a Class A violation.



OFFICE OF CONSUMER PROTECTION

Isiah Leggett
County Executive

Eric S. Friedman
Director

**TESTIMONY ON BEHALF OF COUNTY EXECUTIVE LEGGETT ON BILL 31-18,
NEW HOME WARRANTY AND BUILDER LICENSING -AMENDMENTS**

October 9, 2018

Good afternoon. My name is Eric Friedman, Director of the Montgomery County's Office of Consumer Protection. Our office currently licenses new home builders and sellers. I am here today on behalf of County Executive Isiah Leggett to testify in support of Bill 31-18 which would amend Chapter 31C of the Montgomery County Code regarding new home builders and sellers in Montgomery County.

The bill would revise and update Montgomery County's 30-year old law regarding new home builders and sellers. These revisions would serve to address new business models in the home construction industry, ensure that building permits are issued appropriately, enhance uniformity with State laws, clarify the procedures for revoking or denying registrations, and delete outdated references.

The Office of Consumer Protection has become aware of changes in the marketplace in which some new home builders are creating many single-purpose limited liability companies to own the land and sell new homes that are built by a related construction company. By altering the traditional business model in the construction industry, the creation of these single-purpose limited liability companies may result in new homes being sold by unlicensed builders, without warranties, and without State Guaranty Fund coverage. The Office of Consumer Protection also has identified numerous cases in which unlicensed builders and individuals have been able to obtain building permits by providing false information. In addition, The Office of Consumer Protection has gained firsthand experience with deficiencies currently in Chapter 31C regarding the procedures for revoking or denying a registration.

Accordingly, County Executive Isiah Leggett appreciates the initiative taken by the lead sponsor, Councilmember Craig Rice, to introduce this bill. The Office of Consumer Protection looks forward to working with Council to amend the bill, if and as needed.

Thank you for the opportunity to testify on Bill 31-18. We look forward to working with the Council in its deliberations on this legislation.



ROCKVILLE, MARYLAND

MEMORANDUM

October 19, 2018

TO: Hans Riemer, President, County Council

FROM: Jennifer A. Hughes, Director, Office of Management and Budget
Alexandre A. Espinosa, Director, Department of Finance

SUBJECT: FEIS for Bill 31-18, New Home Warranty and Builder Licensing – Amendments

Please find attached the fiscal and economic impact statements for the above-referenced legislation.

JAH:cbs

c: Bonnie Kirkland, Assistant Chief Administrative Officer
Lily Qi, Assistant Chief Administrative Officer
Lisa Austin, Offices of the County Executive
Joy Nurmi, Special Assistant to the County Executive
Patrick Lacefield, Director, Public Information Office
Eric Friedman, Director, Office of Consumer Protection
David Platt, Department of Finance
Dennis Hetman, Department of Finance
Barbara Suter, Department of Permitting Services
Crystal Saltee, Office of Management and Budget
Alison Dollar, Office of Management and Budget
Helen P. Vallone, Office of Management and Budget

Fiscal Impact Statement
Bill 31-18, New Home Warranty and Builder Licensing - Amendments

1. Legislative Summary

Bill 31-18 amends Chapter 31C in an effort to address five (5) goals: 1) establish greater uniformity with the State of Maryland's builder registration law, 2) ensure that building permits are issued to registered new home builders by Montgomery County's Department of Permitting Services (DPS), and not issued to unregistered new home builders who falsely represent that they are constructing a new home for their personal occupancy, 3) clarify the procedures for revoking new home builder registration applications and the procedures and basis for revoking a registration, 4) address business model changes in which some new home builders form multiple, single-purpose Limited Liability Companies to construct or sell new homes, and 5) delete any outdated references regarding Montgomery County's former 10-year warranty law and third-party warranty enrollment mandate.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

Bill 31-18 is not expected to impact revenues or expenditures. The Office of Consumer Protection (OCP) currently licenses approximately 378 new home builders. The application fee is \$805 for each two-year new or renewal application. The revenues will continue to be monitored and reported by the OCP.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

The bill is not expected to impact revenues or expenditures. Any increase in revenue would be directly related to an increase in the number of new home builders and sellers who file registration applications. The actual revenues received from FY13 to FY18 reflect a fluctuation in the total number of new home builders' registration from a low of 166 registrations in FY15 to a high of 203 registrations in FY13. For illustrative purposes, based on six-year trends, estimates for the next six fiscal years range between \$879,060 (baseline amount) and \$1,054,872 (20 percent above baseline amount). The six-year revenue projections include assumptions for 5, 10, and 20 percent above baseline registrations as illustrated in the chart below.

