

Bill Summary - SB 914

SECTION 1. Amends §1101.006, Occupations Code, to continue the Texas Real Estate Commission (TREC or the commission), Chapters 1101, 1102, and 1303 of the Occupations Code, Chapter 221, Property Code, and Chapter until September 1, 2019.

SECTION 2. Amends Subchapter A, Chapter 1101, Occupations Code, by adding a §1101.007 which requires the Texas Real Estate Commission (commission) to comply with and implement the management action recommendations regarding the commission adopted by the Sunset Advisory Commission on January 10, 2007, as result of its review of the commission and report to the Sunset Advisory Commission not later than November 1, 2008, the information the Sunset Advisory Commission requires regarding the commission's implementation of the recommendations.

SECTION 3. Amends §1101.53 to establish that a person may not be a member of the commission or commission employee if they or their spouse are also an officer, employee, or paid consultant of a Texas trade association.

SECTION 4. Amends §1101.057(a) to provide a procedure for removal of a commission member who is ineligible for membership.

SECTION 5. Adds §1101.059 to detail specific training required for a new commission member, to include information regarding the law, its programs and functions, rules and budget, results of most recent formal audits, open meetings laws, and ethics.

SECTION 6. Amends §1101.101(a) to require the commission to appoint an administrator rather than permit the commission to appoint an administrator.

SECTION 7. Amends §1101.102 to require the commission to develop policies that separate the policymaking responsibilities of the commission and the management responsibilities of the administrator and staff.

SECTION 8. Amends §1101.151(b), Occupations Code, to remove language authorizing the commission to authorize specific employees to conduct hearings and issue final decisions in contested cases.

SECTION 9. Amends §1101.152(a) to require the commission to adopt rules that set reasonable fees for, among other things, applications, renewals, transcript evaluations, approval of educational programs and instructors, and criminal background checks in connection with the annual renewal of a license.

SECTION 10. Adds §1101.158, §1101.159, and § 1101.160 to authorize the commission to appoint advisory committees to perform advisory functions assigned by the commission. The advisory committees may hold meetings by telephone or video conference. The commission is required to implement a technology policy to improve the commission's functionality and to ensure that the public is able to interact with the commission on the Internet. The commission is required to develop and implement a policy to encourage the use of negotiated rulemaking and alternative dispute resolution to assist in the resolution of internal and external disputes and to designate a trained person to manage and coordinate the implementation of the policy.

SECTION 11. Amends §1101.201(a) to delete a provision regarding maintenance of complaints that are filed with and resolved by the commission.

SECTION 12. Amends §1101.203 to require the commission to maintain specific information relating to the parties, the subject matter, and the disposition of complaints filed with the commission. Additionally, the commission is required to make information available describing the

complaint investigation and resolution procedures. The commission is required to periodically notify persons of the status of the complaint.

SECTION 13. Amends §1101.204 to authorize commission staff to open complaints and conduct investigations of suspected violations of the laws subject to TREC's jurisdiction. The bill requires the commission to prioritize complaints using a risk-based analysis, giving highest priority to complaints filed by consumers.

SECTION 14. Amends §1101.301 to provide that, in establishing accreditation standards for proprietary schools or programs, the commission shall require a school to establish that at least 55% of the graduates have passed the licensing exam the first time the exam is taken before the school can renew its accreditation for an additional two year period.

SECTION 15. Amends §1101.303 to include a cite to §1102.205 to clarify that the commission may authorize a continuing education provider or course of study accreditation for a two year period under both chapters 1101 and 1102.

SECTION 16. Adds §1101.304 and §1101.305 to require the commission to adopt rules to collect and publish data relating to exam passage rates for graduates of the accredited schools. The rules must provide the method by which to calculate, collect, and post on the commission's website exam passage rates for each school. A program or school that a person is a 'graduate' of is the program or school last attended before taking the exam. The commission may appoint a committee to review the performance of an educational program, report findings, and temporarily suspend a program. The committee is not authorized to revoke the program's accreditation, but the commission may temporarily suspend the accreditation of a school or program in the same manner as a license issued under Subchapter N of Chapter 1101.

SECTION 17. Amends §1101.364(b) to establish that a person is entitled to hearing on denial of license subject to Chapter 2001, Government Code, the Administrative Procedure Act (the APA).

SECTION 18. Amends the heading to §1101.451 to clarify that the section applies to both license expiration and renewal.

SECTION 19. Amends §1101.451 to provide that a person whose license has been expired for 90 days or less may 'late renew' by paying a fee of 1.5 times the required renewal fee. If the license has been expired for more than 90 days –but less than one year-- the renewal fee paid is 2 times the renewal fee. For those persons whose license has been expired for one year or more, the person may not 'late renew', but must retake the examination and comply with all other requirements for obtaining an original license.

SECTION 20. A person who takes an online mandatory continuing education course may not complete the course in less than 24 hours.

SECTION 21. Amends §1101.457(b) to clarify that a late renewal fee described in §1101.451 is in addition to any other fee that the commission may charge a licensee for late completion of mandatory continuing education requirements.

