

SUBJECT: Self-directed, semi-independent status for Real Estate Commission

COMMITTEE: Licensing and Administrative Procedures — committee substitute recommended

VOTE: 6 ayes — Hamilton, Quintanilla, Gutierrez, Kuempel, Menendez, Thompson
0 nays
3 absent — Driver, Geren, Harless

SENATE VOTE: On final passage, April 20 — 31-0

WITNESSES: For — (*Registered, but did not testify:* Daniel Gonzalez, Texas Association of Realtors)
Against — None
On — Douglas Oldmixon, Texas Real Estate Commission

BACKGROUND: Occupations Code, sec. 1101.051 creates the Texas Real Estate Commission (TREC), which is the state’s regulatory agency for real estate brokers and salespersons. Its duties include licensing real estate agents, real estate inspectors, residential service companies, and real estate schools and registering timeshare properties and easement and right of way agents
Sec. 1103.051 creates the Texas Appraiser Licensing and Certification Board (TALCB), and makes it an independent subdivision of the Real Estate Commission. The board licenses, certifies, and regulates real estate appraisers in Texas.

DIGEST: CSSB 1000 would make the Texas Real Estate Commission and the Texas Appraiser Licensing and Certification Board a self-directed, semi-independent agency. The bill would not affect the status of the Texas Appraiser Licensing and Certification Board as an independent subdivision of the Real Estate Commission. TREC and TALCB would

continue to have and exercise the powers and duties allocated to them in their enabling legislation, except as amended by CSSB 1000.

The bill would take effect September 1, 2011.

Budget, fees. TREC and TALCB each would be required to adopt a separate annual budget using generally accepted accounting principles. The commission and the board would be responsible for the costs of their operations, and they would be prohibited from causing the state's General Revenue Fund to incur any costs.

The commission and the board would be authorized to set fees, penalties, charges, and revenues required or permitted by statute or rule to carry out their functions. Fees and funds collected by TREC and TALCB and any appropriated funds would have to be deposited in accounts held by the Texas Treasury Safekeeping Trust Company, with the exception of two fees. The bill would require two fees associated with individual brokers' licenses to continue to be deposited in the state treasury.

By August 31 each year, the agency would have to remit \$750,000 to the state's General Revenue Fund.

CSSB 1000 would make appropriations to the agency out of the General Revenue Fund to provide for the agency to establish itself as a self-directed, semi-independent agency. For fiscal 2012 and for fiscal 2013, the agency would receive 50 percent of its appropriation for fiscal 2011. By the end of each fiscal year, the commission would have to repay this \$3.8 million appropriation.

Records, audits, and reporting. CSSB 1000 would require the agency to keep financial and statistical information to disclose its financial conditions and operations. Before each regular session, the agency would have to submit to the Legislature and the governor a report describing its activities. CSSB 1000 lists what would have to be in the report, including information on any audits, agency finances, fees, regulatory jurisdiction, and rules. The agency also would have to submit an annual report to the governor, legislative committees, and the LBB with information on salaries, expenses, annual budgets, and revenue.

The state auditor would have a duty to audit the agency. The agency would pay an annual retainer to the auditor of \$10,000 and would pay any audit costs above that amount.

Other provisions. CSSB 1000 contains other provisions that would transition the TREC to a self-directed, semi-independent agency, including:

- requiring the attorney general to represent the agency in litigation and requiring the agency to pay an annual \$75,000 retainer to the attorney general and any attorneys fees incurred over that retainer;
- requiring the agency to pay an annual \$75,000 retainer to the State Office of Administrative Hearings and to pay any fees incurred above that retainer;
- authorizing the commission and board to enter into contracts;
- authorizing the commission and board to acquire, use, and dispose of property and to use and operate facilities;
- authorizing the commission and board to borrow money upon a vote of two-thirds of the commission or board for up to five years;
- making provisions for the expenses, debt, property, and assets of the agency if it no longer had status as a self-directed, semi-independent agency;
- making the commission and board governmental bodies that fell under the Government Code's provisions for open meetings, public information, administrative procedures, and general provisions dealing with licenses and permits;
- making employees of the agency members of the Employee Retirement System of Texas and stating that the transition to independent status would have no effect on employees membership or benefits in the system; and
- transferring title and ownership of supplies and other things currently used by the commission and the board to the commission and the board.

