

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION

May 22, 2007

TO: Honorable Tom Craddick, Speaker of the House, House of Representatives

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 Passed 2nd House**

Estimated Two-year Net Impact to General Revenue Related Funds for HB1038, As Passed 2nd House: 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 GENERAL REVENUE FUND 1	Probable Revenue Gain from GENERAL REVENUE FUND 1
2008	(\$7,531,837)	\$7,531,837
2009	(\$7,160,837)	\$7,160,837
2010	(\$7,160,837)	\$7,160,837
2011	(\$7,160,837)	\$7,160,837
2012	(\$7,160,837)	\$7,160,837

Fiscal Year	Change in Number of State Employees from FY 2007
2008	43.0
2009	43.0
2010	43.0
2011	43.0
2012	43.0

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 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 an ownership 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 and encourage those builders to develop floor plans that are designed to be accessible for persons with mobility-related special needs. The bill 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 require builders in unincorporated areas of the state to have all new home and home improvement projects subject to Section 401.003 of the Property Code inspected by a fee inspector at the time and in the manner prescribed by the bill and by commission rule. The bill would require TRCC to establish an Internet based process to enable inspectors to report the completion of the inspections to TRCC. The bill would require TRCC to issue a certificate of completion upon the report of completion of an inspection. The bill would authorize TRCC to establish fees necessary to implement the inspection and reporting system. The bill would authorize the TRCC, in consultation with the Energy Systems Laboratory at the Texas Engineering Experiment Station (TEES) of the Texas A&M University System, the Texas Commission on Environmental Quality, and an advisory committee appointed by TRCC, to establish an energy-efficient building accreditation program. If the program were implemented, TRCC and TEES would be required to update the program on or before December 1 of each even-numbered year and create a checklist system to produce an energy-efficient building scorecard to help home buyers compare homes and qualify for energy-efficient mortgages under the National Housing Act and help communities qualify for emissions reduction credits by adopting codes that meet or exceed certain standards established in the Health and Safety Code. The bill would authorize TRCC to establish a public information program regarding energy-efficient building ratings. If the program were implemented, TEES would be required to establish a system to measure the reduction in energy and emissions produced under the program and report those savings to TRCC. The

bill would authorize TRCC to set a certification fee sufficient to cover the cost of administering the program.

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 four Attorney IV positions (4.0 FTEs; \$71,284/year); one Attorney II (1.0 FTE; \$53,596/year); one Inspector VI (1.0 FTE; \$47,382/year); seven Investigator VII positions (7.0 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); eight Customer Service Representative IV positions (8.0 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.

Based on the analysis of TRCC, it is assumed the implementation of the inspection program would require one Inspector VI (1.0 FTE; \$47,382/year) to review inspection reports received, one Administrative Assistant III (1.0 FTE; \$33,416/year), and one Administrative Assistant II (1.0 FTE; \$29,779/year) to provide administrative support for the Inspector. Based on information provided by TRCC, it is assumed the commission would incur additional operating costs of \$100,000 per year, \$75,000 each year for mailing inspection certificates for new home and home improvement projects, and approximately \$250,000 in fiscal year 2008 to implement the Internet based reporting system.

Based on the analysis of TRCC, it is assumed the commission would require one Program Specialist II position (1.0 FTE; \$47,382/year) to promote the energy-efficient building accreditation program with home owners, builders, sellers, buyers, and others regarding energy-efficient building ratings; and one Administrative Assistant III position (1.0 FTE; \$33,416/year) to track accreditations and produce the scorecard. It is assumed the costs for consumable supplies, travel, rent, information technology, and other operating costs would be \$142,344 each year.

Employee benefits costs associated with the 43 new positions are estimated to be \$552,336 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 \$186,000 in 2008 and \$86,000 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 inspectors' 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 \$493,844 in 2008 and \$122,844 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: 370 Residential Construction Commission, 302 Office of the Attorney General, 304 Comptroller of Public Accounts

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