

By: Lucio

S.B. No. 276

A BILL TO BE ENTITLED

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AN ACT

relating to the continuation and functions of the Board of Tax Professional Examiners.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1151.003, Occupations Code, is amended to read as follows:

Sec. 1151.003. APPLICATION OF SUNSET ACT. The Board of Tax Professional Examiners is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2015 [~~2003~~].

SECTION 2. Section 1151.051, Occupations Code, is amended to read as follows:

Sec. 1151.051. BOARD MEMBERSHIP [~~, ELIGIBILITY~~]. (a) The Board of Tax Professional Examiners consists of five [~~six~~] members appointed by the governor with the advice and consent of the senate as follows:

(1) four members who:

(A) are [~~. A vacancy on the board is filled in the same manner for the unexpired portion of the term.~~

~~[(b) To be eligible to serve on the board, a person must:~~

~~[(1) be]~~ actively engaged in property tax administration;

(B) [(2)] have at least five years' experience in

1 appraisal, assessment, or collection; and

2 (C) are [~~(3)~~ be] certified under this chapter as
3 a registered professional appraiser, registered Texas collector,
4 or registered Texas assessor; and

5 (2) one member who represents the public.

6 (b) A vacancy on the board is filled by appointment by the
7 governor of a qualified person to serve for the unexpired portion of
8 the term.

9 (c) Each appointment to the board shall be made without
10 regard to the race, color, disability, sex, religion, age, or
11 national origin of the appointee.

12 SECTION 3. Subchapter B, Chapter 1151, Occupations Code, is
13 amended by adding Sections 1151.0511 and 1151.0512 to read as
14 follows:

15 Sec. 1151.0511. PUBLIC MEMBER ELIGIBILITY. A person may
16 not be a public member of the board if the person or the person's
17 spouse:

18 (1) is registered, certified, or licensed by a
19 regulatory agency in the field of property tax appraisal,
20 assessment, or collection;

21 (2) is employed by or participates in the management
22 of a business entity or other organization regulated by or
23 receiving money from the board;

24 (3) owns or controls, directly or indirectly, more
25 than a 10 percent interest in a business entity or other
26 organization regulated by or receiving money from the board; or

27 (4) uses or receives a substantial amount of tangible

1 goods, services, or money from the board other than compensation or
2 reimbursement authorized by law for board membership, attendance,
3 or expenses.

4 Sec. 1151.0512. MEMBERSHIP AND EMPLOYEE RESTRICTIONS.

5 (a) In this section, "Texas trade association" means a cooperative
6 and voluntarily joined statewide association of business or
7 professional competitors in this state designed to assist its
8 members and its industry or profession in dealing with mutual
9 business or professional problems and in promoting their common
10 interest.

11 (b) A person may not be a member of the board and may not be
12 a board employee employed in a "bona fide executive,
13 administrative, or professional capacity," as that phrase is used
14 for purposes of establishing an exemption to the overtime
15 provisions of the federal Fair Labor Standards Act of 1938 (29
16 U.S.C. Section 201 et seq.), and its subsequent amendments, if:

17 (1) the person is an officer, employee, or paid
18 consultant of a Texas trade association in the field of property tax
19 appraisal, assessment, or collection; or

20 (2) the person's spouse is an officer, manager, or paid
21 consultant of a Texas trade association in the field of property tax
22 appraisal, assessment, or collection.

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

1 SECTION 4. Section 1151.052, Occupations Code, is amended
2 to read as follows:

3 Sec. 1151.052. TERMS. Board members serve six-year terms,
4 with the terms of one or two members expiring on March 1 of each
5 odd-numbered year.

6 SECTION 5. Section 1151.054, Occupations Code, is amended
7 to read as follows:

8 Sec. 1151.054. OFFICERS. (a) The governor shall designate
9 a member of the board as the presiding officer of the board to serve
10 in that capacity at the pleasure of the governor.

