

1-1 By: Otto, et al. (Senate Sponsor - Williams) H.B. No. 3494  
1-2 (In the Senate - Received from the House May 3, 2007;  
1-3 May 7, 2007, read first time and referred to Committee on Finance;  
1-4 May 19, 2007, reported favorably by the following vote: Yeas 9,  
1-5 Nays 1; May 19, 2007, sent to printer.)

1-6 A BILL TO BE ENTITLED  
1-7 AN ACT

1-8 relating to the appeal through binding arbitration of a protest of  
1-9 an appraisal review board order, and to related complaints filed by  
1-10 a property owner and disciplinary action by the Board of Tax  
1-11 Professional Examiners; providing penalties.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Section 41A.08(b), Tax Code, as added by Chapter  
1-14 372, Acts of the 79th Legislature, Regular Session, 2005, is  
1-15 amended to read as follows:

1-16 (b) The parties to an arbitration proceeding under this  
1-17 chapter may represent themselves or be represented in the  
1-18 proceeding by an attorney, certified public accountant, ~~or by a~~  
1-19 property tax consultant, real estate appraiser, or real estate  
1-20 broker ~~[acting under power of attorney]~~. An employee of the  
1-21 appraisal district may represent the appraisal district in the  
1-22 arbitration proceeding. The property owner who is a party to the  
1-23 arbitration proceeding may present evidence or make arguments in  
1-24 the proceeding. A person other than the property owner may not  
1-25 serve as a party representative, present evidence, or make  
1-26 arguments in an arbitration proceeding under this chapter unless  
1-27 the person:

1-28 (1) is an employee of the appraisal district;

1-29 (2) is a licensed attorney in this state;

1-30 (3) is licensed as a real estate broker or salesperson  
1-31 under Chapter 1101, Occupations Code, or ~~is~~ licensed or certified  
1-32 as a real estate appraiser under Chapter 1103, Occupations Code;  
1-33 ~~or~~

1-34 (4) is a property tax consultant registered under  
1-35 Chapter 1152, Occupations Code; or

1-36 (5) is certified as a certified public accountant  
1-37 under Chapter 901, Occupations Code.

1-38 SECTION 2. Section 41A.08, Tax Code, is amended by adding  
1-39 Subsections (c) and (d) to read as follows:

1-40 (c) In an arbitration hearing under this chapter:

1-41 (1) any party is entitled to present evidence relating  
1-42 to the data or appraisal method used by the appraisal district in  
1-43 determining the market or appraised value of the property that is  
1-44 the subject of the appeal, regardless of whether that evidence was  
1-45 presented to the appraisal review board that determined the  
1-46 protest; and

1-47 (2) the property owner is entitled to allege and  
1-48 present evidence to show that the appraisal review board that  
1-49 determined the protest failed to comply with:

1-50 (A) a provision of Subchapter C, Chapter 6, or  
1-51 another law of this state applicable to the board;

1-52 (B) a rule adopted by the comptroller applicable  
1-53 to the board or the hearing conducted by the board; or

1-54 (C) any other substantive or procedural  
1-55 requirement applicable to the hearing conducted by the board.

1-56 (d) If the property owner presents evidence under  
1-57 Subsection (c)(2), the arbitrator shall:

1-58 (1) make a determination whether the appraisal review  
1-59 board failed to comply with the statute, rule, or procedural  
1-60 requirement as alleged by the property owner; and

1-61 (2) include that determination in the record of the  
1-62 hearing.

1-63 SECTION 3. Section 41A.11, Tax Code, is amended to read as  
1-64 follows:

2-1           Sec. 41A.11. POST APPEAL ADMINISTRATIVE AND COMPLAINT  
 2-2 PROCEDURES; DISCIPLINARY ACTION. (a) An arbitration award under  
 2-3 this chapter is considered to be a final determination of an appeal  
 2-4 for purposes of Subchapter C, Chapter 42.

2-5           (b) A property owner may not appeal an arbitration award  
 2-6 under this chapter to the Board of Tax Professional Examiners.

