

- SUBJECT:** Continuing the Real Estate Commission and Appraiser Licensing Board
- COMMITTEE:** Licensing and Administrative Procedures — favorable, without amendment
- VOTE:** 7 ayes — T. King, Geren, Guillen, Harless, Hernandez, Kuempel, Paddie
0 nays
4 absent — Goldman, Herrero, K. King, S. Thompson
- SENATE VOTE:** On final passage, April 4 — 31-0
- WITNESSES:** *On House companion bill, HB 1675:*
For — Lori Levy, Texas Realtors; (*Registered but did not testify:* Daniel Gonzalez and Julia Parenteau, Texas Realtors)

Against — Vance Ginn, Texas Public Policy Foundation

On — (*Registered but did not testify:* Kathryn Hricik, Sunset Advisory Commission; Douglas Oldmixon and Tony Slagle, Texas Real Estate Commission)
- BACKGROUND:** The Texas Real Estate Commission (TREC) was created by the 51st Legislature in 1949. The Texas Appraiser Licensing and Certification Board (TALCB) was created by the 72nd Legislature in 1991 as an independent subdivision of TREC.

In 2011, the Legislature removed TREC from the general appropriations act and legislative appropriations process, granting the agency self-directed semi-independent (SDSI) status. Unlike most state agencies, SDSI agencies are allowed to set their own fees and budgets, increase staffing levels, change performance measures, and prioritize expenditures and programs with only the approval of their governing boards. These agencies also may carry forward reserve fund balances indefinitely.

Functions. The Texas Real Estate Commission is charged with protecting consumers by ensuring qualified and ethical service providers by upholding high standards in education, licensing, and regulation. The commission:

- licenses real estate sales agents, brokers, and home inspectors;
- licenses residential service companies;
- registers easements and right of way agents;
- registers timeshare plans;
- approves education providers, instructors, and courses for sales agents, brokers, and inspectors; and
- investigates and resolves complaints, taking disciplinary action when necessary.

The Texas Appraiser Licensing and Certification Board is responsible for consumer protection. It also licenses appraisers and appraisal management companies, ensures appraiser education courses comply with federal criteria, and investigates and resolves complaints, taking disciplinary action when necessary to enforce state statutes, board rules, and federal adopted standards.

Governing structure. The Texas Real Estate Commission is governed by nine members appointed by the governor to staggered six-year terms. Six of these members are licensed real estate brokers, and the other three members represent the public.

The Texas Appraiser Licensing and Certification Board is governed by nine members appointed by the governor who serve staggered six-year terms. One of these members is the executive secretary of the Veterans' Land Board or a designee, four members are certified or licensed appraisers, and the other four are public members.

Funding. In fiscal 2017, the commission and the board maintained a combined fund balance of about \$17 million. The commission collected about \$12.5 million in revenue and spent \$9.3 million in fiscal 2017, while the board collected about \$1.4 million in revenue from license fees

and spent about \$1.4 million.

Staffing. The agency employed 102 staff members in fiscal 2017, 91 of whom were commission employees and 11 of whom were board employees. Most staff were based at the agency's headquarters in Austin, while four real estate investigators and three appraiser investigators worked in locations covering different regions of the state.

If not continued in statute, the Texas Real Estate Commission and the Texas Appraiser Licensing and Certification Board would be discontinued on September 1, 2019.

DIGEST:

SB 624 would continue the Texas Real Estate Commission (TREC) and the Texas Appraiser Licensing and Certification Board (TALCB) until September 1, 2025.

Property. SB 624 would eliminate the authority of the commission or board to purchase, construct, or sell property. The bill also would prohibit TREC from borrowing money to exercise its powers relating to property. The board still would be able to lease property.

Revised reporting requirements. SB 624 would add reporting requirements to the agency's annual financial report, including requirements that the report contain:

- trend performance data for the preceding five fiscal years related to the salaries of agency personnel and the total amount of per diem expenses and travel expenses paid for each member of the agency;
- the agency's operating plan covering a period of two fiscal years; and
- the agency's operating budget showing projected budget data for a period of two fiscal years and trend performance data for the preceding five fiscal years.

