

## **BILL ANALYSIS**

H.B. 4040  
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Ways & Means  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Concerns have been raised about the current state of property tax litigation in Texas. These concerns include the fairness of the process, the speed of the process, the cost of the process, and the effectiveness of the process.

District courts typically enter docket control orders in lawsuits, which set out the timeline for the lawsuit, requiring the court to include alternative dispute resolution in the docket control order. This will generally consist of mediation, and the purpose is to encourage mediation of lawsuits, which frequently results in the resolution of lawsuits. Currently, some appraisal districts and some taxpayers refuse to participate in mediation.

Currently, if a taxpayer files a lawsuit based on equality, the appraised value of the subject property is compared to the appraised value of comparable properties. The subject property may be compared to lawsuit resolved values if some of the comparable properties are resolved in litigation prior to the subject. This result is what has been described as a “spiral down effect” because each settled lawsuit results in lower values of the subject property.

This bill addresses concerns about the current state of property tax litigation from a procedural and technical point of view to create a stable foundation for comparison in appeals alleging unequal appraisal, allow a taxpayer more time to review the need for the filing of a lawsuit in order to encourage fewer and more well considered filings, and use a master in chancery to assist in expediting the settlements of lawsuits.

H.B. 4040 extends the deadline for filing a lawsuit from 45 days to 60 days after receiving the appraisal review board order. The bill authorizes the court to appoint a master in chancery to assist in the resolution of property tax lawsuits.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

H.B. 4040 amends provisions of the Tax Code relating to property taxes to increase, from 45 days to 60 days, the allowable time period that a party has to file a petition for judicial review with the district court to appeal a final order of an appraisal review board, after the party has received notice of the final order. The bill clarifies that the petition for review may be filed at any time after the hearing but before the 60-day deadline. The bill allows a petition for review to include more than one party if the parties have a common ownership interest in whole or in part, and to include multiple properties that have a common ownership in whole or in part.

H.B. 4040 requires the district court to give preference to the use of a master in chancery to resolve an appeal. The bill authorizes the court, in connection with an appeal that seeks a

remedy for excessive or unequal appraisal, to appoint a master in chancery. The bill requires the court, for such an appeal, to appoint a master in chancery on request of a party to the appeal.

H.B. 4040 requires a person, to be eligible to serve as a master in chancery, to be a resident of Texas and an attorney who is licensed in Texas. The bill prohibits the person from being an attorney for or related to a party to the action. The bill requires the court, in appointing a master, to give preference to a qualified person who has judicial experience. The bill establishes that a master in chancery is required to perform all of the duties required by the court, is subject to the orders of the court, and has the power that a master in chancery in a court of equity has. The bill authorizes a mastery in chancery, subject to any limitations or specification stated in the order of reference, to regulate the proceedings in a hearing before the master and do all acts and take all measures necessary or proper for the efficient performance of the master's duties under the order; require the production of evidence regarding any matter covered by the order and require the production of books, papers, vouchers, documents, and other writings applicable to the case; require that parties produce all documentary evidence in advance of the hearing; rule on the admissibility of evidence, unless otherwise directed by the order; administer oaths to and examine witnesses; call and examine under oath the parties to the action; and set a reasonable time limit on the proceedings based on the complexity of the case, which may not be less than four hours for a case involving property that is a residence homestead or less than eight hours for a case involving any other type of property, unless otherwise agreed to by the parties. The bill establishes that a decision of a master in chancery is not binding on the parties to the appeal but may be admitted into evidence in a trial of the matter.

H.B. 4040 requires the district court to include in a docket control order a requirement of alternative dispute resolution unless waived by both parties.

H.B. 4040 establishes that, for purposes relating to remedies for unequal appraisals, the appraised value of the property subject to the lawsuit and the appraised value of a comparable property or sample property that is used for comparison is the appraised value determined by the appraisal review board.

#### **EFFECTIVE DATE**

On passage, or, if the act does not receive the necessary vote, the act takes effect September 1, 2009.