

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 3454
By: Otto et al. (Williams)
Finance
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Appraisal districts currently are required to consider characteristics of a property in determining the property's value but are not required to use such property-specific data as income and expense statements in making that determination. The Tax Code provides guidance for appraising property under the income and cost methods of appraisal but provides no such guidance for using the market data comparison method of appraisal. As a result, appraisals vary significantly across appraisal districts, and property owners are faced with an inconsistent and unpredictable system for determining the value of their property for property tax purposes.

C.S.H.B. 3454 relates to the determination of the value of property for ad valorem tax purposes, including appeals of appraisal review board orders determining protests of property value determinations, and the use of certain values by school districts in adopting tax rates.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the comptroller of public accounts in SECTION 11 (Section 41A.031, Tax Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 6.411(c), Tax Code, to provide that except for communications described by Section 41.66(f)(3) (relating to communication between a member of the appraisal review board and another person), this section does not apply to communications that do not discuss the specific evidence, argument, facts, merits, or property involved in a hearing currently pending before the appraisal review board (board) or to communications between the board and its legal counsel.

SECTION 2. Amends Section 6.43, Tax Code, as follows:

Sec. 6.43. PERSONNEL. (a) Creates this subsection from existing text.

(b) Prohibits the board from employing or retaining a person to serve as legal counsel for the board if the person serves as legal counsel for the appraisal district or chief appraiser. Provides that this subsection does not prevent the board from using the services of the county attorney as authorized by Subsection (a).

SECTION 3. Amends Section 23.01, Tax Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Requires that the market value of property be determined by the application of generally accepted appraisal methods and techniques. Requires that the mass appraisal standards, if the appraisal district determines the appraised value of a property using mass appraisal standards, to comply with the Uniform Standards of Professional Appraisal Practice. Requires that the same or similar appraisal methods and techniques be used in appraising the same or similar kinds or property. Requires that each property, however, be appraised based upon the individual characteristics that affect the property's market value and requires that all available evidence that is specific to the value of the property be taken into account in determining the property's market value.

(c) Provides that notwithstanding any provision of this subchapter to the contrary, if the appraised value of property in a tax year is determined under Subtitle F (Remedies), the appraised value of the property as finally determined under that subtitle is considered to be the appraised value of the property for that tax year. Prohibits the chief appraiser, in the following tax year, from increasing the appraised value of the property unless the increase by the chief appraiser is reasonably supported by substantial evidence when all of the reliable and probative evidence in the record is considered as a whole. Authorizes the chief appraiser, if the appraised value is finally determined in a protest under Section 41.41(a)(2) (relating to the entitlement of a property owner to protest unequal appraisal of the owner's property before the appraisal review board) or an appeal under Section 42.26 (Remedy for Unequal Appraisal), to satisfy the requirement to reasonably support by substantial evidence an increase in the appraised value of the property in the following tax year by presenting evidence showing that the inequality in the appraisal of property has been corrected with regard to the properties that were considered in determining the value of the subject property. Provides that the burden of proof is on the chief appraiser to support an increase in the appraised value of property under the circumstances described by this subsection, not on the property owner.

SECTION 4. Amends Sections 23.013, 23.014, and 23.24, Tax Code, as follows:

Sec. 23.013. MARKET DATA COMPARISON METHOD OF APPRAISAL. (a) Creates this subsection from existing text.

(b) Provides that a sale is not considered to be a comparable sale unless the sale occurred within 24 months of the date as of which the market value of the subject property is to be determined, except that a sale that did not occur during that period may be considered to be a comparable sale if enough comparable properties were not sold during that period to constitute a representative sample.

(c) Requires that a sale of a comparable property be appropriately adjusted for any change in the market value of the comparable property during the period between the date of the sale of the comparable property and the date as of which the market value of the subject property is to be determined.

(d) Requires that whether a property is comparable to the subject property be determined based on similarities with regard to location, square footage of the lot and improvements, property age, property condition, property access, amenities, views, income, operating expenses, occupancy, and the existence of easements, deed restrictions, or other legal burdens affecting marketability.

Sec. 23.014. EXCLUSION OF PROPERTY AS REAL PROPERTY. Requires that the chief appraiser, except as provided by Section 23.24(b), in determining the market value of real property, analyze the effect on that value of, and exclude from that value the value of, any:

(1) tangible personal property, including trade fixtures;

(2) intangible personal property; or

(3) other property that is not subject to appraisal as real property.

