

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 2447
By: Flynn et al. (Estes)
Government Organization
5/14/2009
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Board of Tax Professional Examiners (TBTPE) regulates tax professionals in Texas to ensure that those who appraise real property and assess and collect property taxes are knowledgeable, competent, and ethical. TBTPE's main functions include: registering tax appraisers, assessor-collectors, and collectors; monitoring their progress toward certification; and enforcing the Property Taxation Professional Certification Act and TBTPE rules.

In fiscal year 2008, TBTPE operated with a budget of about \$160,000 and employed three full-time employees and one part-time employee. In fiscal year 2008, TBTPE regulated 3,728 tax professionals and resolved 24 complaints resulting in three letters of reprimand.

TBTPE is subject to the Sunset Act and will be abolished on September 1, 2009, unless continued by the legislature. The Sunset review found that the regulation of tax professionals continues to be needed, but TBTPE's ability to address the concerns of taxpayers is limited by the small size of the agency and its lack of clear and comprehensive regulations. These difficulties indicate the need to consolidate TBTPE's functions with a larger agency to improve regulatory effectiveness and administrative efficiency.

C.S.H.B. 2447 relates to the abolition of TBTPE and the transfer of its functions to the Texas Department of Licensing and Regulation.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas Board of Tax Professional Examiners (TBTPE) is transferred to the Texas Commission of Licensing and Regulation in SECTION 12 (Section 1151.102, Occupations Code), SECTION 15 (Section 1151.106, Occupations Code), SECTION 26 (Section 1151.160, Occupations Code), SECTION 27 (Section 1151.161, Occupations Code), SECTION 28 (Section 1151.162, Occupations Code), and SECTION 31 (Section 1151.202, Occupations Code) of this bill.

Rulemaking authority is expressly granted to the Texas Commission of Licensing and Regulation SECTION 24 (Section 1151.158, Occupations Code) of this bill.

Rulemaking authority previously granted to TBTPE is rescinded in SECTION 41 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1151.002, Occupations Code, by amending Subdivision (5) and adding Subdivisions (7-a), (7-b), and (7-c), to define "commission," "committee," and "department" and to redefine "code of ethics."

SECTION 2. Amends Section 1151.004(b), Occupations Code, to require the Texas Department of Licensing and Regulation (TDLR), rather than the Board of Tax Professional Examiners (TBTPE), to thoroughly investigate a complaint of a violation of this section.

SECTION 3. Amends the heading to Subchapter B, Chapter 1151, Occupations Code, to read as follows:

SUBCHAPTER B. TEXAS TAX PROFESSIONAL ADVISORY COMMITTEE

SECTION 4. Reenacts and amends Section 1151.051, Occupations Code, as amended by Chapters 815 (S.B. 276) and 1170 (S.B. 287), Acts of the 78th Legislature, Regular Session, 2003, as follows:

Sec. 1151.051. New heading: MEMBERSHIP. (a) Provides that the Texas Tax Professional Advisory Committee (committee) consists of seven members, rather than that TBTPE consists of five members, appointed by the presiding officer of the Texas Commission of Licensing and Regulation (commission) with the approval of the commission, as follows: two members who are certified under this chapter as registered professional appraisers, two members who are certified under this chapter as registered Texas collectors or registered Texas assessors, and three members who represent the public. Deletes existing text that provides that TBTPE consists of five certain members appointed by the governor with the advice and consent of the senate.

(b) Provides that a vacancy on the committee, rather than TBTPE, is filled in the same manner as the original appointment, rather than by appointment by the governor of a qualified person to serve, for the unexpired portion of the term. Makes a conforming change.

(c) Requires the presiding officer of the commission to designate one member of the committee as the presiding officer.

(d) Creates this subsection from existing text. Requires that each appointment to the committee, rather than TBTPE, be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee. Makes a nonsubstantive change.

(e) Provides that Section 2110.008 (Duration of Advisory Committees), Government Code, does not apply to the committee.

SECTION 5. Amends Section 1151.0511, Occupations Code, to prohibit a person from being a public member of the committee for certain reasons, including if the person or the person's spouse at any time has served on an appraisal review board. Makes conforming and nonsubstantive changes.

