

1-1 By: Lucio S.B. No. 276
1-2 (In the Senate - Filed February 27, 2003; March 3, 2003,
1-3 read first time and referred to Committee on Government
1-4 Organization; March 24, 2003, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 7, Nays 0;
1-6 March 24, 2003, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 276 By: Wentworth

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the continuation and functions of the Board of Tax
1-11 Professional Examiners.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Section 1151.003, Occupations Code, is amended
1-14 to read as follows:

1-15 Sec. 1151.003. APPLICATION OF SUNSET ACT. The Board of Tax
1-16 Professional Examiners is subject to Chapter 325, Government Code
1-17 (Texas Sunset Act). Unless continued in existence as provided by
1-18 that chapter, the board is abolished and this chapter expires
1-19 September 1, 2015 [2003].

1-20 SECTION 2. Section 1151.051, Occupations Code, is amended
1-21 to read as follows:

1-22 Sec. 1151.051. BOARD MEMBERSHIP [~~ELIGIBILITY~~]. (a) The
1-23 Board of Tax Professional Examiners consists of five [~~six~~] members
1-24 appointed by the governor with the advice and consent of the senate
1-25 as follows:

1-26 (1) four members who:

1-27 (A) are [~~. A vacancy on the board is filled in the~~
1-28 ~~same manner for the unexpired portion of the term.~~

1-29 [~~(b) To be eligible to serve on the board, a person must:~~

1-30 [~~(1) be~~] actively engaged in property tax
1-31 administration;

1-32 (B) [(2)] have at least five years' experience in
1-33 appraisal, assessment, or collection; and

1-34 (C) are [(3) be] certified under this chapter as
1-35 a registered professional appraiser, registered Texas collector,
1-36 or registered Texas assessor; and

1-37 (2) one member who represents the public.

1-38 (b) A vacancy on the board is filled by appointment by the
1-39 governor of a qualified person to serve for the unexpired portion of
1-40 the term.

1-41 (c) Each appointment to the board shall be made without
1-42 regard to the race, color, disability, sex, religion, age, or
1-43 national origin of the appointee.

1-44 SECTION 3. Subchapter B, Chapter 1151, Occupations Code, is
1-45 amended by adding Sections 1151.0511 and 1151.0512 to read as
1-46 follows:

1-47 Sec. 1151.0511. PUBLIC MEMBER ELIGIBILITY. A person may
1-48 not be a public member of the board if the person or the person's
1-49 spouse:

1-50 (1) is registered, certified, or licensed by a
1-51 regulatory agency in the field of property tax appraisal,
1-52 assessment, or collection;

1-53 (2) is employed by or participates in the management
1-54 of a business entity or other organization regulated by or
1-55 receiving money from the board;

1-56 (3) owns or controls, directly or indirectly, more
1-57 than a 10 percent interest in a business entity or other
1-58 organization regulated by or receiving money from the board; or

1-59 (4) uses or receives a substantial amount of tangible
1-60 goods, services, or money from the board other than compensation or
1-61 reimbursement authorized by law for board membership, attendance,
1-62 or expenses.

1-63 Sec. 1151.0512. MEMBERSHIP AND EMPLOYEE RESTRICTIONS.

2-1 (a) In this section, "Texas trade association" means a cooperative
 2-2 and voluntarily joined statewide association of business or
 2-3 professional competitors in this state designed to assist its
 2-4 members and its industry or profession in dealing with mutual
 2-5 business or professional problems and in promoting their common
 2-6 interest.

2-7 (b) A person may not be a member of the board and may not be
 2-8 a board employee employed in a "bona fide executive,
 2-9 administrative, or professional capacity," as that phrase is used
 2-10 for purposes of establishing an exemption to the overtime
 2-11 provisions of the federal Fair Labor Standards Act of 1938 (29
 2-12 U.S.C. Section 201 et seq.), and its subsequent amendments, if:

2-13 (1) the person is an officer, employee, or paid
 2-14 consultant of a Texas trade association in the field of property tax
 2-15 appraisal, assessment, or collection; or

2-16 (2) the person's spouse is an officer, manager, or paid
 2-17 consultant of a Texas trade association in the field of property tax
 2-18 appraisal, assessment, or collection.