Sec. 23.24. FURNITURE, FIXTURES, AND EQUIPMENT. (a) Creates this subsection from existing text.

(b) Prohibits the chief appraiser, in determining the market value of the real property appraised on the basis of rental income, from separately appraising or taking into account any personal property valued as a portion of the income of the real property, and requires that the market value of the real property include the combined value of the real property and the personal property.

SECTION 5. Amends Subchapter D, Chapter 23, Tax Code, by adding Section 23.522, as follows:

Sec. 23.522. TEMPORARY CESSATION OF AGRICULTURAL USE DURING DROUGHT. Provides that the eligibility of land for appraisal under this subchapter does not end because the land ceases to be devoted principally to agricultural use to the degree of intensity generally accepted in the area if a drought declared by the governor creates an agricultural necessity to extend the normal time the land remains out of agricultural production, and the owner of the land intends that the use of the land in that manner and to that degree of intensity be resumed when the declared drought ceases.

SECTION 6. Amends Section 26.04, Tax Code, by adding Subsection (d-1), as follows:

(d-1) Provides that this subsection applies only to a school district. Provides that notwithstanding Subsections (a) (relating to the determination of total appraised value, total assessed value, and total taxable value of property taxable by the unit), (b) (relating to the appraisal roll submitted by the assessor), and (c) (relating to the effective tax rate and rollback tax calculated by a designated officer or employee of the governing body for the unit), on receipt of the estimate of the taxable value of property in the district under Section 26.01(e) (relating to the date the chief appraiser is required to prepare and certify to the assessor for each entity participating in the appraisal an estimate of the taxable value of property in that taxing unit):

(1) requires the assessor of the district to:

(A) determine an estimate of the values specified in Subsection (a) for the district using the estimated value provided under Section 26.01(e); and

(B) submit an appraisal roll to the governing body of the district showing an estimate of each item of information specified by Subsection (b), using the estimated values provided under Section 26.01(e) and determined under Paragraph (A); and

(2) requires an officer or employee designated by the governing body of the school district to calculate the effective tax rate and the rollback tax rate for the district using the estimates described by Subdivision (1).

SECTION 7. Amends Section 26.05, Tax Code, by adding Subsection (a-1), as follows:

(a-1) Provides that this subsection applies only to a school district. Requires the governing body of the school district to adopt a tax rate for the current tax year before the later of September 30 or the 60th day after the date the estimate of the taxable value of property in the district is received under Section 26.01(e) using the values estimated under that section and Section 26.04(d-1).

SECTION 8. Amends Section 41.66(f), Tax Code, to prohibit a member of the board from communicating with another person concerning a factual or hypothetical situation that is substantially similar to a situation that is the subject of the protest, except during the hearing on the protest.

SECTION 9. Amends Section 41A.01, Tax Code, as follows:

Sec. 41A.01. RIGHT OF APPEAL BY PROPERTY OWNER. Entitles a property owner, as an alternative to filing an appeal under Section 42.01 (Right of Appeal by Property Owner), to appeal through binding arbitration under this chapter an appraisal review board order determining a protest filed under Section 41.41(a)(1) (relating to the entitlement of a property owner to protest determination of the appraised value of the owner's property or determination of its appraised or market value before the appraisal review board) concerning the appraised or market value of property, rather than real property, if the property qualifies as the owner's residence homestead under Section 11.13 (Residence

Homestead); or the appraised or market value, as applicable, of the property as determined by the order is \$1 million or less, rather than if the appraised or market value, as applicable, of the property as determined by the order is \$1 million or less and the appeal does not involve any matter in dispute other than the determination of the appraised or market value of the property. Makes nonsubstantive changes.

SECTION 10. Amends Section 41A.03(a), Tax Code, to require a property owner, to appeal an appraisal review board order under this chapter, to file with the appraisal district not later than the 45th day after the date the property owner receives notice of the order an arbitration deposit made payable to the comptroller of public accounts (comptroller) in the amount of \$500, or \$250, if the property owner requests expedited arbitration under Section 41A.031, rather than in the amount of \$500.

SECTION 11. Amends Chapter 41A, Tax Code, by adding Section 41A.031, as follows:

Sec. 41A.031. EXPEDITED ARBITRATION. (a) Entitles a property owner to an expedited arbitration if the property owner includes a request for expedited arbitration in the request filed under Section 41A.03 and pays the required deposit.

(b) Requires that an expedited arbitration provide for not more than one hour of argument and testimony on behalf of the property owner and not more than one hour of argument and testimony on behalf of the appraisal district.

