

## **BILL ANALYSIS**

C.S.S.B. 1000

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Licensing & Administrative Procedures  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties assert that much of the money collected by the Texas Real Estate Commission (TREC) and the Texas Appraiser Licensing and Certification Board through licensing and registration fees has been deposited in the general revenue fund but has not been appropriated to those agencies. The parties further contend that recent budget cuts have hampered the ability of the TREC and the board to carry out their respective missions, even though the fees paid to the agencies have remained largely consistent. C.S.S.B. 1000 seeks to address this problem by making the TREC and the Texas Appraiser Licensing and Certification Board self-directed and semi-independent.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.S.B. 1000 amends the Occupations Code to establish the Texas Real Estate Commission (TREC) and the Texas Appraiser Licensing and Certification Board as self-directed and semi-independent. The bill defines "agency" to mean the TREC and the board and specifies that any act of the 82nd Legislature that relates to the agency and is inconsistent with the agency being self-directed and semi-independent may be implemented by the administrator of the agency only on authorization by the agency. The bill establishes that its provisions relating to the agency's self-directed and semi-independent status do not affect the board's status as an independent subdivision of the TREC as provided by provisions of law.

C.S.S.B. 1000 requires the TREC and the board to each adopt a separate budget annually using generally accepted accounting principles. The bill requires the TREC to be responsible for all direct and indirect costs of its existence and operation and requires the board to be responsible for all direct and indirect costs of the board's existence and operation. The bill prohibits the agency from directly or indirectly causing the general revenue fund to incur any cost. The bill authorizes the TREC and the board 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 the commission and the board and funding the respective budgets of the commission and the board adopted and approved under the bill's provisions.

C.S.S.B. 1000 requires all fees and funds collected by the TREC or the board and any funds appropriated to the commission or the board, except as provided by the bill, to be deposited in interest-bearing deposit accounts in the Texas Treasury Safekeeping Trust Company. The bill requires the comptroller of public accounts to contract with the TREC and the board for the maintenance of those accounts under terms comparable to a contract between a commercial banking institution and the institution's customers. The bill provides for specified amounts of the increase in the fee for filing an original or renewal application for an individual real estate broker license, as provided under provisions of law, to be deposited in certain specified funds in the

state treasury. The bill requires the agency, not later than August 31 of each fiscal year, to remit \$750,000 to the general revenue fund. The bill provides that the fiscal year for the agency begins on September 1 and ends on August 31.

C.S.S.B. 1000 establishes that its provisions relating to the agency's self-directed and semi-independent status do not affect the duty of the state auditor to audit the agency and requires the state auditor to enter into a contract and schedule with the agency to conduct audits. The bill 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 and requires the agency to reimburse the auditor for all costs incurred, in excess of the aggregate nonrefundable retainer amounts paid each fiscal year, in performing the audits and to provide to the governor a copy of any audit performed.

C.S.S.B. 1000 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. The bill 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 and requires the report to include the required audit and certain specified documents and information. The bill requires the agency, not later than November 1 of each year and in addition to the reporting requirements, 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 certain specified information relating to agency finances, personnel, and operations.

C.S.S.B. 1000 authorizes the TREC or the board, for purposes of carrying out and promoting the objectives of the bill's provisions relating to the agency's self-directed and semi-independent status, to enter into contracts and do all other acts incidental to those contracts that are necessary for administering the commission's or board's respective affairs and for attaining the commission's or board's respective purposes. The bill creates an exception to that authorization by prohibiting any indebtedness, liability, or obligation of the TREC or board incurred under the bill's provisions authorizing the commission and board to enter into contracts from creating a debt or other liability of the state or another entity other than the commission or board, as appropriate, or creating any personal liability on the part of the members or employees of the agency.

C.S.S.B. 1000 authorizes the TREC or board, if necessary or convenient to the exercise of the commission's or board's respective powers, rights, privileges, or functions, to acquire by any manner provided by law and maintain, use, and operate any interest in property and to construct, extend, improve, maintain, and reconstruct, or cause to construct, extend, improve, maintain, and reconstruct, and use and operate facilities. The bill authorizes the TREC or board to sell or otherwise dispose of any interest in property that the commission or board, as appropriate, determines is not necessary or convenient to the exercise of the commission's or board's respective powers, rights, privileges, or functions. The bill authorizes the TREC or board, as appropriate, to borrow money, as may be authorized from time to time by an affirmative vote of a two-thirds majority of the commission or board, as appropriate, for a period not to exceed five years if necessary or convenient to the exercise of the commission's or board's respective powers, rights, privileges, or functions,.

C.S.S.B. 1000 requires the office of the attorney general to represent the agency in any litigation. The bill requires the agency, not later than August 31 of each fiscal year, to remit a nonrefundable retainer to the office of the attorney general in an amount of not less than \$75,000. The bill requires the nonrefundable retainer to be applied to any services provided to the agency and 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 these provisions.

C.S.S.B. 1000 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 the SOAH under a law administered by the TREC or the board. The bill requires the nonrefundable retainer to be applied to the costs associated with conducting the hearings and authorizes the 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.

C.S.S.B. 1000 provides that, if the agency no longer has status under the bill's provisions as a self-directed, semi-independent agency for any reason, the agency shall be liable for any expenses or debts incurred by the agency during the time the agency had such status and the ownership of any asset acquired by the agency during that time shall be transferred to the state. The bill specifies that the agency's liability for expenses or debts under the bill's provisions includes liability for any lease entered into by the agency, exempts the state from liability for any such expense or debt, and prohibits money from the general revenue fund to be used to repay the expense or debt.

