

SUBJECT: Amending practices of Texas Appraiser Licensing and Certification Board

COMMITTEE: Licensing and Administrative Procedures — favorable, without amendment

VOTE: 6 ayes — Smith, Gutierrez, Goldman, Guillen, Kuempel, D. Miller

0 nays

3 absent — Geren, Miles, S. Thompson

SENATE VOTE: On final passage, April 21 — 28-2 (Hall, Huffines)

WITNESSES: (*On House companion bill, HB 2850*)

For — Joseph Woller, Foundation Appraisers Coalition of Texas;  
(*Registered, but did not testify*: Amy Ables and Glenn Garoon,  
Foundation Appraisers Coalition of Texas; Chris Farr)

Against — (*Registered, but did not testify*: Kelley Shannon, Freedom of  
Information Foundation of Texas)

On — (*Registered, but did not testify*: Douglas Oldmixon; Texas  
Appraiser Licensing and Certification Board)

BACKGROUND: Occupations Code, ch. 1103, the Texas Appraiser Licensing and  
Certification Act, establishes the Texas Appraiser Licensing and  
Certification Board as an independent subdivision of the Texas Real  
Estate Commission.

By rule, the board regulates real estate appraiser certificates and licenses,  
continuing education, and professional conduct.

DIGEST: SB 1007 would make changes to the structure and practices of the Texas  
Appraiser Licensing and Certification Board. The bill would adjust the  
board's functions, including changing board terms, advisory committee  
composition, real estate appraiser continuing education requirements, and

various aspects of how complaints and disciplinary actions against real estate appraisers would be handled. The bill also would place the board under Sunset review in 2019.

**Texas Appraiser Licensing and Certification Board members.** The bill would extend Texas Appraiser Licensing and Certification Board member appointment terms from two-year terms to six-year terms. The executive committee would be the governor-appointed presiding officer, assistant presiding officer, and secretary. New members of the board would be required to complete an initial training program before participating in certain board activities.

The bill would provide that if the commissioner of the Texas Appraiser Licensing and Certification Board had knowledge that a potential ground for removal of an appointed board member existed, the commissioner would notify the presiding officer so that person could notify the governor and attorney general. If the potential ground for removal involved the presiding officer, the commissioner would have to notify next highest ranking board member and that person would notify the governor and attorney general.

The bill would increase the frequency with which the board would be required to send a roster of persons certified or licensed under the Texas Appraiser Licensing and Certification Act to the Appraisal Subcommittee of the Federal Financial Institutions Examination Council from at least annually to at least weekly.

**Real estate appraiser education.** The bill would allow board members and staff to give presentations to real estate license holders and award continuing education credit for such presentations. Board members and staff could not be compensated for the presentations.

In addition to continuing education, the bill would include requirements for approval of continuing education providers, courses and instructors in the board's rulemaking authority.

**Appraisal Management Company Advisory Committee.** The bill would expand the membership of the Appraisal Management Company Advisory Committee, which provides recommendations to the board regarding regulation of appraisal management companies, from three people to five people. The bill would increase the number of appointees named by the governor from two to four, including an additional member designated as a controlling person of a registered appraisal management company, and an additional public member with recognized business ability. The governor would be required to appoint the new members within 60 days of the effective date of the bill.

**Real estate appraiser certificate or license application.** The bill would replace the current eligibility requirements for a real estate appraisal license with an application process for a real estate appraiser certificate or license or for renewal of a certificate or license.

**Applicant criminal history information.** An applicant would have to disclose whether the applicant had been convicted of a felony or entered a guilty plea, regardless of whether a court order granted community supervision. The bill would allow the board, by rule, to require an applicant to submit a complete and legible set of fingerprints on a form prescribed by the board to either the board or to the Department of Public Safety (DPS) for the purpose of obtaining criminal history record information from DPS or the Federal Bureau of Investigation.

The bill would provide instruction for conducting a criminal history check and would allow the board to enter into an agreement with DPS or other federally authorized entity to administer a required criminal history check. DPS or other federally authorized entity would be allowed to collect from each applicant the costs incurred in conducting the criminal history check.

**Experience required for real estate appraiser examination.** The bill would require an applicant for the examination to fulfill the applicable experience requirement for a certificate or license before taking the examination.

**Disciplinary proceedings.** The bill would make various changes to how complaints against real estate appraisals would be handled.