2-19 (c) A person may not be a member of the board or act as the
 2-20 general counsel to the board if the person is required to register
 2-21 as a lobbyist under Chapter 305, Government Code, because of the
 2-22 person's activities for compensation on behalf of a profession
 2-23 related to the operation of the board.

2-24 SECTION 4. Section 1151.052, Occupations Code, is amended
 2-25 to read as follows:

2-26 Sec. 1151.052. TERMS. Board members serve six-year terms,
 2-27 with the terms of one or two members expiring on March 1 of each
 2-28 odd-numbered year.

2-29 SECTION 5. Section 1151.054, Occupations Code, is amended
 2-30 to read as follows:

2-31 Sec. 1151.054. OFFICERS. (a) The governor shall designate
 2-32 a member of the board as the presiding officer of the board to serve
 2-33 in that capacity at the pleasure of the governor.

2-34 (b) At the first regular meeting of each calendar year, the
 2-35 board shall elect from its members an [a ~~presiding officer,~~
 2-36 assistant presiding officer[7] and a secretary-treasurer.

2-37 SECTION 6. Subchapter B, Chapter 1151, Occupations Code, is
 2-38 amended by adding Sections 1151.056 and 1151.057 to read as
 2-39 follows:

2-40 Sec. 1151.056. TRAINING. (a) A person who is appointed to
 2-41 and qualifies for office as a member of the board may not vote,
 2-42 deliberate, or be counted as a member in attendance at a meeting of
 2-43 the board until the person completes a training program that
 2-44 complies with this section.

2-45 (b) The training program must provide the person with
 2-46 information regarding:

2-47 (1) this chapter;
 2-48 (2) the programs operated by the board;
 2-49 (3) the role and functions of the board;
 2-50 (4) the rules of the board, with an emphasis on the
 2-51 rules that relate to disciplinary and investigatory authority;

2-52 (5) the current budget for the board;
 2-53 (6) the results of the most recent formal audit of the
 2-54 board;

2-55 (7) the requirements of:
 2-56 (A) the open meetings law, Chapter 551,
 2-57 Government Code;
 2-58 (B) the public information law, Chapter 552,
 2-59 Government Code;
 2-60 (C) the administrative procedure law, Chapter
 2-61 2001, Government Code; and

2-62 (D) other laws relating to public officials,
 2-63 including conflict-of-interest laws; and

2-64 (8) any applicable ethics policies adopted by the
 2-65 board or the Texas Ethics Commission.

2-66 (c) A person appointed to the board is entitled to
 2-67 reimbursement, as provided by the General Appropriations Act, for
 2-68 the travel expenses incurred in attending the training program
 2-69 regardless of whether the attendance at the program occurs before

3-1 or after the person qualifies for office.

3-2 Sec. 1151.057. GROUNDS FOR REMOVAL. (a) It is a ground for
 3-3 removal from the board that a member:

3-4 (1) does not have at the time of taking office the
 3-5 qualifications required by Section 1151.051 or 1151.0511;

3-6 (2) does not maintain during service on the board the
 3-7 qualifications required by Section 1151.051 or 1151.0511;

3-8 (3) is ineligible for membership under Section
 3-9 1151.0512;

3-10 (4) cannot, because of illness or disability,
 3-11 discharge the member's duties for a substantial part of the member's
 3-12 term; or

3-13 (5) is absent from more than half of the regularly
 3-14 scheduled board meetings that the member is eligible to attend
 3-15 during a calendar year without an excuse approved by a majority vote
 3-16 of the board.

3-17 (b) The validity of an action of the board is not affected by
 3-18 the fact that it is taken when a ground for removal of a board member
 3-19 exists.

3-20 (c) If the executive director has knowledge that a potential
 3-21 ground for removal exists, the executive director shall notify the
 3-22 presiding officer of the board of the potential ground. The
 3-23 presiding officer shall then notify the governor and the attorney
 3-24 general that a potential ground for removal exists. If the
 3-25 potential ground for removal involves the presiding officer, the
 3-26 executive director shall notify the next highest ranking officer of
 3-27 the board, who shall then notify the governor and the attorney
 3-28 general that a potential ground for removal exists.