11 (b) At the first regular meeting of each calendar year, the
12 board shall elect from its members an [a ~~presiding officer,~~
13 assistant presiding officer~~]~~ and a secretary-treasurer.

14 SECTION 6. Subchapter B, Chapter 1151, Occupations Code, is
15 amended by adding Sections 1151.056 and 1151.057 to read as
16 follows:

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

22 (b) The training program must provide the person with
23 information regarding:

24 (1) this chapter;

25 (2) the programs operated by the board;

26 (3) the role and functions of the board;

27 (4) the rules of the board, with an emphasis on the

1 rules that relate to disciplinary and investigatory authority;

2 (5) the current budget for the board;

3 (6) the results of the most recent formal audit of the
4 board;

5 (7) the requirements of:

6 (A) the open meetings law, Chapter 551,
7 Government Code;

8 (B) the public information law, Chapter 552,
9 Government Code;

10 (C) the administrative procedure law, Chapter
11 2001, Government Code; and

12 (D) other laws relating to public officials,
13 including conflict-of-interest laws; and

14 (8) any applicable ethics policies adopted by the
15 board or the Texas Ethics Commission.

16 (c) A person appointed to the board is entitled to
17 reimbursement, as provided by the General Appropriations Act, for
18 the travel expenses incurred in attending the training program
19 regardless of whether the attendance at the program occurs before
20 or after the person qualifies for office.

21 Sec. 1151.057. GROUNDS FOR REMOVAL. (a) It is a ground for
22 removal from the board that a member:

23 (1) does not have at the time of taking office the
24 qualifications required by Section 1151.051 or 1151.0511;

25 (2) does not maintain during service on the board the
26 qualifications required by Section 1151.051 or 1151.0511;

27 (3) is ineligible for membership under Section

1 1151.0512;

2 (4) cannot, because of illness or disability,
3 discharge the member's duties for a substantial part of the member's
4 term; or

5 (5) is absent from more than half of the regularly
6 scheduled board meetings that the member is eligible to attend
7 during a calendar year without an excuse approved by a majority vote
8 of the board.

9 (b) The validity of an action of the board is not affected by
10 the fact that it is taken when a ground for removal of a board member
11 exists.

12 (c) If the executive director has knowledge that a potential
13 ground for removal exists, the executive director shall notify the
14 presiding officer of the board of the potential ground. The
15 presiding officer shall then notify the governor and the attorney
16 general that a potential ground for removal exists. If the
17 potential ground for removal involves the presiding officer, the
18 executive director shall notify the next highest ranking officer of
19 the board, who shall then notify the governor and the attorney
20 general that a potential ground for removal exists.

21 SECTION 7. Chapter 1151, Occupations Code, is amended by
22 adding Subchapter B-1 to read as follows:

23 SUBCHAPTER B-1. EXECUTIVE DIRECTOR AND PERSONNEL

24 Sec. 1151.071. EXECUTIVE DIRECTOR AND PERSONNEL. (a) The
25 board shall employ an executive director to administer the
26 operations of the board as directed by the board.

27 (b) The executive director may employ other personnel to

1 assist the executive director.

2 Sec. 1151.072. DIVISION OF RESPONSIBILITIES. The board
3 shall develop and implement policies that clearly separate the
4 policy-making responsibilities of the board and the management
5 responsibilities of the executive director and the staff of the
6 board.

7 Sec. 1151.073. REQUIREMENTS AND STANDARDS OF CONDUCT
8 INFORMATION. The executive director or the executive director's
9 designee shall provide to members of the board and to board
10 employees, as often as necessary, information regarding the
11 requirements for office or employment under this chapter, including
12 information regarding a person's responsibilities under applicable
13 laws relating to standards of conduct for state officers or
14 employees.

15 Sec. 1151.074. INFORMATION ON STATE EMPLOYEE INCENTIVE
16 PROGRAM. The executive director or the executive director's
17 designee shall provide to board employees information and training
18 on the benefits and methods of participation in the state employee
19 incentive program under Subchapter B, Chapter 2108, Government
20 Code.

