

By: Veasey

H.B. No. 3871

A BILL TO BE ENTITLED

AN ACT

relating to the operation of the Texas Residential Construction Commission; providing an administrative penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 401.002, Property Code, is amended by adding Subdivision (5-a) to read as follows:

(5-a) "Commissioner" means the residential construction commissioner.

SECTION 2. Subtitle B, Title 16, Property Code, is amended by adding Chapter 405 to read as follows:

CHAPTER 405. RESIDENTIAL CONSTRUCTION COMMISSIONER

Sec. 405.001. EXECUTIVE DIRECTOR AND PRESIDING OFFICER.

(a) The residential construction commissioner is a member of the commission who serves as the commission's executive director and as the presiding officer of the commission.

(b) The governor, with the advice and consent of the senate, shall appoint the commissioner.

(c) Except as provided by Section 405.002(1), the governor shall appoint the commissioner without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Sec. 405.002. QUALIFICATIONS. The commissioner must:

(1) be at least 30 years of age; and

(2) have resided in the state for at least five years.

1 Sec. 405.003. COMPENSATION. The commissioner is entitled
2 to compensation as provided by the General Appropriations Act.

3 Sec. 405.004. CERTAIN BUSINESS INTERESTS AND OTHER
4 RELATIONSHIPS PROHIBITED. (a) A person may not serve as
5 commissioner if, in the 10 years before the date the person would
6 take office, the person was employed by a person engaged in the
7 business of residential construction or real estate sales or by a
8 Texas trade association, as defined by Section 406.004, in the
9 field of residential construction.

10 (b) The commissioner may not be married to or have been
11 married to an employee of a person engaged in the business of
12 residential construction.

13 Sec. 405.005. MAY NOT BE PARTY TO CERTAIN SUITS. A person
14 may not serve as commissioner if, at the time the person would take
15 office, the person is or ever has been a party to a lawsuit
16 involving a person engaged in the business of residential
17 construction or real estate sales.

18 Sec. 405.006. REMOVAL. The commissioner may be removed
19 from office by the senate.

20 SECTION 3. Sections 406.001(a) and (c), Property Code, are
21 amended to read as follows:

22 (a) The Texas Residential Construction Commission consists
23 of the commissioner and eight [~~nine~~] members appointed by the
24 governor with the advice and consent of the senate as follows:

25 (1) three [~~four~~] members must be builders who each
26 hold a certificate of registration under Chapter 416;

27 (2) three members must be representatives of the

1 general public;

2 (3) one member must be a licensed professional
3 engineer who practices in the area of residential construction;
4 and

5 (4) one member must be either a licensed architect who
6 practices in the area of residential construction or a building
7 inspector who meets the requirements set forth in Chapter 427 and
8 practices in the area of residential construction.

9 (c) A person may not be a public member of the commission if:

10 (1) the person or the person's spouse:

11 (A) [~~(1)~~] is a builder registered with the
12 commission, or is otherwise registered, certified, or licensed by a
13 regulatory agency in the field of residential construction;

14 (B) [~~(2)~~] is employed by or participates in the
15 management of a business entity or other organization regulated by
16 or receiving money from the commission;

17 (C) [~~(3)~~] owns or controls, directly or
18 indirectly, more than a 10 percent interest in a business entity or
19 other organization regulated by or receiving money from the
20 commission; or

21 (D) [~~(4)~~] uses or receives a substantial amount
22 of tangible goods, services, or money from the commission other
23 than compensation or reimbursement authorized by law for commission
24 membership, attendance, or expenses;

25 (2) in the 10 years before the date the person would
26 take office, the person has been employed by a person engaged in the
27 business of residential construction or real estate sales or a

1 Texas trade association in the field of residential construction;
2 or
3 (3) the person is or ever has been a party to a lawsuit
4 involving a builder or real estate entity.

5 SECTION 4. Section 406.002(a), Property Code, is amended to
6 read as follows:

7 (a) Commission members serve staggered six-year terms, with
8 three members' terms expiring February 1 of each odd-numbered year.
9 The terms of [~~three of~~] the builder representatives must expire in
10 different odd-numbered years. The term of one of the
11 representatives of the general public must expire in each
12 odd-numbered year.

13 SECTION 5. Section 406.003, Property Code, is amended to
14 read as follows:

15 Sec. 406.003. ASSISTANT PRESIDING OFFICER; SECRETARY. [~~The~~
16 ~~governor shall designate a member of the commission as the~~
17 ~~presiding officer of the commission to serve in that capacity at the~~
18 ~~pleasure of the governor.~~] At a regular meeting in February of each
19 year, the commission shall elect from its membership an assistant
20 [a vice] presiding officer and a secretary.

