

- SUBJECT:** Regulation of real estate inspectors
- COMMITTEE:** Licensing and Administrative Procedures — favorable, without amendment
- VOTE:** 6 ayes — Smith, Kuempel, Geren, Guillen, Miles, S. Thompson  
0 nays  
3 absent — Gooden, Gutierrez, Price
- SENATE VOTE:** On final passage, April 18 — 31-0
- WITNESSES:** (*On companion bill, HB 2911:*)  
For — Dianna Burley, Texas Association of Real Estate Inspectors; Jay Fuller, American Society of Home Inspectors; Brad Phillips, Texas Real Estate Commission; (*Registered, but did not testify:* Daniel Gonzalez and Chelsey Thomas, Texas Association of Realtors)  
  
Against — Clay Collins, Texas Professional Real Estate Inspectors Association  
  
On — Douglas Oldmixon, Texas Real Estate Commission
- BACKGROUND:** The Texas Real Estate Commission oversees the licensing, conduct, and educational and insurance requirements of individuals conducting real estate inspections under the authority of Occupations Code, ch. 1102.
- DIGEST:** SB 1296 would change the regulation of real estate inspectors. It would allow an inspector to obtain a bond or security in lieu of liability insurance, require background checks and felony disclosures as part of the licensing process, change training requirements, and eliminate the real estate inspection recovery fund, among other provisions.
- Background checks and felony disclosures.** SB 1296 would require applicants for new or renewed real estate inspector licenses to submit a complete and clear set of fingerprints to the Real Estate Commission or the Department of Public Safety (DPS) for the purpose of performing state

and national criminal background checks. If DPS conducted the background check, it could collect from applicants the costs incurred.

During the renewal process, licensees would have to disclose any felony convictions, guilty pleas and pleas of no contest. They would be required to disclose this even if an order had granted community supervision suspending the sentence.

**Training requirements.** SB 1296 would increase the minimum number of additional hours of classroom training for professional real estate inspectors from 30 hours to 40 hours, while removing the requirement that eight classroom hours be related to the study of standards of practice, legal issues, and ethics.

The bill would require that real estate inspector and professional inspector applicants who were reapplying for a license within 24 months of having allowed their licenses to expire complete all continuing education requirements that would have been required if they had renewed their licenses before they expired.

The bill would remove the word “classroom” from the description of core real estate inspection classes as it relates to the commission’s alternative certification program.

**Insurance or bonding.** The bill would specify the minimum amount of aggregate liability insurance required for an inspector at \$100,000. It would require that the insurance be obtained from an insurer authorized to engage in the business of providing insurance to protect the public specifically against violations of Occupations Code, ch. 1102, subch. G, which covers prohibited acts.

SB 1296 would provide that in lieu of liability insurance, an inspector could opt to obtain bond or other security in the amount of at least \$100,000 to provide surety against violations of Occupations Code, ch. 1102, subch. G. The bill would describe the bond posting requirements and provide that the security be convertible to cash by the commission for the benefit of a person contracting with an inspector who violated subch. G.

**Elimination of the real estate inspection recovery fund.** SB 1296 would repeal the statute authorizing the real estate inspection recovery fund and

establishing a mechanism to eliminate it. The commission would transfer \$300,000 to general revenue by August 31, 2015, and by November 1, 2017, it would determine the remaining liability of the fund based on any penalty claims. After determining liability, the commission would refund to each eligible inspector a portion of the amount in excess of the remaining liability, not to exceed \$100 per person. The commission would then transfer any remaining funds to general revenue.

**Deadline for completion of licensing.** The bill would modify the requirements for a license applicant who had failed the license examination three times to allow the commission to prescribe additional training.

**Other provisions and effective date.** SB 1296 would:

- add language describing the type of information provided to the commission for an address change;
- remove statutory language describing how notice of license expiration must be provided to the licensee;
- establish penalties for late license renewals for licenses renewed within six months of expiration;
- remove provisions that describe the manner in which fees are paid; and
- remove the requirement that fees associated with the real estate inspection recovery fund be renewed annually.

