

BILL ANALYSIS

H.B. 3494

By: Otto

Local Government Ways & Means
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Currently, when a property taxpayer feels the appraised value of their property, as assessed by the Central Appraisal District (CAD), does not accurately reflect the property's true and taxable value, they can challenge that appraised value before the Appraisal Review Board (ARB).

If the outcome of the hearing before the ARB does not satisfy the property taxpayer, they can appeal that decision through binding arbitration. However, currently the only information that can be considered in binding arbitration is the value as decided by the ARB and the value the property taxpayer feels is more accurate.

HB 3494 amends the Tax Code to allow the parties to an arbitration proceeding to present any evidence relating to the data or appraisal method used by the appraisal district, and allows the property owner to allege and present evidence to show the appraisal review board failed to comply with law. The bill also allows the property owner to file a complaint with the Board of Tax Professional Examiners to allege the chief appraiser violated a procedural or ethical provision or rule enacted or adopted, provides a process for the review of the allegations, and provides penalties if a violation is proven to exist.

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

SECTION 1: Amends Section 41A.08(b), Tax Code, by adding language which states the parties to an arbitration proceeding under this chapter may represent themselves in the proceeding, adds that a certified public accountant can represent the parties in an arbitration proceeding, and adds that a property owner may present evidence or make arguments in the arbitration proceeding.

SECTION 2: Amends Section 41A.08, Tax Code, by adding Subsections (c) and (d).

Subsection (c) states that in an arbitration hearing under this chapter, any party is entitled to present evidence relating to the data or appraisal method used by the appraisal district in determining the market value or appraised value of the property that is subject to the appeal, regardless of whether or not that evidence was presented to the ARB that determined the protest. It also allows that a property owner is entitled to allege and present evidence to show that the appraisal review board that determined the protest failed to comply with law, rule, or any other substantive or procedural requirement.

Subsection (d) states that if the property owner presented evidence under Subsection (c)(2), the arbitrator shall make a determination whether the ARB failed to comply with the statute, rule, or procedural requirement as alleged by the property owner, and include that determination in the record of the hearing.

SECTION 3: Amends Section 41A.11, Tax Code, to add that a property owner may not appeal an arbitration award under this chapter to the Board of Tax Professional Examiners (BTPE); adds a complaint procedure for the property owner who alleges a chief appraiser violated a procedural or ethical provision or rule enacted or adopted under this title; states the BTPE shall investigate a complaint filed against a chief appraiser, and states the disciplinary action the BTPE may impose on an appraiser if they find that appraiser did violate a procedural or ethical provision or rule enacted or adopted under this title.

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SECTION 4: Amends Section 1151.202, Occupations Code, by adding Subsections (a-1) and (a-2).

(a-1) states what disciplinary actions the BTPE may exercise if a violation of Title 1, Tax Code is found to exist.

(a-2) states that in addition to the disciplinary actions authorized in Subsection (a-1), the board may also issue a written reprimand or require participation in continuing education programs in which the board specifies the courses to be completed and the number of hours required.

SECTION 5: Amends Subchapter E, Chapter 1151, Occupations Code, by adding Section 1151.2021 which says the board by rule shall adopt a schedule of disciplinary sanctions the board may impose under this chapter; states the board must ensure the severity of the sanction imposed is appropriate to the type of violation; states that in determining the appropriate disciplinary action, the board shall consider the number of violations the person is found to have, whether they have been previously disciplined, the seriousness of the violation, the threat to public safety and other mitigating factors.

SECTION 6: Amends Chapter 1151, Occupations Code, by adding Subchapter G, Administrative Penalty.

Sec. 1151.301 grants the board the power to impose an administrative penalty against a person who violates this chapter, a rule adopted under this chapter, or Title 1, Tax Code.

Sec. 1151.302 states the maximum amount of the penalty for each violation is \$1000. It also lists the factors used to determine the amount of penalty (seriousness of violation, history of previous violations, amount necessary to deter future violations, and other matters that justice requires).

Sec. 1151.303 states the board shall, if after investigating a possible violation the board determines a violation has occurred, give written notice of the violation to the person alleged to have committed the violation. Also says the notice must include a brief summary of the alleged violation, state the amount of the proposed administrative penalty, and inform the person of their right to a hearing, the amount of the penalty, or both.