21 SECTION 6. Section 406.005(c), Property Code, is amended to
22 read as follows:

23 (c) If the commissioner [~~executive director~~] has knowledge
24 that a potential ground for removal of another commission member
25 exists, the commissioner [~~executive director~~] shall notify the
26 [~~presiding officer of the potential ground. The presiding officer~~
27 ~~shall then notify the]~~ governor and the attorney general that a

1 potential ground for removal exists. If a member of the commission
2 has knowledge that a [the] potential ground for removal of the
3 commissioner exists, the member [~~involves the presiding officer,~~
4 ~~the executive director shall notify the next highest ranking~~
5 ~~officer of the commission, who]~~ shall notify the governor and the
6 attorney general that a potential ground for removal exists.

7 SECTION 7. Section 407.002, Property Code, is amended to
8 read as follows:

9 Sec. 407.002. OTHER PERSONNEL. The commissioner
10 [~~commission]~~ may employ [~~other~~] personnel as necessary for the
11 administration of this title.

12 SECTION 8. Section 407.004, Property Code, is amended to
13 read as follows:

14 Sec. 407.004. QUALIFICATIONS AND STANDARDS OF CONDUCT
15 INFORMATION. The commissioner [~~executive director~~] or the
16 commissioner's [~~executive director's~~] designee shall provide to the
17 other members of the commission and to commission employees, as
18 often as necessary, information regarding the requirements for
19 office or employment under this title, including information
20 regarding a person's responsibilities under applicable laws
21 relating to standards of conduct for state officers or employees.

22 SECTION 9. Section 416.004(a), Property Code, is amended to
23 read as follows:

24 (a) The commission shall charge and collect:

25 (1) a filing fee of \$750 for an application for an
26 original certificate of registration [~~that does not exceed \$500~~];

27 (2) a fee of \$500 for renewal of a certificate of

1 registration [~~that does not exceed \$300~~]; and

2 (3) a late fee that does not exceed the amount of the
3 fee due if payment of a registration application or renewal fee due
4 under this title is late.

5 SECTION 10. Section 417.003(a), Property Code, is amended
6 to read as follows:

7 (a) The commission shall charge and collect:

8 (1) a filing fee of \$100 for an application for
9 certification under this chapter [~~that does not exceed \$100~~];

10 (2) a fee of \$100 for renewal of a certification under
11 this chapter [~~that does not exceed \$50~~]; and

12 (3) a late fee that does not exceed the amount of the
13 fee due if payment of a registration or application fee due under
14 this title is late.

15 SECTION 11. Subtitle C, Title 16, Property Code, is amended
16 by adding Chapter 421 to read as follows:

17 CHAPTER 421. RECOVERY FUND

18 Sec. 421.001. DEFINITION. In this chapter, "fund" means
19 the recovery fund established under this chapter.

20 Sec. 421.002. RECOVERY FUND. (a) The commission shall
21 maintain a recovery fund to pay for repairs in accordance with
22 Section 421.003 and legal assistance provided under Section
23 426.009(c).

24 (b) The commission shall deposit into the fund:

25 (1) all fines collected by the commission; and

26 (2) half of the amount of the fees and other non-fine
27 income collected by the agency during a fiscal year that has not

1 been spent by the commission at the end of that fiscal year.

2 Sec. 421.003. EXPENDITURES FROM FUND. (a) A homeowner who
3 is unable to obtain repair of a construction defect in accordance
4 with a recommendation or appeals ruling issued under Subtitle D or
5 recover damages or obtain other relief for the construction defect
6 provided by law may request that the commission provide or pay for
7 part of the repairs in accordance with this section.

8 (b) The commission shall adopt rules establishing the items
9 that must be shown in an application for relief under this section
10 to establish the applicant's eligibility for the relief under
11 Subsection (a).

12 (c) The commission may:

13 (1) pay from the fund 25 to 50 percent of the estimated
14 cost of the repair, as the commission determines appropriate based
15 on the availability of money in the fund; or

16 (2) contract with a third-party vendor to make the
17 repairs and pay the vendor from the fund.

18 (d) A recovery by a homeowner under this section does not
19 limit the homeowner's right to obtain the remainder of the repair
20 costs or any other relief from the builder.

21 SECTION 12. Section 426.005, Property Code, is amended by
22 amending Subsection (b) and adding Subsection (g) to read as
23 follows:

24 (b) If the third-party inspector's recommendation or an
25 appeals ruling does not designate a method or manner of repair of a
26 construction defect, an ~~An~~ action described by Subsection (a)
27 must be filed:

1 (1) on or before the expiration of any applicable
2 statute of limitations or by the 45th day after the date the
3 third-party inspector issues the inspector's recommendation,
4 whichever is later; or

5 (2) if the recommendation is appealed, on or before
6 the expiration of any applicable statute of limitations or by the
7 45th day after the date the commission issues its ruling on the
8 appeal, whichever is later.