2-7           (c) A property owner who alleges that a chief appraiser  
 2-8 violated a procedural or ethical provision or rule enacted or  
 2-9 adopted under this title may file a complaint with the Board of Tax  
 2-10 Professional Examiners under Chapter 1151, Occupations Code.

2-11           (d) The board shall investigate a complaint filed against a  
 2-12 chief appraiser under Subsection (c) and may impose any  
 2-13 disciplinary action authorized under Section 1151.202, Occupations  
 2-14 Code, for a violation of this title.

2-15           SECTION 4. Section 1151.202, Occupations Code, is amended  
 2-16 by adding Subsections (a-1) and (a-2) to read as follows:

2-17           (a-1) For a violation of Title 1, Tax Code, the board may:

2-18                 (1) deny, suspend, or revoke a registration of a  
 2-19 person;

2-20                 (2) place on probation a person whose registration has  
 2-21 been suspended;

2-22                 (3) administer a public reprimand of a person for a  
 2-23 violation by the person;

2-24                 (4) stipulate periodic board review of the person;

2-25                 (5) require the person to successfully complete  
 2-26 additional continuing education; or

2-27                 (6) assess an administrative penalty under Subchapter  
 2-28 G.

2-29           (a-2) In addition to any disciplinary action authorized by  
 2-30 Subsection (a-1) for a violation of Title 1, Tax Code, the board may  
 2-31 issue a written reprimand to the registration holder or require the  
 2-32 holder to participate in continuing education programs in which the  
 2-33 board specifies the courses to be completed and the number of hours  
 2-34 required.

2-35           SECTION 5. Subchapter E, Chapter 1151, Occupations Code, is  
 2-36 amended by adding Section 1151.2021 to read as follows:

2-37           Sec. 1151.2021. SCHEDULE OF SANCTIONS. (a) The board by  
 2-38 rule shall adopt a schedule of the disciplinary sanctions that the  
 2-39 board may impose under this chapter. In adopting the schedule of  
 2-40 sanctions, the board shall ensure that the severity of the sanction  
 2-41 imposed is appropriate to the type of violation or conduct that is  
 2-42 the basis for disciplinary action.

2-43           (b) In determining the appropriate disciplinary action,  
 2-44 including the amount of any administrative penalty to assess, the  
 2-45 board shall consider:

2-46                 (1) whether the person is being disciplined for  
 2-47 multiple violations of either this chapter or Title 1, Tax Code, or  
 2-48 a rule or order adopted under this chapter;

2-49                 (2) whether the person has previously been the subject  
 2-50 of disciplinary action by the board and has previously complied  
 2-51 with board rules and this chapter;

2-52                 (3) the seriousness of the violation;

2-53                 (4) the threat to public safety; and

2-54                 (5) any mitigating factors.

2-55           SECTION 6. Chapter 1151, Occupations Code, is amended by  
 2-56 adding Subchapter G to read as follows:

2-57           SUBCHAPTER G. ADMINISTRATIVE PENALTY

2-58           Sec. 1151.301. IMPOSITION OF PENALTY. The board may impose  
 2-59 an administrative penalty against a person who violates this  
 2-60 chapter, a rule adopted under this chapter, or Title 1, Tax Code.

2-61           Sec. 1151.302. AMOUNT OF PENALTY. (a) The amount of the  
 2-62 administrative penalty may not exceed \$1,000 for each violation.  
 2-63 Each day of a continuing violation is a separate violation.

2-64           (b) The amount of the penalty shall be based on:

2-65                 (1) the seriousness of the violation;

2-66                 (2) the history of previous violations;

2-67                 (3) the amount necessary to deter a future violation;

2-68                 (4) efforts made to correct the violation; and

2-69                 (5) any other matter that justice may require.

3-1 Sec. 1151.303. NOTICE OF VIOLATION AND PENALTY. (a) If,  
 3-2 after investigating a possible violation and the facts surrounding  
 3-3 that possible violation, the board determines that a violation  
 3-4 occurred, the board shall give written notice of the violation to  
 3-5 the person alleged to have committed the violation.