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

27 (b) The policy statement must include:

1 (1) personnel policies, including policies relating
2 to recruitment, evaluation, selection, training, and promotion of
3 personnel, that show the intent of the board to avoid the unlawful
4 employment practices described by Chapter 21, Labor Code; and

5 (2) an analysis of the extent to which the composition
6 of the board's personnel is in accordance with state and federal law
7 and a description of reasonable methods to achieve compliance with
8 state and federal law.

9 (c) The policy statement must:

10 (1) be updated annually;

11 (2) be reviewed by the Commission on Human Rights for
12 compliance with Subsection (b)(1); and

13 (3) be filed with the governor's office.

14 SECTION 8. Subchapter C, Chapter 1151, Occupations Code, is
15 amended by adding Section 1151.1015 to read as follows:

16 Sec. 1151.1015. INTERAGENCY CONTRACT WITH COMPTROLLER.

17 (a) The board and the comptroller shall provide under an
18 interagency contract for the comptroller to provide administrative
19 support to the board. The contract must include terms for fees to
20 be paid by the board to the comptroller for services provided under
21 the contract.

22 (b) Under the interagency contract, the comptroller shall
23 provide to the board:

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

26 (2) assistance with outreach efforts to inform
27 taxpayers of their rights and remedies;

1 (3) information on appraisal district enforcement
2 efforts; and

3 (4) assistance with administrative services,
4 including:

5 (A) payroll services;

6 (B) budgeting services;

7 (C) information technology support;

8 (D) human resources services; and

9 (E) other administrative services necessary for
10 the board to perform its powers and duties under this chapter.

11 SECTION 9. Subchapter C, Chapter 1151, Occupations Code, is
12 amended by adding Section 1151.1021 to read as follows:

13 Sec. 1151.1021. NEGOTIATED RULEMAKING AND ALTERNATIVE
14 DISPUTE RESOLUTION POLICY. (a) The board shall develop and
15 implement a policy to encourage the use of:

16 (1) negotiated rulemaking procedures under Chapter
17 2008, Government Code, for the adoption of board rules; and

18 (2) appropriate alternative dispute resolution
19 procedures under Chapter 2009, Government Code, to assist in the
20 resolution of internal and external disputes under the board's
21 jurisdiction.

22 (b) The board's procedures relating to alternative dispute
23 resolution must conform, to the extent possible, to any model
24 guidelines issued by the State Office of Administrative Hearings
25 regarding the use of alternative dispute resolution by state
26 agencies.

27 (c) The board shall designate a trained person to:

1 (1) coordinate the implementation of the policy
2 adopted under Subsection (a);

3 (2) serve as a resource for any training necessary for
4 implementation of the negotiated rulemaking or alternative dispute
5 resolution procedures; and

6 (3) collect data concerning the effectiveness of the
7 procedures as implemented by the board.

8 SECTION 10. Subchapter C, Chapter 1151, Occupations Code,
9 is amended by adding Section 1151.110 to read as follows:

10 Sec. 1151.110. USE OF TECHNOLOGY. The board shall develop
11 and implement a policy requiring the executive director and board
12 employees to research and propose appropriate technological
13 solutions to improve the board's ability to perform its functions.
14 The technological solutions must:

15 (1) ensure that the public is able to easily find
16 information about the board on the Internet;

17 (2) ensure that persons who want to use the board's
18 services are able to:

19 (A) interact with the board through the Internet;
20 and

21 (B) access any service that can be provided
22 effectively through the Internet; and

23 (3) be cost-effective and developed through the
24 board's planning processes.

