

## **BILL ANALYSIS**

Senate Research Center

S.B. 1000  
By: Eltife et al.  
Business & Commerce  
8/19/2011  
Enrolled

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

S.B. 1000 amends current law relating to self-directed and semi-independent status of the Texas Real Estate Commission and makes an appropriation.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subtitle A, Title 7, Occupations Code, by adding Chapter 1105, as follows:

#### **CHAPTER 1105. SELF-DIRECTED AND SEMI-INDEPENDENT STATUS OF TEXAS REAL ESTATE COMMISSION**

Sec. 1105.001. DEFINITIONS. Defines, in this section "agency," "board," and "commission".

Sec. 1105.002. SELF-DIRECTED AND SEMI-INDEPENDENT STATUS.

(a) Provides that the Texas Appraiser Licensing and Certification Board (TALCB) and the Texas Real Estate Commission (TREC) (agency), notwithstanding any other provision of law, is self-directed and semi-independent as specified by this chapter. Authorizes that any Act of the 82nd Legislature that relates to the agency and that is inconsistent with the agency being self-directed and semi-independent be implemented by the administrator of the agency only on authorization by the agency.

(b) Provides that this chapter does not affect TALCB's status as an independent subdivision of TREC as provided by Section 1103.051 (Texas Appraiser Licensing and Certification).

Sec. 1105.003. BUDGET, REVENUES, AND EXPENSES. (a) Requires TREC and TALCB, notwithstanding any other provision of law, including the General Appropriations Act, to each adopt a separate budget annually using generally accepted accounting principles.

(b) Requires TREC to be responsible for all direct and indirect costs of TREC's existence and operation. Requires TALCB to be responsible for all direct and indirect costs of TREC's existence and operation. Prohibits the agency from directly or indirectly causing the general revenue fund to incur any cost.

(c) Authorizes TREC and TALCB, notwithstanding any other provision of law, to each set the amounts of the respective fees, penalties, charges, and revenues required or permitted by statute or rule as necessary for the purpose of carrying

out the separate functions of TREC and TALCB and funding the respective budgets of TREC and TALCB adopted and approved under Subsection (a).

(d) Requires all fees and funds collected by TREC or TALCB and any funds appropriated to TREC or TALCB, except as provided by Subsection (e), to be deposited in interest-bearing deposit accounts in the Texas Treasury Safekeeping Trust Company. Requires the comptroller of public accounts (comptroller) to contract with TREC and TALCB for the maintenance of the deposit accounts under terms comparable to a contract between a commercial banking institution and the institution's customers.

(e) Requires that a fee collected under Section 1101.153(b)(2) (relating to requiring \$50 be deposited to the foundation school fund) to be deposited in Fund 0193 in the state treasury; and Section 1101.153(b)(3) (relating to requiring \$100 be deposited in the general revenue fund) be deposited in Fund 0001 in the state treasury.

(f) Requires the agency, not later than August 31 of each fiscal year, to remit \$750,000 to the general revenue fund.

(g) Provides that the fiscal year for the agency begins on September 1 and ends on August 31.

Sec. 1105.004. AUDITS. (a) Provides that this chapter does not affect the duty of the state auditor to audit the agency. Requires the state auditor to enter into a contract and schedule with the agency to conduct audits.

(b) Requires the agency, not later than August 31 of each fiscal year, to remit a nonrefundable retainer to the state auditor in an amount not less than \$10,000. Requires the agency to reimburse the state auditor for all costs incurred, in excess of the aggregate nonrefundable retainer amounts paid each fiscal year, in performing the audits and is required to provide to the governor a copy of any audit performed.

Sec. 1105.005. RECORDS; REPORTING REQUIREMENTS. (a) Requires the agency to keep financial and statistical information as necessary to disclose completely and accurately the financial condition and results of operations of the agency.

(b) Requires the agency, before the beginning of each regular session of the legislature, to submit to the legislature and the governor a report describing all of the agency's activities in the previous biennium. Requires that the report include:

- (1) an audit as required by Section 1105.004;
- (2) a financial report of the previous fiscal year, including reports on the financial condition and results of operations;
- (3) a description of all changes in fees imposed on regulated persons;
- (4) a report on changes in the regulatory jurisdiction of the agency; and
- (5) a list of all new rules adopted or repealed.