FISCAL YEAR	REGISTRATION FEE	ESTIMATED REGISTRATIONS (BASELINE)	BASELINE TOTAL REVENUES	5% INCREASE OVER BASELINE	TOTAL REVENUES (ESTIMATE)	10% INCREASE OVER BASELINE	TOTAL REVENUES (ESTIMATE)	20% INCREASE OVER BASELINE	TOTAL REVENUES (ESTIMATE)
FY19	\$805	203	\$163,415	213	\$171,586	223	\$179,757	244	\$196,098
FY20	\$805	171	\$137,655	180	\$144,538	188	\$151,421	205	\$165,186
FY21	\$805	166	\$133,630	174	\$140,312	183	\$146,993	199	\$160,356
FY22	\$805	185	\$148,925	194	\$156,371	204	\$163,818	222	\$178,710
FY23	\$805	191	\$153,755	201	\$161,443	210	\$169,131	229	\$184,506
FY24	\$805	176	\$141,680	185	\$148,764	194	\$155,848	211	\$170,016
TOTAL 6 YRS		1092	\$879,060	1147	\$923,014	1201	\$966,968	1310	\$1,054,872

- 4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.**

Not applicable.

- 5. An estimate of expenditures related to County's information technology (IT) systems, including Enterprise Resource Planning (ERP) systems.**

The bill is not expected to impact expenditures related to the County's IT or ERP systems. The DPS estimates that implementation of this legislation will create minor changes to its process, primarily a modification to its online application query – this can be accomplished within existing resources. The OCP estimates the enactment of this legislation will require modifications to the Information Technology data systems currently maintained by the DPS and the OCP. This can be coordinated with the Department of Technology Services and implemented at no additional cost to the OCP.

- 6. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.**

Bill 31-18 does not authorize future spending.

- 7. An estimate of the staff time needed to implement the bill.**

Implementation of this legislation will not impact existing DPS staff, and any workload impact on OCP staff is expected to be minimal and can be absorbed by existing personnel.

- 8. An explanation of how the addition of new staff responsibilities would affect other duties.**

Not applicable.

- 9. An estimate of costs when an additional appropriation is needed.**

Not applicable.

- 10. A description of any variable that could affect revenue and cost estimates.**

Any fluctuation in the number of new applicants or any change to the fee structure would impact revenues accordingly.

- 11. Ranges of revenue or expenditures that are uncertain or difficult to project.**

Not applicable.

12. If a bill is likely to have no fiscal impact, why that is the case.

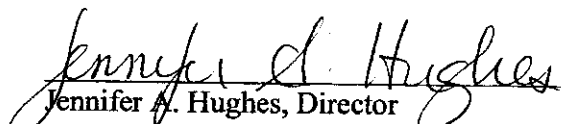
Revenue is not expected to change as a direct result of the bill. Implementation of this legislation will not have an impact on expenditures because the DPS and OCP can absorb any additional workload impact within existing resources.

13. Other fiscal impacts or comments.

None.

14. The following contributed to and concurred with this analysis:

Eric Friedman, Office of Consumer Protection
Marsha Carter, Office of Consumer Protection
Samuel Buo, Office of Consumer Protection
Tracy Rezvani, Office of Consumer Protection,
Barbara Suter, Department of Permitting Services
Crystal Sallee, Office of Management and Budget
Alison Dollar, Office of Management and Budget


Jennifer A. Hughes, Director
Office of Management and Budget

10/23/18
Date

Economic Impact Statement
Bill 31-18 New Home Warranty and Builder Licensing - Amendments

Background:

Bill 31-18 would require new home builders and new home sellers to register with the Office of Consumer Protection, require new home builders and new home sellers to provide buyers with a new home warranty, and require the Office of Consumer Protection to administer and enforce County law related to new home builders and new home sellers.

1. The sources of information, assumptions, and methodologies used.

- New Home Warranty Report, National Commercial Service Contract Association

2. A description of any variable that could affect the economic impact estimates.

Variables affecting estimates include the number of new home builders that include warranties in existing sales, the extent of the coverages of those warranties, and how the associated costs of the coverages are passed along to new home buyers. According to the latest new home warranty report from the National Commercial Service Contract Association¹, when a new home is sold the builder sets aside an amount of money that is sufficient to pay its warranty costs after each closing. For a new home, the industry average is around \$2,500 with this total varying across the spectrum of housing markets and prices. Typically, the policies cover time frames of one year for walls, two years for heat, and ten years for major structural defects. The report notes that over the past fourteen years warranty costs per new home sold have risen however new home prices have increased at an even faster rate. Therefore, warranty costs as a percentage of sales are falling as warranty accruals for home builders rise and fall proportionally with sales.

3. The Bill's positive or negative effect, if any on employment, spending, savings, investment, incomes, and property values in the County.

Warranty costs that are passed on to home buyers have the potential to moderately alter property values in the County as they will likely be reflected in the prices paid for new homes. The impact is expected to be minimal as warranty costs comprise a small fraction of the total closing costs associated with purchasing a new home and the value of new homes in the County have the potential to fluctuate on a weekly basis by amounts that are several multiples higher than the average cost of a warranty. While the bill slightly alters the cost calculations involved in the decision making process for both new home buyers and builders, it is not anticipated to discernably effect employment, spending, savings, investment, or incomes in the County.

4. If a Bill is likely to have no economic impact, why is that the case?

Please see paragraph 3.

5. The following contributed to or concurred with this analysis:

David Platt, Dennis Hetman – Department of Finance.