3-6 (b) The notice must:

3-7 (1) include a brief summary of the alleged violation;  
 3-8 (2) state the amount of the proposed administrative  
 3-9 penalty; and  
 3-10 (3) inform the person of the person's right to a  
 3-11 hearing on the occurrence of the violation, the amount of the  
 3-12 penalty, or both.

3-13 Sec. 1151.304. PENALTY TO BE PAID OR HEARING REQUESTED. (a)  
 3-14 Not later than the 20th day after the date the person receives the  
 3-15 notice, the person may:

3-16 (1) accept the board's determination, including the  
 3-17 proposed administrative penalty; or  
 3-18 (2) make a written request for a hearing on that  
 3-19 determination.

3-20 (b) If the person accepts the board's determination, the  
 3-21 executive director or that executive director's designee by order  
 3-22 shall approve the determination and impose the proposed penalty.

3-23 Sec. 1151.305. HEARING. (a) If the person timely requests  
 3-24 a hearing, the board shall:

3-25 (1) set a hearing;  
 3-26 (2) give written notice of the hearing to the person;  
 3-27 and  
 3-28 (3) designate a hearings examiner to conduct the  
 3-29 hearing.

3-30 (b) The hearings examiner shall make findings of fact and  
 3-31 conclusions of law and promptly issue to the executive director or  
 3-32 that executive director's designee a proposal for decision as to  
 3-33 the occurrence of the violation and the amount of any proposed  
 3-34 administrative penalty.

3-35 Sec. 1151.306. DECISION BY EXECUTIVE DIRECTOR. (a) Based  
 3-36 on the findings of fact and conclusions of law and the  
 3-37 recommendations of the hearings examiner, the executive director or  
 3-38 the executive director's designee by order may determine that:

3-39 (1) a violation has occurred and may impose an  
 3-40 administrative penalty; or  
 3-41 (2) a violation did not occur.

3-42 (b) The board shall give notice of the order to the person.  
 3-43 The notice must include:

3-44 (1) separate statements of the findings of fact and  
 3-45 conclusions of law;  
 3-46 (2) the amount of any penalty imposed; and  
 3-47 (3) a statement of the right of the person to judicial  
 3-48 review of the order.

3-49 Sec. 1151.307. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.  
 3-50 (a) Not later than the 30th day after the date on which the order  
 3-51 becomes final, the person shall:

3-52 (1) pay the administrative penalty;  
 3-53 (2) pay the penalty and file a petition for judicial  
 3-54 review contesting the occurrence of the violation, the amount of  
 3-55 the penalty, or both; or  
 3-56 (3) without paying the penalty, file a petition for  
 3-57 judicial review contesting the occurrence of the violation, the  
 3-58 amount of the penalty, or both.

3-59 (b) Within the 30-day period, a person who acts under  
 3-60 Subsection (a)(3) may:

3-61 (1) stay enforcement of the penalty by:  
 3-62 (A) paying the penalty to the court for placement  
 3-63 in an escrow account; or

3-64 (B) giving to the court a supersedeas bond that  
 3-65 is approved by the court for the amount of the penalty and that is  
 3-66 effective until all judicial review of the order is final; or

3-67 (2) request the court to stay enforcement of the  
 3-68 penalty by:

3-69 (A) filing with the court a sworn affidavit of

4-1 the person stating that the person is financially unable to pay the  
 4-2 penalty and is financially unable to give the supersedeas bond; and  
 4-3 (B) giving a copy of the affidavit to the board by  
 4-4 certified mail.

4-5 (c) If the board receives a copy of an affidavit as provided  
 4-6 by Subsection (b)(2), the board may file with the court a contest to  
 4-7 the affidavit not later than the fifth day after the date the copy  
 4-8 is received.

4-9 (d) The court shall hold a hearing on the facts alleged in  
 4-10 the affidavit as soon as practicable and shall stay the enforcement  
 4-11 of the penalty on finding that the alleged facts are true. The  
 4-12 person who files an affidavit has the burden of proving that the  
 4-13 person is financially unable to pay the penalty and to give a  
 4-14 supersedeas bond.

