

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION**

**May 7, 2007**

**TO:** Honorable Troy Fraser, Chair, Senate Committee on Business & Commerce

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB1038** by Ritter (Relating to the operation of the Texas Residential Construction Commission; providing penalties.), **As Engrossed**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB1038, As Engrossed: an impact of \$0 through the biennium ending August 31, 2009.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**General Revenue-Related Funds, Five-Year Impact:**

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2008	\$0
2009	\$0
2010	\$0
2011	\$0
2012	\$0

**All Funds, Five-Year Impact:**

Fiscal Year	Probable (Cost) from <i>GENERAL REVENUE FUND</i> 1	Probable Revenue Gain from <i>GENERAL REVENUE FUND</i> 1
2008	(\$6,887,576)	\$6,887,576
2009	(\$6,766,576)	\$6,766,576
2010	(\$6,766,576)	\$6,766,576
2011	(\$6,766,576)	\$6,766,576
2012	(\$6,766,576)	\$6,766,576

Fiscal Year	Change in Number of State Employees from FY 2007
2008	40.0
2009	40.0
2010	40.0
2011	40.0
2012	40.0

## **Fiscal Analysis**

The bill would amend various sections of the Property Code and the Local Government Code, relating to the functions of the Texas Residential Construction Commission (TRCC). The bill would include in the definition of "builder" a person who had been issued a license by a political subdivision, but not by the state, to practice a trade or profession related to or affiliated with residential construction and persons who perform improvements to the interior of a home when the cost of the work exceeds \$10,000 (current threshold is \$20,000). Under the provisions of the bill, an individual who builds a home or makes a material improvement to the home with the intent to immediately sell the home and not live in it for at least a year after completion of the work would be liable as a builder under the warranty obligation for the work performed. The bill would authorize TRCC to charge late fees for late payment of any fee due to TRCC in any amount up to the amount of the fee due. The bill would specify that the Texas Star Builder certification is valid for one year and renewable on a date determined by TRCC. The bill would allow TRCC or the Attorney General to pursue injunctive relief against non-registered builders and remodelers and would increase the grounds for disciplinary action and the disciplinary powers of the commission. The bill would authorize TRCC to issue an order to cease and desist and would allow a person to appeal the order directly to a district court. The bill would authorize TRCC to reimburse a third-party inspector for travel expenses incurred to complete an inspection regardless of whether the expenses exceed the inspection fees collected from the party requesting the inspection. The bill would require a builder to comply to follow the state-sponsored inspection and dispute resolution process prior to initiating an action for damages or other relief arising from an alleged construction defect. The bill would decrease the number of years of experience required for a person to register as a third-party inspector. The bill would authorize a party to a dispute who did not file an inspection and dispute resolution request to submit a written response to the allegations in the request and submit evidence to TRCC. The bill would prohibit TRCC from requiring a builder to reimburse fees or inspection expenses if, before the inspection, the builder made or offered to make repairs similar to those identified in the third-party inspection report. The bill would specify that builders in economically distressed areas, as defined by Water Code Section 15.001 (11), and any allegations of postconstruction defects are not exempt from TRCC's state-sponsored inspection and dispute resolution process. The bill would prohibit municipalities from issuing building permits to builders not registered with TRCC. The bill would authorize TRCC to require an applicant for a registration renewal to disclose to TRCC every person with financial or management interest in the applicant's business as a builder. The bill would allow a builder to designate a United State Postal Service postal box for use in correspondence with TRCC. The bill would establish continuing education requirements and require TRCC to approve courses and course providers. The bill would expand the time period in which a person may request an inspection and dispute resolution. The bill would amend the Natural Resources Code to require the Veteran's Land Board and TRCC to maintain an electronic list and hard-copy list of registered builders who provide certain types of building services in Texas, as specified by the bill. The bill would require TRCC to contact all volume builders in Texas who do not provide building services to persons with mobility-related special needs, as specified in the bill, and encourage those builders to develop floor plans that are designed to be accessible for persons with mobility-related special needs. The bill would specify that TRCC must certify a builder's floor plans before the builder is included on the electronic or hard-copy list prescribed by the bill and would require TRCC to establish rules, procedures, and fees necessary to certify floor plans. The bill would require the Veteran's Land Board to make the electronic list available to the public on its Internet website.