SECTION 22. Amends §1101.657(a) to provide that a person is entitled to a hearing conducted by the State Office of Administrative Hearings (SOAH) subject to the APA if the commission proposes to deny, revoke, or suspend the person's license or registration or assess an administrative penalty.

SECTION 23. Amends §1101.658(a) to provide conforming language regarding a person's right

to appeal a decision under Subchapter N.

SECTION 24. Amends subchapter N by adding §§1101.659, 1101.660, 1101.661, and 1101.662 to authorize the commission to order a person regulated by the commission to pay a refund to a consumer in addition to any other penalty or sanction. The amount of the refund may not exceed the amount that the consumer actually paid to the person for a service or accommodation. The commission may not order damages or estimate harm in a refund order. The commission must adopt rules setting forth procedures for informal disposition of contested cases. The rules must provide that the licensee or registrant must have an opportunity to be heard, and must establish that a public member of the commission and at least two staff members of the commission with experience in the regulatory area which is the subject of the proceeding must be present at the meeting. The commission may enter a final order in a disciplinary proceeding or in a proceeding assessing an administrative penalty even though the person's license has expired. The bill provides a procedure for the temporary suspension of a license or registration by giving the presiding office of the commission the authority to appoint a disciplinary panel consisting of three commission members to determine whether a license should be temporarily suspended if the panel believes that the licensee's continued practice poses a threat to public welfare. Under certain limited circumstances, a license may be suspended without notice or hearing on the complaint. The bill permits the disciplinary panel to meet by telephone conference call if immediate action is necessary and at least one member of the panel is unable to attend the meeting.

SECTION 25. Amends §1101.701 to permit the commission to impose an administrative penalty and to impose other disciplinary action –such as suspension or revocation-- in a single enforcement procedure.

SECTION 26. Amends §1101.702 to increase the amount of an administrative penalty to \$5,000 per violation. The commission is required to adopt a schedule of administrative penalties based on certain enumerated criteria to ensure that the penalty is appropriate to the violation.

SECTION 27. Amends the heading of §1101.703 to provide for Notice of Violation and Penalty.

SECTION 28. Amends §1101.703(a) to authorize the administrator to issue a notice of violation after investigation reveals that a violation occurred. The notice must include a brief summary of the alleged violation and the administrator's recommendation of disciplinary action, which may include any combination of disciplinary action and administrative penalty. The person would have a right to a hearing to contest the violation and/or penalty.

SECTION 29. Amends §1101.704 to provide that if the person fails to timely respond in writing to the administrator's notice of violation, the commission is required to approve the administrator's determination by default and order the recommended sanction.

SECTION 30. Amends the heading of §1101.705.

SECTION 31. Amends §1101.705 to authorize a SOAH administrative law judge to conduct commission hearings and issues findings of fact, conclusions of law, and proposals for decision. The notice of the commission's order regarding whether a violation has occurred must include a statement that the person has a right to judicial review of the order.

SECTION 32. Amends §1101.707 to provide a procedure by which a person may appeal a commission order by filing a petition for judicial review and a method by which to stay enforcement of the penalty.

SECTION 33. Amends Subchapter 0 to add §1101.7085 to permit a court to uphold or reduce the amount of an administrative penalty if the court sustains the commission's order.

SECTION 34. Amends §1101.709 regarding calculation of the penalty and interest and release of a supersedeas bond.

SECTION 35. Amends Subchapter 0 by adding §1101.710 to clarify that a hearing under the subchapter is subject to the Administrative Procedure Act.

SECTION 36. Amends Subchapter p by adding §1101.759 to authorize the commission to issue a cease and desist order after notice and opportunity for a hearing under certain circumstances.

SECTION 37. Amends §1102.051(a) to make the Real Estate Inspector Committee an advisory committee appointed by the commission.

SECTION 38. Amends §1102.114 to require an applicant for a license under chapter 1102 to provide proof that the applicant carries liability insurance with a minimum limit of \$100,000 per occurrence.

SECTION 39. Amends §1102.203 to require a person renewing an unexpired license under chapter 1102 to provide proof that the applicant carries liability insurance with a minimum limit of \$100,000 per occurrence.

SECTION 40. Amends §1102.205 to authorize the commission to approve a continuing education program for licensed inspectors and clarify that an inspector licensee must complete at least 16 classroom hours of core or continuing education real estate inspection courses.

SECTION 41. Amends §1102.251, Occupations to remove statutory caps on the reasonable and necessary fees the commission is required to charge and collect to cover the cost of administering this chapter for filing certain inspector license applications, renewals, license examination, request to change a place of business or replace a lost or destroyed license, and filing a request for issuance of a license due to a change of name, return to active status, or change in sponsoring professional inspector.

SECTION 42. Amends the heading of Subchapter I, Chapter 1102 to add disciplinary proceedings to the title.

SECTION 43. Amends subchapter I, Chapter 1102 to provide a procedure for the temporary suspension of a license by giving the presiding office of the commission the authority to appoint a disciplinary panel consisting of three commission members to determine whether a license should be temporarily suspended if the panel believes that the licensee's continued practice poses a threat to public welfare. Under certain limited circumstances, a license may be suspended without notice or hearing on the complaint. The bill permits the disciplinary panel to meet by telephone conference call if immediate action is necessary and at least one member of the panel is unable to attend the meeting.