The annual report also would be required to include trend performance data for the preceding five years regarding:

- the number of full-time equivalent positions at the agency;
- the number of complaints dismissed and the number of complaints resolved by enforcement action;
- the amount of administrative penalties assessed and the rate of collection of penalties;
- the average time to resolve a complaint;
- the number of license holders or regulated persons broken down by type of license and license status;
- the fee charged to issue and renew each type of license, certificate, and registration issued by the agency, and the average time to issue a license, certificate, or registration;
- litigation costs, broken down by administrative hearings, judicial proceedings, and outside counsel costs;
- reserve fund balances; and
- other data measures as listed in the bill.

The bill also would add a requirement that the agency's biennial report to the Legislature and the governor include information on the number of examination candidates; license, certificate, and registration holders; enforcement activities; and any changes in those figures.

Complaints. SB 624 would require TREC and TALCB to protect the identity of a complainant to the extent possible by excluding the complainant's identifying information from a complaint notice sent to a complaint respondent.

If TREC determined at any time that an allegation made or formal complaint submitted by a person was inappropriate and without merit, the commission would be required to dismiss the complaint and would not be allowed to take any further action. TREC could delegate the duty to dismiss complaints to staff.

Education courses. SB 624 would eliminate fees charged and collected by the commission for applications for approval of an instructor of qualifying real estate courses, approval of a continuing education

instructor, and for attendance at a program to train continuing education instructors.

The bill would authorize TREC to establish by rule minimum education and experience requirements for course instructors teaching certain real estate or real estate inspection courses and for instructors of continuing education courses. For the commission to approve an application to offer such courses, an applicant would have to ensure that the course instructors met the minimum requirements. TREC would be allowed to deny approval to offer a course of study if the applicant was in violation of a commission order.

TALCB also could develop by rule minimum education and experience requirements for course instructors teaching qualifying or continuing education courses for appraisers or appraiser trainees. For the board to approve a course provider application, the applicant would have to ensure that the instructors met the minimum requirements.

Advisory committees. SB 624 would authorize TALCB to establish advisory committees to perform functions assigned by the board, which would be subject to statutes governing state agency advisory committees. If the board appointed an advisory committee, it would be required to adopt rules governing how the committee would be run.

Administrative changes. SB 624 would remove requirements that TREC and TALCB annually remit nonrefundable retainers to the state auditor, attorney general's office, and State Office of Administrative Hearings (SOAH). Instead, TREC and TALCB would reimburse the agencies for applicable work performed. The bill would require the commission and the board to contract with SOAH for the purpose of conducting hearings.

The bill also would require TALCB to remit collected administrative penalties to the comptroller for deposit in the general revenue fund, rather than deposit the penalty in a restricted fund maintained and operated by the board.

The board could order a person regulated by the board to pay a refund to a consumer as provided in an agreement resulting from an informal settlement conference or an enforcement order instead of or in addition to imposing an administrative penalty or other sanctions. The amount of a refund could not exceed the amount the consumer paid to the person for a service regulated by the board, and the board could not require payment of other damages or estimate harm in a refund order.

Licensing decisions. SB 624 would authorize TREC and TALCB to deny an application for the issuance or renewal of licenses, registrations, and certificates if the applicant was in violation of a commission or board order.

The bill also would authorize the commission to suspend or revoke a license or take other disciplinary action if a licensed broker, sales agent, or real estate inspector failed to consider market conditions for the specific geographic area in which the license holder was providing service.

Standard recommendations. SB 624 would apply several standard Sunset recommendations to TREC and TALCB, including requiring the board to develop and implement policies separating the policymaking responsibilities of the board and the management responsibilities of the commissioner and staff of the board. The bill would also amend provisions on commission and board member training, the agency's complaints system, and public testimony, and would implement restrictions on board members and employees to prevent conflicts of interest.

SB 624 would require TALCB to develop a policy encouraging the use of negotiated rulemaking procedures and appropriate alternative dispute resolution procedures in accordance with the guidelines issued by the State Office of Administrative Hearings. The board would be required to coordinate the implementation of, provide training for, and collect data concerning the effectiveness of the procedures.

The bill also would remove requirements that applicants for licenses

issued by TREC and TALCB be of "good moral character" and replace them with a requirement that applicants "possess the fitness to engage in the profession."

Other provisions. SB 624 also would eliminate fees charged by TREC for filing a request for a branch office license and eliminate Texas residency requirements for the apprentice real estate inspector license, broker and sales agent licenses, and appraiser trainee license.

