

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

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

**March 19, 2007**

**TO:** Honorable David Swinford, Chair, House Committee on State Affairs

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

**IN RE: HB1686** by McClendon (Relating to the registration and regulation of homebuilders and residential construction and improvements; providing penalties.), **As Introduced**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB1686, As Introduced: a positive impact of \$41,522,827 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	\$33,277,469
2009	\$8,245,358
2010	\$8,245,358
2011	\$8,245,358
2012	\$8,245,358

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

Fiscal Year	Probable (Cost) from <i>GENERAL REVENUE</i> <i>FUND</i> 1	Probable Revenue Gain from <i>GENERAL REVENUE</i> <i>FUND</i> 1	Probable Revenue Gain from <i>Builder Recovery Fund</i>
2008	(\$12,510,031)	\$45,787,500	\$350,000
2009	(\$11,143,542)	\$19,388,900	\$0
2010	(\$11,143,542)	\$19,388,900	\$0
2011	(\$11,143,542)	\$19,388,900	\$0
2012	(\$11,143,542)	\$19,388,900	\$0

Fiscal Year	Change in Number of State Employees from FY 2007
2008	101.8
2009	101.8
2010	101.8
2011	101.8
2012	101.8

## **Fiscal Analysis**

The bill would amend sections of the Local Government Code and the Property Code relating to the registration and regulation of home builders and residential construction and improvement. The bill would prohibit a municipality from issuing certain building permits to builder required to be registered with the Texas Residential Construction Commission (TRCC) unless the builder provides a certificate of registration number to the municipality. The bill would clarify the definition of builder to include certain entities or individuals who would construct, supervise, or manage the construction of an improvement to the interior of an existing home when the cost of the work exceeds \$2,500, including roof replacement or repair. The change in the definition of a builder would take effect on January 1, 2008.

The bill would prohibit TRCC from charging a home owner a fee for filing a complaint with the commission, a request for a state-sponsored inspection and dispute resolution, or other proceeding under TRCC's jurisdiction. The bill would require TRCC to make available to the public a list of all registered builders. The bill would require TRCC to establish rules to require all applicants for builder registrations or registration renewals to provide TRCC with proof of bonding and insurance coverage. The bill would require applicants to provide TRCC with information about any outstanding judgment and pending litigation against the applicant resulting from home improvement contracting or work and information about any past-due franchise tax owed to the Comptroller. The bill would remove the fee caps of \$500 for new registrations and \$300 for renewals and establish minimum fees of \$500 for new registrations and \$300 for renewals and authorize TRCC to increase fees to provide improved service to home owners.

The bill would create new grounds for disciplinary action by TRCC against builders, including failure to pay all required taxes, and create a criminal penalty for undertaking the activities of a builder without holding the required registration. The bill would require the Attorney General to initiate a suit against any builder who commits a violation of the Texas Residential Construction Commission Act or a commission rule when the violation poses a serious threat substantial or irreparable harm to another person. The bill would create a builder recovery fund in trust to reimburse persons who suffer actual damages from builder violations. The bill would require TRCC to charge a fee of at least \$50 for each registration application for deposit to the fund and to assess fees sufficient to obtain a balance of \$350,000 if the balance at any time is less than \$250,000. The bill would specify how money in the fund would be invested and how claims would be paid from the fund.

The bill would take effect on September 1, 2007.

## **Methodology**

Based on the analysis of TRCC, the bill would require approximately 323,000 additional remodeling projects to be registered with the commission each year at a minimum of \$25 each for an online registration, which would result in a gain to the General Revenue Fund of \$8,075,000 each year; and approximately 75,425 additional entities or individuals would be required to apply for an initial registration at a minimum fee of \$500 in 2008 with staggered biennial renewals at \$300 per year, resulting in a gain to the General Revenue Fund of \$37,712,500 in 2008 and \$11,313,900 each year thereafter. Based on TRCC's analysis, it is assumed the commission would require two Clerk IV positions (2.0 FTEs; \$28,122/year, each); two Program Specialist IV positions (2.0 FTEs; \$53,597/year, each); 15 Customer Service Representative IV positions (15.0 FTEs; \$37,596/year, each); and \$81,625 for increased expenses for record checks on applicants.