C.S.S.B. 1000 establishes that the TREC and the board are governmental bodies for purposes of the state's open meetings law and public information law and that the commission is a state agency for purposes of the Administrative Procedure Act and statutory provisions governing procedures relating to state licenses and permits. The bill provides that employees of the agency are members of the Employees Retirement System of Texas and that the commission's and the board's transition to independent status has no effect on their membership or any benefits under that system.

C.S.S.B. 1000 defines "board" and "commission" and makes conforming changes.

C.S.S.B. 1000 repeals a provision relating to the prohibition against the amounts of the salaries of the officers and employees of the board from exceeding the amounts specified by the General Appropriations Act.

C.S.S.B. 1000 establishes that, to provide a reasonable period for the TREC to establish itself as a self-directed and semi-independent agency for the state fiscal year ending August 31, 2012, and for the state fiscal year ending August 31, 2013, the commission is appropriated out of the general revenue fund an amount equal to 50 percent of the amount of the general revenue appropriated to the agency for the state fiscal year ending August 31, 2011. The bill authorizes the appropriations made for the state fiscal year ending August 31, 2012, and for the state fiscal year ending August 31, 2013, to be spent by the TREC as the commission directs, subject to the bill's provisions relating to the agency's self-directed and semi-independent status. The bill requires the TREC, not later than August 31, 2012, and as funds become available, to repay to the general revenue fund the appropriation made to the commission for the state fiscal year ending August 31, 2012, and requires the commission, not later than August 31, 2013, and as funds become available, to repay to the general revenue fund the appropriation made to the commission for the state fiscal year ending August 31, 2013.

C.S.S.B. 1000 prohibits the transfer of the TREC to self-directed and semi-independent status and the expiration of such status from acting to cancel, suspend, or prevent any debt owed to or by the commission or the board; any fine, tax, penalty, or obligation of any party; any contract or other obligation of any party; or any action taken by the commission or the board in the administration or enforcement of the commission's or the board's duties.

C.S.S.B. 1000 provides that the TREC and the board shall continue to have and exercise the powers and duties allocated to the commission or the board in the commission's or the board's enabling legislation, except as specifically amended by the bill's provisions. The bill transfers title to or ownership of all supplies, materials, records, equipment, books, papers, and furniture

used by the TREC or the board to the commission or the board, respectively. The bill establishes that its provisions do not affect any property owned by the TREC or the board on or before the bill's effective date.

C.S.S.B. 1000 requires the TREC and the board, not later than September 1, 2011, to relocate to state-owned office space and to pay rent to the state in a reasonable amount to be determined by the Texas Facilities Commission for the use and occupancy of the office space. The bill sets limits on the amounts of the aggregate rental payments per fiscal year for the state fiscal year ending August 31, 2012, through the state fiscal year ending August 31, 2016.

C.S.S.B. 1000 repeals Section 1103.103(b), Occupations Code.

### **EFFECTIVE DATE**

September 1, 2011.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.S.B. 1000 differs from the original by making the substitute's provisions applicable to the Texas Real Estate Commission (TREC) and to the Texas Appraiser Licensing and Certification Board, whereas the original makes its provisions applicable only to the TREC. The substitute contains provisions not included in the original defining "board" and "commission" and defining "agency" to mean the TREC and the board.

C.S.S.B. 1000 contains a provision not included in the original establishing that the substitute's provisions relating to the agency's self-directed and semi-independent status do not affect the board's status as an independent subdivision of the TREC as provided by provisions of law.

C.S.S.B. 1000 omits a provision included in the original requiring collected revenue and interest associated with certain specified funds in the state treasury to continue to be deposited in the appropriate fund.

C.S.S.B. 1000 contains a provision not included in the original providing for specified amounts of the increase in the fee for filing an original or renewal application for an individual real estate broker license to be deposited in certain specified funds in the state treasury. The substitute omits a provision included in the original requiring certain fees collected in connection with the issuance or renewal of a real estate broker or salesperson license to be remitted to the state and deposited in the appropriate fund in the state treasury.

C.S.S.B. 1000, in a requirement that the agency reimburse the state auditor for all costs incurred in performing audits required by the bill in excess of certain nonrefundable retainer amounts paid each fiscal year, contains a specification not included in the original that those amounts are aggregate amounts. The substitute, in the provision authorizing the attorney general to assess and collect from the agency reasonable attorney's fees in excess of the nonrefundable retainer amount paid each fiscal year associated with any litigation under the bill's provisions, contains the specification not included in the original that the amount is the aggregate amount.

C.S.S.B. 1000 differs from the original by specifying that the agency's remittance of a nonrefundable retainer to the State Office of Administrative Hearings (SOAH) each fiscal year in an amount of not less than \$75,000 is for hearings conducted by the SOAH under a law administered by the TREC or the board, whereas the original specifies that such remittance is for hearings conducted under provisions of law relating to prohibited practices and disciplinary proceedings for real estate brokers and salespersons or provisions of law relating to administrative penalties for such persons.

C.S.S.B. 1000 contains a provision not included in the original repealing Section 1103.103(b),

Occupations Code, relating to the prohibition against the amounts of the salaries of the officers and employees of the board from exceeding the amounts specified by the General Appropriations Act.

C.S.S.B. 1000 differs from the original in nonsubstantive ways.