3-29 SECTION 7. Chapter 1151, Occupations Code, is amended by
 3-30 adding Subchapter B-1 to read as follows:

3-31 SUBCHAPTER B-1. EXECUTIVE DIRECTOR AND PERSONNEL

3-32 Sec. 1151.071. EXECUTIVE DIRECTOR AND PERSONNEL. (a) The
 3-33 board shall employ an executive director to administer the
 3-34 operations of the board as directed by the board.

3-35 (b) The executive director may employ other personnel to
 3-36 assist the executive director.

3-37 Sec. 1151.072. DIVISION OF RESPONSIBILITIES. The board
 3-38 shall develop and implement policies that clearly separate the
 3-39 policy-making responsibilities of the board and the management
 3-40 responsibilities of the executive director and the staff of the
 3-41 board.

3-42 Sec. 1151.073. REQUIREMENTS AND STANDARDS OF CONDUCT
 3-43 INFORMATION. The executive director or the executive director's
 3-44 designee shall provide to members of the board and to board
 3-45 employees, as often as necessary, information regarding the
 3-46 requirements for office or employment under this chapter, including
 3-47 information regarding a person's responsibilities under applicable
 3-48 laws relating to standards of conduct for state officers or
 3-49 employees.

3-50 Sec. 1151.074. INFORMATION ON STATE EMPLOYEE INCENTIVE
 3-51 PROGRAM. The executive director or the executive director's
 3-52 designee shall provide to board employees information and training
 3-53 on the benefits and methods of participation in the state employee
 3-54 incentive program under Subchapter B, Chapter 2108, Government
 3-55 Code.

3-56 Sec. 1151.075. EQUAL EMPLOYMENT OPPORTUNITY POLICY;
 3-57 REPORT. (a) The executive director or the executive director's
 3-58 designee shall prepare and maintain a written policy statement that
 3-59 implements a program of equal employment opportunity to ensure that
 3-60 all personnel decisions are made without regard to race, color,
 3-61 disability, sex, religion, age, or national origin.

3-62 (b) The policy statement must include:

3-63 (1) personnel policies, including policies relating
 3-64 to recruitment, evaluation, selection, training, and promotion of
 3-65 personnel, that show the intent of the board to avoid the unlawful
 3-66 employment practices described by Chapter 21, Labor Code; and

3-67 (2) an analysis of the extent to which the composition
 3-68 of the board's personnel is in accordance with state and federal law
 3-69 and a description of reasonable methods to achieve compliance with

4-1 state and federal law.

4-2 (c) The policy statement must:

4-3 (1) be updated annually;

4-4 (2) be reviewed by the Commission on Human Rights for
4-5 compliance with Subsection (b)(1); and

4-6 (3) be filed with the governor's office.

4-7 SECTION 8. Subchapter C, Chapter 1151, Occupations Code, is
4-8 amended by adding Section 1151.1015 to read as follows:

4-9 Sec. 1151.1015. INTERAGENCY CONTRACT WITH COMPTROLLER.

4-10 (a) The board and the comptroller shall provide under an
4-11 interagency contract for the comptroller to provide administrative
4-12 support to the board. The contract must include terms for fees to
4-13 be paid by the board to the comptroller for services provided under
4-14 the contract.

4-15 (b) Under the interagency contract, the comptroller shall
4-16 provide to the board:

4-17 (1) information on the educational needs of and
4-18 opportunities for tax professionals;

4-19 (2) assistance with outreach efforts to inform
4-20 taxpayers of their rights and remedies;

4-21 (3) information on appraisal district enforcement
4-22 efforts; and

4-23 (4) assistance with administrative services,
4-24 including:

4-25 (A) payroll services;

4-26 (B) budgeting services;

4-27 (C) information technology support;

4-28 (D) human resources services; and

4-29 (E) other administrative services necessary for
4-30 the board to perform its powers and duties under this chapter.

