

BILL ANALYSIS

S.B. 382
By: Staples
Licensing & Administrative Procedures
Committee Report (Unamended)

BACKGROUND AND PURPOSE

As a part of its strategic planning process, the Texas Appraiser Licensing and Certification Board (board) made several recommendations for modifications to the Texas Appraiser Licensing and Certification Act. The board is required to address concerns raised by the Appraisal Subcommittee regarding the viability of the enforcement and complaint process. Currently, the average time to close a complaint is far greater than for other agencies, and the number of active complaints continues to rise.

S.B. 382 streamlines the enforcement and complaint process of the Texas Appraiser Licensing and Certification Board to make the process more efficient.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

SECTION 1. Amends Section 1103.451, Occupations Code, by amending Subsections (a), (b), and (c), and adding Subsection (e), as follows:

(a) Authorizes any person, including a member of the Texas Appraiser Licensing and Certification Board (board), to initiate the complaint process under this subchapter by filing with the board a written complaint, rather than an affidavit stating the complaint, on a form prescribed by the board.

(b) Authorizes the board, on its own motion, to file a formal complaint against a certified appraiser or an appraiser trainee who is approved by the board under Subchapter H (Appraiser Trainees).

(c) Makes a conforming change.

(e) Prohibits a complaint alleging a violation by a person licensed, certified, or approved under this chapter from being terminated solely on the basis that the person fails to renew the license, certificate, or approval.

SECTION 2. Amends Section 1103.452(c), Occupations Code, to require the board or the commissioner, if the board determines that a complaint does not present facts that are grounds for disciplinary action, to dismiss the complaint and not take further action.

SECTION 3. Amends Section 1103.455(b), Occupations Code, to make a conforming change.

SECTION 4. Amends Section 1103.456, Occupations Code, as follows:

Sec. 1103.456. New heading: ACTION BASED ON REPORT. Authorizes the board, based on the report submitted under Section 1103.455, to permit the appraiser or appraiser trainee who is the subject of the complaint to attend, rather than appear before the board for, an informal discussion as provided by Section 1103.457 (Informal Discussion of Complaint).

SECTION 5. Amends Section 1103.457(a), Occupations Code, to authorize the board to permit the appraiser or appraiser trainee who is the subject of a complaint an opportunity to appear before the board or an agent of the board for an informal discussion, on the action, rather than motion, of the board or on the request of the appraiser or appraiser trainee.

SECTION 6. Amends Sections 1103.458(a), (c), and (e), Occupations Code, to include that a consent order must be signed by the commissioner, rather than the presiding officer of the board. Makes conforming changes.

SECTION 7. Amends Sections 1103.459(a), (c) and (d), Occupations Code, as follows:

(a) Authorizes the board to enter into a consent agreement in lieu of taking action against a violator, rather than a first-time violator, of the rules of professional conduct.

(c) and (d) Make conforming changes.

SECTION 8. Amends Sections 1103.502(b) and (c), Occupations Code, to make conforming changes.

SECTION 9. Amends Sections 1103.503-1103.505, Occupations Code, as follows:

Sec. 1103.503. STATEMENT OF CHARGES. Requires the attorney representing the board, rather than the attorney general, to prepare the statement of charges. Makes conforming changes.

Sec. 1103.504. ATTORNEY GENERAL REPRESENTATION. Deletes subdivision designations. Deletes existing text requiring the attorney general to review and approve each statement of charges and notice of hearing prepared by the board and requiring the attorney general to represent the public interest.

Sec. 1103.505. ANSWER. Makes conforming changes.

SECTION 10. Amends the heading to Section 1103.508, Occupations Code, to read as follows:

Sec. 1103.508. New heading: HEARING.

SECTION 11. Amends Section 1103.508(c), Occupations Code, to authorize the board, as an independent subdivision of the Texas Real Estate Commission (TREC), to provide for TREC's administrative law judge to act as presiding officer to conduct the hearing and issue final decisions for the board. Makes nonsubstantive changes.

SECTION 12. Amends Section 1103.510, Occupations Code, to make conforming changes.

SECTION 13. Sections 1103.513-1103.516, Occupations Code, as follows:

Sec. 1103.513. ORDER OF PROCEEDINGS. Makes conforming changes.

Sec. 1103.514. COPIES OF EVIDENCE. Deletes existing text requiring that a copy of each document offered as evidence at a contested case hearing be provided to board members.

Sec. 1103.515. RESPONSE TO CERTAIN ACCUSATIONS. Authorizes an appraiser or appraiser trainee to respond to the board in writing not later than the 10th day after the last day of the hearing. Deletes existing text referring to a subsequent scheduled board meeting. Makes conforming changes.

Sec. 1103.516. DIRECT EXAMINATION. Deletes existing text authorizing board members other than the presiding officer to conduct a direct examination of a witness at any stage in the witness's testimony.

SECTION 14. Amends Section 1103.517(a), Occupations Code, to authorize the board, rather than presiding officer, in a contested case hearing to grant a witness immunity from disciplinary

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action by the board. Deletes existing text referring to the board members hearing the case unanimously granting immunity.

SECTION 15. Amends Section 1103.518, Occupations Code, as follows:

Sec. 1103.518. BOARD ACTION AFTER HEARING. Sets forth certain requirements and authorizations for the board on conclusion of a contested case hearing and on submission of certain written responses. Deletes existing text pertaining to a majority vote of the board members. Makes conforming changes.

SECTION 16. Repealers: Sections 1103.457(b) (pertaining to considering facts addressed in the informal discussion if the complaint proceeds to a contested case), 1103.458(b) (pertaining to an informal settlement), 1103.459(b) (pertaining to an appraiser member of the board and the attorney general agreeing to negotiate a consent agreement), 1103.508(b) (pertaining to certain requirements of the board during a hearing), and 1103.509 (Challenge of a Board Member), Occupations Code.

SECTION 17. Makes application of this Act prospective.

SECTION 18. Effective date: September 1, 2005.

EFFECTIVE DATE

September 1, 2005.