9 (g) If the third-party inspector's recommendation or the
10 appeals ruling designates a method or manner of repair of a
11 construction defect, an action described by Subsection (a) must be
12 filed on or before the expiration of any applicable statute of
13 limitations or not later than the 45th day after the date the
14 commission authorizes the filing of an action under Section
15 426.009, whichever is later.

16 SECTION 13. Chapter 426, Property Code, is amended by
17 adding Section 426.009 to read as follows:

18 Sec. 426.009. REPAIRS REQUIRED; AUTHORIZATION OF ACTION.

19 (a) Not later than the 45th day after the date a third-party
20 inspector's recommendation under Section 428.004 or a ruling on an
21 appeal under Section 429.001 is issued that designates a method or
22 manner of repair of a construction defect, the builder must perform
23 the repair as specified in the recommendation or ruling or pay to
24 the homeowner the estimated cost of the repair.

25 (b) If the builder does not make a repair or payment
26 required under Subsection (a) in the time prescribed by that
27 subsection, not later than the 91st day after the date the

1 recommendation or ruling was issued, the homeowner may request that
2 the commission authorize the filing of an action against the
3 builder.

4 (c) The commission shall adopt rules under which a
5 low-income homeowner, as established under criteria adopted by the
6 commission, may qualify for legal assistance from the commission in
7 pursuing an action filed by the homeowner under this section.

8 (d) A builder who fails to make a repair or payment required
9 under Subsection (a) is subject to disciplinary action and an
10 administrative penalty under Chapters 418 and 419. This subsection
11 does not apply if it is determined in a civil action that the
12 construction defect for which the method or manner of repair was
13 specified does not exist.

14 SECTION 14. Section 427.001(a), Property Code, is amended
15 to read as follows:

16 (a) A third-party inspector approved by the commission
17 must:

18 (1) meet the minimum qualifications prescribed by this
19 section and any other qualifications prescribed by the commission
20 by rule; and

21 (2) submit an application to the commission annually
22 with an application fee of \$100 [~~in the amount required by the~~
23 ~~commission by rule~~].

24 SECTION 15. Section 430.008(b), Property Code, is amended
25 to read as follows:

26 (b) A third-party warranty company must submit to the
27 commission an annual application [~~and fee~~] in the form [~~and in the~~

1 ~~amount~~] required by the commission by rule and a \$500 fee before the
2 company may be approved under this section.

3 SECTION 16. The following sections of the Property Code are
4 repealed:

5 (1) Sections 407.001 and 407.003; and

6 (2) Section 416.004(b).

7 SECTION 17. (a) As soon as practicable after the first
8 vacancy on the Texas Residential Construction Commission for a
9 builder member occurs on or after the effective date of this Act,
10 the governor shall appoint the residential construction
11 commissioner in accordance with this Act.

12 (b) Section 416.004(a), Property Code, as amended by this
13 Act, applies only to an original or renewal application for a
14 certificate of registration submitted on or after the effective
15 date of this Act. An application submitted before the effective
16 date of this Act is governed by the law in effect immediately before
17 the effective date of this Act, and that law is continued in effect
18 for that purpose.

19 (c) Section 417.003(a), Property Code, as amended by this
20 Act, applies only to an original or renewal application for
21 certification as a residential construction arbitrator submitted
22 on or after the effective date of this Act. An application
23 submitted before the effective date of this Act is governed by the
24 law in effect immediately before the effective date of this Act, and
25 that law is continued in effect for that purpose.

26 (d) Section 421.002(b), Property Code, as added by this Act,
27 applies only to a fine, fee, or other income collected on or after

1 the effective date of this Act. A fine, fee, or other income
2 collected before the effective date of this Act is governed by the
3 law in effect immediately before the effective date of this Act, and
4 that law is continued in effect for that purpose.

5 (e) Sections 421.003 and 426.009, Property Code, as added by
6 this Act, and Section 426.005, Property Code, as amended by this
7 Act, apply only to a third-party inspector's recommendation or an
8 appeals ruling regarding a request submitted under Section 428.001,
9 Property Code, on or after the effective date of this Act. A
10 recommendation or appeals ruling regarding a request submitted
11 before the effective date of this Act is governed by the law in
12 effect immediately before the effective date of this Act, and that
13 law is continued in effect for that purpose.

14 (f) Section 427.001(a), Property Code, as amended by this
15 Act, applies only to an application submitted by a third-party
16 inspector on or after the effective date of this Act. An
17 application submitted before the effective date of this Act is
18 governed by the law in effect immediately before the effective date
19 of this Act, and that law is continued in effect for that purpose.

20 (g) Section 430.008(b), Property Code, as amended by this
21 Act, applies only to an application of a third-party warranty
22 company submitted on or after the effective date of this Act. An
23 application submitted before the effective date of this Act is
24 governed by the law in effect immediately before the effective date
25 of this Act, and that law is continued in effect for that purpose.

26 SECTION 18. This Act takes effect September 1, 2009.