

## **BILL ANALYSIS**

S.B. 862  
By: Eltife  
Licensing & Administrative Procedures  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

The Texas Real Estate Commission (TREC) regulates real estate brokers, salespersons, inspectors, and right-of-way agents. Each session, TREC makes an effort to improve and update its statute. S.B. 862 is primarily a housekeeping bill. It ensures that the fees imposed by TREC are reasonable and necessary to cover administrative costs. In addition, it allows TREC to adopt rules regarding the administration of the recovery fund in cases in which a judgment is subject to a bankruptcy stay or discharge. Additional administrative authority is granted with respect to licensees who are convicted of or enter a plea of guilty or no contest in crimes involving fraud. Finally, effective September 2011, it directs \$50 of the \$200 broker licensing fee to support the Texas Real Estate Research Center.

As proposed, S.B. 862 allows TREC to collect only what is reasonable and necessary to carry out its functions; directs a portion of the real estate broker professional fee to help defray the costs of the Texas Real Estate Research Center; clarifies the process for an aggrieved party to make a claim on the recovery fund in cases in which a judgment is subject to a bankruptcy stay or discharge; grants additional administrative authority with respect to licensees who are convicted of or enter a plea of guilty or no contest in certain crimes; and brings other statutes in line with federal law and Sunset Advisory Commission recommendations from the 80th Legislature.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Real Estate Commission in SECTION 5 (Section 1101.606, Occupations Code).

Rulemaking authority previously granted to the Texas Real Estate Commission is modified in SECTION 1 (Section 1101.152, Occupations Code), SECTION 2 (Section 1101.152, Occupations Code), and SECTION 8 (Section 221.024, Property Code) of this bill

### **ANALYSIS**

#### **SECTION 1.**

Reenacts Section 1101.152(a), Occupations Code, as amended by Section 3, Chapter 297 (H.B. 1530), and Section 9, Chapter 1411 (S.B. 914), Acts of the 80th Legislature, Regular Session, 2007, and amends it to require the Texas Real Estate Commission (TREC) to adopt rules to charge and collect fees, rather than reasonable fees, in amounts reasonable and necessary to cover the costs of administering this chapter, including a fee for certain things.

#### **SECTION 2.**

Amends Section 1101.152(b), Occupations Code, to require TREC to adopt rules to set and collect fees in amounts reasonable and necessary to cover the costs of implementing, rather than reasonable fees to implement, the continuing education requirements for license holders, including a fee for certain things.

#### **SECTION 3.**

Amends Section 1101.153(b), Occupations Code, to provide that of each fee increase collected under Subsection (a), \$50 is required to be transmitted to Texas A&M University for deposit in a separate banking account that is authorized to be appropriated only to support, maintain, and carry out the purposes, objectives, and duties of the Texas Real Estate Research Center; \$50 is to be deposited to the credit of the foundation school fund; and \$100, rather than \$150, is to be deposited to the credit of the general revenue fund.

#### **SECTION 4.**

Amends Section 1101.154(a), Occupations Code, to provide that the fee for the issuance or renewal of a salesperson license is the amount of the fee set under Section 1101.152 (Fees) and an additional \$20, rather than \$17.50, fee.

#### SECTION 5.

Amends Section 1101.606, Occupations Code, by amending Subsection (a) and adding Subsections (c) and (d) as follows:

(a) Creates an exception provided by Subsection (c).

(c) Requires an aggrieved person to verify to TREC, if the person is precluded by action of a bankruptcy court from executing a judgment or perfecting a judgment lien as required by Subsection (a), that the person has made a good faith effort to protect the judgment from being discharged in bankruptcy.

(d) Authorizes TREC by rule to prescribe the actions necessary for an aggrieved person to demonstrate that the person has made good faith effort under Subsection (c) to protect a judgment from being discharged in bankruptcy.

#### SECTION 6.

Amends Section 1101.652, Occupations Code, as follows: Sec. 1101.652. GROUND FOR SUSPENSION OR REVOCATION OF LICENSE. (a) Authorizes TREC to suspend or revoke a license issued under this chapter or take other disciplinary action authorized by this chapter if the license holder enters a plea of guilty or nolo contendere to or is convicted of a felony or a criminal offense involving fraud, rather than convicted of a felony in which fraud is an essential element, and the time for appeal has elapsed or the judgment or conviction has been affirmed on appeal, without regard to an order granting community supervision that suspends the imposition of the sentence.

(b) Makes no changes to this subsection.

#### SECTION 7.

Amends Section 1303.3525, Occupations Code, as follows: Sec. 1303.3525. New heading: HEARING. (a) Authorizes TREC to authorize the State Office of Administrative Hearings (SOAH), rather than a hearing examiner, to conduct a hearing and enter a final decision in a proceeding under Section 1303.351 (Disciplinary Powers of Commission). (b) Provides that all hearings conducted under Subsection (a) are governed by Chapter 2001 (Administrative Procedure), Government Code. Deletes existing text providing that a final decision of a hearing examiner under this section is appealable to TREC as provided by TREC rule.

#### SECTION 8.

Amends Sections 221.024(b) and (c), Property Code, as follows: (b) Requires TREC to authorize SOAH to conduct hearings in contested cases, rather than authorizing TREC to authorize specific employees to conduct hearings and issue final decisions in contested cases. Makes a nonsubstantive change. (c) Entitles the person, if TREC initiates a disciplinary proceeding under this chapter, to a hearing before SOAH, rather than TREC or a hearing officer appointed by TREC. Requires TREC by rule to adopt procedures to permit an appeal to TREC from a determination made by SOAH, rather than a hearing officer in a disciplinary action.

#### SECTION 9.

Amends Section 221.027(c), Property Code, to authorize a registration to be suspended under this section without notice or hearing on the complaint if institution of proceedings for a hearing before SOAH, rather than TREC, is initiated simultaneously with the temporary suspension and a hearing is held under Chapter 2001, Government Code, and this chapter as soon as possible.

#### SECTION 10.

(a) Makes application of Section 1101.606, Occupations Code, prospective. (b) Makes application of Section 1101.652(b), Occupations Code, prospective. (c) Makes application of Section 1303.3525, Occupations Code, and Section 221.024, Property Code, prospective.

#### SECTION 11.

(a) Effective date, except as provided by Subsection (b) of this section: upon passage or September 1, 2009. (b) Effective date, Section 1101.153(b), Occupations Code: September 1, 2011.

#### **EFFECTIVE DATE**

(a) Effective date, except as provided by Subsection (b) of this section: upon passage or September 1, 2009. (b) Effective date, Section 1101.153(b), Occupations Code: September 1, 2011.

