

BILL ANALYSIS

S.B. 276
By: Lucio
Licensing & Administrative Procedures
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The Texas Board of Tax Professional Examiners (TBTPE) regulates appraisers, assessor-collectors, and collectors to ensure that only qualified individuals appraise real property and assess and collect property taxes. S.B. 276 would continue TBTPE for the standard 12-year period until September 1, 2015, and incorporate recommendations made by the Texas Sunset Commission regarding the operation of TBTPE.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Board of Tax Professional Examiners in SECTION 14 (Section 1151.161(a), Occupations Code) and SECTION 17 (Section 1151.202, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1151.003, Occupations Code, to continue the Board of Tax Professional Examiners (TBTPE) for the standard 12-year period until September 1, 2015.

SECTION 2. Amends Section 1151.051, Occupations Code, as follows:

Sec. 1151.051. New heading: BOARD MEMBERSHIP. (a) Reduces the size of TBTPE from six to five members appointed by the governor with the advice and consent of the senate, including one member who represents the public.

(b) Provides that a TBTPE vacancy is filled by appointment by the governor of a qualified person to serve for the unexpired portion of the term.

(c) Requires each appointment to TBTPE to be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

SECTION 3. Amends Chapter 1151B, Occupations Code, by adding Sections 1151.0511 and 1151.0512, as follows:

Sec. 1151.0511. PUBLIC MEMBER ELIGIBILITY. Provides that a person may not be a public member of TBTPE if the person or the person's spouse meets certain criteria.

Sec. 1151.0512. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) Defines "Texas trade association."

(b) Provides that a person may not be a member of TBTPE and may not be a TBTPE employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes 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, if certain criteria are met.

(c) Provides that person may not be a member of TBTPE or act as the general counsel to TBTPE if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

SECTION 4. Amends Section 1151.052, Occupations Code, to provide that TBTPE members serve six-year terms, with the terms of one or two members expiring on March 1 of each odd-numbered year.

SECTION 5. Amends Section 1151.054, Occupations Code, as follows:

Sec. 1151.054. OFFICERS. (a) Requires the governor to designate a member of TBTPE as the presiding officer of TBTPE to serve in that capacity at the pleasure of the governor.

(b) Deletes text requiring TBTPE members to elect a presiding officer. Creates this subsection from existing text.

SECTION 6. Amends Chapter 1151B, Occupations Code, by adding Sections 1151.056 and 1151.057, as follows:

Sec. 1151.056. TRAINING. (a) Provides that a person who is appointed to and qualifies for office as a member of TBTPE may not vote, deliberate, or be counted as a member in attendance at a meeting of TBTPE until the person completes a training program that complies with this section.

(b) Requires the training program to provide the person with certain information.

(c) Provides that a person appointed to TBTPE is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

Sec. 1151.057. GROUNDS FOR REMOVAL. (a) Provides the grounds for removal from TBTPE.

(b) Provides that the validity of an action of TBTPE is not affected by the fact that it is taken when a ground for removal of a TBTPE member exists.

(c) Requires the executive director, if the executive director has knowledge that a potential ground for removal exists, to notify the presiding officer of TBTPE of the potential ground. Requires the presiding officer to then notify the governor and the attorney general that a potential ground for removal exists. Requires the executive director, if the potential ground for removal involves the presiding officer, to notify the next highest ranking officer of TBTPE, who is required to then notify the governor and the attorney general that a potential ground for removal exists.

SECTION 7. Amends Chapter 1151, Occupations Code, by adding Subchapter B-1, as follows:

SUBCHAPTER B-1. EXECUTIVE DIRECTOR AND PERSONNEL

Sec. 1151.071. EXECUTIVE DIRECTOR AND PERSONNEL. (a) Requires TBTPE to employ an executive director to administer the operations of TBTPE as directed by TBTPE.

(b) Authorizes the executive director to employ other personnel to assist the executive director.

Sec. 1151.072. DIVISION OF RESPONSIBILITIES. Requires TBTPE to develop and implement policies that clearly separate the policy-making responsibilities of TBTPE and the management responsibilities of the executive director and the staff of TBTPE.

Sec. 1151.073. REQUIREMENTS AND STANDARDS OF CONDUCT INFORMATION. Requires the executive director or the executive director's designee to provide to TBTPE members and to TBTPE employees, as often as necessary, information regarding the requirements for office or employment under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Sec. 1151.074. INFORMATION ON STATE EMPLOYEE INCENTIVE PROGRAM. Requires the executive director or the executive director's designee to provide to TBTPE employees information and training on the benefits and methods of participation in the state employee incentive program under Chapter 2108B, Government Code.

Sec. 1151.075. EQUAL EMPLOYMENT OPPORTUNITY POLICY; REPORT. (a) Requires the executive director or the executive director's designee to prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.

(b) Requires the policy statement to include certain information.

(c) Requires certain actions to be taken regarding the policy statement.

SECTION 8. Amends Chapter 1151C, Occupations Code, by adding Section 1151.1015, as follows:

Sec. 1151.1015. INTERAGENCY CONTRACT WITH COMPTROLLER. (a) Requires TBTPE and the comptroller to provide under an interagency contract for the comptroller to provide administrative support to the board. Requires the contract to include terms for fees to be paid by TBTPE to the comptroller for services provided under the contract.

(b) Requires the comptroller, under the interagency contract, to provide TBTPE with certain information.

SECTION 9. Amends Chapter 1151C, Occupations Code, by adding Section 1151.1021, as follows:

Sec. 1151.1021. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY. (a) Requires TBTPE to develop and implement a policy to encourage the use of negotiated rulemaking procedures and alternative dispute resolution.