Any change made by CSSB 1000 would not cancel debt owed to or by the commission; fines, taxes, penalties or obligations of any party; contracts; or actions by the commission or board in their administration or enforcement.

TREC and TALCB would be required to relocate to state-owned office space by September 1, 2011, and to pay rent to the state. Rent payments

could not be less than \$550,000 annually for fiscal 2012 and fiscal 2013, and could not be less than \$425,000 annually for fiscal 2014 and 2015.

**SUPPORTERS
SAY:**

CSSB 1000 would allow TREC to become a self-directed, semi-independent entity so that it could better regulate the professions it oversees and better protect the public. Currently, much of the money raised by TREC through licensing and registration fees is deposited in the General Revenue Fund, but not all of it is appropriated to the TREC. This restricts the ability of the agency to operate and makes its revenue raising and spending less transparent to those who pay the fees. Changing the TREC status to semi-independent would make it operate like a business, allow it to be accountable to its stakeholders, and reduce the size of state government and the number of state employees.

CSSB 1000 would allow TREC to join the seven other entities that have self-direct, semi-independent status: the Texas Board of Public Accountancy, Texas Board of Professional Engineers, Texas Board of Architectural Examiners, Texas Credit Union Department, Texas Department of Banking, Office of Consumer Credit Commissioner, and Texas Department of Savings and Mortgage Lending. The change made by CSSB 1000 would be appropriate because, like the other seven agencies with this status, the TREC functions are directly related to the number of persons it oversees and licenses, not to other economic factors that affect the state budget.

TREC and TALCB would be self-funded and not receive state appropriations. The agency would establish and charge fees for its operations, and licensees would pay the cost of regulation through those fees. CSSB 1000 would ensure that TREC paid all of the indirect costs that it might impose on the state by requiring payment of retainers for the state auditor, the attorney general, and SOAH and by requiring a \$750,000 annual payment to the state.

CSSB 1000 would result in a positive impact to state funds. According to the fiscal note, the bill would have a positive impact of \$2.6 million in fiscal 2012-13. This is due, at least in part, to the \$750,000 that the TREC would have to pay the state annually. This payment would help ensure that any given year the state did not lose money through enactment of CSSB 1000.

The agency would continue to receive proper oversight and be held to the standards required of other state entities. The bill would require regular reports to the Legislature and the governor, and TREC would continue to be audited by the State Auditor's Office. The governor would continue to appoint the agency's board members. The agency would continue to be subject to the state's Open Meetings and Public Information Act. TREC would continue to be governed by its statutes, and the Legislature would be able to amend the statutes to address any problems with the agency or any changes it wanted to make. The Legislature always could revoke the agency's semi-independent status if it felt more direct oversight was warranted.

**OPPONENTS
SAY:**

CSSB 1000 could result in additional state licensing agencies seeking self-directed and semi-independent status. Granting an agency self-directed and semi-independent status moves it out from the biennial appropriations process, which is a significant part of legislative oversight. CSSB 1000 could make it more difficult for the Legislature to deny self-directed, semi-independent status to other licensing and regulatory agencies.

In some cases, granting self-directed and semi-independent status to an agency could result in losses in state revenue. The fact that some licensing and regulatory agencies bring more into the state's coffers than they are appropriated allows more general revenue to be made available for other state priorities.

NOTES:

The committee substitute made several changes to the Senate-passed version, including stating that the status of the Texas Appraiser Licensing and Certification Board as an independent subdivision of the commission would not be affected by the bill.