(c) Requires the agency, in addition to the reporting requirements of Subsection (b), not later than November 1 of each year, to submit to the governor, the committee of each house of the legislature that has jurisdiction over appropriations, and the Legislative Budget Board a report that contains:

- (1) the salary for all agency personnel and the total amount of per diem expenses and travel expenses paid for all agency employees;

(2) the total amount of per diem expenses and travel expenses paid for each member of the agency;

(3) the agency's operating plan and the annual budgets of TREC and TALCB; and

(4) a detailed report of all revenue received and all expenses incurred by the agency in the previous 12 months.

Sec. 1105.006. ABILITY TO CONTRACT. (a) Authorizes TREC or TALCB, to carry out and promote the objectives of this chapter, to enter into contracts and do all other acts incidental to those contracts that are necessary for the administration of TREC's or TALCB's respective affairs and for the attainment of TREC's or TALCB's respective purposes, except as limited by Subsection (b).

(b) Prohibits any indebtedness, liability, or obligation of TREC or TALCB incurred under this section from:

(1) creating a debt or other liability of this state or another entity other than TREC or TALCB, as appropriate; or

(2) creating any personal liability on the part of the members or employees of the agency.

Sec. 1105.007. PROPERTY. Authorizes TREC or TALCB to:

(1) acquire by purchase, lease, gift, or any other manner provided by law and maintain, use, and operate any real, personal, or mixed property, or any interest in property, necessary or convenient to the exercise of the respective powers, rights, privileges, or functions of TREC or TALCB;

(2) sell or otherwise dispose of any real, personal, or mixed property, or any interest in property, that TREC or TALCB, as appropriate, determines is not necessary or convenient to the exercise of TREC's or TALCB's respective powers, rights, privileges, or functions;

(3) construct, extend, improve, maintain, and reconstruct, or cause to construct, extend, improve, maintain, and reconstruct, and use and operate all facilities necessary or convenient to the exercise of the respective powers, rights, privileges, or functions of TREC or TALCB; and

(4) borrow money, as may be authorized from time to time by an affirmative vote of a two-thirds majority of TREC or TALCB, as appropriate, for a period not to exceed five years if necessary or convenient to the exercise of TREC's or TALCB's respective powers, rights, privileges, or functions.

Sec. 1105.008. SUITS. (a) Requires the office of the attorney general (OAG) to represent the agency in any litigation.

(b) Requires the agency, not later than August 31 of each fiscal year, to remit a nonrefundable retainer to OAG in an amount of not less than \$75,000. Requires the nonrefundable retainer to be applied to any services provided to the agency. Authorizes the attorney general, if additional litigation services are required to assess and collect from the agency reasonable attorney's fees, in excess of the aggregate nonrefundable retainer amount paid each fiscal year, associated with any litigation under this section.

Sec. 1105.009. ADMINISTRATIVE HEARINGS. (a) Requires the agency, not later than August 31 of each fiscal year, to remit a nonrefundable retainer to the State Office of

Administrative Hearings (SOAH) in an amount of not less than \$75,000 for hearings conducted by SOAH under a law administered by TREC or TALCB.

(b) Requires the nonrefundable retainer to be applied to the costs associated with conducting the hearings. Authorizes SOAH, if additional costs are incurred, to assess and collect from the agency reasonable fees, in excess of the nonrefundable retainer amount paid each fiscal year, associated with conducting the hearings.

Sec. 1105.010. POST-PARTICIPATION LIABILITY. (a) Requires the agency, if the agency no longer has status under this chapter as a self-directed semi-independent agency for any reason, to be liable for any expenses or debts incurred by the agency during the time the agency was a self-directed semi-independent agency. Provides that the agency's liability under this section includes liability for any lease entered into by the agency. Provides that this state is not liable for any expense or debt covered by this subsection, and prohibits money from the general revenue fund from being used to repay the expense or debt.

