

BILL ANALYSIS

C.S.H.B. 3612
By: Otto
Ways & Means
Committee Report (Substituted)

BACKGROUND AND PURPOSE

When a central appraisal district (CAD) determines that the appraised value of a property is \$1 million or more, state law currently authorizes the taxpayer to appeal the determination to an appraisal review board (ARB) and, if the taxpayer determines it to be necessary, to further appeal the ARB's decision to district court. However, a perception exists among taxpayers that the ARB is an extension of the CAD, and as such will act in the best interests of the CAD, rather than the taxpayer. To change this perception, the system itself must be changed.

Many cases appealed to the ARB are complex and require extensive knowledge of property tax and real estate law. A district court offers the assurance of proper consideration and understanding of the arguments being presented. However, appealing to district court can be a time-consuming and expensive process, thereby reducing the number of taxpayers who choose to pursue such an appeal. An alternative to the current process is needed to reduce litigation expenses, while continuing to provide a neutral third party to hear arguments and issue decisions.

C.S.H.B. 3612 creates a three-year pilot program in Bexar, Cameron, Dallas, El Paso, Harris, Tarrant, and Travis Counties under which a property owner may appeal the ARB's determination on real and personal property valued over \$1 million to the State Office of Administrative Hearings.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the chief administrative law judge and to the State Office of Administrative Hearings in SECTION 1 of this bill.

ANALYSIS

C.S.H.B. 3612 amends the Government Code by adding temporary provisions, set to expire January 1, 2013, that require the State Office of Administrative Hearings (SOAH), not later than January 1, 2010, to develop a pilot program under which a property owner may appeal to SOAH, as an alternative to seeking judicial review of the order in district court, an appraisal review board order determining a protest relating to the appraised or market value of the owner's property or land or the unequal appraisal of the owner's property if the board determined the appraised or market value of the property that was the subject of the protest to be more than \$1 million. The bill requires the pilot program to be developed and implemented in conformance with the provisions of the bill. The bill requires the program to be implemented in Bexar, Cameron, Dallas, El Paso, Harris, Tarrant, and Travis Counties for a three-year period beginning with the property tax year that begins January 1, 2010. The bill requires the pilot program to be applicable to a determination of the appraised or market value made by an appraisal review board in connection with real or personal property, other than industrial property or minerals.

C.S.H.B. 3612 requires an administrative law judge assigned to hear an appeal to SOAH to have knowledge of each of the appraisal methods a chief appraiser may use to determine the appraised

value or the market value of property under state law and of the proper method for determining an appeal of a protest, including a protest brought on the ground of unequal appraisal. The bill entitles an administrative law judge to attend one or more appraiser training and education courses approved by the comptroller of public accounts and Board of Tax Professional Examiners, to receive a copy of the materials used in the course, or both, without charge.

C.S.H.B. 3612 requires a property owner appealing an appraisal review board order to SOAH to file with the chief appraiser of the appraisal district, not later than the 15th day after the date the owner receives notice of the order, a completed notice of appeal to SOAH and a filing fee made payable to SOAH in the amount of \$300. The bill requires the chief appraiser for the appraisal district, as soon as practicable after receipt of a notice of appeal, to indicate, where appropriate, entries in the records that are subject to the appeal, submit the notice of appeal and filing fee to SOAH, and request the appointment of a qualified administrative law judge to hear the appeal. The bill requires the chief administrative law judge by rule to prescribe the form of a notice of appeal to SOAH. The bill prescribes elements required to be included in the form. The bill requires an appraisal review board of a district in a county participating in the pilot program to include with the notice of the board's determination of a protest and copy of the board's order a notice of the property owner's rights relating to an appeal of the order to SOAH and a copy of the notice of appeal prescribed by the bill.

C.S.H.B. 3612 provides for the timely designation of an administrative law judge to hear the appeal and date, time, and place of the hearing. The bill prescribes the location of a hearing.