SECTION 6. Amends Sections 1151.0512(b) and (c), Occupations Code, as follows:

(b) Prohibits a person from being a member of the committee if they meet certain criteria. Deletes existing text prohibiting a person from being a member of TBTPE and a TBTPE employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for the purpose of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et. seq.), and its subsequent amendments.

(c) Prohibits a person from being a member of the committee, rather a member of TBTPE or act as the general counsel to TBTPE, if the person or the person's spouse is required to register as a lobbyist under Chapter 305 (Registration of Lobbyists), Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the committee or TDLR, rather than TBTPE.

SECTION 7. Amends Section 1151.052, Occupations Code, to make a conforming change.

SECTION 8. Amends Section 1151.055(a), Occupations Code, to make a conforming change.

SECTION 9. Amends the heading to Subchapter C, Chapter 1151, Occupations Code, to read as follows:

SUBCHAPTER C. DUTIES OF COMMISSION, EXECUTIVE DIRECTOR,
DEPARTMENT, AND ADVISORY COMMITTEE

SECTION 10. Amends Subchapter C, Chapter 1151, Occupations Code, by adding Section 1511.101, as follows:

Sec. 1151.101. FEES. Requires the commission, with the advice of the committee, to establish fees under this chapter in the amounts reasonable and necessary to cover the costs of administering the programs and activities under this chapter.

SECTION 11. Amends Section 1151.1015, Occupations Code, as follows.

Section 1151.1015. New heading: ASSISTANCE FROM COMPTROLLER. Requires the comptroller of public accounts (comptroller) to enter into a memorandum of understanding with TDLR under which the comptroller is required to provide:

(1) information on the educational needs of and opportunities for tax professionals;

(2) review and approval of all required educational courses, examinations, and continuing education programs for registrants;

(3) a copy of any report issued by the comptroller under Section 5.102 (Review of Appraisal Standards), Tax Code, and if requested by TDLR a copy of any work papers or other documents collected or created in connection with a report issued under that section; and

(4) information and assistance regarding administrative proceedings conducted under the commission's rules of this chapter. Deletes existing text of Subsection (a) requiring TBTPE and the comptroller to provide, under an interagency contract, administrative support to TBTPE, terms for fees to be paid by TBTPE to the comptroller for services provided under the contract. Deletes existing text of Subsection (b) requiring the comptroller, under the interagency contract, to provide TBTPE certain information and assistance.

SECTION 12. Amends Section 1151.102, Occupations Code, to authorize the commission, rather than TBTPE, to adopt and enforce rules necessary for the performance of TDLR's, rather than TBTPE's, duties.

SECTION 13. Amends Section 1151.103, Occupations Code, to require the commission, rather than authorize TBTPE, to establish standards of professional practice, conduct, education, and ethics for appraisers, assessors, and collectors consistent with the purposes and intent of this chapter.

SECTION 14. Amends Section 1151.104, Occupations Code, to make a conforming change.

SECTION 15. Amends Section 1151.106(a), Occupations Code, to require the commission, rather than TBTPE, by rule to adopt a classification system for registrants and establish minimum requirements for each classification.

SECTION 16. Amends Section 1151.107(a), Occupations Code, to make a conforming change.

SECTION 17. Amends Section 1151.108, Occupations Code, as follows:

Sec. 1151.108. COMMITTEE DUTIES. Requires the committee to recommend to the commission rules and standards regarding technical issues relating to tax professionals; provide advice to the commission regarding continuing education courses and curricula for registrants; provide advice to the commission regarding the contents of any examination required by the commission under this chapter; and educate, and respond to questions from, the commission and TDLR regarding issues affecting tax professionals. Deletes existing Subsection 1151.108 (Money Received by Board).

SECTION 18. Amends Section 1151.151, Occupations Code, to make conforming changes.

SECTION 19. Amends Section 1151.153, Occupations Code, to make conforming changes.

SECTION 20. Amends Section 1151.154, Occupations Code, as follows:

Sec. 1151.154. SUBMISSION OF APPLICATION. Requires that an initial application for registration be accompanied by a nonrefundable processing fee, rather than a nonrefundable \$50 processing fee, and a nonrefundable registration fee, rather than the fee required by Section 1151.158. Makes a nonsubstantive change.

SECTION 21. Amends Sections 1151.155(a) and (b), Occupations Code, to make conforming changes.