Based on the analysis of the Comptroller of Public Accounts (CPA), the bill would create a special or trust fund either with or outside of the Treasury, or create a dedicated revenue source. Legislative policy, implemented as Government Code, Section 403.094, consolidated special funds (except those affected by constitutional, federal, or other restrictions) into the General Revenue Fund as of August 31, 1993, and eliminated all applicable statutory revenue dedications as of August 31, 1995. Each subsequent Legislature has reviewed bills that affect funds consolidation. The fund, account, or revenue dedication included in this bill would be subject to funds consolidation review by the current Legislature.

Based on the analysis of the CPA, it is assumed TRCC would assess fees sufficient to achieve a balance of \$350,000 in the new Builder Recovery Fund in 2008. This analysis does not assume any payments from or additional revenues to the fund in fiscal years 2009 through 2012. Based on the analysis of TRCC, it is assumed the commission would require one Attorney IV (1.0 FTE; \$71,284/year), one Investigator IV (1.0 FTE; \$42,754/year), and one Administrative Assistant III (1.0 FTE; \$33,416/year) to maintain the fund for applications of damages.

Based on the analysis of TRCC, it is assumed the number and complexity complaints received and the number of state-sponsored dispute resolution process cases would increase, which would require four Administrative Assistant III positions (4.0 FTEs; \$33,416/year, each); three Program Specialist I positions (3.0 FTEs; \$42,754/year, each); two Administrative Assistant II positions (2.0 FTEs; \$29,799/year, each); and three

Program Specialist IV positions (3.0 FTEs; \$53,597/year, each).

Based on the analysis of TRCC, it is assumed the increased disciplinary powers provided by the bill would result in approximately 2,000 additional investigations and referrals to the Office of the Attorney General (OAG) and would require one Inspector VI (1.0 FTE; \$47,382/year); one Inspector VII (1.0 FTE; \$53,597/year); one Investigator VII (1.0 FTE; \$56,983/year); one Attorney IV (1.0 FTE; \$71,284/year); one Engineer V (1.0 FTE; \$71,284/year); three Legal Assistant III positions (3.0 FTEs; \$47,382/year, each); and one Administrative Assistant III (1.0 FTE; \$33,415/year) to support the inspectors, investigator, and engineer positions. Based on the analysis of the OAG, the increased duties associated with the bill would require 15 Investigator IV positions (15.0 FTEs; \$42,754/year, each); 8 Assistant Attorney General IV positions (8.0 FTEs; \$71,284/year, each); 8 Assistant Attorney General V positions (8.0 FTEs; \$80,886/year, each); 7 Legal Assistant II positions (7.0 FTEs; \$40,267/year, each); 7.25 Legal Secretary II positions (7.25 FTEs; \$29,779/year, each); one Assistant Attorney General III (1.0 FTE; \$60,647/year); a part-time Legal Assistant III (0.5 FTE; \$23,691/year); \$366,489 for equipment in 2008; and annual travel and operating costs of \$324,926.

Based on the analysis of TRCC, it is assumed the agency would incur increased professional services fees of \$1.9 million each year for hearings at the State Office of Administrative Hearings, third-party inspections, auditors, and temporary staffing services, and other operating expenses of \$2,456,625 for TexasOnline fees, postage, background checks, and consumer education. It is assumed additional costs for leasing of computer equipment, software and support, and enhancements to the commission's database would be \$1,110,000 in 2008 and \$110,000 each year thereafter.

Employee benefits costs associated with additional employees are estimated to be \$692,221 per year for TRCC and \$690,495 per year for OAG (28.29 percent of salaries).

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

## **Technology**

Technology costs associated with the implementation of the bill are estimated to be \$1,110,000 in 2008 and \$110,000 each year thereafter for enhancements to TRCC's database, leasing computer equipment, software, and technical support.

## **Local Government Impact**

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

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

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