4-31 SECTION 9. Subchapter C, Chapter 1151, Occupations Code, is
4-32 amended by adding Section 1151.1021 to read as follows:

4-33 Sec. 1151.1021. NEGOTIATED RULEMAKING AND ALTERNATIVE
4-34 DISPUTE RESOLUTION POLICY. (a) The board shall develop and
4-35 implement a policy to encourage the use of:

4-36 (1) negotiated rulemaking procedures under Chapter
4-37 2008, Government Code, for the adoption of board rules; and

4-38 (2) appropriate alternative dispute resolution
4-39 procedures under Chapter 2009, Government Code, to assist in the
4-40 resolution of internal and external disputes under the board's
4-41 jurisdiction.

4-42 (b) The board's procedures relating to alternative dispute
4-43 resolution must conform, to the extent possible, to any model
4-44 guidelines issued by the State Office of Administrative Hearings
4-45 regarding the use of alternative dispute resolution by state
4-46 agencies.

4-47 (c) The board shall designate a trained person to:

4-48 (1) coordinate the implementation of the policy
4-49 adopted under Subsection (a);

4-50 (2) serve as a resource for any training necessary for
4-51 implementation of the negotiated rulemaking or alternative dispute
4-52 resolution procedures; and

4-53 (3) collect data concerning the effectiveness of the
4-54 procedures as implemented by the board.

4-55 SECTION 10. Subchapter C, Chapter 1151, Occupations Code,
4-56 is amended by adding Section 1151.110 to read as follows:

4-57 Sec. 1151.110. USE OF TECHNOLOGY. The board shall develop
4-58 and implement a policy requiring the executive director and board
4-59 employees to research and propose appropriate technological
4-60 solutions to improve the board's ability to perform its functions.
4-61 The technological solutions must:

4-62 (1) ensure that the public is able to easily find
4-63 information about the board on the Internet;

4-64 (2) ensure that persons who want to use the board's
4-65 services are able to:

4-66 (A) interact with the board through the Internet;
4-67 and

4-68 (B) access any service that can be provided
4-69 effectively through the Internet; and

5-1 (3) be cost-effective and developed through the
 5-2 board's planning processes.

5-3 SECTION 11. Chapter 1151, Occupations Code, is amended by
 5-4 adding Subchapter C-1 to read as follows:

5-5 SUBCHAPTER C-1. PUBLIC INTEREST INFORMATION AND COMPLAINT
 5-6 PROCEDURES

5-7 Sec. 1151.131. PUBLIC PARTICIPATION. The board shall
 5-8 develop and implement policies that provide the public with a
 5-9 reasonable opportunity to appear before the board and to speak on
 5-10 any issue under the jurisdiction of the board.

5-11 Sec. 1151.132. RECORDS OF COMPLAINTS. The board shall
 5-12 maintain a file on each written complaint filed with the board. The
 5-13 file must include:

5-14 (1) the name of the person who filed the complaint;
 5-15 (2) the date the complaint is received by the board;
 5-16 (3) the subject matter of the complaint;
 5-17 (4) the name of each person contacted in relation to
 5-18 the complaint;

5-19 (5) a summary of the results of the review or
 5-20 investigation of the complaint; and

5-21 (6) an explanation of the reason the file was closed,
 5-22 if the board closed the file without taking action other than to
 5-23 investigate the complaint.

5-24 Sec. 1151.133. NOTIFICATION OF INVESTIGATION. (a) The
 5-25 board shall provide to the person filing the complaint and to each
 5-26 person who is a subject of the complaint a copy of the board's
 5-27 policies and procedures relating to complaint investigation and
 5-28 resolution.

5-29 (b) The board, at least quarterly until final disposition of
 5-30 the complaint, shall notify the person filing the complaint and
 5-31 each person who is a subject of the complaint of the status of the
 5-32 investigation unless the notice would jeopardize an undercover
 5-33 investigation.

5-34 SECTION 12. Subsection (b), Section 1151.151, Occupations
 5-35 Code, is amended to read as follows:

5-36 (b) A county assessor-collector is not required to register
 5-37 with the board if the county, [+

5-38 ~~[(1) has a population of one million or more; or~~
 5-39 ~~[(2)]~~ by contract entered into under Section 6.24(b),
 5-40 Tax Code, has its taxes assessed and collected by another taxing
 5-41 unit or an appraisal district.