SECTION 22. Amends Section 1151.156, Occupations Code, as follows:

Sec. 1151.156. DISCRIMINATION PROHIBITED. Prohibits TDLR from refusing to register an applicant because of the race, color, disability, sex, religion, age, or national origin, of the applicant. Deletes existing text relating to the creed and the ethnic origin of an applicant. Makes a conforming change.

SECTION 23. Amends Section 1151.157(a), Occupations Code, to make a conforming change.

SECTION 24. Amends Section 1151.158, Occupations Code, as follows:

Sec. 1151.158. ANNUAL FEE; EXPIRATION AND RENEWAL OF REGISTRATION. (a) Provides that, except as otherwise provided by the commission, a registration under this chapter is valid for one year, rather than expires on December 31, and is required to be renewed annually. Requires that a registrant pay an annual fee, rather than an annual fee of not less than \$45 or more than \$75. Authorizes the commission by rule to adopt a system under which registrations expire on various dates during the year. Makes a nonsubstantive change.

(b) Requires TDLR to notify a registrant under this chapter of the impending expiration of the registrant's registration as provided by Section 51.401(f) (relating to the delivery of the written notice of the impending expiration of a person's license at the person's last known address). Deletes existing text relating to requiring TBTPE, on or before December 1 of each year, to establish the amount of the renewal fee for the following year and mail a renewal notice to each person registered under this chapter.

SECTION 25. Amends Section 1151.1581, Occupations Code, as follows:

Sec. 1151.1581. CONTINUING EDUCATION. (a) Creates this subsection from existing text. Requires the commission to recognize, prepare, or administer continuing education programs for registrants under this chapter, rather than for its license holders. Makes a conforming change.

(b) Requires the comptroller to review and approve all continuing education programs for registrants.

(c) Creates this subsection from existing text. Requires a registrant to participate in the programs to the extent required by TDLR to keep the person's certificate of registration, rather than license. Makes conforming changes.

(d) Authorizes the commission to set fees for continuing education courses and providers of continuing education courses in amounts reasonable and necessary to cover TDLR's costs in administering TDLR's duties under this section.

(e) Authorizes the comptroller to set fees for continuing education courses and providers of continuing education courses in amounts reasonable to cover the comptroller's costs in administering the comptroller's duties under this section.

SECTION 26. Amends Sections 1151.160(a) and (b), Occupations Code, as follows:

(a) Requires that the requirements for certification of an employee of a taxing unit's tax office emphasize, rather than emphasize, but are not limited to, the areas of responsibility of the registrant in performing the registrant's duties for the taxing unit. Makes a conforming change.

(b) Redefines "registered professional appraiser," "registered Texas assessor," and "registered Texas collector." Makes conforming changes.

SECTION 27. Section 1151.161, Occupations Code, as follows:

Sec. 1151.161. EXAMINATION FOR CERTIFICATION; APPLICATION; FEE. (a) Requires the commission, rather than authorizes TBTPE, by rule to require a registrant to pass one or more examinations to be certified. Requires the commission by rule to ensure that any examination required for certification is administered in compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.). Deletes existing text referring to subsequent amendments to the Americans with Disabilities Act. Makes a conforming change

(b) Requires an applicant for examination under this section to apply to take the examination in the manner prescribed by TDLR, rather than to file an application with TBTPE on a printed form provided by TBTPE. Deletes existing text requiring TBTPE, in prescribing the contents of the form, to ensure that the form requires information sufficient to determine the applicant's current classification.

(c) Authorizes TDLR to accept, develop, or contract for the examinations required by this section, including the administration of the examinations. Requires the comptroller to approve the content of the examination accepted, developed, or contracted for by TDLR. Authorizes TDLR to require a third-party vendor to collect a fee associated with the examination directly from examinees. Deletes existing text requiring that the application for examination be filed with TBTPE not later than the 14th day before the examination date and accompanied by a nonrefundable fee in the amount set by TBTPE.

SECTION 28. Amends Section 1151.162, Occupations Code, to authorize the commission to adopt rules relating to recertification and specialization. Makes a conforming change.