C.S.H.B. 3612 establishes that an appeal is trial de novo and prohibits an administrative law judge from admitting into evidence the fact of previous action by the appraisal review board, except as otherwise provided by the bill. The bill exempts a hearing by an administrative law judge from the provisions of the Administrative Procedure Act and the Texas Rules of Evidence. The bill limits prehearing discovery to the exchange of documents the parties will rely on during the hearing, and requires any expert witness testimony to be reduced to writing and included in the exchange of documents. The bill establishes that any relevant evidence is admissible, subject to the imposition of reasonable time limits and the parties' compliance with reasonable procedural requirements imposed by the administrative law judge, including a schedule for the prehearing exchange of documents to be relied on. The bill authorizes an administrative law judge to consider factors such as the hearsay nature of testimony, the qualifications of witnesses, and other restrictions on the admissibility of evidence under the Texas Rules of Evidence in assessing the weight to be given to the evidence admitted.

C.S.H.B. 3612 establishes procedures for the representation of a property owner and the appraisal district at a hearing. The bill requires the judge, as soon as practicable, but not later than the 30th day after the date the hearing is concluded, to issue a determination and send a copy to the property owner and the chief appraiser. The bill establishes that the determination is required to include a determination of the appraised or market value, as applicable, of the property that is the subject of the appeal; is required to contain a brief analysis of the judge's rationale for and set out the key findings in support of the determination but is not required to contain a detailed discussion of the evidence admitted or the contentions of the parties; is authorized to include any remedy or relief a court may order in an appeal relating to the appraised or market value of property; and is required to specify whether the district or the owner is required to pay the costs of the hearing and the amount of those costs.

C.S.H.B. 3612 establishes procedures by which the administrative law judge determines that the appraised or market value of the property that is the subject of the appeal is nearer to, or a determination that the value is not nearer to, the property owner's stated opinion of the value of the property than to the value determined by the appraisal review board, for purposes of refunding or retaining the property owner's filing fee payment for costs of the appeal and correcting the appraised or market value of the property in the appraisal roll to reflect the determination. The bill authorizes SOAH by rule to implement a process under which the

administrative law judge issues a proposal for determination to the parties, the parties are given a reasonable period in which to make written objections to the proposal, and the judge is authorized to take those objections into account before issuing a final determination.

C.S.H.B. 3612 establishes that the pendency of an appeal to SOAH does not affect the delinquency and prohibits a property owner from appealing to SOAH if taxes on the property are delinquent. The bill sets out requirements relating to the payment of taxes on the property subject to an appeal and the dismissal of an appeal for property for which taxes are delinquent. The bill establishes procedures for the appeal of an administrative law judge's final order to a district court and provides that an appeal to SOAH does not prevent the owner from seeking judicial review of the order of the appraisal review board. The bill requires SOAH and the chief appraisers of the appraisal districts established in the counties in which the pilot program is implemented to submit a report, not later than January 1, 2013, to the legislature that includes: the number of appeals for property in each appraisal district; the number of appeals that were settled before being heard by an administrative law judge; the number of appeals brought on the ground of excessive appraisal; the number of appeals brought on the ground of unequal appraisal; the number of judicial appeals of an administrative law judge's determination for each appraisal district; and any recommendations for future legislative action that SOAH or the chief appraisers consider appropriate.

EFFECTIVE DATE

January 1, 2010.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 3612 adds Cameron County to those counties in the original in which the pilot program is to be implemented. The substitute adds provisions not in the original relating to the conduct of an administrative hearing regarding the appeal of an order of an appraisal review board, and to the treatment of evidence, testimony, and witnesses in relation to that hearing, including provisions that establish that the Administrative Procedure Act and the Texas Rules of Evidence do not apply. The substitute differs from the original by requiring the determination issued by the administrative law judge hearing the appeal to contain a brief analysis of the judge's rationale for, and set out the key findings in support of, the determination, whereas the original only requires the determination to state the judge's rationale for the determination of value. The substitute adds a provision not in the original that the determination is not required to contain a detailed discussion of the evidence admitted or the contentions of the parties.