Alexandre Espinosa, Director
Department of Finance

10/4/18
Date

¹ Warrantyweek.com, 6/8/2017

AMENDMENT

To Bill 31-18

BY Council staff

PURPOSE: To make clarifying amendments.

Beginning on page 19, after line 468, add definition of "person" to Section 31C-3 and make consistent changes throughout bill as follows:

1 Person has the same meaning as in §1-302.

Beginning on page 21, lines 529-538, change paragraph 31C-5(b) to read:

2 (b) Application. Each application for registration must be on a form the
3 Director requires and:

4 (1) provide information as to character, references, experience,
5 education, and training in or related to erecting, constructing, or
6 otherwise creating a new home or selling a new home;

7 (2) [[disclose that the applicant agrees that any service of process from
8 the Office to the applicant will be satisfied by mailing via regular
9 mail and certified mail, to the applicant at the most current address
10 listed on the application form]] require that the applicant agree to
11 provide the warranty required in Section 31C-8; and

12 (3) include any additional information required by regulation.

Beginning on page 23, lines 559-563, change paragraph 31C-5(e)(2) to read:

13 (2) If the applicant is denied registration approval, the Director must[[:

14 (A) notify]] send the applicant [[in writing]] written notification
15 of the denial and the reasons for the denial]]; and

16 (B) mail the denial by certified mail to the address on the
17 application]].

Beginning on page 23, lines 582-591, change paragraph 31C-6(b) to read:

18 (b) At least 60 days before a new home builder or new home seller
19 registration is set to expire, the Office must [[provide notice to the
20 registrant by electronic mail or regular mail sent to the last known address
21 of]] send written notification to the registrant. This notice must contain:

- 22 (1) a renewal application form or online link to the renewal form;
- 23 (2) the date on which the current registration expires;
- 24 (3) the date by which the Office must receive the renewal application;
25 and
- 26 (4) information regarding the required fees associated with the
27 renewal.

Beginning on page 24, lines 596-600, change paragraph 31C-6(e) and (f) to read:

28 (e) By the date on which a registration is set to expire, the Director must
29 [[notify]] send the applicant written notification of the of the Board's
30 recommendation, if any, and the Director's final action regarding renewal
31 of a registration. If the Director fails to notify the applicant by this date,
32 the renewal application is deemed approved.

33 (f) If the applicant is denied registration approval, the Director must[[:
34 (1) notify]] send the applicant [[in writing]] written notification of the
35 denial and the reasons for the denial[[; and
36 (2) mail the denial by certified mail to the address on the application]].

Beginning on page 24, lines 607-609, change Section 31C-7 to read:

31C-7. Enforceability of contracts.

A contract for the performance of any act for which a home builder registration is required is [[not enforceable]] void unless the home builder was registered at the time that the contract was signed by the contract purchaser.

Beginning on page 25, lines 611-618 and 625-682, change paragraphs 31C-8(a), (b), and (d) to read:

31C-8. New home warranty.

(a) Warranty required. [[A]] As a condition to being registered under this Chapter, a new home builder [[or]] and a new home seller must give a consumer a written warranty that provides the warranty coverage required by this Chapter [[before entering into a contract to sell or build a new home]] no later than the execution of the contract to sell the home.

(b) Liability. The new home builder and new home seller [[are jointly and severally liable for honoring]] must honor the terms of the warranty and cannot discharge this warranty obligation by providing a third-party new home warranty plan to the homeowner.

* * *

(d) Duration of warranty. The new home builder and the new home seller [[are jointly and severally liable and]] must warrant to the homeowner, and all subsequent homeowners during the warranty period, [[the new home]] that:

* * *

Beginning on page 27, lines 675-683, delete Section 31C-9 and renumber remaining sections to read:

57 **[[31C-9. Liability of builder and seller.**

- 58 (a) A new home builder and new home seller are jointly liable to the
59 homeowner during the period when the new home warranty is in effect.
60 (b) The builder and seller are jointly liable for any defect in the home which
61 is covered by the warranty.
62 (c) The liability of a builder and seller under the new home warranty is
63 limited to the purchase price of the home in the first good faith sale.
64 (d) The homeowner may recover any damages due from a builder or seller
65 under this Section by filing a civil action in any court with jurisdiction.]]
66

Beginning on page 27, lines 690-693, change paragraph 31C-10(b)(1) to read:

- 67 (b) Investigation. The Office may:
68 (1) investigate any complaint made against any person or legal entity
69 who is operating as a new home builder or new home seller and
70 who is or should be [[required to be]] registered under this Chapter;

Beginning on page 30, lines 754-756, change paragraph 31C-10(c)(2)(P) to read:

- 71 (P) [[failure]] failed to satisfy final judgments or liens in favor
72 of a contract purchaser, homeowner, subcontractor, or
73 government;

Beginning on page 30, lines 767-769, change paragraph 31C-10(c)(4) to read:

- 74 [[(4) Service of process must be by regular and certified mail to the new
75 home builder, new home seller, or the applicant's most current
76 address provided on their application form.]]