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et al.

H.B. No. 3494

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the appeal through binding arbitration of a protest of
3 an appraisal review board order, and to related complaints filed by
4 a property owner and disciplinary action by the Board of Tax
5 Professional Examiners; providing penalties.

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

7 SECTION 1. Section 41A.08(b), Tax Code, as added by Chapter
8 372, Acts of the 79th Legislature, Regular Session, 2005, is
9 amended to read as follows:

10 (b) The parties to an arbitration proceeding under this
11 chapter may represent themselves or be represented in the
12 proceeding by an attorney, certified public accountant, [~~or by a~~]
13 property tax consultant, real estate appraiser, or real estate
14 broker [~~acting under power of attorney~~]. An employee of the
15 appraisal district may represent the appraisal district in the
16 arbitration proceeding. The property owner who is a party to the
17 arbitration proceeding may present evidence or make arguments in
18 the proceeding. A person other than the property owner may not
19 serve as a party representative, present evidence, or make
20 arguments in an arbitration proceeding under this chapter unless
21 the person:

- 22 (1) is an employee of the appraisal district;
23 (2) is a licensed attorney in this state;
24 (3) is licensed as a real estate broker or salesperson

1 under Chapter 1101, Occupations Code, or [~~is~~] licensed or certified
2 as a real estate appraiser under Chapter 1103, Occupations Code;
3 [~~or~~]

4 (4) is a property tax consultant registered under
5 Chapter 1152, Occupations Code; or

6 (5) is certified as a certified public accountant
7 under Chapter 901, Occupations Code.

8 SECTION 2. Section 41A.08, Tax Code, is amended by adding
9 Subsections (c) and (d) to read as follows:

10 (c) In an arbitration hearing under this chapter:

11 (1) any party is entitled to present evidence relating
12 to the data or appraisal method used by the appraisal district in
13 determining the market or appraised value of the property that is
14 the subject of the appeal, regardless of whether that evidence was
15 presented to the appraisal review board that determined the
16 protest; and

17 (2) the property owner is entitled to allege and
18 present evidence to show that the appraisal review board that
19 determined the protest failed to comply with:

20 (A) a provision of Subchapter C, Chapter 6, or
21 another law of this state applicable to the board;

22 (B) a rule adopted by the comptroller applicable
23 to the board or the hearing conducted by the board; or

24 (C) any other substantive or procedural
25 requirement applicable to the hearing conducted by the board.

26 (d) If the property owner presents evidence under
27 Subsection (c)(2), the arbitrator shall:

1 (1) make a determination whether the appraisal review
2 board failed to comply with the statute, rule, or procedural
3 requirement as alleged by the property owner; and

4 (2) include that determination in the record of the
5 hearing.

6 SECTION 3. Section 41A.11, Tax Code, is amended to read as
7 follows:

8 Sec. 41A.11. POST APPEAL ADMINISTRATIVE AND COMPLAINT
9 PROCEDURES; DISCIPLINARY ACTION. (a) An arbitration award under
10 this chapter is considered to be a final determination of an appeal
11 for purposes of Subchapter C, Chapter 42.

12 (b) A property owner may not appeal an arbitration award
13 under this chapter to the Board of Tax Professional Examiners.

14 (c) A property owner who alleges that a chief appraiser
15 violated a procedural or ethical provision or rule enacted or
16 adopted under this title may file a complaint with the Board of Tax
17 Professional Examiners under Chapter 1151, Occupations Code.

18 (d) The board shall investigate a complaint filed against a
19 chief appraiser under Subsection (c) and may impose any
20 disciplinary action authorized under Section 1151.202, Occupations
21 Code, for a violation of this title.

22 SECTION 4. Section 1151.202, Occupations Code, is amended
23 by adding Subsections (a-1) and (a-2) to read as follows:

24 (a-1) For a violation of Title 1, Tax Code, the board may:

25 (1) deny, suspend, or revoke a registration of a
26 person;

27 (2) place on probation a person whose registration has

1 been suspended;

2 (3) administer a public reprimand of a person for a
3 violation by the person;

4 (4) stipulate periodic board review of the person;

5 (5) require the person to successfully complete
6 additional continuing education; or

7 (6) assess an administrative penalty under Subchapter
8 G.

9 (a-2) In addition to any disciplinary action authorized by
10 Subsection (a-1) for a violation of Title 1, Tax Code, the board may
11 issue a written reprimand to the registration holder or require the
12 holder to participate in continuing education programs in which the
13 board specifies the courses to be completed and the number of hours
14 required.

