

BILL ANALYSIS

H.B. 2375
By: Hamilton
Licensing & Administrative Procedures
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The Texas Appraiser Licensing and Certification Board licenses, certifies, and regulates real estate appraisers in Texas and safeguards the public interest by protecting consumers of real estate services. The board oversees providers of real estate brokerage, appraisal, inspection, home warranty, and timeshare interest services. The board ensures the availability of qualified and ethical service providers through education, licensing, and regulation, which facilitates economic growth and opportunity in Texas. The statutes governing the board need to be updated for general operational activities, to reflect current terminology, and to address changes in federal and state requirements.

H.B. 2375 addresses these issues and streamlines a variety of administrative functions to allow the board to function more efficiently and fulfill its mission.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Appraiser Licensing and Certification Board in SECTIONS 5 and 12 of this bill.

ANALYSIS

H.B. 2375 amends the Occupations Code to expand the stated purpose of the Texas Appraiser Licensing and Certification Act to include the enforcement of standards for the appraisal of real property, in addition to conforming state law relating to the regulation of real estate appraisers to federal law.

H.B. 2375 updates provisions of law establishing the appraisal related activities that are not expressly prohibited by the act and the activities for which a certificate or license is required. The bill establishes that a licensed real estate broker or salesperson acting under the authority of a sponsoring broker is not prohibited from providing to another person a written analysis, opinion, or conclusion relating to the estimated price of real property that, in addition to satisfying other conditions, is not referred to as an appraisal. The bill adds to the conditions that must be satisfied by such a written analysis, opinion, or conclusion the relevance of that analysis, opinion, or conclusion to the actual or potential acquisition, disposition, encumbrance, or management of an interest in the real property in question. The bill removes specified parties to whom a broker or salesperson delivers such an opinion as a determination of whether giving the opinion is not prohibited. The bill prohibits a person from performing an appraisal of real estate unless the person is licensed or certified as an appraiser, registered as a temporary out-of-state appraiser, or acting as an appraiser trainee under the sponsorship of a certified appraiser.

H.B. 2375 specifies that the Texas Appraiser Licensing and Certification Board's authority to delegate to the board's commissioner responsibility for administering the Texas Appraiser Licensing and Certification Act includes the approval of consent orders and agreements. The bill authorizes the board to adopt, in addition to other rules, rules relating to procedures for trainee approval. The bill changes a reference to an annual renewal fee for an appraiser trainee under

provisions of law authorizing the board to establish reasonable fees to instead refer to a renewal fee.

H.B. 2375 authorizes the board to solicit, accept, and administer gifts and donations of any kind from any public or private source. The bill authorizes a board member to testify as an expert witness in an action concerning a violation of the Uniform Standards of Professional Appraisal Practice.

H.B. 2375 requires an applicant to provide the board with the applicant's current mailing address, telephone number, and e-mail address, if available. The bill adds the review of appraisal experience of all applicants for certification to the elements required to be included in the board's method of verifying the evidence of appraisal experience submitted by an applicant for a certificate or license.

H.B. 2375 requires, rather than authorizes, the board to issue a reciprocal certificate or license to an applicant from another state if the appraiser licensing and certification program of the other state is in compliance with federal law, the appraiser holds a valid license or certificate from a state whose requirements for licensure or certification meet or exceed the licensure or certification requirements of this state, and the appraiser satisfies the board as to the appraiser's honesty, trustworthiness, and integrity. The bill removes authorization for the board to issue such a license or certificate to an applicant who is certified or licensed under the laws of another state under terms adopted by the board that comply with the minimum criteria for obtaining a certificate or license recognized by the Appraiser Qualifications Board.

H.B. 2375 requires process in an action against a reciprocal license or certificate applicant that is delivered by the commissioner to be delivered to the certified or licensed appraiser at the appraiser's address of record, rather than at the appraiser's principal place of business and residence address. The bill extends the term of a reciprocal certificate or license by changing the expiration date for such a certificate or license from the earlier of the expiration date of the certificate or license held by the applicant in the state in which the applicant is certified or licensed or the first anniversary of the date the reciprocal certificate or license is issued to the second anniversary of the last day of the month in which the license or certificate was issued.

H.B. 2375 authorizes the board to issue a probationary certificate or license or approve an appraiser trainee on a probationary basis. The bill requires the board, by rule, to adopt reasonable terms for issuing a probationary certificate or license and for approval of an appraiser trainee on a probationary basis. The bill requires a person who holds a probationary certificate or license or who is approved as an appraiser trainee to disclose the probationary status to all clients before accepting an assignment.

