

SUBJECT: Continuing the Texas Real Estate Commission

COMMITTEE: Licensing and Administrative Procedures — committee substitute recommended

VOTE: 9 ayes — Flores, Geren, Isett, Goolsby, Hamilton, Jones, Miles, Quintanilla, Thompson
0 nays

SENATE VOTE: On final passage, April 12— 31-0, on Local and Uncontested Calendar

WITNESSES: (*On House companion bill, HB 3250 by Truitt:*)
For — (*Registered, but did not testify:* Daniel Gonzalez, Texas Association of REALTORS)

Against — None

On — (*Registered, but did not testify:* Christian Ninaud, Sunset Advisory Commission; Wayne Thorburn, Texas Real Estate Commission)

BACKGROUND: The Texas Real Estate Commission (TREC) is charged with protecting consumers by ensuring that the individuals it licenses carry out their due diligence in real estate transactions professionally and competently. Created in 1949, the commission's principal responsibilities are to:

- license real estate brokers, salespersons, home inspectors, and residential service companies;
- certify right-of-way agents and register timeshare projects;
- approve private real estate schools, courses, and instructors; and
- investigate and resolve complaints, taking disciplinary action when necessary.

The commission's governing board comprises nine members, six of whom are appointed for six-year terms and three of whom are appointed for three-year terms. In fiscal 2006, the agency operated on a budget of \$4.3 million and collected \$18.6 million in revenues primarily from professional licensing fees. In that year, TREC transferred \$2.6 million in

licensing fee revenues to the Texas Real Estate Research Center. TREC also provides administrative support to the staff of the Texas Appraiser Licensing and Certification Board (TALCB), an independent entity with a budget of \$480,000.

In fiscal 2005, the agency licensed 148,160 individuals and businesses, including 35,270 real estate brokers, 97,130 salespersons, and 15,760 others, including broker corporations, private real estate schools, instructors, home inspectors, right-of-way agents, home warranty companies, and time-share projects. TREC also regulates more than 50 private real estate and home inspector schools and 250 continuing education providers. In fiscal 2005, more than 20,000 students took the real estate salesperson licensing exam; more than 1,400 took the real estate broker licensing exam; and more than 1,880 took the home inspector licensing exam.

TREC opened 4,585 enforcement cases in fiscal year 2005, and closed 4,419. Of these, 1,909 were initiated by complaints from consumers or licensees. The most common complaints were for failure to properly disclose client representation and failure to carry out required financial duties for clients.

TREC underwent Sunset review in 1991 and was continued by the 72nd Legislature. If not continued by the 80th Legislature, TREC would be abolished September 1, 2007.

DIGEST:

CSSB 914 would continue TREC until 2019. The bill would modify processes for cataloging and investigating complaints, punitive actions that could be taken in response to complaints, protocol for hearings and appeals for licensees, requirements for exam passage rates for private education programs, the role of advisory committees, and general administration rules for commissioners.

Complaints and investigations. CSSB 914 would make changes to the process by which TREC catalogues and processes complaints. The bill would call for the creation of new processes to act on submitted complaints and to maintain tracking files for this purpose. Complaints would be investigated using the “risk-based approach,” which would assign priority based on the likelihood and severity of potential harm to a customer, the number of license holders potentially involved in the

complaint, the history of complaints against implicated license holders, and the number of potential violations in the complaint.

Enforcement authority. TREC's complaint enforcement authority would be enhanced, and the agency would be empowered to adopt procedures to provide for informal and alternative dispute resolution processes for contested cases. TREC could order a licensee to pay a refund to a consumer up to the amount paid for services or accommodations and could impose an increased penalty on licensees up to \$5,000. Penalties would be based on a number of factors, including the severity and history of previous violations, efforts taken to correct a violation, and the amount necessary to deter a future violation. Disciplinary actions could include the temporary suspension or revocation of a license. Administrative penalties and disciplinary proceedings would be reviewed periodically to ensure they were combined into a single enforcement procedure.

