

By: Alvarado

S.B. No. 2167

A BILL TO BE ENTITLED

AN ACT

relating to the burden of proof in a trial de novo appeal of the appraised value of property.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 42.23, Property Tax Code, is amended by adding subsection (i) to read as follows:

Sec. 42.23. SCOPE OF REVIEW. (a) Review is by trial de novo. The district court shall try all issues of fact and law raised by the pleadings in the manner applicable to civil suits generally.

(b) The court may not admit in evidence the fact of prior action by the appraisal review board or comptroller, except to the extent necessary to establish its jurisdiction.

(c) Any party is entitled to trial by jury on demand.

(d) Each party to an appeal is considered a party seeking affirmative relief for the purpose of discovery regarding expert witnesses under the Texas Rules of Civil Procedure if, on or before the 120th day after the date the appeal is filed, the property owner:

(1) makes a written offer of settlement;

(2) requests alternative dispute resolution; and

(3) designates, in response to an appropriate written discovery request, which cause of action under this chapter is the basis for the appeal.

1 (e) For purposes of Subsection (d), a property owner may
2 designate a cause of action under Section 42.25 or 42.26 as the
3 basis for an appeal, but may not designate a cause of action under
4 both sections as the basis for the appeal. Discovery regarding a
5 cause of action that is not specifically designated by the property
6 owner under Subsection (d) shall be conducted as provided by the
7 Texas Rules of Civil Procedure. A court may not enter an order,
8 including a protective order under Rule 192.6 of the Texas Rules of
9 Civil Procedure, that conflicts with Subsection (d).

10 (f) For purposes of a no-evidence motion for summary
11 judgment filed by a party to an appeal under this chapter, the offer
12 of evidence, including an affidavit or testimony, by any person,
13 including the appraisal district, the property owner, or the
14 owner's agent, that was presented at the hearing on the protest
15 before the appraisal review board constitutes sufficient evidence
16 to deny the motion.

17 (g) For the sole purpose of admitting expert testimony to
18 determine the value of chemical processing property or utility
19 property in an appeal brought under this chapter and for no other
20 purpose under this title, including the rendition of property under
21 Chapter 22, the property is considered to be personal property.

22 (h) Evidence, argument, or other testimony offered at an
23 appraisal review board hearing by a property owner or agent is not
24 admissible in an appeal under this chapter unless:

25 (1) the evidence, argument, or other testimony is
26 offered to demonstrate that there is sufficient evidence to deny a
27 no-evidence motion for summary judgment filed by a party to the

1 appeal or is necessary for the determination of the merits of a
2 motion for summary judgment filed on another ground;

3 (2) the property owner or agent is designated as a
4 witness for purposes of trial and the testimony offered at the
5 appraisal review board hearing is offered for impeachment purposes;
6 or

7 (3) the evidence is the plaintiff's testimony at the
8 appraisal review board hearing as to the value of the property.

9 (i) In a trial de novo appeal brought under this Chapter
10 involving circumstances described in either Section 23.01(e) or
11 41.43(a-3) the burden of proof is on the chief appraiser and the
12 appraisal district to support an increase in the appraised value of
13 property as provided in sections 23.01(e) or 41.43(a-3), whichever
14 is applicable.

15 SECTION 2. Section 23.01(e), Property Tax Code, is amended
16 to read as follows:

17 (e) Notwithstanding any provision of this subchapter to the
18 contrary, if the appraised value of property in a tax year is
19 lowered under Subtitle F, the appraised value of the property as
20 finally determined under that subtitle is considered to be the
21 appraised value of the property for that tax year. In the next tax
22 year in which the property is appraised, the chief appraiser or
23 appraisal review board may not increase the appraised value of the
24 property unless the increase by the chief appraiser is reasonably
25 supported by clear and convincing evidence when all of the reliable
26 and probative evidence in the record is considered as a whole. If
27 the appraised value is finally determined in a protest under

1 Section 41.41(a)(2) or an appeal under Section 42.26, the chief
2 appraiser may satisfy the requirement to reasonably support by
3 clear and convincing evidence an increase in the appraised value of
4 the property in the next tax year in which the property is appraised
5 by presenting evidence showing that the inequality in the appraisal
6 of property has been corrected with regard to the properties that
7 were considered in determining the value of the subject property.
8 The burden of proof is on the chief appraiser to support an increase
9 in the appraised value of property under the circumstances
10 described by this subsection.

11 SECTION 3. EFFECTIVE DATE. This Act takes effect
12 immediately if it receives a vote of two-thirds of all the members
13 elected to each house, as provided by Section 39, Article III, Texas
14 Constitution. If this Act does not receive the vote necessary for
15 immediate effect, this Act takes effect September 1, 2023.