Applicability. TREC and TALCB would be required to adopt rules and policies and enter into contracts necessary to implement the bill's provisions as soon as practicable after the bill's effective date.

The bill's provisions establishing requirements for board member training would apply to any member of the board appointed before, on, or after the effective date. Any member of the board who had completed board member training required by previous law would be required to complete additional training only on the subjects added by the bill by December 1, 2019.

Provisions on eligibility for board membership would not affect the entitlement of a member serving on TALCB immediately before the effective date of the bill to continue to serve for the remainder of the member's term.

The bill would take effect September 1, 2019, and apply only to applications submitted, acts that occurred, and penalties collected on or after that date.

**SUPPORTERS
SAY:**

SB 624 would allow the state to fulfill its continuing need to regulate the real estate and appraisal industries by continuing the Texas Real Estate Commission (TREC) and the Texas Appraiser Licensing and Certification Board (TALCB) while also eliminating burdensome administrative requirements and adding standard Sunset recommendations to the agency's governing statutes.

During its 2018-2019 review cycle, the Sunset Advisory Commission found that the commission and board had not adequately monitored their budgets or performance of essential functions, a role the Legislature principally delegated to them when it gave them self-directed semi-independent (SDSI) status. They instead put large amounts of excess revenue into building reserves even as core agency operations such as customer service suffered. For this reason, the bill would continue the agency only six years rather than the standard 12-year period.

Confidentiality of complaints. Currently, when investigating complaints, the commission and board send a copy of the complaint, including the complainant's name, directly to the respondent. This could put individuals at risk of retaliation and discourage the filing of necessary, legitimate complaints. While license holders ultimately may learn who filed a complaint against them as the investigation process moves forward, many licensing agencies do their best to protect the identity of complainants for as long as possible. SB 624 would require TREC and TALCB to protect the identity of a complainant to the extent possible, removing an unnecessary barrier to filing complaints and increasing the likelihood that substantive issues were brought to light. The respondent would still have the right to face the complainant later in the process.

Regulation of inspectors. During the 2018-2019 Sunset review process, the Sunset Advisory Commission examined potential conflicts of interest between TREC and the real estate inspectors' industry and determined that TREC's actions did not exhibit actual conflicts of interest to justify an organizational change. Instead, Sunset staff found that the commission and the inspectors' committee advising it were working as intended, allowing for participation by inspectors and outcomes that reflect a balance between the inspection industry's interests and consumer protection.

Eliminating residency requirement. SB 624 would remove a statutory requirement for brokers, sales agents, and apprentice inspectors to establish Texas residency before applying for a license, which is an arbitrary barrier to entry into these professions that does not protect

consumers.

License denials. SB 624 would give TREC and TALCB the authority to deny license renewals. They currently lack standard authority to deny renewals based on noncompliance with commission and board orders, which undermines enforcement efforts and places consumers at risk.

OPPONENTS
SAY:

SB 624 would complicate the Texas Real Estate Commission's (TREC) complaints process and continue the agency without addressing concerns about the regulation of real estate inspectors.

Confidentiality of complaints. SB 624's requirements pertaining to the redaction of a complainant's name from a complaint when sending a copy of it to a respondent could unnecessarily preclude a respondent from adequately responding to alleged violations, create delays or inefficiencies in the investigation process, and raise due process concerns by allowing the complainant to remain anonymous at the outset. The bill would not provide adequate clarity as to when a complainant's identity could be revealed, potentially creating confusion for agency staff as to what expectation of confidentiality to give to complainants.

Regulation of inspectors. SB 624 would not address the inherent conflict of interest in the current structure of TREC, which regulates both real estate inspectors and agents and brokers. Real estate inspectors look to protect the buyer of a property in a transaction by identifying potential defects, whereas brokers and agents aim to close the deal. Because these are different interests, the inspectors either should be regulated separately under the Texas Department of Licensing and Regulation, given additional board seats on TREC, or deregulated.

OTHER
OPPONENTS
SAY:

SB 624 would perpetuate the licensing of real estate professions even though it is questionable whether these licenses are needed to provide for the public health, safety, or welfare. Real estate licenses could be eliminated entirely and replaced with less restrictive requirements, such as a registration or certification, or by market solutions, in which case the Texas Real Estate Commission could be downsized or abolished.

NOTES: According to the Legislative Budget Board, the bill would have a positive impact of \$36,000 to general revenue related funds through fiscal 2020-21.