Licensees who were the subject of a penalty would be entitled to a hearing conducted by a judge of the State Office of Administrative Hearings (SOAH) and could appeal for further judicial review. A court would have the option of upholding or reducing the amount of an administrative penalty or overruling a penalty altogether. TREC also would have the option of issuing a cease-and-desist order prohibiting further unauthorized activities following due notice and the opportunity for a hearing. Licensing renewal standards would be amended to include a criminal background check.

Licensing and educational programs. Accreditation standards for licensing educational programs would be amended to include a requirement that at least 55 percent of the program's graduates pass a licensing exam their first time taking the test. TREC would be required to establish a method to determine the exam passage rate for educational programs and post the data on their Web site. Education programs that did not attain at least a 55 percent passage rate would be subject to review by a committee appointed by TREC. A review committee would consist of at least one commission member, one member of TREC staff, licensees, and a representative from the Texas Real Estate Research Center. A review committee would evaluate a program's performance and submit recommendations to TREC.

General administration. The commission could appoint advisory committees as provided by Government Code, sec. 2110. The Texas Real

Estate Inspector Committee would be converted to an advisory committee appointed by TREC. The bill would require the implementation of Sunset Advisory Commission management recommendations, including the development of an interagency agreement with other regulatory agencies to coordinate enforcement efforts. The bill would provide for the administrator of TREC also to serve as the TALCB commissioner.

The bill would add standard Sunset provisions governing training of board members, technology, complaint processes, and negotiated rulemaking and alternative dispute resolution procedures. It also would grant TREC more flexibility to determine the amount of appropriate fees to charge for various licensing requests. It would repeal sections to make conforming changes to complaint and investigation processes, administrative hearings and notification, the revocation and suspension of licenses, provisions authorizing and regulating the appointment of committees, and the adoption of procedural rules in conformity with statutory provisions.

TREC would have to comply with and implement management action recommendations adopted by the Sunset commission and report any required information on implementation of these measures no later than November 1, 2008. Changes to educational program standards would apply only to an accreditation granted or renewed on or after September 1, 2009. Other provisions in the bill would be implemented on the effective date or as soon as practicable.

The bill would take effect September 1, 2007.

**SUPPORTERS
SAY:**

CSSB 914 appropriately would continue the TREC without any major restructuring. TREC carries out major responsibilities concerning the regulation of real estate transactions and licenses and executes these competently and efficiently with few staff. The bill would achieve a carefully crafted balance between protection for consumers and fair recourse for licensees. The bill would ensure that consumers received enhanced protection with streamlined claims processes and would give TREC a wider range of possible enforcement actions. Licensees also would be protected from questionable complaints through their recourse to a hearing and ability to appeal penalties in court.

Consumer protection. A renewed focus on consumer protection would help provide extra protections in Texas' large and growing real estate markets. Enhancing TREC's ability to track and take enforcement action

on complaints would improve the already exemplary service it provides to Texans.

Establishing a system to promptly and efficiently act on complaints would reduce the time between when a complaint was filed and when it was confirmed or denied. Implementing a “risk-based” approach to assign priority to complaint investigations would ensure that the most serious offenses were addressed as quickly as possible. TREC would be empowered to require that confirmed complaints be redressed with a refund of the cost of services provided, various disciplinary actions, and the imposition of penalties up to \$5,000 per violation per day.

Equitable enforcement provisions. CSSB 914 would provide TREC with additional tools to act as a resource to local disputes through the establishment of alternative and informal dispute procedures. Alternative settlement procedures would reduce the number of complaints TREC had to process formally and would facilitate quicker resolutions for minor disputes and grievances.

The bill also would provide ample recourse for licensees who were the subject of complaints from clients. TREC would be charged with establishing procedures for the informal resolution of complaints. A panel would be created to review any action involving a license suspension. Penalized licensees would be entitled to a hearing and could request judicial review of any outcomes. Informal and alternate dispute resolution processes would reduce the number of administrative hearings required, and hearings would be transferred to SOAH, which could review cases independently and within existing resources.

