

BILL ANALYSIS

C.S.H.B. 2591
By: Thompson
Licensing & Administrative Procedures
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Texas' system for property tax appraisal appeals has created a growing industry of property tax consulting services. The majority of these consultants do an excellent job representing their clients' interests, but certain firms have introduced massive, questionable advertising campaigns and now represent thousands of clients. Current law, as administered by the Texas Department of Licensing and Regulation, does not adequately ensure that a client of such a firm receives quality service, nor does it protect Texans from the misleading and deceptive marketing strategies used by some of these firms, including the filing of a fictitious protest on a person's behalf. Some firms use contracts that allow the firm to hire attorneys and file appeals of appraisal review board decisions without a client's permission. One firm has filed hundreds of false affidavits, mailed misleading analyses of home values to thousands of prospective clients, filed thousands of fictitious protests and correction motions, and filed thousands of lawsuits without consideration of merit. In addition, consultants who represent homeowners' properties often are college students without formal training or sufficient experience.

C.S.H.B. 2591 makes changes in laws regulating property tax consultants to restrict certain types of contracting and marketing practices, require a competency examination, and require that a registered consultant have authorization before filing a protest concerning residential property.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Commission of Licensing and Regulation in SECTION 3 of this bill.

ANALYSIS

C.S.H.B. 2591 amends the Occupations Code to prohibit a registered senior property tax consultant or an attorney licensed to practice law in Texas who successfully completes the senior property tax consultant registration examination from employing, claiming an association with, or sponsoring more than 10 registered property tax consultants. The bill increases from 15 to 40 the classroom hours of approved courses an applicant for registration as a property tax consultant is required to complete and includes as a registration requirement that the applicant pass a property tax consultant registration examination. The bill requires the executive director of the Texas Department of Licensing and Regulation (TDLR) to adopt the competency examination not later than December 31, 2009 and establish the standards for grading and passing the exam, and requires an applicant to pay TDLR an examination fee to be eligible to take the examination. The bill makes this provision applicable to applications submitted to TDLR on or after March 1, 2010. The bill requires TDLR to offer the examination at times and places designated by the executive director of the department. The bill requires the examination to test the applicant's knowledge of certain subjects and be graded according to rules adopted by the Texas Commission of Licensing and Administration.

C.S.H.B. 2591 prohibits a senior property tax consultant from serving in that role for more than 10 registered property tax consultants and prohibits a registered consultant from filing a protest

before a local appraisal board review without the written approval of the property owner. The bill prohibits a registered consultant from falsifying an agent appointment, exemption application, protest, or other legal document that is filed with or presented to an appraisal district, an appraisal review board, or a taxing unit. The bill prohibits a registered property tax consultant from filing a motion or protest concerning residential property on behalf of a person whom the consultant does not represent unless the consultant has authorization from that person or another person, other than the authorized agent or the firm that employs the agent, who is authorized to designate agents.

C.S.H.B. 2591 prohibits a registered property tax consultant from representing that the fee for services rendered includes the hiring of legal services or soliciting a property tax consulting assignment by assuring a specific outcome.

C.S.H.B. 2591 prohibits a person required to register as a property tax consultant or senior property tax consultant from maintaining an Internet website for any purpose associated with the provision of tax consulting services by the consultant that has a domain name or other Internet address that implies that the website is a government website. The bill prohibits a registered property tax consultant from using or maintaining an Internet website for the purpose of soliciting clients if the website does not identify the company prominently on the home page of the website. The bill prohibits a registered property tax consultant from engaging the services of an attorney for the purposes of filing an appeal in court pertaining to property taxes or related actions without the prior consent of the consultant's client.

EFFECTIVE DATE

January 1, 2010.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 2591 adds a provision not in the original to prohibit a registered senior property tax consultant or an authorized attorney from employing, claiming association with, or sponsoring more than 10 registered property tax consultants.

C.S.H.B. 2591 adds provisions not in the original to increase the number of hours of approved courses required to be completed by an applicant for registration as a property tax consultant and to require an applicant to pass a competency examination as part of the registration process.

C.S.H.B. 2591 adds provisions not in the original that require the executive director of the Texas Department of Licensing and Regulation (TDLR) to adopt the competency examination and that set forth provisions for the examination, including the requirement that the Texas Commission of Licensing and Regulation adopt rules for grading the examination.

C.H.S.B. 2591 removes provisions in the original that prohibit a registered consultant from appearing at an appraisal board hearing unless the consultant has satisfied certain experience requirements and that prohibit a registered consultant from mailing or providing a retainer agreement or fee agreement as part of a public solicitation of business.

C.S.H.B. 2591 removes a provision in the original that prohibits a registered consultant from signing a request for arbitration to appeal an appraisal board review order or from making an arbitration deposit on behalf of a property owner.

C.S.H.B. 2591 differs from the original by prohibiting a registered consultant from falsifying a legal document that is filed with or presented to an appraisal district, an appraisal review board, or a taxing board, whereas the original prohibits a consultant from being party to, or benefiting from, the forgery, alteration, or changing of a legal document filed with or presented to such an entity.

C.S.H.B. 2591 removes provisions in the original that require the authorization from a client for a registered consultant to file a certain motion or protest to be a written authorization delivered by specified methods of delivery.

C.S.H.B. 2591 removes language in the original that specifies that an authorization to file a motion or protest from another person, other than an agent or the firm that employs the agent, who is authorized by the person applies if the person is authorized to designate agents at the time the protest or motion is filed.

C.S.H.B. 2591 removes a provision in the original that requires the consultant to retain a copy of the written authorization until at least the second anniversary of the date of the representation.

C.S.H.B. 2591 removes a provision in the original that prohibits a registered consultant, with certain exceptions, from soliciting professional employment from a prospective client in a written, recorded, or electric communication without including the words "advertising material."

C.S.H.B. 2591 removes provisions in the original that prohibit a registered consultant, in the public solicitation of business, from offering economic incentives based on the success or lack of success of the representation and from providing in unsolicited marketing material any analysis or characterization of the appraisal or level of taxation of a person's property unless the consultant conducts the appraisal and handles the communication in a certain manner.

C.S.H.B. 2591 removes language from the original that requires the prior consent of a client authorizing a registered consultant to engage the services of an attorney in filing an appeal to be a written consent.

C.S.H.B. 2591 removes provisions in the original that prohibit a registered consultant from paying, offering to pay, contracting to pay, or advancing the payment of a filing fee for purposes of filing the appeal; from appearing as a designated expert witness in such an appeal in which a remedy for unequal appraisal is sought if the consultant or the consultant's employer represented the owner of the property that is the subject of the appeal unless the property tax consultant is a registered professional appraiser and holds an industry-recognized national appraisal designation; from soliciting a client for an attorney for the purpose of filing an appeal in court pertaining to property taxes or related actions in a manner that results in compensation to the consultant; and from recommending an attorney for the purpose of filing such an appeal if the consultant receives compensation in connection with the appeal.

C.S.H.B. 2591 adds a provision not in the original that requires the executive director of the commission to adopt rules for the property tax consultant registration examination not later than December 31, 2009.

C.S.H.B. 2591 adds a provision not in the original that specifies that changes made to the law by the substitute apply only to applications submitted to TDLR on or after March 1, 2010.

C.S.H.B. 2591 differs from the original by making its provisions effective January 1, 2010, whereas the original makes its provisions effective September 1, 2009.