15 SECTION 5. Subchapter E, Chapter 1151, Occupations Code, is
16 amended by adding Section 1151.2021 to read as follows:

17 Sec. 1151.2021. SCHEDULE OF SANCTIONS. (a) The board by
18 rule shall adopt a schedule of the disciplinary sanctions that the
19 board may impose under this chapter. In adopting the schedule of
20 sanctions, the board shall ensure that the severity of the sanction
21 imposed is appropriate to the type of violation or conduct that is
22 the basis for disciplinary action.

23 (b) In determining the appropriate disciplinary action,
24 including the amount of any administrative penalty to assess, the
25 board shall consider:

26 (1) whether the person is being disciplined for
27 multiple violations of either this chapter or Title 1, Tax Code, or

1 a rule or order adopted under this chapter;

2 (2) whether the person has previously been the subject
3 of disciplinary action by the board and has previously complied
4 with board rules and this chapter;

5 (3) the seriousness of the violation;

6 (4) the threat to public safety; and

7 (5) any mitigating factors.

8 SECTION 6. Chapter 1151, Occupations Code, is amended by
9 adding Subchapter G to read as follows:

10 SUBCHAPTER G. ADMINISTRATIVE PENALTY

11 Sec. 1151.301. IMPOSITION OF PENALTY. The board may impose
12 an administrative penalty against a person who violates this
13 chapter, a rule adopted under this chapter, or Title 1, Tax Code.

14 Sec. 1151.302. AMOUNT OF PENALTY. (a) The amount of the
15 administrative penalty may not exceed \$1,000 for each violation.
16 Each day of a continuing violation is a separate violation.

17 (b) The amount of the penalty shall be based on:

18 (1) the seriousness of the violation;

19 (2) the history of previous violations;

20 (3) the amount necessary to deter a future violation;

21 (4) efforts made to correct the violation; and

22 (5) any other matter that justice may require.

23 Sec. 1151.303. NOTICE OF VIOLATION AND PENALTY. (a) If,
24 after investigating a possible violation and the facts surrounding
25 that possible violation, the board determines that a violation
26 occurred, the board shall give written notice of the violation to
27 the person alleged to have committed the violation.

1 (b) The notice must:

2 (1) include a brief summary of the alleged violation;

3 (2) state the amount of the proposed administrative
4 penalty; and

5 (3) inform the person of the person's right to a
6 hearing on the occurrence of the violation, the amount of the
7 penalty, or both.

8 Sec. 1151.304. PENALTY TO BE PAID OR HEARING REQUESTED. (a)
9 Not later than the 20th day after the date the person receives the
10 notice, the person may:

11 (1) accept the board's determination, including the
12 proposed administrative penalty; or

13 (2) make a written request for a hearing on that
14 determination.

15 (b) If the person accepts the board's determination, the
16 executive director or that executive director's designee by order
17 shall approve the determination and impose the proposed penalty.

18 Sec. 1151.305. HEARING. (a) If the person timely requests
19 a hearing, the board shall:

20 (1) set a hearing;

21 (2) give written notice of the hearing to the person;
22 and

23 (3) designate a hearings examiner to conduct the
24 hearing.

25 (b) The hearings examiner shall make findings of fact and
26 conclusions of law and promptly issue to the executive director or
27 that executive director's designee a proposal for decision as to

1 the occurrence of the violation and the amount of any proposed
2 administrative penalty.

3 Sec. 1151.306. DECISION BY EXECUTIVE DIRECTOR. (a) Based
4 on the findings of fact and conclusions of law and the
5 recommendations of the hearings examiner, the executive director or
6 the executive director's designee by order may determine that:

7 (1) a violation has occurred and may impose an
8 administrative penalty; or

9 (2) a violation did not occur.

10 (b) The board shall give notice of the order to the person.
11 The notice must include:

12 (1) separate statements of the findings of fact and
13 conclusions of law;

14 (2) the amount of any penalty imposed; and

15 (3) a statement of the right of the person to judicial
16 review of the order.

17 Sec. 1151.307. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.

18 (a) Not later than the 30th day after the date on which the order
19 becomes final, the person shall:

20 (1) pay the administrative penalty;

21 (2) pay the penalty and file a petition for judicial
22 review contesting the occurrence of the violation, the amount of
23 the penalty, or both; or

24 (3) without paying the penalty, file a petition for
25 judicial review contesting the occurrence of the violation, the
26 amount of the penalty, or both.