Sec. 1151.304 outlines the process for the penalty to be paid or a hearing requested. States the person has no more than 20 days from the date they received the notice to either: (1) accept the board's determination and proposed penalty; or (2) make a written request for a hearing. If they choose the board's determination, the executive director or their designee by order shall approve the determination and impose the penalty.

Sec. 1151.305 says if the person requests a hearing in a timely manner, the board shall set a hearing, give written notice to the person of the hearing, and designate an examiner to conduct the hearing. The Section says a hearing examiner shall make their findings and promptly issue to the executive director or their designee a proposal for decision as to the occurrence of the violation and any proposed administrative penalty.

Sec. 1151.306 says the executive director, based on the findings of the hearings examiner, by order may determine that a violation has occurred and impose an administrative penalty, or determine a violation did not occur. The board then shall give notice to the person of the executive director's findings. The notice must include separate statements of the findings, the amount of any penalty imposed, and statement of the right of the person to judicial review of the order.

Sec. 1151.307 says that no later than the 30th day after the date on which the order becomes final, the person shall have three options: (1) pay the administrative penalty; (2) pay the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both; or (3) without paying the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty or both.

The section also says that within this 30 day period, a person who decides to file a petition without paying the penalty may stay enforcement of the penalty by paying the penalty to the

court into an escrow account, give the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the order is final, or request the court to stay the enforcement of the penalty by filing with the court a sworn affidavit stating they are financially unable to pay the penalty and are unable to give a supersedeas bond and give a copy of the affidavit to the board by certified mail.

The board has no more than five days after they receive the affidavit to file with the court a contest to the affidavit. The court shall then hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who filed the affidavit has the burden of proving they are financially unable to pay the penalty to give a supersedeas bond.

Sec. 1151.308 states that if the board decides to enforce the penalty, and the person does not pay the penalty, the board may refer the matter to the attorney general for collection.

Sec. 1151.309 states if the court sustains the determination that a violation did occur, they can uphold or reduce the amount of the administrative penalty to be paid. Or, if the court finds a violation did not occur, they shall order that a penalty is not owed.

Sec. 1151.310 states that if, after judicial review, the administrative penalty is reduced or not imposed by the court, the court shall repay to the person the amount they have already paid under Section 1151.307 (a)(2) plus accrued interest; or, if they paid the penalty under Section 1151.307(b)(1)(A) or posted a supersedeas bond, order the board to execute a complete release of the escrowed account or bond; or release the escrow account or bond, as appropriate, after the reduced penalty has been paid from the account or by the person.

This section states the interest to be paid in Sec. 1151.310 is accrued at the rate charged on loans to depository institutions by the New York Federal Reserve Bank. It also states the interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Sec. 1151.311 defines which expenses and costs are "reasonable expenses and costs" the board and the attorney general may have incurred under this chapter. States the board may assess reasonable expenses and costs against a person in an administrative hearing if, as a result of the administrative hearing, an administrative penalty is assessed against the person. Also states the person shall pay expenses and costs assessed under this subsection not later than the 30th day after the date the order is final, and that the board may refer the matter to the attorney general for collection of the expenses and costs. If the attorney general brings action against a person to enforce an administrative penalty assessed under this chapter and the person is found liable for an administrative penalty, the attorney general may recover, on behalf of the attorney general and the board, reasonable expenses and costs.

Sec. 1151.312 States that an administrative procedure under this subchapter is subject to Chapter 2001, Government Code.

SECTION 7: Repeals Section 41A.08(b), Tax Code, as added by Chapter 912, Acts of the 79th Legislature, Regular Session, 2005.

SECTION 8: States that this change in law only applies to a penalty assessed on or after the effective date of this Act. A penalty assessed before that date is governed by the law in effect immediately before that date, and that law is continued for that purpose.

SECTION 9: States the effective date is immediately if the legislation receives a vote of two-thirds of all members elected to each house. If the legislation does not receive that vote total, the Act takes effect September 1, 2007.

EFFECTIVE DATE

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