25 SECTION 11. Chapter 1151, Occupations Code, is amended by
26 adding Subchapter C-1 to read as follows:

1 SUBCHAPTER C-1. PUBLIC INTEREST INFORMATION AND COMPLAINT

2 PROCEDURES

3 Sec. 1151.131. PUBLIC PARTICIPATION. The board shall
4 develop and implement policies that provide the public with a
5 reasonable opportunity to appear before the board and to speak on
6 any issue under the jurisdiction of the board.

7 Sec. 1151.132. RECORDS OF COMPLAINTS. The board shall
8 maintain a file on each written complaint filed with the board. The
9 file must include:

- 10 (1) the name of the person who filed the complaint;
11 (2) the date the complaint is received by the board;
12 (3) the subject matter of the complaint;
13 (4) the name of each person contacted in relation to
14 the complaint;
15 (5) a summary of the results of the review or
16 investigation of the complaint; and
17 (6) an explanation of the reason the file was closed,
18 if the board closed the file without taking action other than to
19 investigate the complaint.

20 Sec. 1151.133. NOTIFICATION OF INVESTIGATION. (a) The
21 board shall provide to the person filing the complaint and to each
22 person who is a subject of the complaint a copy of the board's
23 policies and procedures relating to complaint investigation and
24 resolution.

25 (b) The board, at least quarterly until final disposition of
26 the complaint, shall notify the person filing the complaint and
27 each person who is a subject of the complaint of the status of the

1 investigation unless the notice would jeopardize an undercover
2 investigation.

3 SECTION 12. Subsection (b), Section 1151.151, Occupations
4 Code, is amended to read as follows:

5 (b) A county assessor-collector is not required to register
6 with the board if the county, ~~+~~

7 ~~[(1) has a population of one million or more, or~~

8 ~~[(2)]~~ by contract entered into under Section 6.24(b),
9 Tax Code, has its taxes assessed and collected by another taxing
10 unit or an appraisal district.

11 SECTION 13. Subchapter D, Chapter 1151, Occupations Code,
12 is amended by adding Section 1151.1581 to read as follows:

13 Sec. 1151.1581. CONTINUING EDUCATION. The board shall
14 recognize, prepare, or administer continuing education programs
15 for its license holders. A license holder must participate in the
16 programs to the extent required by the board to keep the person's
17 license.

18 SECTION 14. Subsection (a), Section 1151.161, Occupations
19 Code, is amended to read as follows:

20 (a) The board by rule may require a registrant to pass one or
21 more examinations to be certified. The board by rule shall ensure
22 that any examination required for certification is administered in
23 compliance with the Americans with Disabilities Act of 1990 (42
24 U.S.C. Section 12101 et seq.), and its subsequent amendments.

25 SECTION 15. Subchapter D, Chapter 1151, Occupations Code,
26 is amended by adding Section 1151.1611 to read as follows:

27 Sec. 1151.1611. EXAMINATION RESULTS. (a) Not later than

1 the 30th day after the date a person takes a licensing examination
2 under this chapter, the board shall notify the person of the results
3 of the examination.

4 (b) If the examination is graded or reviewed by a testing
5 service:

6 (1) the board shall notify the person of the results of
7 the examination not later than the 14th day after the date the board
8 receives the results from the testing service; and

9 (2) if notice of the examination results will be
10 delayed for longer than 90 days after the examination date, the
11 board shall notify the person of the reason for the delay before the
12 90th day.

13 (c) The board may require a testing service to notify a
14 person of the results of the person's examination.

15 (d) If requested in writing by a person who fails a
16 licensing examination administered under this chapter, the board
17 shall furnish the person with an analysis of the person's
18 performance on the examination.

19 SECTION 16. Subchapter D, Chapter 1151, Occupations Code,
20 is amended by adding Section 1151.163 to read as follows:

21 Sec. 1151.163. LICENSE BY ENDORSEMENT. The board may waive
22 any prerequisite to obtaining a license for an applicant after
23 reviewing the applicant's credentials and determining that the
24 applicant holds a license issued by another jurisdiction that has
25 licensing requirements substantially equivalent to those of this
26 state.

