

## **BILL ANALYSIS**

C.S.S.B. 771  
By: Williams  
Ways & Means  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Currently, appraisal districts do not have a standard for setting values on properties following a year in which the property's market value was determined to be lower than the initial value through the protest process. Even though a lower value was achieved through protest, in the subsequent year, a property owner often receives an initial value that is the same or higher than the initial valuation that was the subject of the preceding year's protest, even if there has been little or no change to the property since the previous year's value had been finally established. As a result, property owners are forced to protest the value, often resulting in litigation, and each year having to present the same issues as presented the previous year with substantially the same outcome. Appraisal districts are required to consider characteristics of a property in valuing it but are not required to use property-specific data, such as income and expense statements, in establishing the value. The Tax Code provides guidance for appraising property under the income and the cost methods but provides no such guidance for using the market data comparison. The result is that appraisals vary significantly across appraisal districts and property owners are faced with an inconsistent and unpredictable system for determining their property value for property tax purposes.

C.S.S.B. 771 differs from the original by clarifying the standards for which a successful protest under Subtitle F to be considered the true appraised value of the property. C.S.S.B. 771 provide that agricultural land in a governor declared drought is to be considered agricultural land during that period, even if the land remains out of agricultural production. The substitute provides that a property owner may appeal an appraisal review board order to binding arbitration as an alternative to filing an appeal under Section 42.01, Tax Code. C.S.S.B. 771 allows for a property owner to appeal an appraisal review board order through binding arbitration if the property qualifies as the owner's residence homestead. C.S.S.B. 771 adds a licensed attorney as who may initially qualify as an arbitrator.

### **RULEMAKING AUTHORITY**

CSSB 771 gives the comptroller additional rulemaking authority in Section 6 of the bill.

### **ANALYSIS**

C.S.S.B. 771 changes the caption to "relating to the determination of the value of property for ad valorem tax purposes, including appeals through binding arbitration of appraisal review board orders determining protests of property value determinations."

SECTION 1. Amends Section 23.01, Tax Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Requires that each property be appraised based upon the individual characteristics that affect the property's market value and all available evidence that is specific to the value of a property be taken into account in determining the property's market value.

(c) Notwithstanding any provision of this subchapter to the contrary, if the appraised value of property in a tax year is determined under Subtitle F, 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. In the following tax year, the chief appraiser may not

increase 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. If the appraised value is finally determined in a protest under Section 41.41(a)(2) or an appeal under Section 42.26, the chief appraiser may 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. 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 2. Amends Sections 23.013 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 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) Provides that whether a property is comparable to the subject property is required to 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. 23.24. 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, 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 3. Amends Section 23.522, Tax Code, as follows:

Sec. 23.522. TEMPORARY CESSATION OF AGRICULTURAL USE DURING DROUGHT. 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 4. 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 a

property owner's entitlement to protest a determination of the appraised value of the owner's property or, in the case of land appraised under certain conditions, a determination of its appraised or market value) concerning the appraised or market value of 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. Deletes existing text entitling a property owner, as an alternative to filing an appeal under Section 42.01, to appeal through binding arbitration under this chapter an appraisal review board order determining a protest concerning real property 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 5. 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 in the amount of \$500 or \$250, if the property owner requests expedited arbitration under Section 41A.031. Makes nonsubstantive changes.

SECTION 6. Amends Section 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 (Request for Arbitration) 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 of public accounts (comptroller) to adopt rules and processes to assist in the conduct of an expedited arbitration.

SECTION 7. Amends the heading to Section 41A.06, Tax Code, to read as follows:

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

SECTION 8. Amends Section 41A.06(b), Tax Code, to require a person, to initially qualify to serve as an arbitrator under this chapter, to have been a licensed attorney in this state or to have been licensed or certified continuously during the five years preceding the date the person agrees to serve as an 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 (Real Estate Appraisers), Occupations Code; or a certified public accountant under Chapter 901 (Accountants), Occupations Code. Deletes existing text requiring a person, to qualify to serve as an arbitrator under this chapter, to 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. Makes nonsubstantive changes.

SECTION 9. 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 10. Reenacts and amends 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, to authorize the parties to an arbitration proceeding under this chapter to represent themselves or, at their own cost, to be represented by certain persons, including an individual who is licensed as a certified accountant under Chapter 901, Occupations Code. Makes nonsubstantive changes.

SECTION 11. Amends Section 41A.09 (b) of the Tax Code to keep in place the requirement that the arbitrator's fee may not exceed 90 percent of the amount of the arbitration deposit. The committee substitute moved the language from Section 41A.06(b) (3) of the Tax Code to Section 41A.06 (b) (2) of the Tax Code.

SECTION 12. (a) 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.

(b) 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.

(c) 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 or 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 13. Effective date: January 1, 2010.

### **EFFECTIVE DATE**

January 1, 2010

### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

C.S.S.B. 771 differs from the original by clarifying that for a successful protest under Subtitle F to be considered the true appraised value of the property, the property owner must have succeeded in getting the appraised value lowered. It further provides that if the successful protest was based on an equity argument, the chief appraiser may satisfy the substantial evidence burden for purposes of raising the value in the subsequent year by showing that the inequity in the appraisal of the properties that were used as comparables has been corrected. It further provides that the burden of proof is always on the chief appraiser and never on the property owner.

C.S.S.B. 771 removes the repeal of Sec. 23.014 and provides Sec. 23.014 does not apply in appraising business personal property included in the income method for valuing real property as specified in Sec. 23.24 (b).

C.S.S.B. 771 provides that the eligibility for property appraised as agriculture land does not cease because the land is not principally devoted to agricultural use if the area is in a governor declared drought and creates an agricultural necessity to extend the normal time the land remains

out of agricultural production and the owner of the land intends to resume using the land for agricultural purposes after the drought ceases.

C.S.S.B. 771 clarifies that binding arbitration is available to any property owner's residence homestead. The substitute allows the property owner to use expedited arbitration and requires a \$250 deposit if they choose to do so. The substitute gives the comptroller rulemaking authority to adopt rules and processes to assist in expedited arbitration. CSSB 771 establishes a minimum requirement level to be qualified as an arbitrator and establishes a continued education requirement for the continued qualification of an arbitrator.

C.S.S.B. 771 adds that a party may elect to use a certified public accountant during arbitration proceedings at their own cost.