4-15 Sec. 1151.308. COLLECTION OF PENALTY. If the person does  
 4-16 not pay the administrative penalty and the enforcement of the  
 4-17 penalty is not stayed, the board may refer the matter to the  
 4-18 attorney general for collection.

4-19 Sec. 1151.309. DETERMINATION BY COURT. (a) If the court  
 4-20 sustains the determination that a violation occurred, the court may  
 4-21 uphold or reduce the amount of the administrative penalty and order  
 4-22 the person to pay the full or reduced amount.

4-23 (b) If the court does not sustain the determination that a  
 4-24 violation occurred, the court shall order that a penalty is not  
 4-25 owed.

4-26 Sec. 1151.310. REMITTANCE OF PENALTY AND INTEREST. (a) If,  
 4-27 after judicial review, the administrative penalty is reduced or not  
 4-28 imposed by the court, the court shall, after the judgment becomes  
 4-29 final:

4-30 (1) order the appropriate amount, plus accrued  
 4-31 interest, be remitted to the person by the board if the person paid  
 4-32 the penalty under Section 1151.307(a)(2); or

4-33 (2) if the person paid the penalty under Section  
 4-34 1151.307(b)(1)(A) or posted a supersedeas bond, order the board to:

4-35 (A) execute a complete release of the escrow  
 4-36 account or bond, as appropriate, if the penalty is not imposed; or

4-37 (B) release the escrow account or bond, as  
 4-38 appropriate, after the reduced penalty has been paid from the  
 4-39 account or by the person.

4-40 (b) The interest paid under Subsection (a)(1) is accrued at  
 4-41 the rate charged on loans to depository institutions by the New York  
 4-42 Federal Reserve Bank. The interest shall be paid for the period  
 4-43 beginning on the date the penalty is paid and ending on the date the  
 4-44 penalty is remitted.

4-45 Sec. 1151.311. EXPENSES AND COSTS. (a) In this section,  
 4-46 "reasonable expenses and costs" includes expenses incurred by the  
 4-47 board and the attorney general in the investigation, initiation, or  
 4-48 prosecution of an action, including reasonable investigative  
 4-49 costs, court costs, attorney's fees, witness fees, and deposition  
 4-50 expenses.

4-51 (b) The board may assess reasonable expenses and costs  
 4-52 against a person in an administrative hearing if, as a result of the  
 4-53 hearing, an administrative penalty is assessed against the person.  
 4-54 The person shall pay expenses and costs assessed under this  
 4-55 subsection not later than the 30th day after the date the order of  
 4-56 the executive director or that executive director's designee  
 4-57 requiring the payment of expenses and costs is final. The board may  
 4-58 refer the matter to the attorney general for collection of the  
 4-59 expenses and costs.

4-60 (c) If the attorney general brings an action against a  
 4-61 person to enforce an administrative penalty assessed under this  
 4-62 subchapter and the person is found liable for an administrative  
 4-63 penalty, the attorney general may recover, on behalf of the  
 4-64 attorney general and the board, reasonable expenses and costs.

4-65 Sec. 1151.312. ADMINISTRATIVE PROCEDURE. A proceeding  
 4-66 under this subchapter is subject to Chapter 2001, Government Code.

4-67 SECTION 7. Section 41A.08(b), Tax Code, as added by Chapter  
 4-68 912, Acts of the 79th Legislature, Regular Session, 2005, is  
 4-69 repealed.

5-1 SECTION 8. The change in law made by this Act applies only  
5-2 to a penalty assessed on or after the effective date of this Act. A  
5-3 penalty assessed before that date is governed by the law in effect  
5-4 immediately before that date, and that law is continued in effect  
5-5 for that purpose.  
5-6 SECTION 9. This Act takes effect immediately if it receives  
5-7 a vote of two-thirds of all the members elected to each house, as  
5-8 provided by Section 39, Article III, Texas Constitution. If this  
5-9 Act does not receive the vote necessary for immediate effect, this  
5-10 Act takes effect September 1, 2007.

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