

## **BILL ANALYSIS**

S.B. 1296  
By: Taylor  
Licensing & Administrative Procedures  
Committee Report (Unamended)

### **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.

S.B. 1296 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**

S.B. 1296 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.

S.B. 1296 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 320 additional classroom hours, of core real estate inspection courses.

S.B. 1296 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 by these provisions.

S.B. 1296 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.

S.B. 1296 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.

S.B. 1296 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.

S.B. 1296 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.

S.B. 1296 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.

S.B. 1296 repeals provisions relating to the payment of a license fee by cash, check, cashier's check, or money order and to TREC's annual review of certain fee amounts.

S.B. 1296 repeals the following provisions of the Occupations Code:

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

**EFFECTIVE DATE**

September 1, 2013.