H.B. 2375 authorizes renewal of a certificate, license, or approval that has been expired for 90 days or less by payment to the board of a fee equal to 1-1/2 times the required renewal fee and by payment to the board of a fee equal to two times the required renewal fee for a certificate, license, or approval that has been expired for or more than 90 days but less than six months.

H.B. 2375 sets the expiration date for a certificate, license, or approval renewed late on the date that would apply had the certificate, license, or approval been timely renewed. The bill prohibits a person from performing an appraisal in a federally related transaction while the person is not actively licensed or certified as an appraiser. The bill prohibits a person whose certificate, license, or approval has been expired six months or longer from renewing the certificate, license, or approval and authorizes such a person to obtain a new certificate, license, or approval by complying with the requirements and procedures for an original application.

H.B. 2375 establishes a limit on the number of times an applicant is authorized to attempt the licensing examination to prohibit an applicant who fails the board-required examination three consecutive times from applying for reexamination or submitting a new license application

unless the applicant submits evidence satisfactory to the board that the applicant has completed additional education, as prescribed by the board, since the date the applicant last took the examination. The bill removes a requirement that an applicant who has not successfully completed an examination before the first anniversary of the date an application was initially accepted by the board submit a new application and pay the required application fee.

H.B. 2375 authorizes a person to obtain a 90-day extension of a temporary registration by completing an extension form approved by the board and paying the required fee. The bill limits the number of extensions to one extension for each temporary registration. The bill authorizes a person to renew an approval as an appraiser trainee by paying the renewal fee established by the board, providing evidence satisfactory to the board of completion of any required continuing education, and meeting any other renewal requirement established by the board. The bill updates the requirement for an appraiser to notify the board of a change in the appraiser's contact information to include a change to the appraiser's e-mail address or telephone number.

H.B. 2375 authorizes the commissioner to send an appraiser against whom a complaint has been filed a notice of violation including a summary of the alleged violation; the recommended sanction, including the amount of any administrative penalty sought; and a conspicuous notice that the respondent has the right to a hearing to contest the alleged violation, the recommended sanction, or both. The bill authorizes a person against whom a complaint has been filed, not later than the 20th day after the date the person receives notice, to accept the commissioner's determination, including the recommended sanction, or request in writing a hearing, to be held under the Administrative Procedure Act, on the occurrence of the violation, the sanction, or both. The bill requires the board, if a person accepts the commissioner's determination, or fails to respond in a timely manner to a notice, to approve by order the determination and order payment of the recommended penalty, impose the recommended sanction, or both. The bill removes a requirement that an administrative law judge, in dismissing the charges in a contested case, include an order declaring that the case file is confidential.

H.B. 2375 prohibits a person whose certificate or license has been revoked or a person who has surrendered a certificate or license issued by the board from applying to the board for reinstatement until the second anniversary of the date of revocation or surrender, rather than providing for reinstatement according to the terms of an order of suspension or revocation. The bill removes a reference to the reinstatement of a suspended certificate or license to conform to procedures for a temporary suspension under the bill's provisions.

H.B. 2375 requires the presiding officer of the board to appoint a disciplinary panel consisting of three board members to determine whether a person's license or certification to practice should be temporarily suspended. The bill requires the panel to temporarily suspend the license or certification of a person if the disciplinary panel determines from the information presented to the panel that the licensed or certified person would, by the person's continued practice, constitute a continuing threat to the public welfare. The bill authorizes a license or permit to be suspended without notice or hearing on the complaint if institution of proceedings for a contested case hearing is initiated simultaneously with the temporary suspension and a hearing on the matter is held as soon as possible. The bill sets the automatic expiration of a temporary suspension at 45 days if the board has not scheduled a hearing to take place within that time or if, at the board's request, the hearing is continued beyond the 45th day. The bill authorizes the panel to hold a meeting by telephone conference call if immediate action is required and convening the panel at one location is inconvenient for any member of the panel.

H.B. 2375 expands the authority of the board to impose an administrative penalty for any violation of the Texas Appraiser Licensing and Certification Act or a rule adopted or order issued by the board. The bill specifies that the payment deadline for a person on whom a penalty is imposed is determined based on the date the order imposing the penalty becomes final, rather than the date of the final disposition of the contested case. The bill redefines "appraisal." The bill makes conforming changes.

H.B. 2375 repeals the following provisions of the Occupations Code:

- Section 1103.208, relating to provisional licenses for certain appraiser trainees
- Section 1103.209(b), relating to the issuance of reciprocal certificates and licenses

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2011.