*Statute of limitation on complaints.* The bill would establish a four-year statute of limitations for a complaint investigation against a real estate appraiser. If the board determined that an allegation or formal complaint was inappropriate or without merit, the board or the commissioner of the board would be required to dismiss the complaint and not take further action.

*Peer investigative committee.* The bill would change the composition of the peer investigative committee, which reviews and determines the facts of a complaint and prepares a report regarding the complaint to the board, from three certified or licensed appraisers to two or more.

Under the bill, a real estate appraiser who was the subject of the complaint could participate in a voluntary discussion of the facts and circumstances of the alleged violation.

*Settlement negotiation.* Under current law, the board may negotiate a settlement and enter into a consent order with an appraiser who was the subject of a complaint. The bill would disqualify a board member who participated in negotiating a consent order from participating in the adjudication of a contested case that resulted from the negotiation.

An appraiser could be disciplined, rather than prosecuted, for failure to comply with a consent agreement.

*Confidentiality of investigation material.* The bill would allow the board's investigative files to remain confidential during an ongoing investigation, but would make them subject to the Public Information Act once the investigation was complete and any final action was taken.

*Failure to appear at a contested case hearing.* The bill would allow an administrative law judge to award reasonable costs to the board if the real estate appraiser who was the subject of a complaint failed to appear for a

hearing to contest the alleged violation.

*Administrative penalty.* The bill would dedicate administrative penalties imposed by the board for violations to a restricted fund for educational programs or studies.

*Waiting period for license.* The bill would expand the two-year waiting period currently applied to a reapplication after license revocation or a license surrender to also apply to a denial of a license after the opportunity for a contested case hearing.

*Cease and desist order.* The bill would grant the board cease-and-desist authority over a person engaged in unlicensed activity. The board could issue this order after it provided notice and an opportunity for a hearing.

**Other provisions.** The bill would include an appraiser trainee as an occupation for which the board was authorized to adopt certain rules regarding professional conduct.

Under the bill, certified real estate appraisers would be allowed to conduct reviews of appraisal reports on Texas properties without Texas credentials as long as no opinion of value was offered.

**Sunset review.** The bill would add the Texas Appraiser Licensing and Certification Board to the Sunset review schedule in 2019.

**Repealers.** The bill would repeal the following sections of the Occupations Code:

- Sec. 1103.005, providing that a person is not required to be licensed as a real estate broker or salesperson under Chapter 1101 to appraise real property in this state if the person is certified or licensed, approved as an appraiser trainee, or certified or licensed as a real estate appraiser by another state;
- Sec. 1103.2015, requiring an applicant for a license or certificate to provide the board with a current mailing address, telephone

- number, and e-mail address, if available;
- Sec. 1103.457, allowing the appraiser or appraiser trainee who is the subject of a complaint an opportunity to appear before the board or an agent of the board for a voluntary, informal discussion of the facts and circumstances of the alleged violation.

The bill would take effect September 1, 2015.

**SUPPORTERS  
SAY:**

SB 1007 would make necessary changes to the structure and functions of the Texas Appraiser Licensing and Certification Board to ensure it has the tools to comply with federal oversight requirements.

The bill would allow the board to implement fingerprint-based criminal history checks as part of the application for a real estate appraiser license if it becomes a federal requirement. While the background check would be federally required, the board would still have discretion on the determination of an application as long as the applicant did not have a felony within the past five years.

A background check is a necessary measure to ensure the safety of homeowners, since real estate appraisers must enter properties to conduct appraisals. Homeowners should feel secure knowing that the appraisers are credible and trustworthy.

**OPPONENTS  
SAY:**

SB 1007 would make changes to the Texas Appraiser Licensing and Certification Act that could violate a person's individual liberty and would be overly punitive. The bill would require background checks and felony disclosure when applying for a real estate appraiser license. Background checks could result in qualified people being refused a license based on a person's history that may not have any relevance to the profession. After a person has paid the person's debt to society, that individual should not have to endure a lifelong punishment by a criminal history record that could prevent the individual from obtaining a job in the person's chosen profession.

The bill also would grant the Texas Appraiser Licensing and Certification

Board cease-and-desist authority. Issuing a cease-and-desist order for a violation under this profession could be too punitive.

NOTES:

The House companion bill, HB 2850 by Kuempel, was considered in a public hearing of the House Committee on Licensing and Administrative Procedures on May 4 and left pending.