

BILL ANALYSIS

C.S.H.B. 2911
By: Kuempel
Licensing & Administrative Procedures
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties have raised concerns that certain Texas Real Estate Commission (TREC) practices relating to real estate inspectors do not match those used by the TREC for other licensees under its jurisdiction. The parties have identified a number of examples ranging from the time an applicant has to complete the licensing requirements to the license renewal procedures regarding an expired license, and they contend that addressing these matters, among others, will benefit the inspectors, reduce costs, and streamline agency operations. In addition, recent legislative efforts relating to errors and omissions coverage for inspectors have raised further concerns, with the parties asserting that it is redundant to mandate errors and omissions coverage for inspectors while maintaining the real estate inspection recovery fund.

C.S.H.B. 2911 seeks to amend the current applicable law to conform agency practices relating to inspectors to match those used by the TREC for its other licensees and to address the issues regarding the errors and omissions coverage and the real estate inspection recovery fund.

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.H.B. 2911 amends the Occupations Code to set out provisions establishing a criminal history record information requirement for an applicant for an apprentice real estate inspector license, a real estate inspector license, or a professional inspector license or renewal of such an unexpired license and to provide for specified Texas Real Estate Commission (TREC) requirements and authorizations related to such provisions. The bill authorizes the TREC to enter into an agreement with the Department of Public Safety (DPS) to administer a criminal history check under these provisions and authorizes DPS to collect from each applicant the costs incurred by DPS in conducting such a check.

C.S.H.B. 2911 increases from 30 to 40 the minimum number of classroom hours of core real estate inspection courses required to be eligible for a professional inspector license, in addition to the hours required for a real estate inspector license and removes a provision requiring a minimum of eight classroom hours of courses related to the study of standards of practice, legal issues, or ethics relating to the practice of real estate inspection. The bill expands the eligibility requirements for an applicant for a real estate inspector license or a professional inspector license who previously held such a license to include the requirement that the applicant submit evidence satisfactory to the TREC of successful completion of not less than the number of hours of continuing education courses that would have been required for the applicant to renew the license. The bill prohibits rules for the substitution of relevant experience and additional education for licensing requirements from requiring an applicant for a real estate inspector license to complete more than 320 additional hours, rather than additional classroom hours, of core real estate inspection courses.

C.S.H.B. 2911 requires a real estate inspector to maintain financial responsibility in the form of a liability insurance policy with a minimum limit of \$100,000 per occurrence and an aggregate annual total of at least \$100,000 that meets certain specifications or in the form of a bond or other security accepted by the TREC that meets certain specifications. The bill requires any provided security other than a bond to be convertible to cash by the TREC for the benefit of a person who contracts with an inspector in this state, without requiring approval of a court, if the TREC determines that the inspector has engaged in certain prohibited acts. The bill requires any amount remaining after an inspector's license has expired to be returned to the inspector within a certain time frame and requires an inspector who posts a bond or other security to designate an unaffiliated third party to handle the processing of any claim regarding the bond or security. The bill revises application requirements for the issuance of a real estate inspector license to include proof of financial responsibility as described above.

C.S.H.B. 2911 requires an inspector to provide the TREC with a current mailing address, telephone number, and, if available, an e-mail address and requires notification within a specified period after an inspector changes the inspector's mailing address, telephone number, or e-mail address, rather than after an inspector changes the inspector's place of business.

C.S.H.B. 2911 increases from within six months after the date an application for a real estate inspector license is filed to before the first anniversary of that date the period after which an applicant who does not satisfy the examination requirement must submit a new application and pay another examination fee to be eligible for examination. The bill revises a provision prohibiting an applicant who fails the examination three consecutive times in connection with the same application from applying for reexamination or submitting a new license application before six months after the date of the third failed examination and instead authorizes an applicant to apply for reexamination if the applicant completes additional educational requirements as prescribed by the TREC and submits evidence satisfactory to the TREC of successful completion of those requirements.

C.S.H.B. 2911 revises the requirement that the TREC provide notice regarding a real estate inspector license expiration, sets out a graduated renewal fee schedule for a person whose license has been expired for less than six months, and prohibits a person from renewing a license if it has been expired for six months or longer. The bill requires each applicant for the renewal of a license to disclose to the TREC whether the applicant has entered a plea of guilty or nolo contendere to a felony or has been convicted of a felony and the time for appeal has elapsed or the judgment or conviction has been affirmed on appeal. The bill requires such disclosure to be provided even if an order has granted community supervision suspending the imposition of the sentence.