(b) Requires ownership of any property or other asset acquired by the agency during the time the agency was a self-directed semi-independent agency, including unexpended fees in a deposit account in the Texas Treasury Safekeeping Trust Company, if the agency no longer has status under this chapter as a self-directed semi-independent agency for any reason, to be transferred to this state.

Sec. 1105.011. DUE PROCESS; OPEN GOVERNMENT. Provides that TREC and TALCB are governmental bodies for purposes of Chapters 551 (Open Meetings) and 552 (Public Information), Government Code. Provides that TREC is a state agency for purposes of Chapters 2001 (Administrative Procedure) and 2005 (Miscellaneous Provisions to State Licenses and Permits), Government Code.

Sec. 1105.012. MEMBERSHIP IN EMPLOYEES RETIREMENT SYSTEM. Provides that employees of the agency are members of the Employees Retirement System of Texas under Chapter 812 (Membership), Government Code, and TREC's and TALCB's transition to independent status as provided by this chapter has no effect on their membership or any benefits under that system.

SECTION 2. Amends Section 1101.059(c), Occupations Code, to delete existing text providing that a person appointed to TREC is entitled to reimbursement as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

SECTION 3. Amends Section 1101.101(d), Occupations Code, to delete existing text prohibiting the amounts of the salaries from exceeding the amounts specified by the General Appropriations Act.

SECTION 4. Repealer: Section 1103.103(b) (relating to prohibiting the amounts of the salaries from exceeding the amounts specified by the General Appropriations Act), Occupations Code.

SECTION 5. (a) Provides that to provide a reasonable period for TREC to establish itself as a self-directed and semi-independent agency under Chapter 1105, Occupations Code, as added by this Act, the following amounts are appropriated out of the general revenue fund:

(1) for the state fiscal year ending August 31, 2012, an amount equal to 50 percent of the amount of general revenue appropriated to the agency for the state fiscal year ending August 31, 2011; and

(2) for the state fiscal year ending August 31, 2013, an amount equal to 50 percent of the amount of general revenue appropriated to the agency for the state fiscal year ending August 31, 2011.

(b) Authorizes that the appropriations made by Subsection (a) of this section, subject to Chapter 1105, Occupations Code, as added by this Act, be spent by TREC as TREC directs. Requires TREC to repay to the general revenue fund the appropriation made to TREC for the state fiscal year ending August 31, 2012, not later than that date and as funds become available. Requires TREC to repay to the general revenue fund the appropriation made to TREC for the state fiscal year ending August 31, 2013, not later than that date and as funds become available.

SECTION 6. Prohibits the transfer of TREC to self-directed and semi-independent status under Chapter 1105, Occupations Code, as added by this Act, and the expiration of self-directed and semi-independent status from acting to cancel, suspend, or prevent:

- (1) any debt owed to or by TREC or TALCB;
- (2) any fine, tax, penalty, or obligation of any party;
- (3) any contract or other obligation of any party; or
- (4) any action taken by TREC or TALCB in the administration or enforcement of TREC's or TALCB's duties.

SECTION 7. Requires TREC and TALCB to continue to have and exercise the powers and duties allocated to TREC or TALCB in TREC's or the TALCB's enabling legislation, except as specifically amended by this Act.

SECTION 8. Provides that title to or ownership of all supplies, materials, records, equipment, books, papers, and furniture used by TREC or TALCB is transferred to TREC or TALCB respectively. Provides that this Act does not affect any property owned by TREC or TALCB on or before the effective date of this Act.

SECTION 9. Requires TREC and TALCB to relocate to state-owned office space not later than September 1, 2011, and to pay rent to this state in a reasonable amount to be determined by the Texas Facilities Commission for the use and occupancy of the office space. Prohibits aggregate rental payments from being less than \$550,000 per fiscal year for the state fiscal years ending August 31, 2012, and August 31, 2013. Prohibits aggregate rental payments from being less than \$425,000 per fiscal year for each state fiscal year ending August 31, 2014, August 31, 2015, and August 31, 2016.

SECTION 10. Effective date: September 1, 2011.