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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/21/19

SPONSOR Ruiloba LAST UPDATED 3/4/19 HB 632/aHCEDC

SHORT TITLE Home Warranty Act SB \_\_\_\_\_

ANALYST Hawker

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		Indeterminate but minimal				

Parenthesis ( ) indicate expenditure decreases

#### SOURCES OF INFORMATION

LFC Files  
Federal Trade Commission (FTC)

Response Received From  
Regulation and Licensing Department (RLD)

No Response Received From  
Office of Superintendent of Insurance (OSI)

#### SUMMARY

##### Synopsis of HCEDC Amendment

House Commerce & Economic Development Committee amendments to House Bill 632 amends the bill as follows:

- Section 2, the definition of “home warranty guarantor” is amended to mean an entity that guarantees or administers a home warranty of a builder as provided by rule.
- Section 4 is amended so the rules promulgated by the superintendent shall include a process for approving a home warranty guarantor to sell or back home warranties.
- Section 4C is stricken. The stricken section had stated “A home warranty guarantor shall not require any payment by an owner at any time subsequent to the home warranty commencement date as a condition of maintaining the home warranty.”
- The succeeding subsections in Section 4 are relettered.
- Section 5 is amended to include RIGHT TO REPAIR.
- Section 5 is also amended to clarify language.

- Section 7 is amended to provide when a transfer of warranty occurs, the subsequent owner shall be held to the terms of the warranty.

Synopsis of Original Bill

House Bill 632 creates the Home Warranty Act.

Section 1: establishes the title.

Section 2: establishes definitions to be used in the Home Warranty Act. “Home” means a detached one- or multi-family residence that has five or fewer stories above grade plane, has a separate means of egress, is newly constructed by a builder and will be occupied by the owner as the owner’s residence. It does not include any common areas owned by a homeowners’ or condominium association.

Section 3: establishes home warranty terms and exclusions. Upon the sale of a home, every builder shall provide a home warranty to the owner that is backed by a “home warranty guarantor”. Unless the builder and the owner agree in writing to changes, the home warranty is to provide the specified coverage for the following periods:

- for 365 days following the warranty commencement date;
- a one-year period following 366 days from the warranty commencement date;
- an eight year period following the end of the above one-year period.

The warranty shall describe the parties’ responsibilities, describe whether the builder or the home warranty guarantor is the primary responsible party. This shall be clearly explained to the owner before the warranty commencement date and shall not be revised after the warranty commencement date.

HB 632 provides for exemptions from the Home Warranty Act.

Section 4: the Superintendent of Insurance shall promulgate rules to govern the Home Warranty Act, including rules covering the qualifications for a home warranty guarantor, terms and conditions of a home warranty, the process for approving a home warranty guarantor to sell and back home warranties.

Home warranty guarantors must meet qualifications established in rule by the superintendent, possess a certificate of authority issued by the superintendent, be able to show financial security sufficient to cover the total amount of claims that could be made. Home warranty guarantors shall not require any payment by an owner at any time subsequent to the home warranty commencement date as a condition of maintaining the home warranty. Terms and conditions of a home warranty are subject to approval by the superintendent. Once approved they shall not be altered without consent of the superintendent.

The superintendent may suspend or revoke a home warranty guarantor’s approval to sell and back home warranties if the superintendent finds the guarantor has violated either the Home Warranty Act or the rules promulgated by the superintendent.

Section 5: provides an owner must provide written notice before undertaking a home repair that is not an emergency repair. Additionally, before an owner commences legal action for a breach

of warranty, the owner shall first notify in writing the builder or the home warranty guarantor as specified in the home warranty.

Before the owner undertakes an emergency repair, the owner shall first notify the builder or the home warranty administrator, as specified in the warranty. If the owner is unable to make contact, the owner shall make as minimal repairs as necessary to mitigate or avoid an emergency until additional repairs can be approved by the builder or the home warranty guarantor. The owner shall take reasonable action to mitigate additional damage.

Procedures and processes are established for builders or home warranty guarantors who receive written notice of damage from an owner. Owners shall ensure the home is available during business hours or as otherwise agreed with the building or home warranty guarantor for inspection, testing, repairs or replacement.

If the builder or home warranty guarantor offers a monetary settlement, the owner may accept or reject the settlement. If the owner rejects an offer to repair or replace damage, the owner shall file a claim with the home warranty guarantor. If the owner accepts a monetary settlement, the parties shall negotiate for a release of the liability.

If the builder does not comply with the requirements in this section, and the failure is not due to any action or inaction of the owner or to an unforeseen event outside of the builder's control, the owner shall file a claim with the home warranty guarantor.

Section 6: establishes limitations to penalties associated with violations of the Home Warranty Act.

Section 7: provides for home warranties made pursuant to the Home Warranty Act to automatically transfer, without charge, to a subsequent owner who acquires title to the home at a time when the warranty is still in effect. This transfer shall not extend the duration of home warranty coverage.

Section 8: the Home Warranty Act shall not: affect or limit the warranty of title to land or improvements; prevent the parties from agreeing to alternative dispute resolution as the sole or optional remedy to a dispute or violation of the provisions of the Home Warranty Act or the home warranty.

## **FISCAL IMPLICATIONS**

OSI receives no general fund revenue, its operating budget is primarily composed of other revenues. As of September 2018, the agency had 14 vacancies.

## **SIGNIFICANT ISSUES**

The Federal Housing Authority (FHA) and the Department of Veteran's Affairs (VA) require builders to purchase a third-party warranty as a way to protect buyers of newly built homes financed with either FHA or VA loans.

According to the FTC:

“Warranties for newly built homes generally offer limited coverage on workmanship and materials relating to various components of the home, such as windows, heating, ventilation and air conditioning (HVAC), plumbing, and electrical systems for specific periods. Warranties also typically define how repairs will be made.

The duration of coverage varies depending on the component of the house. Coverage is provided for workmanship and materials on most components during the first year. For example, most warranties on new construction cover siding and stucco, doors and trim, and drywall and paint during the first year. Coverage for HVAC, plumbing, and electrical systems is generally two years. Some builders provide coverage for up to 10 years for “major structural defects,” sometimes defined as problems that make a home unsafe and put the owner in danger. For example, a roof that could collapse is a “major structural defect.”

Most warranties for newly built homes, however, do not cover expenses an owner may incur as a consequence of a major construction defect or warranty repair, like the cost of having to move out of one’s home while repairs are being made. Nor do they typically cover:

- household appliances
- small cracks in brick, tile, cement or drywall
- components covered under a manufacturer’s warranty”

## **ADMINISTRATIVE IMPLICATIONS**

OSI will be required to promulgate rules associated with the Home Warranty Act. The superintendent of insurance may revoke or suspend a guarantor’s ability to sell and back home warranties.

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