Standards for educational programs. The bill would apply simple but effective provisions to ensure that licensee education programs met minimal standards. Programs would have to verify that at least 55 percent of graduates passed a licensing exam on their first attempt. Passage rates would be made publicly available so that potential students could factor these into their decisions on what program to attend, and programs with a passage rate of less than a 55 percent would be subject to review by a committee appointed for this purpose. Revisions to these requirements would help provide accountability and basic standards for licensing programs and would enable underperforming programs to improve. The passage rule would provide a simple, comprehensible means of gauging

quality of education and would replicate similar changes made by state agencies for other private career schools.

Updated administration. CSSB 914 would provide several important updates to basic TREC functions. Clarifying conflicts of interest among TREC members and requiring training courses for new commissioners would improve agency administration. Granting TREC more flexibility to determine a reasonable charge for licensing fees would allow it to set fees at the cost of processing such applications. Implementing Sunset commission management recommendations to adopt interagency agreements would promote the coordination of enforcement practices related to real estate transactions, such as mortgage lending and homeowner's insurance.

The administrator of TREC already acts as the commissioner of TALCB. The bill would codify this practice. The executive level merger would not affect the independence of the TALCB board or effectively modify any of its independent functions.

**OPPONENTS
SAY:**

CSSB 914 would disrupt an internalized hearings process that has been accessible and effective for complaints regarding real estate matters. Transferring TREC's contested case hearings to SOAH could be counterproductive in delaying the closing of cases. TREC commissioners would have to approve rulings made by SOAH judges, and this could add as much as 60 days to the time required for closing on complaints. SOAH might not have the particular areas of expertise to make rulings on the practices TREC regulates. Having an administrative law judge internally who specializes in statutes the agency enforces greatly increases efficiency and the overall cohesion of the hearings process. The additional transfer of hearings from TREC to SOAH would reverse improvements made in 2005 by the 79th Legislature to internalize hearings on licensing and appraisal cases.

An examination pass rate for licensing programs should be only one of many criteria used to determine the quality of an education provider. The passage rate requirement would place a heavy emphasis on performance as measured by a licensing exam, which is one among many components of a complete education. Enacting a minimum exam pass rate could encourage schools to teach to the exam at the expense of other, critical components of practical education. Because universities and colleges are not governed

by TREC, they could not be held to the same standards as TREC-approved education providers.

Instead of fostering more independence for TALCB, CSSB 914 inappropriately would merge the management functions of TREC and TALCB. A greater degree of integration of TALCB and TREC functions could prevent effective regulation of conflicts of interest among real estate salespersons and appraisers. The transfer could negate some of the positive steps taken in recent years to increase the independence and enforcement processes of TALCB, including hiring an attorney and gaining use of an administrative law judge through TREC. Legislative modifications to the agency should grant the TALCB office ample funds to hire adequate enforcement and support staff for the everyday operation of the agency and take positive measures to avoid merging its management functions with TREC.

NOTES:

The House committee substitute differs from the Senate-passed version of the bill in that the committee substitute would require TREC to comply with and implement the management action recommendations adopted by the Sunset Advisory Commission on January 10, 2007, and report back not later than November 1, 2008, with any required information regarding the implementation of the recommendations. The substitute also would allow TREC to adopt and enforce rules necessary to administer and establish standards of conduct and ethics for persons licensed under Occupations Code, chs. 1101 and 1102. CSSB 914 also added specific provisions that would regulate the imposition of fees and appropriate fee amounts.

The identical companion, HB 3250 by Truitt, was left pending in the Licensing and Administrative Procedures Committee.

According to the fiscal note, CSSB 914 would result in an estimated positive impact of \$118,900 for fiscal 2008 and \$129,000 for each year thereafter. This would result from additional revenue collected as a result of delinquent licensing renewal fees that TREC would be authorized to collect. Fiscal impacts associated with advisory committee meetings and hearings conducted by SOAH could be absorbed by existing resources. The increased revenue from licensing fees — \$77,000 in even-numbered

years and \$71,000 in odd-numbered years — would be offset by the cost of administering a criminal background check.