SECTION 44. Amends §1103.101(a) to clarify that the TREC administrator serves as the Texas Appraiser Licensing and Certification Board (TALCB) commissioner.

SECTION 45. Amends §1103.103(a) to require the TALCB board to determine the salaries of the officers and employees of the board.

SECTION 46. Amends §1103.104 to authorize the TREC administrator to, among other things, manage TALCB staff and employees.

SECTION 47. Amends §1103.504 to require the attorney general to provide public interest

representation in all proceedings before SOAH.

SECTION 48. Amends §1103.508 to authorize a SOAH administrative law judge to conduct TALCB board hearings and issues findings of fact, conclusions of law, and proposals for decision.

SECTION 49. Amends §1103.510 to authorize a SOAH administrative law judge to conduct a default hearing in a case involving an appraiser or appraiser trainee.

SECTION 50. Amends §1103.512(c) regarding hearings before a SOAH administrative law judge.

SECTION 51. Amends §1103.513 regarding the procedure for hearings before a SOAH administrative law judge.

SECTION 52. Amends §1103.516 regarding the procedure for hearings before a SOAH administrative law judge.

SECTION 53. Amends §1103.518 regarding the procedure for hearings before a SOAH administrative law judge.

SECTION 54. Amends §1103.520 regarding the procedure for hearings before a SOAH administrative law judge.

SECTION 55. Amends §1103.521 regarding the procedure for hearings before a SOAH administrative law judge.

SECTION 56. Amends §1303.052(a) and (b), to delete statutory caps on the fees a residential service company must pay for filing an license application, an amendment to the application, or for filing an annual report and any other filing required by this chapter.

SECTION 57. Amends Subchapter H, Chapter 1303, Occupations Code, the Residential Services Company Act (RSCA), to authorize the commission to impose an administrative penalty against a person who violates the RSCA or rules promulgated under Chapter 1303. The maximum penalty amount may not exceed \$5,000 per violation. The bill requires the commission to adopt a schedule of administrative penalties based on certain criteria, including, among other things, the seriousness of the violation, the harm caused, the history of previous violations, and the amount necessary to deter future violations.

SECTION 58. Amends Subchapter C, Chapter 221, Property Code, to provide a procedure for the temporary suspension of a license by giving the presiding office of the commission the authority to appoint a disciplinary panel consisting of three commission members to determine whether a license should be temporarily suspended if the panel believes that the licensee's continued practice poses a threat to public welfare. Under certain limited circumstances, a license may be suspended without notice or hearing on the complaint. The bill permits the disciplinary panel to meet by telephone conference call if immediate action is necessary and at least one member of the panel is unable to attend the meeting.

SECTION 59. Repeals various provisions in Chapter 1101 regarding the filing of complaints and hearings; Chapter 1102 regarding appointments to the Texas Real Estate Inspector Committee and membership requirements and committee powers and duties; and Chapter 1103 regarding hearings.

SECTION 60. Requires the commission to adopt rules and policies implementing the provisions of the bill by January 1, 2008.

SECTION 61. (a) Provides that the changes in law made by this Act to §1101.053, Occupations Code, regarding the prohibitions on or qualifications of members of the Texas Real Estate

Commission do not affect the entitlement of a member serving on the commission immediately before September 1, 2007, to continue to serve and function as a member of the commission for the remainder of the member's term.

(b) Provides that the changes in law made by this Act regarding the filing, investigation, or resolution of a complaint under Chapter 1101, Occupations Code, as amended by this Act, applies only to a complaint filed with the Texas Real Estate Commission on or after the effective date of this Act.

(c) Provides that the change in law made by this Act regarding the conduct that is grounds for imposition of a disciplinary sanction, including a refund, temporary license suspension, or cease and desist order, applies only to conduct that occurs on or after the effective date of this Act.

(d) Provides that the changes in law made by this Act regarding the procedure for an administrative penalty applies only to a proceeding commenced on or after the effective date of this Act.

(e) Provides that the change in law made by this Act regarding the renewal of an expired license applies only to a license that expires on or after the effective date of this Act.

(f) Provides that the change in law made by this Act regarding accreditation standards for educational programs under Chapter 1101, Occupations Code, as amended by this Act, applies only to an accreditation granted or renewed on or after September 1, 2009. Provides that an educational program renewing an accreditation on or after the effective date of this Act but before September 1, 2009, should strive to meet the new accreditation standards under Chapter 1101, Occupations Code, as amended by this Act, but an accreditation granted or renewed before September 1, 2009, is governed by the law in effect on the date the accreditation expired, and that former law is continued in effect for that purpose.

(g) Provides that the change in law made by this Act to the authority of the Texas Real Estate Inspector Committee to develop and recommend rules under Chapter 1102, Occupations Code, as amended by this Act, applies only to a rule proposed for adoption on or after the effective date of this Act.

SECTION 62. Provides the effective date of the bill as September 1, 2007.