SECTION 29. Amends Section 1151.163, Occupations Code, as follows:

Sec. 1151.163. New heading: REGISTRATION BY ENDORSEMENT. Authorizes TDLR to waive any prerequisite to obtaining a certificate of registration for an applicant after reviewing the applicant's credentials and determining that the applicant holds a license or certificate of registration issued by another jurisdiction that has requirements, rather than licensing requirements, substantially equivalent to those of this state. Makes conforming changes.

SECTION 30. Amends Sections 1151.164(a) and (b), Occupations Code, to make conforming changes.

SECTION 31. Amends Section 1151.202, Occupations Code, as follows:

Sec. 1151.202. DENIAL OF REGISTRATION; DISCIPLINARY ACTION. (a) Authorizes TDLR to deny an application for, suspend, or revoke the registration of a person who violates this chapter or a commission rule, place on probation a person whose registration has been suspended, or reprimand a person for a violation by the person of this chapter or a commission rule. Makes conforming changes.

(b) Requires the commission by rule to adopt written guidelines to ensure that the denial of an application, suspension, revocation, probation, and the issuance of reprimands are administered consistently. Makes a conforming change.

SECTION 32. Amends Section 1151.204, Occupations Code, to authorize TDLR, after investigation, to dismiss a complaint without conducting a hearing if the complaint challenges only, rather than involves a disagreement on, the appraised value of a property or another matter for which Title 1 (Property Tax Code), Tax Code, specifies a remedy and does not credibly allege a violation of this chapter or the standards established by the commission for registrants under this chapter, and the disagreement has not been resolved in the complainant's favor by an appraisal review board or court. Makes a conforming change.

SECTION 33. Amends Sections 1151.205(a) and (b), Occupations Code, as follows:

(a) Authorizes TDLR to request and, if necessary, compel by subpoena, the production of records, documents, and other evidence relevant to the investigation of an alleged violation of this chapter or a commission rule for inspection and copying. Makes a conforming change.

(b) Makes conforming changes.

SECTION 34. Amends Section 1151.251(a), Occupations Code, to make a conforming change.

SECTION 35. Amends Section 1151.252(a), Occupations Code, to provide that a person commits an offense if the person performs an appraisal, assessment, or collection function while the person's registration or certification with TDLR is not active, rather than revoked or suspended. Makes a conforming change.

SECTION 36. Amends Section 1151.253, Occupations Code, to authorize a person to file a complaint with TDLR concerning a violation of this chapter or a rule adopted by the commission under this chapter, rather than with TBTPE concerning a violation of Section 1151.251 or 1151.252.

SECTION 37. Amends Section 1152.103, Occupations Code, as follows:

Sec. 1152.103. MEMBERSHIP RESTRICTIONS. Provides that a person is not eligible for appointment as a member of the Property Tax Consultants Advisory Council (council) if the person is required to register with TDLR, rather than the Board of Tax Professional Examiners, under Chapter 1151.

SECTION 38. Amends Section 411.122(d), Government Code, as follows:

(d) Provides that certain state agencies are subject to this section, including the Texas State Perfusionist Advisory Committee, rather than Board of Examiners of Perfusionists. Deletes existing text that provides that TBTPE is subject to this section. Makes nonsubstantive changes.

SECTION 39. Amends Section 2054.352(a), Government Code, to delete existing text requiring TBTPE to participate in the system established under Section 2054.353 (Electronic System for Occupational Licensing Transactions). Makes nonsubstantive changes.

SECTION 40. Amends Section 5.04, Tax Code, as follows:

Sec. 5.04. TRAINING AND EDUCATION OF APPRAISERS. (a) Requires the comptroller to enter into a memorandum of understanding with TDLR, rather than to consult and cooperate with TBTPE, or any successor agency responsible for certifying tax professionals in this state in setting standards for and approving curricula and materials for use in training and educating appraisers and assessor-collectors, and authorizes the comptroller to contract or enter into a memorandum of understanding, rather than to cooperate with TBTPE or, with other public agencies, educational institutions, or private organizations in sponsoring courses of instruction and training programs.

(b) Makes a conforming change.

SECTION 41. Repealer: Section 1151.002(4) (relating to the definition of "board"), Occupations Code.

Repealer: Section 1151.003 (Application of Sunset Act), Occupations Code.

Repealer: Section 1151.053 (Meetings), Occupations Code.

Repealer: Section 1151.054 (Officers), Occupations Code.