5-42 SECTION 13. Subchapter D, Chapter 1151, Occupations Code,
 5-43 is amended by adding Section 1151.1581 to read as follows:

5-44 Sec. 1151.1581. CONTINUING EDUCATION. The board shall
 5-45 recognize, prepare, or administer continuing education programs
 5-46 for its license holders. A license holder must participate in the
 5-47 programs to the extent required by the board to keep the person's
 5-48 license.

5-49 SECTION 14. Subsection (a), Section 1151.161, Occupations
 5-50 Code, is amended to read as follows:

5-51 (a) The board by rule may require a registrant to pass one or
 5-52 more examinations to be certified. The board by rule shall ensure
 5-53 that any examination required for certification is administered in
 5-54 compliance with the Americans with Disabilities Act of 1990 (42
 5-55 U.S.C. Section 12101 et seq.), and its subsequent amendments.

5-56 SECTION 15. Subchapter D, Chapter 1151, Occupations Code,
 5-57 is amended by adding Section 1151.1611 to read as follows:

5-58 Sec. 1151.1611. EXAMINATION RESULTS. (a) Not later than
 5-59 the 30th day after the date a person takes a licensing examination
 5-60 under this chapter, the board shall notify the person of the results
 5-61 of the examination.

5-62 (b) If the examination is graded or reviewed by a testing
 5-63 service:

5-64 (1) the board shall notify the person of the results of
 5-65 the examination not later than the 14th day after the date the board
 5-66 receives the results from the testing service; and

5-67 (2) if notice of the examination results will be
 5-68 delayed for longer than 90 days after the examination date, the
 5-69 board shall notify the person of the reason for the delay before the

90th day.

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

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

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

Sec. 1151.163. LICENSE BY ENDORSEMENT. The board may 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. Section 1151.202, Occupations Code, is amended to read as follows:

Sec. 1151.202. DENIAL OF REGISTRATION; DISCIPLINARY ACTION. (a) The board may deny, suspend, or revoke the registration of a person who violates this chapter or a board 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 board rule.

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

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

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

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

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

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

SECTION 19. The following laws are repealed:

(1) Section 6.235, Tax Code;

(2) Section 1151.101, Occupations Code; and

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

SECTION 20. (a) Before January 1, 2004, the Board of Tax Professional Examiners and the comptroller of public accounts shall enter into the interagency contract required by Section 1151.1015, Occupations Code, as added by this Act.

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

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

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

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

SECTION 23. The change in law made by Section 1151.054,

7-1 Occupations Code, as amended by this Act, does not affect the
7-2 entitlement of a person who was serving as the presiding officer of
7-3 the Board of Tax Professional Examiners immediately before
7-4 September 1, 2003, to continue to serve and function in that
7-5 capacity for the remainder of the person's term as the presiding
7-6 officer. The change in law made by that section applies only to the
7-7 designation of a presiding officer of the board after that person's
7-8 term as presiding officer expires.

7-9 SECTION 24. The change in law made by Subchapter C-1,
7-10 Chapter 1151, Occupations Code, as added by this Act, relating to
7-11 the investigation of a complaint applies only to a complaint filed
7-12 with the Board of Tax Professional Examiners on or after the
7-13 effective date of this Act. A complaint filed with the board before
7-14 the effective date of this Act is governed by the law as it existed
7-15 immediately before that date, and the former law is continued in
7-16 effect for that purpose.

7-17 SECTION 25. Before January 1, 2004, the Board of Tax
7-18 Professional Examiners shall adopt the rules required by Subsection
7-19 (a), Section 1151.161, Occupations Code, as amended by this Act.

7-20 SECTION 26. Before January 1, 2004, the Board of Tax
7-21 Professional Examiners by rule shall adopt the written guidelines
7-22 required by Section 1151.202, Occupations Code, as amended by this
7-23 Act.

7-24 SECTION 27. This Act takes effect September 1, 2003.

7-25 * * * * *