(b) Requires TBTPE's procedures relating to alternative dispute resolution to conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings regarding the use of alternative dispute resolution by state agencies.

(c) Requires TBTPE to designate a trained person to perform certain tasks.

SECTION 10. Amends Chapter 1151C, Occupations Code, by adding Section 1151.110, as follows:

Sec. 1151.110. USE OF TECHNOLOGY. Requires TBTPE to develop and implement a

policy requiring the executive director and TBTPE employees to research and propose appropriate technological solutions to improve the TBTPE's ability to perform its functions. Requires the technological solutions to meet certain standards.

SECTION 11. Amends Chapter 1151, Occupations Code, by adding Subchapter C-1, as follows:

SUBCHAPTER C-1. PUBLIC INTEREST INFORMATION AND COMPLAINT
PROCEDURES

Sec. 1151.131. PUBLIC PARTICIPATION. Requires TBTPE to develop and implement policies that provide the public with a reasonable opportunity to appear before TBTPE and to speak on any issue under the jurisdiction of TBTPE.

Sec. 1151.132. RECORDS OF COMPLAINTS. Requires TBTPE to maintain a file on each written complaint filed with the TBTPE. Requires the file to include certain information.

Sec. 1151.133. NOTIFICATION OF INVESTIGATION. (a) Requires TBTPE to provide to the person filing the complaint and to each person who is a subject of the complaint a copy of TBTPE's policies and procedures relating to complaint investigation and resolution.

(b) Requires TBTPE, at least quarterly until final disposition of the complaint, to notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

SECTION 12. Amends Section 1151.151(b), Occupations Code, to provide that a county assessor-collector is not required to register with TBTPE if the county by contract entered into under Section 6.24(b), Tax Code, has its taxes assessed and collected by another taxing unit or an appraisal district. Deletes reference to a population of one million or more.

SECTION 13. Amends Chapter 1151D, Occupations Code, by adding Section 1151.1581, as follows:

Sec. 1151.1581. CONTINUING EDUCATION. Requires TBTPE to recognize, prepare, or administer continuing education programs for its license holders. Requires a license holder to participate in the programs to the extent required by TBTPE to keep the person's license.

SECTION 14. Amends Section 1151.161(a), Occupations Code, to require TBTPE by rule to ensure that any examination required for certification is administered in compliance with the Americans with Disabilities Act (42 U.S.C. Section 12101 et seq.), and its subsequent amendments.

SECTION 15. Amends Chapter 1151D, Occupations Code, by adding Section 1151.1611, as follows:

Sec. 1151.1611. EXAMINATION RESULTS. (a) Requires TBTPE, not later than the 30th day after the date a person takes a licensing examination under this chapter, to notify the person of the results of the examination.

(b) Requires TBTPE to perform certain tasks if the examination is graded or reviewed by a testing service.

(c) Authorizes TBTPE to require a testing service to notify a person of the results of the person's examination.

(d) Requires TBTPE, if requested in writing by a person who fails a licensing examination administered under this chapter, to furnish the person with an analysis of

the person's performance on the examination.

SECTION 16. Amends Chapter 1151D, Occupations Code, by adding Section 1151.163, as follows:

Sec. 1151.163. LICENSE BY ENDORSEMENT. Authorizes TBTPE to waive any prerequisite to obtaining a license for an applicant after reviewing the applicant's credentials and determining that the applicant holds a license issued by another jurisdiction that has licensing requirements substantially equivalent to those of this state.

SECTION 17. Amends Section 1151.202, Occupations Code, as follows:

(a) Authorizes TBTPE to 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 board rule. Creates this subsection from existing text.

(b) Requires TBTPE by rule to adopt written guidelines to ensure that probation and the issuance of reprimands are administered consistently.

SECTION 18. Amends Chapter 1151E, Occupations Code, by adding Section 1151.2025, as follows:

Sec. 1151.2025. PROBATION. Authorizes TBTPE to require a person whose license suspension is probated to perform certain tasks.

SECTION 19. Repealer:

(1) Section 6.235, Tax Code (Restrictions on Eligibility and Conduct of Board Members);

(2) Section 1151.101, Occupations Code (Executive Director and Personnel); and

(3) Section 1151.154(b), Occupations Code (Enforcement of Chapter).

SECTION 20. (a) Requires TBTPE and the comptroller, before January 1, 2004, to enter into the interagency contract required by Section 1151.1015, Occupations Code, as added by this Act.

(b) Requires TBTPE and the comptroller to study the feasibility of relocating TBTPE's offices to the comptroller's office and to report their findings to the lieutenant governor and the speaker of the house of representatives not later than December 1, 2004.

SECTION 21. (a) Provides that the two TBTPE positions that have terms scheduled to expire on March 1, 2009, are abolished on September 1, 2003.

(b) Requires the governor, as soon as possible on or after September 1, 2003, to appoint a member representing the general public to the Board of Tax Professional Examiners for a term expiring March 1, 2009.

SECTION 22. Makes Sections 1151.0512 and 1151.056, Occupations Code, as added by this Act prospective to September 1, 2003.

SECTION 23. Makes Section 1151.054, Occupations Code, prospective to September 1, 2003.

SECTION 24. Makes application of Chapter 1151C-1, Occupations Code, as added by this Act prospective.

SECTION 25. Requires TBTPE, before January 1, 2004, to adopt the rules required by Section 1151.161(a), Occupations Code, as amended by this Act.

SECTION 26. Requires TBTPE, before January 1, 2004, by rule to adopt the written guidelines required by Section 1151.202, Occupations Code, as amended by this Act.

SECTION 27. Effective date: September 1, 2003.

EFFECTIVE DATE

September 1, 2003