C.S.H.B. 2911 specifies that a person is not eligible for a real estate inspector license until the person has reimbursed the TREC in full for any amount paid on the person's behalf from the real estate inspection recovery fund or the real estate recovery trust account, plus interest at the legal rate. The bill requires an administrative penalty for a violation of statutory provisions governing real estate inspectors or a rule adopted or order issued by the TREC under such provisions or The Real Estate License Act to be deposited to the credit of the general revenue fund, rather than the real estate recovery trust account or the real estate inspection recovery fund, as applicable. The bill specifies that the penalty revenue deposited in the general revenue account shall offset any amounts required to be remitted to the general revenue fund by the TREC. The bill repeals provisions governing the real estate inspection recovery fund.

C.S.H.B. 2911 requires the TREC, not later than August 31, 2015, to transfer not less than \$300,000 from the real estate inspection recovery fund to the general revenue fund and to determine, not later than November 1, 2017, the remaining liability of the real estate inspection recovery fund based on any pending claim for payment. The bill requires the TREC to refund to each eligible real estate inspector license holder who holds the license as of the date of the refund

a portion of the amount in excess of the remaining liability of the real estate inspection recovery fund in an amount not to exceed \$100 per person. The bill requires the TREC, once all refunds to inspectors are paid and all claims for payment for the real estate inspection recovery fund are paid, to transfer any remaining money to the general revenue fund and specifies that any money transferred to the general revenue fund under these provisions offsets any amounts due from the TREC to the general revenue fund. The bill requires a claim for payment from the real estate inspection recovery fund for a cause of action that accrues before September 1, 2013, to be filed before September 1, 2017.

C.S.H.B. 2911 repeals provisions relating to the payment of a license fee by cash, check, cashier's check, or money order and to the TREC's annual review of certain fee amounts.

C.S.H.B. 2911 repeals the following provisions of the Occupations Code:

- Section 1102.252
- Section 1102.253
- Subchapter H, Chapter 1102

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2911 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED	HOUSE COMMITTEE SUBSTITUTE
SECTION 1. Subchapter C, Chapter 1102, Occupations Code, is amended.	SECTION 1. Same as introduced version.
SECTION 2. Section 1102.109, Occupations Code, is amended.	SECTION 2. Same as introduced version.
SECTION 3. Section 1102.110, Occupations Code, is amended to read as follows: Sec. 1102.110. ELIGIBILITY OF PREVIOUS LICENSE HOLDERS. (a) Notwithstanding Section 1102.108, an applicant is eligible for and has satisfied all requirements for a real estate inspector license if the applicant: (1) held a real estate inspector license during the 24-month period preceding the date the application is filed; (2) is sponsored by a professional inspector; and	SECTION 3. Section 1102.110, Occupations Code, is amended to read as follows: Sec. 1102.110. ELIGIBILITY OF PREVIOUS LICENSE HOLDERS. (a) Notwithstanding Section 1102.108, an applicant is eligible for and has satisfied all requirements for a real estate inspector license if the applicant: (1) held a real estate inspector license during the 24-month period preceding the date the application is filed; (2) is sponsored by a professional inspector; and (3) satisfies the commission as to the applicant's honesty, trustworthiness, and integrity; <u>and</u> (4) <u>submits evidence satisfactory to the</u>
(3) <u>provides evidence that the applicant</u>	

has completed any continuing education that would have been required for timely renewal of the previous license; and

(4) satisfies the commission as to the applicant's honesty, trustworthiness, and integrity.

(b) Notwithstanding Section 1102.109, an applicant is eligible for and has satisfied all requirements for a professional inspector license if the applicant:

(1) held a professional inspector license during the 24-month period preceding the date the application is filed; ~~and~~

(2) provides evidence that the applicant has completed any continuing education that would have been required for timely renewal of the previous license; and

(3) satisfies the commission as to the applicant's honesty, trustworthiness, and integrity.

SECTION 4. Section 1102.111(b), Occupations Code, is amended.

SECTION 5. Section 1102.114, Occupations Code, is amended to read as follows:

Sec. 1102.114. ISSUANCE OF LICENSE. The commission shall issue the appropriate license to an applicant who:

(1) meets the required qualifications; and

(2) has submitted proof of financial responsibility with the commission by:

(A) providing a certificate of insurance verifying coverage as required by Section 1102.1141; or

(B) filing a bond, or other security accepted by the commission, that meets the requirements of Section 1102.1142 [pays the fee required by Section 1102.352(a); and

[(3) offers proof that the applicant carries liability insurance with a minimum limit of \$100,000 per occurrence to protect the public against a violation of Subchapter G].

commission of successful completion of not less than the number of hours of continuing education courses that would have been required for the applicant to renew the license described by Subdivision (1).