27 (b) Within the 30-day period, a person who acts under

1 Subsection (a)(3) may:

2 (1) stay enforcement of the penalty by:

3 (A) paying the penalty to the court for placement
4 in an escrow account; or

5 (B) giving to the court a supersedeas bond that
6 is approved by the court for the amount of the penalty and that is
7 effective until all judicial review of the order is final; or

8 (2) request the court to stay enforcement of the
9 penalty by:

10 (A) filing with the court a sworn affidavit of
11 the person stating that the person is financially unable to pay the
12 penalty and is financially unable to give the supersedeas bond; and

13 (B) giving a copy of the affidavit to the board by
14 certified mail.

15 (c) If the board receives a copy of an affidavit as provided
16 by Subsection (b)(2), the board may file with the court a contest to
17 the affidavit not later than the fifth day after the date the copy
18 is received.

19 (d) The court shall hold a hearing on the facts alleged in
20 the affidavit as soon as practicable and shall stay the enforcement
21 of the penalty on finding that the alleged facts are true. The
22 person who files an affidavit has the burden of proving that the
23 person is financially unable to pay the penalty and to give a
24 supersedeas bond.

25 Sec. 1151.308. COLLECTION OF PENALTY. If the person does
26 not pay the administrative penalty and the enforcement of the
27 penalty is not stayed, the board may refer the matter to the

1 attorney general for collection.

2 Sec. 1151.309. DETERMINATION BY COURT. (a) If the court
3 sustains the determination that a violation occurred, the court may
4 uphold or reduce the amount of the administrative penalty and order
5 the person to pay the full or reduced amount.

6 (b) If the court does not sustain the determination that a
7 violation occurred, the court shall order that a penalty is not
8 owed.

9 Sec. 1151.310. REMITTANCE OF PENALTY AND INTEREST. (a) If,
10 after judicial review, the administrative penalty is reduced or not
11 imposed by the court, the court shall, after the judgment becomes
12 final:

13 (1) order the appropriate amount, plus accrued
14 interest, be remitted to the person by the board if the person paid
15 the penalty under Section 1151.307(a)(2); or

16 (2) if the person paid the penalty under Section
17 1151.307(b)(1)(A) or posted a supersedeas bond, order the board to:

18 (A) execute a complete release of the escrow
19 account or bond, as appropriate, if the penalty is not imposed; or

20 (B) release the escrow account or bond, as
21 appropriate, after the reduced penalty has been paid from the
22 account or by the person.

23 (b) The interest paid under Subsection (a)(1) is accrued at
24 the rate charged on loans to depository institutions by the New York
25 Federal Reserve Bank. The interest shall be paid for the period
26 beginning on the date the penalty is paid and ending on the date the
27 penalty is remitted.

1 Sec. 1151.311. EXPENSES AND COSTS. (a) In this section,
2 "reasonable expenses and costs" includes expenses incurred by the
3 board and the attorney general in the investigation, initiation, or
4 prosecution of an action, including reasonable investigative
5 costs, court costs, attorney's fees, witness fees, and deposition
6 expenses.

7 (b) The board may assess reasonable expenses and costs
8 against a person in an administrative hearing if, as a result of the
9 hearing, an administrative penalty is assessed against the person.
10 The person shall pay expenses and costs assessed under this
11 subsection not later than the 30th day after the date the order of
12 the executive director or that executive director's designee
13 requiring the payment of expenses and costs is final. The board may
14 refer the matter to the attorney general for collection of the
15 expenses and costs.

16 (c) If the attorney general brings an action against a
17 person to enforce an administrative penalty assessed under this
18 subchapter and the person is found liable for an administrative
19 penalty, the attorney general may recover, on behalf of the
20 attorney general and the board, reasonable expenses and costs.

21 Sec. 1151.312. ADMINISTRATIVE PROCEDURE. A proceeding
22 under this subchapter is subject to Chapter 2001, Government Code.

23 SECTION 7. Section 41A.08(b), Tax Code, as added by Chapter
24 912, Acts of the 79th Legislature, Regular Session, 2005, is
25 repealed.

26 SECTION 8. The change in law made by this Act applies only
27 to a penalty assessed on or after the effective date of this Act. A

1 penalty assessed before that date is governed by the law in effect
2 immediately before that date, and that law is continued in effect
3 for that purpose.

4 SECTION 9. This Act takes effect immediately if it receives
5 a vote of two-thirds of all the members elected to each house, as
6 provided by Section 39, Article III, Texas Constitution. If this
7 Act does not receive the vote necessary for immediate effect, this
8 Act takes effect September 1, 2007.