New provisions related to criminal background checks, changes in licensing requirements, financial responsibility, continuing education, and payment of administrative penalties into the real estate inspection fund would apply only to license applications, renewals, and payments received on or after the effective date.

The bill would take effect September 1, 2013.

SUPPORTERS  
SAY:

SB 1296 would increase professional standards for those conducting real estate inspections. It is largely a housekeeping measure that would bring real estate inspection licensees in line with other professionals licensed by the Real Estate Commission.

**Background checks and felony disclosures.** SB 1296 would enhance public safety and protect property. Criminal background checks and the

disclosure of felony convictions are common practices in Texas law for any professional entering an individual's home or working with children or at-risk populations. Real estate agents and brokers are required to undergo criminal background checks, and inspectors should be held to the same standard.

The Real Estate Commission administers its existing statutes and those governing felony convictions of professionals under a set of rules established to implement Occupations Code, ch. 53, which concerns the consequences of criminal conviction. In determining whether to grant or renew a license, the commission examines a variety of factors, including the nature and extent of the crime, the rehabilitation of the individual, and the length of time since the crime was committed. This helps ensure that individuals are not improperly kept out of an industry for nonviolent crimes or those unrelated to the profession that were committed well in the past.

When real estate agents and brokers first underwent criminal background checks, few were denied licenses — and those who were primarily fell into a group that was involved in fraud and harm against individuals. Fingerprinting and background checks are not expensive, ranging between \$30 and \$40.

**Insurance and bonding.** SB 1296 would allow home inspectors to obtain bonds or other securities as an alternative to obtaining liability insurance against errors and omissions, which is a common practice in other states. This provision would ensure that some form of insurance or bonds protected both inspectors and consumers of home inspections.

**Elimination of the real estate inspection recovery fund.** SB 1296 would wind down the real estate inspection recovery fund, which is no longer needed now that inspectors obtain insurance. There have been no claims against the fund since liability insurance became mandatory in 2007. Proceeds from the elimination of the fund would benefit general revenue and individuals who paid into the fund. The private marketplace, not a state agency, is the appropriate setting to address claims against individual inspectors.

**Training.** Although SB 1296 would remove training requirements related to standards of practice and ethics, the commission intends to adopt training standards that include ethics and standards of practice tailored

specifically to Texas home inspectors.

**Deadline for completion of licensing.** SB 1296 would allow the Real Estate Commission to enhance, by rule, the educational requirements of individuals having difficulty passing licensure exams. This would help ensure that an individual who needed additional training to pass the required exams would receive it, instead of merely forcing an individual to start over again without addressing the underlying issue.

OPPONENTS  
SAY:

**Background checks and felony disclosures.** SB 1296 would penalize individuals who committed a crime in the past but pose no current threat to society. While the commission can claim that they are not trying to deny licenses to individuals who committed nonviolent crimes well in past, there is no guarantee that the commission might not adopt stricter rules in the future that drive inspectors out of business. A decrease in the number of individuals conducting home inspections could lead to higher prices for home inspections.

Many of the vocational programs at the Texas Department of Criminal Justice (TDCJ) are aimed at tasks that normally would be covered in the training of home inspectors, such as plumbing, electrical work, and construction. Background checks could have the unintended consequence of creating a barrier to entry into a profession uniquely suited to the individuals who have undergone TDCJ training and pose no threat to society.

**Insurance and bonding.** The state made a mistake when it required inspectors to obtain liability insurance in 2007. Providing the option for bonds as way to meet the financial responsibility liability requirement would be even more expensive and cumbersome than obtaining liability insurance. SB 1296 should eliminate the requirement for liability insurance and bonds. Instead, the state should continue the real estate inspection recovery fund and use that as the mechanism to pay damages associated with errors and omissions.

NOTES:

The companion bill, HB 2911 by Kuempel, was reported favorably by the Senate Business and Commerce Committee and placed on the Senate intent calendar on May 17.