

## **BILL ANALYSIS**

Senate Research Center  
82R20027 NC-F

C.S.S.B. 1000  
By: Eltife et al.  
Business & Commerce  
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Committee Report (Substituted)

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

The Texas Real Estate Commission (TREC) is charged with regulating individuals and entities in the real estate business and assessing licensing and registration fees. These fees allow TREC to carry out its mission of protecting consumers through programs of education, licensing, and industry regulation. However, some funds are retained in the state General Revenue Fund and are not used to support the agency and its mission.

There are currently seven licensing agencies that are "self-directed and semi-independent," including the Board of Public Accountancy, Board of Professional Engineers, Board of Architectural Examiners, Texas Credit Union Department, Texas Department of Banking, Office of Consumer Credit Commissioner, and Department of Savings and Mortgage Lending. This status allows those agencies to establish a budget and utilize the fees generated.

C.S.S.B. 1000 provides that TREC is a self-directed and semi-independent agency.

C.S.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 Chapter 1101, Occupations Code, by adding Subchapter B-1, as follows:

#### **SUBCHAPTER B-1. SELF-DIRECTED AND SEMI-INDEPENDENT STATUS OF COMMISSION**

Sec. 1101.081. SELF-DIRECTED AND SEMI-INDEPENDENT STATUS. Provides that, notwithstanding any other provision of law, the Texas Real Estate Commission (TREC) is self-directed and semi-independent as specified by this subchapter. Provides that any Act of the 82nd Legislature that relates to TREC and that is inconsistent with TREC being self-directed and semi-independent may be implemented by the administrator of TREC only on authorization by TREC.

Sec. 1101.082. BUDGET, REVENUES, AND EXPENSES. (a) Requires TREC, notwithstanding any other provision of law, including the General Appropriations Act, to adopt a 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. Prohibits TREC from directly or indirectly causing the general revenue fund to incur any cost.

(c) Authorizes TREC, notwithstanding any other provision of this chapter, to set the amounts of fees, penalties, charges, and revenues required or permitted by

statute or rule as necessary for the purpose of carrying out the functions of TREC and funding the budget adopted and approved under Subsection (a).

(d) Requires that all fees and funds collected by TREC and any funds appropriated to TREC be deposited in interest-bearing deposit accounts in the Texas Treasury Safekeeping Trust Company, except as provided by Subsection (e) or (f). Requires the comptroller of public accounts to contract with TREC 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 collected revenue and interest associated with one of the following funds in the state treasury to continue to be deposited in the appropriate fund:

- (1) Fund 0028, Appraisal Registry;
- (2) Fund 0969, Real Estate Fee Trust Account;
- (3) Fund 0971, Real Estate Recovery Trust Account; and
- (4) Fund 0988, Real Estate Inspection Recovery Trust Fund.

(f) Requires a fee collected under Section 1101.152(a)(16) (relating to fees for conducting a criminal history check for issuing or renewing a license), 1101.153 (Fee Increase), or 1101.154 (Additional Fee: Texas Real Estate Research Center) or under an agreement authorized by Section 1101.3521(d) (relating to authorizing TREC to enter into an agreement with the Department of Public Safety to administer a criminal history check and collect from each applicant the costs incurred in conducting the criminal history check) to be remitted to the state and deposited in the appropriate fund in the state treasury.

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

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

Sec. 1101.083. AUDITS. (a) Provides that this subchapter does not affect the duty of the state auditor to audit TREC. Requires the state auditor to enter into a contract and schedule with TREC to conduct audits.

(b) Requires TREC, 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 TREC to reimburse the state auditor for all costs incurred, in excess of the nonrefundable retainer amounts paid each fiscal year, in performing the audits and to provide to the governor a copy of any audit performed.

Sec. 1101.084. RECORDS; REPORTING REQUIREMENTS. (a) Requires TREC to keep financial and statistical information as necessary to disclose completely and accurately the financial condition and results of operations of TREC.