(c) Requires the comptroller to adopt rules and processes to assist in the conduct of an expedited arbitration.

SECTION 12. Amends the heading to Section 41A.06, Tax Code to read as follows:

Sec. 41A.06. REGISTRY AND INITIAL QUALIFICATION OF ARBITRATORS.

SECTION 13. Amends Section 41A.06(b), Tax Code, to require a person, to initially qualify to serve as an arbitrator under this chapter, to have completed at least 30 hours of training in arbitration and alternative dispute resolution procedures from a university, college, or legal or real estate trade association; have been licensed or certified continuously during the five years preceding the date the person agrees to serve as a arbitrator, as a real estate broker or salesperson under Chapter 1101 (Real Estate Brokers and Salespersons), Occupations Code; a real estate appraiser under Chapter 1103, Occupations Code (Real Estate Appraisers); or a certified public accountant under Chapter 901 (Accountants), Occupations Code; and agree to conduct an arbitration for a fee that is not more than 90 percent of the amount of the arbitration deposit required by Section 41A.03, rather than have completed at least 30 hours of training in arbitration and alternative dispute resolution procedures from a university, college, or legal or real estate trade association; be licensed as a real estate broker or salesperson under Chapter 1101, Occupations Code; or be licensed or certified as a real estate appraiser under Chapter 1103 Occupations Code and agree to conduct an arbitration for a fee that is not more than 90 percent of the amount of the arbitration deposit required by Section 41A.03.

SECTION 14. Amends Chapter 41A, Tax Code, by adding Section 41A.061, as follows:

Sec. 41A.061. CONTINUED QUALIFICATION OF ARBITRATOR; RENEWAL OF AGREEMENT. (a) Requires the comptroller to include a qualified arbitrator in the registry until the second anniversary of the date the person was added to the registry. Requires the person, to continue to be included in the registry after the second anniversary of the date the person was added to the registry, to renew the person's agreement with the comptroller to serve as an arbitrator on or as near as possible to the date on which the person's license or certification issued under Chapter 901, 1101, or 1103, Occupations Code, is renewed.

(b) Requires the person, to renew the person's agreement to serve as an arbitrator, to file a renewal application with the comptroller at the time and in the manner prescribed by the comptroller; continue to meet the requirements provided by Section 41A.06(b); and during the preceding two years have completed at least eight hours of continuing education in arbitration and alternative dispute resolution procedures offered by a university, college, real estate trade association, or legal association.

(c) Requires the comptroller to remove a person from the registry if the person fails or declines to renew the person's agreement to serve as an arbitrator in the manner required by this section.

SECTION 15. Amends Section 41A.07, Tax Code, by adding Subsection (e), to require that an arbitrator selected or appointed to arbitrate an appeal under this chapter regarding property other than real property, notwithstanding any other provision of this section, be licensed as a certified public accountant under Chapter 901, Occupations Code.

SECTION 16. Reenacts Section 41A.08(b), Tax Code, as added by Chapters 372 (S.B. 1351) and 912 (H.B. 182), Acts of the 79th Legislature, Regular Session, 2005, and amends it to authorize the parties to an arbitration proceeding under this chapter to represent themselves or, at their own cost, be represented by certain entities or by an individual who is licensed as a certified public accountant under Chapter 901, Occupations Code.

SECTION 17. (a) Makes application of Sections 6.411 and 41.66, Tax Code, as amended by this Act, prospective.

(b) Provides that Sections 41A.01, 41A.03, 41A.07, and 41A.08, Tax Code, as amended by this Act, and Section 41A.031, Tax Code, as added by this Act, apply only to an appeal through binding arbitration under Chapter 41A of that code that is requested on or after the effective date of this Act.

(c) Provides that Section 41A.06, Tax Code, as amended by this Act, applies only to a person who initially qualifies to serve as an arbitrator under Chapter 41A, Tax Code, on or after the effective date of this Act.

(d) Provides that Section 41A.061, Tax Code, as added by this Act, does not affect the eligibility of a person who is included on the registry list of qualified arbitrators on the effective date of this Act to continue to remain on that registry list before the date on which the person's license or certificate under Chapter 901, 1101, or 1103, Occupations Code, expires unless renewed.

SECTION 18. Provides that this Act applies only to the appraisal of property for a tax year beginning on or after the effective date of this Act.

SECTION 19. Effective date: January 1, 2010.