27 SECTION 17. Section 1151.202, Occupations Code, is amended

1 to read as follows:

2 Sec. 1151.202. DENIAL OF REGISTRATION; DISCIPLINARY
3 ACTION. (a) The board may deny, suspend, or revoke the
4 registration of a person who violates this chapter or a board rule,
5 place on probation a person whose registration has been suspended,
6 or reprimand a person for a violation by the person of this chapter
7 or a board rule.

8 (b) The board by rule shall adopt written guidelines to
9 ensure that probation and the issuance of reprimands are
10 administered consistently.

11 SECTION 18. Subchapter E, Chapter 1151, Occupations Code,
12 is amended by adding Section 1151.2025 to read as follows:

13 Sec. 1151.2025. PROBATION. The board may require a person
14 whose license suspension is probated to:

15 (1) report regularly to the board on matters that are
16 the basis of the probation;

17 (2) limit practice to the areas prescribed by the
18 board; or

19 (3) continue or review professional education until
20 the person attains a degree of skill satisfactory to the board in
21 those areas that are the basis of the probation.

22 SECTION 19. The following laws are repealed:

23 (1) Section 6.235, Tax Code;

24 (2) Section 1151.101, Occupations Code; and

25 (3) Subsection (b), Section 1151.154, Occupations
26 Code.

27 SECTION 20. (a) Before January 1, 2004, the Board of Tax

1 Professional Examiners and the comptroller of public accounts shall
2 enter into the interagency contract required by Section 1151.1015,
3 Occupations Code, as added by this Act.

4 (b) The Board of Tax Professional Examiners and the
5 comptroller of public accounts shall study the feasibility of
6 relocating the board's offices to the comptroller's office and
7 shall report their findings to the lieutenant governor and the
8 speaker of the house of representatives not later than December 1,
9 2004.

10 SECTION 21. (a) The two positions on the Board of Tax
11 Professional Examiners that have terms scheduled to expire on
12 March 1, 2009, are abolished on September 1, 2003.

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

17 SECTION 22. The changes in law made by Sections 1151.0512
18 and 1151.056, Occupations Code, as added by this Act, in the
19 prohibitions or qualifications of members of the Board of Tax
20 Professional Examiners do not affect the entitlement of a member
21 serving on the Board of Tax Professional Examiners immediately
22 before September 1, 2003, to continue to serve and function as a
23 member of the Board of Tax Professional Examiners for the remainder
24 of the member's term. Those changes in law apply only to a member
25 appointed on or after September 1, 2003.

26 SECTION 23. The change in law made by Section 1151.054,
27 Occupations Code, as amended by this Act, does not affect the

1 entitlement of a person who was serving as the presiding officer of
2 the Board of Tax Professional Examiners immediately before
3 September 1, 2003, to continue to serve and function in that
4 capacity for the remainder of the person's term as the presiding
5 officer. The change in law made by that section applies only to the
6 designation of a presiding officer of the board after that person's
7 term as presiding officer expires.

8 SECTION 24. The change in law made by Subchapter C-1,
9 Chapter 1151, Occupations Code, as added by this Act, relating to
10 the investigation of a complaint applies only to a complaint filed
11 with the Board of Tax Professional Examiners on or after the
12 effective date of this Act. A complaint filed with the board before
13 the effective date of this Act is governed by the law as it existed
14 immediately before that date, and the former law is continued in
15 effect for that purpose.

16 SECTION 25. Before January 1, 2004, the Board of Tax
17 Professional Examiners shall adopt the rules required by Subsection
18 (a), Section 1151.161, Occupations Code, as amended by this Act.

19 SECTION 26. Before January 1, 2004, the Board of Tax
20 Professional Examiners by rule shall adopt the written guidelines
21 required by Section 1151.202, Occupations Code, as amended by this
22 Act.

23 SECTION 27. This Act takes effect September 1, 2003.