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

- (1) an audit as required by Section 1101.083;
- (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 TREC; and

(5) a list of all new rules adopted or repealed.

(c) Requires TREC, 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 TREC personnel and the total amount of per diem expenses and travel expenses paid for all TREC employees;

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

(3) TREC's operating plan and annual budget; and

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

Sec. 1101.085. ABILITY TO CONTRACT. (a) Authorizes TREC, 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 affairs and for the attainment of TREC's purposes, except as limited by Subsection (b).

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

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

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

Sec. 1101.086. PROPERTY. Authorizes TREC 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 powers, rights, privileges, or functions of TREC;

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

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

Sec. 1101.087. SUITS. (a) Requires the office of the attorney general (OAG) to represent TREC in any litigation.

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

Sec. 1101.088. ADMINISTRATIVE HEARINGS. (a) Requires TREC, 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 under Section 1101.657 (Hearing) or 1101.705 (Hearing; Decision).

(b) Requires that the nonrefundable retainer be applied to the costs associated with conducting the hearings. Authorizes SOAH, if additional costs are incurred, to assess and collect from TREC reasonable fees, in excess of the nonrefundable retainer amount paid each fiscal year, associated with conducting a hearing under Section 1101.657 or 1101.705.

Sec. 1101.089. POST-PARTICIPATION LIABILITY. (a) Requires TREC, if TREC no longer has status under this subchapter as a self-directed semi-independent agency for any reason, to be liable for any expenses or debts incurred by TREC during the time TREC was a self-directed semi-independent agency. TREC's liability under this section includes liability for any lease entered into by TREC. Provides that this state is not liable for any expense or debt covered by this subsection, and money from the general revenue fund may not be used to repay the expense or debt.

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

Sec. 1101.090. DUE PROCESS; OPEN GOVERNMENT. Provides that TREC is:

(1) a governmental body for purposes of Chapters 551 (Open Meetings) and 552 (Public Information), Government Code; and

(2) a state agency for purposes of Chapters 2001 (Administrative Procedure) and 2005 (Miscellaneous Provisions Relating to State Licenses and Permits), Government Code.

Sec. 1101.091. MEMBERSHIP IN EMPLOYEES RETIREMENT SYSTEM. Provides that TREC employees are members of the Employees Retirement System of Texas under Chapter 812 (Membership), Government Code, and TREC'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, as follows:

(c) Provides that a person appointed to TREC is entitled to reimbursement, rather than 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, as follows:

(d) Requires TREC to determine the salaries of the administrator, officers, and employees of TREC. Deletes existing text prohibiting the amounts of the salaries from exceeding the amounts specified by the General Appropriations Act.

SECTION 4. (a) Provides that, to provide a reasonable period for TREC to establish itself as a self-directed and semi-independent agency under Subchapter B-1, Chapter 1101, 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 the appropriations made by Subsection (a) of this section to be spent by TREC as TREC directs, subject to Subchapter B-1, Chapter 1101, Occupations Code, as added by this Act. Requires TREC to repay to the general revenue fund the appropriations 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 5. Prohibits the transfer of TREC to self-directed and semi-independent status under Subchapter B-1, Chapter 1101, Occupations Code, as added by this Act, and the expiration of self-directed and semi-independent status from cancelling, suspending, or preventing:

(1) any debt owed to or by TREC;

(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 in the administration or enforcement of TREC's duties.

SECTION 6. Requires TREC to continue to have and exercise the powers and duties allocated to TREC in TREC's enabling legislation, except as specifically amended by this Act.

SECTION 7. Transfers title to or ownership of all supplies, materials, records, equipment, books, papers, and furniture used by TREC to TREC. Provides that this Act does not affect any property owned by TREC on or before the effective date of this Act.

SECTION 8. Requires TREC to relocate to state-owned office space not later than September 1, 2011, and requires TREC 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 9. Effective date: September 1, 2011.