(b) Notwithstanding Section 1102.109, an applicant is eligible for and has satisfied all requirements for a professional inspector license if the applicant:

(1) held a professional inspector license during the 24-month period preceding the date the application is filed; ~~and~~

(2) satisfies the commission as to the applicant's honesty, trustworthiness, and integrity; and

(3) submits evidence satisfactory to the commission of successful completion of not less than the number of hours of continuing education courses that would have been required for the applicant to renew the license described by Subdivision (1).

SECTION 4. Same as introduced version.

SECTION 5. Section 1102.114, Occupations Code, is amended to read as follows:

Sec. 1102.114. ISSUANCE OF LICENSE. The commission shall issue the appropriate license to an applicant who:

(1) meets the required qualifications; and

(2) submits [pays the fee required by Section 1102.352(a); and

[(3) offers] proof of financial responsibility as required by Section 1102.1141 [that the applicant carries liability insurance with a minimum limit of \$100,000 per occurrence to protect the public against a violation of Subchapter G].

(See SECTION 6, Section 1102.1141(a)(2), below)

SECTION 6. Subchapter C, Chapter 1102, Occupations Code, is amended by adding Section 1102.1141 to read as follows:

Sec. 1102.1141. INSURANCE COVERAGE. Insurance obtained by an applicant or inspector to meet the financial responsibility requirement of Section 1102.114 must:

- (1) be written by an insurer authorized to engage in the business of insurance in this state, a risk retention group as defined by Chapter 2201, Insurance Code, or an eligible surplus lines insurer, as defined by Section 981.002, Insurance Code;
- (2) specifically provide for professional liability insurance to protect the public against a violation of Subchapter G; and
- (3) provide coverage with a minimum limit of \$100,000 per occurrence, and a total annual aggregate of not less than \$100,000.

(See SECTION 5, Section 1102.114(2)(B), above)

SECTION 7. Subchapter C, Chapter 1102, Occupations Code, is amended by adding Section 1102.1142 to read as follows:

Sec. 1102.1142. BOND OR OTHER SECURITY.

(a) A bond, or other security accepted by the commission, submitted by an applicant or inspector to meet the financial responsibility requirement Section 1102.114 must be:

(1) issued by a carrier admitted in this state in an amount not less than \$100,000; and

(2) continuous.

(b) A surety may not cancel a bond or other security issued under Subsection (a) unless the surety provides at least 90 days written notice of cancellation to the commission.

(c) Any security provided under this section in a form other than a bond must be convertible to cash by the commission for the benefit of persons who contract with an inspector in this state, without resort to the courts, if the commission determines that the inspector has violated Subchapter G. Any amount remaining after the inspector's license has expired must be returned to the inspector not later than the sixth month after the date the license expires.

SECTION 6. Subchapter C, Chapter 1102, Occupations Code, is amended by adding Section 1102.1141 to read as follows:

Sec. 1102.1141. FINANCIAL RESPONSIBILITY REQUIREMENT. (a) An inspector must maintain financial responsibility in the form of:

(1) a liability insurance policy with a minimum limit of \$100,000 per occurrence and an aggregate annual total of at least \$100,000, and that:

(A) is written by an insurer authorized to engage in the business of insurance in this state, a risk retention group as defined by Chapter 2201, Insurance Code, or an eligible surplus lines insurer, as defined by Section 981.002, Insurance Code; and

(B) specifically provides for professional liability coverage to protect the public against a violation of Subchapter G; or

(2) a bond or other security accepted by the commission.

SECTION 6. (continued)

(b) A bond posted as security under Subsection (a)(2) must:

(1) be issued by a carrier admitted in this state;

(2) be in an amount not less than \$100,000;

(3) be continuous; and

(4) be cancellable by the surety only after the surety has provided at least 90 days' written notice to the commission before the effective date of the cancellation.

(c) Any security provided under this section in a form other than a bond must be convertible to cash by the commission for the benefit of a person who contracts with an inspector in this state, without requiring approval of a court, if the commission determines that the inspector has violated Subchapter G. Any amount remaining after an inspector's license has expired shall be returned to the inspector not later than the 180th day after the date the license expires.

(d) An applicant or inspector who files a bond or other security under this section must designate a third party not affiliated with the applicant or inspector to handle the processing of claims regarding that bond or other security.