The bill would also require the House Committee on State Affairs to conduct an interim study regarding the feasibility of creating a fund designed to reimburse aggrieved persons who experience actual damages from a builder's actions in violation of Title 16 of the Property Code.

The bill would take effect on September 1, 2007.

## **Methodology**

Based on the analysis of TRCC, it is assumed the increased grounds for disciplinary action and disciplinary powers, authority to pursue injunctive relief, and cease and desist orders under the provisions of the bill would require additional staff and resources for enforcement including five Attorney IV positions (5.0 FTEs; \$71,284/year); one Attorney II (1.0 FTE; \$53,596/year); one

Inspector VI (1.0 FTE; \$47,382/year); eight Investigator VII positions (8.0 FTEs; \$56,983/year); an Investigator IV (1.0 FTE; \$42,754/year); three Legal Assistant II positions (3.0 FTEs; \$40,267/year); two Program Specialist II positions (2.0 FTEs; \$47,382/year); one Administrative Assistant III (1.0 FTE; \$33,416/year); and an additional \$570,000 for costs associated with hearings and judicial actions.

Based on the analysis of TRCC, it is assumed the reduced experience requirements for third-party inspectors under the provisions of the bill would increase the number of third-party inspector applications received and would require one additional Customer Service Representative IV (1.0 FTE; \$37,596) to accommodate the increased duties.

Based on the analysis of TRCC, it is assumed the new registration requirements for builders/remodelers and projects in economically distressed areas, new requirement for builders to follow the state-sponsored inspection and dispute resolution process, and lower project cost threshold for registration of remodelers and remodeling projects would increase the number of registrations processed and the number of inspection requests received, which would require two additional Program Specialist I positions (2.0 FTEs; \$42,754/year); one Program Specialist II (1.0 FTE; \$47,382/year); six Customer Service Representative IV positions (6.0 FTE; \$37,596/year); one Customer Service Representative II (1.0 FTE; \$29,779/year); one Legal Assistant II (1.0 FTE; \$40,267/year); and three Administrative Assistant III positions (3.0 FTEs; \$33,416/year).

Based on the analysis of TRCC, it is assumed two additional Program Specialist I positions (2.0 FTEs; \$42,754/year) would be required to process information and evidence received with a response to a request for inspection of an alleged construction defect and to accommodate increased disclosure requirements for the state-sponsored inspection and dispute resolution process.

Based on the analysis of TRCC, it is assumed the commission would incur costs of \$25,000 in fiscal year 2008 for programming and enhancements to the commission's builder database and an additional \$4,000 each year thereafter for increased database maintenance to develop and maintain a database of builders providing services to persons with mobility-related special needs. Also based on the analysis of TRCC, it is assumed an additional Inspector V position (1.0 FTE; \$40,267/year) would be required to review and certify builders' floor plans.

Employee benefits costs associated with the 40 new positions are estimated to be \$536,698 each year (28.29 percent of salaries). Based on the analysis of TRCC, it is assumed additional costs for leasing computer equipment, software, technical support, and enhancements to the commission's database would be \$180,000 in 2008 and \$80,000 each year thereafter. It is also assumed the agency would require leased office space to accommodate the additional staff at an estimated cost of \$45,000 per year.

Based on the analysis of TRCC, it is assumed the agency would incur increased costs of \$53,000 per year for reimbursing inspector's travel expenses under the provisions of the bill. Other costs related to personnel, professional fees, reproduction charges, certified mail, TexasOnline fees, background checks, and consumables are estimated to be \$3,580,750 each year.

It is assumed TRCC would assess or increase fees sufficient to recover any additional costs associated with implementing the provisions of the bill.

Based on the analysis of the Office of the Attorney General (OAG), it is assumed the provisions of the bill would result in an increased number of administrative hearings, injunction actions, and appeals handled by the OAG's Administrative Law Division, which would require approximately five FTEs and \$400,000 each year for salaries and operating expenses. It is assumed the costs could be absorbed within the agency's existing resources.

## **Technology**

Technology costs associated with the implementation of the bill are estimated to be \$205,000 in 2008 and \$84,000 each year thereafter for leasing computer equipment, software, technical support, and enhancements to the commission's database.

## **Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 302 Office of the Attorney General, 370 Residential Construction Commission, 304  
Comptroller of Public Accounts

**LBB Staff:** JOB, JRO, KJG, MW, TG