Repealer: Section 1151.055(b) (relating to a board member's entitlement to reimbursement for necessary expenses incurred in performing the member's duties), Occupations Code.

Repealer: Section 1151.056 (Training), Occupations Code.

Repealer: Section 1151.057 (Grounds for Removal), Occupations Code.

Repealer: Subchapter B-1 (Executive Director and Personnel), Chapter 1151 (Property Tax Professionals), Occupations Code.

Repealer: Section 1151.1021 (Negotiated Rulemaking and Alternative Dispute Resolution Policy), Occupations Code.

Repealer: Section 1151.105 (Record of Board), Occupations Code.

Repealer: Section 1151.109 (Waiver of Fee or Penalty Prohibited), Occupations Code.

Repealer: Section 1151.110 (Use of Technology), Occupations Code.

Repealer: Subchapter C-1 (Public Interest Information and Complaint Procedures), Chapter 1151, Occupations Code.

Repealer: Section 1151.155(c) (relating to refund of a registration fee if TBTPE disapproves an application for registration), Occupations Code.

Repealer: Section 1151.159 (Removal from Roster of Registrants; Reinstatement), Occupations Code.

Repealer: Section 1151.1611 (Examination Results), Occupations Code.

Repealer: Section 1151.164(c) (relating to requiring TBTPE to provide the chief appraiser training program), Occupations Code.

Repealer: Section 1151.201 (Initiation of Proceedings), Occupations Code.

Repealer: Section 1151.2025 (Probation), Occupations Code.

Repealer: Section 1151.203 (Rules for Proceedings; Notice), Occupations Code.

SECTION 42. (a) Requires the presiding officer of the commission, as soon as possible after the effective date of this Act, to appoint the members of the committee in accordance with Chapter 1151 (Property Tax Professionals), Occupations Code, as amended by this Act. Requires the presiding officer, in making the initial appointments, to designate two members for terms expiring March 1, 2011, two members for terms expiring March 1, 2013, and three members for terms expiring March 1, 2015.

(b) Makes application of Section 1151.1581, Occupations Code, as amended by this Act, prospective to June 1, 2010.

SECTION 43. (a) Provides that TBTPE is abolished but continues in existence until March 1, 2010, for the sole purpose of transferring obligations, property, full-time equivalent positions, rights, powers, and duties to TDLR. Provides that TDLR assumes all of the obligations, property, full-time equivalent positions, rights, powers, and duties of TBTPE, as it exists immediately before the effective date of this Act. Provides that all unexpended funds appropriated to TBTPE are transferred to TDLR. Requires that the transfer of obligations, property, full-time equivalent positions, rights, powers, and duties of TBTPE to TDLR be completed not later than March 1, 2010.

(b) Provides that all rules of TBTPE are continued in effect as rules of the commission until superseded by a rule of the commission. Provides that a certificate issued by TBTPE is continued in effect as provided by the law in effect immediately before the effective date of this Act. Provides that a complaint, investigation, contested case, or other proceeding pending on the effective date of this Act is continued without change in status after the effective date of this Act. Provides that an activity conducted by TBTPE is considered to be an activity conducted by TDLR.

(c) Provides that a reference in another law or an administrative rule to TBTPE means TDLR.

SECTION 44. (a) Requires TBTPE, in cooperation with and at the direction of TDLR, to complete all necessary computer programming and other tasks to ensure that the agency numbers assigned by the comptroller to TBTPE and TDLR are not necessary for any fiscal year after 2009, except to complete earlier fiscal year revenue and expenditure transactions and reporting. Requires that the number assigned by the comptroller to TDLR be used to record transactions related to the regulation of tax professionals beginning in fiscal year 2010.

(b) Requires TBTPE, not later than July 1, 2009, to request that the comptroller grant TDLR inquiry-only security access to the uniform statewide accounting system, the state property accounting system, the uniform statewide payroll system, and the human resources information system for TBTPE. Authorizes TDLR and the comptroller to coordinate implementation of this subsection.

(c) Requires TDLR, not later than July 15, 2009, to provide to TBTPE detailed information regarding TBTPE's responsibilities under Subsection (a) of this section.

SECTION 45. (a) Effective date, except as provided by Subsection (b) of this section: September 1, 2009.

(b) Effective date, Section 44 of this Act: upon passage or September 1, 2009.