SECTION 8. Section 1102.118, Occupations Code, is amended to read as follows:

Sec. 1102.118. CONTACT INFORMATION [CHANGE OF ADDRESS]. (a) An applicant or inspector shall provide the commission a current mailing address and telephone number, and an e-mail address if available.

(b) Not later than the 30th day after the date an inspector changes the inspector's address, e-mail address, or telephone number [place of business], the inspector shall notify the commission and pay any [the] required fee.

SECTION 9. Section 1102.153, Occupations Code, is amended.

SECTION 10. Section 1102.155(b), Occupations Code, is amended.

SECTION 11. Section 1102.202, Occupations Code, is amended.

SECTION 12. Section 1102.203, Occupations Code, is amended to read as follows:

Sec. 1102.203. RENEWAL OF LICENSE. (a) A person may renew an unexpired license by paying the required renewal fee to the commission before the expiration date of the license and providing proof of financial responsibility [professional liability insurance] as required by Section 1102.114.

((New Subsection (b) is parallel to Section 1101.451(e).))

(b) A person whose license has been expired for 90 days or less may renew the license by paying to the commission a fee equal to 1-1/2 times the required renewal fee. If a license has been expired for more than 90 days but less than six months, the

(d) An inspector who posts a bond or other security under this section must designate an unaffiliated third party to handle the processing of any claim regarding the bond or other security.

SECTION 7. Section 1102.118, Occupations Code, is amended to read as follows:

Sec. 1102.118. CONTACT INFORMATION [CHANGE OF ADDRESS].

(a) An inspector shall provide the commission with a current mailing address, telephone number, and, if available, e-mail address.

(b) Not later than the 30th day after the date of a change in the mailing address, telephone number, or e-mail address of an inspector [changes the inspector's place of business], the inspector shall notify the commission of the change and pay any [the] required fee.

SECTION 8. Substantially the same as introduced version.

SECTION 9. Substantially the same as introduced version.

SECTION 10. Substantially the same as introduced version.

SECTION 11. Section 1102.203, Occupations Code, is amended to read as follows:

Sec. 1102.203. RENEWAL OF LICENSE; INFORMATION REQUIRED. (a) A person may renew an unexpired license by paying the required renewal fee to the commission before the expiration date of the license and providing proof of financial responsibility [liability insurance] as required by Section 1102.114 [1102.114(3)].

No equivalent provision.

(a-1) A person whose license has been expired for 90 days or less may renew the license by paying to the commission a fee equal to 1-1/2 times the required renewal fee. If a license has been expired for more than 90 days but less than six months, the person

person may renew the license by paying to the commission a fee equal to two times the required renewal fee.

(c) If the person's license has been expired for six months or longer [expires], the person may not renew the license. The person may obtain a new license by submitting to reexamination, if required, and complying with the requirements and procedures for obtaining an original license.

(d) Each applicant for the renewal of a license must disclose in the license application whether the applicant has:

(1) entered a plea of guilty or nolo contendere to a felony; or

(2) been convicted of a felony and the time for appeal has elapsed or the judgment or conviction has been affirmed on appeal.

(e) The disclosure under Subsection (d) must be provided even if an order has granted community supervision suspending the imposition of the sentence.

SECTION 13. Section 1102.402(c), Occupations Code, is amended.

SECTION 14. Section 1102.403(b), Occupations Code, is amended.

No equivalent provision.

SECTION 15. The following provisions of Chapter 1102, Occupations Code, are repealed:

- (1) Section 1102.252;
- (2) Section 1102.253; and
- (3) Subchapter H.

SECTION 16. (a) In this section:

- (1) "Commission" means the Texas Real Estate Commission.
- (2) "Eligible inspector" means a person who holds a real estate or professional

may renew the license by paying to the commission a fee equal to two times the required renewal fee.

(b) If the person's license has been expired for six months or longer [expires], the person may not renew the license. The person may obtain a new license by submitting to reexamination, if required, and complying with the requirements and procedures for obtaining an original license.

(c) Each applicant for renewal of a license must disclose to the commission whether the applicant has:

(1) entered a plea of guilty or nolo contendere to a felony; or

(2) been convicted of a felony and the time for appeal has elapsed or the judgment or conviction has been affirmed on appeal.

(d) The disclosure under Subsection (c) must be provided even if an order has granted community supervision suspending the imposition of the sentence.

SECTION 12. Substantially the same as introduced version.

SECTION 13. Substantially the same as introduced version.

SECTION 14. Section 1101.603(d), Occupations Code, is amended to read as follows:

(d) An administrative penalty collected under Subchapter O for a violation by a person who is not licensed under this chapter or Chapter 1102 shall be deposited to the credit of the trust account ~~[or the real estate inspection recovery fund, as determined by the commission].~~

SECTION 15. Substantially the same as introduced version.

SECTION 16. (a) In this section:

- (1) "Commission" means the Texas Real Estate Commission.
- (2) "Eligible inspector" means a person who holds a real estate inspector license or

inspector license under Chapter 1102, Occupation Code, as of September 1, 2013.

(b) Not later than August 31, 2015, the commission shall transfer not less than \$300,000 from the real estate inspection recovery fund to the general revenue fund.

(c) **Not later than August 31, 2017**, the commission shall determine the remaining liability of the real estate inspection recovery fund based on any pending claim for payment under former Subchapter H, Chapter 1102, Occupations Code.

(d) The commission shall refund to each eligible inspector who also holds a license as of the date of the refund any amount in excess of the remaining liability of the real estate inspection recovery fund at a rate not to exceed \$100.

(e) Once all refunds to the inspectors are paid and all claims for payment from the real estate inspection recovery fund are paid, the commission shall transfer any remaining money to the general revenue fund.

(f) Any money transferred to the general revenue fund under this section offsets any amounts due from the commission to the general revenue fund.

SECTION 17. (a) The changes in law made by this Act apply only to an application for a license submitted to the Texas Real Estate Commission on or after September 1, 2013. An application for a license submitted before that date is governed by the law in effect on the date the application was submitted, and the former law is continued in effect for that purpose.

No equivalent provision.

professional inspector license under Chapter 1102, Occupations Code, as of September 1, 2013.

(b) Not later than August 31, 2015, the commission shall transfer not less than \$300,000 from the real estate inspection recovery fund to the general revenue fund.

(c) **Not later than November 1, 2017**, the commission shall determine the remaining liability of the real estate inspection recovery fund based on any pending claims for payment under former Subchapter H, Chapter 1102, Occupations Code.

(d) After determining the remaining liability under Subsection (c) of this section, the commission shall refund to each eligible inspector a portion of the amount in excess of the remaining liability of the real estate inspection recovery fund, if the eligible inspector holds a license issued under Chapter 1102, Occupations Code, as of the date of the refund. A refund under this subsection may not exceed \$100 per person.

(e) The commission shall transfer any money remaining in the real estate inspection recovery fund to the general revenue fund after paying all claims for payment from the fund and issuing refunds under Subsection (d) of this section.

(f) Any money transferred to the general revenue fund under this section shall offset any amount required to be remitted to the general revenue fund by the commission.

SECTION 17. (a) Sections 1102.1051 and 1102.1141, Occupations Code, as added by this Act, and Sections 1102.109, 1102.110, 1102.111, 1102.114, 1102.153, 1102.155, and 1102.402, Occupations Code, as amended by this Act, apply only to an application for an inspector license submitted to the Texas Real Estate Commission on or after the effective date of this Act. An application for a license submitted before that date is governed by the law in effect on the date the application was submitted, and the former law is continued in effect for that purpose.

(b) Sections 1102.203 and 1102.402, Occupations Code, as amended by this Act, and Sections 1102.1051 and 1102.1141, Occupations Code, as added by this Act, apply only to the renewal of an inspector

license that expires on or after the effective date of this Act. A license that expires before that date is governed by the law in effect on the date the license expires, and the former law is continued in effect for that purpose.

No equivalent provision.

(c) Sections 1102.403 and 1101.603, Occupations Code, as amended by this Act, apply only to an administrative penalty that is collected on or after the effective date of this Act. An administrative penalty that is collected before the effective date of this Act is governed by the law in effect on the date the administrative penalty was collected, and the former law is continued in effect for that purpose.

(b) The changes in law made by this Act apply only to a claim for payment from the real estate inspection recovery fund based on a cause of action that accrues on or after the effective date of this Act. A claim for payment based on a cause of action that accrues before the effective date of this Act is governed by the law in effect when the cause of action accrued, and the former law is continued in effect for that purpose.

No equivalent provision.

(c) A claim for payment from the real estate inspection recovery fund under former Section 1102.355, Occupations Code, for a cause of action that accrues before September 1, 2013, must be filed before September 1, 2017.

(d) A claim for payment from the real estate inspection recovery fund under former Section 1102.355, Occupations Code, for a cause of action that accrues before September 1, 2013, must be filed before September 1, 2017.

SECTION 18. This Act takes effect September 1, 2013.

SECTION 18. Same as introduced version.