

1-1 By: Otto, et al. (Senate Sponsor - Williams) H.B. No. 3454
1-2 (In the Senate - Received from the House May 1, 2009;
1-3 May 6, 2009, read first time and referred to Committee on Finance;
1-4 May 26, 2009, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 14, Nays 0; May 26, 2009,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 3454 By: Williams

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the determination of the value of property for ad
1-11 valorem tax purposes, including appeals of appraisal review board
1-12 orders determining protests of property value determinations, and
1-13 the use of certain values by school districts in adopting tax rates.

1-14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-15 SECTION 1. Section 6.411(c), Tax Code, is amended to read as
1-16 follows:

1-17 (c) Except for communications described by Section
1-18 41.66(f)(3), this [This] section does not apply to communications
1-19 that do not discuss the specific evidence, argument, facts, merits,
1-20 or property involved in a hearing currently pending before the
1-21 appraisal review board or to communications between the board and
1-22 its legal counsel.

1-23 SECTION 2. Section 6.43, Tax Code, is amended to read as
1-24 follows:

1-25 Sec. 6.43. PERSONNEL. (a) The appraisal review board may
1-26 employ legal counsel as provided by the district budget or use the
1-27 services of the county attorney and may use the staff of the
1-28 appraisal office for clerical assistance.

1-29 (b) The appraisal review board may not employ or retain a
1-30 person to serve as legal counsel for the board if the person serves
1-31 as legal counsel for the appraisal district or chief appraiser.
1-32 This subsection does not prevent the appraisal review board from
1-33 using the services of the county attorney as authorized by
1-34 Subsection (a).

1-35 SECTION 3. Section 23.01, Tax Code, is amended by amending
1-36 Subsection (b) and adding Subsection (c) to read as follows:

1-37 (b) The market value of property shall be determined by the
1-38 application of generally accepted appraisal methods and
1-39 techniques. If the appraisal district determines the appraised
1-40 value of a property using mass appraisal standards, the mass
1-41 appraisal standards must comply with the Uniform Standards of
1-42 Professional Appraisal Practice. The same or similar appraisal
1-43 methods and techniques shall be used in appraising the same or
1-44 similar kinds of property. However, each property shall be
1-45 appraised based upon the individual characteristics that affect the
1-46 property's market value, and all available evidence that is
1-47 specific to the value of the property shall be taken into account in
1-48 determining the property's market value.

1-49 (c) Notwithstanding any provision of this subchapter to the
1-50 contrary, if the appraised value of property in a tax year is
1-51 determined under Subtitle F, the appraised value of the property as
1-52 finally determined under that subtitle is considered to be the
1-53 appraised value of the property for that tax year. In the following
1-54 tax year, the chief appraiser may not increase the appraised value
1-55 of the property unless the increase by the chief appraiser is
1-56 reasonably supported by substantial evidence when all of the
1-57 reliable and probative evidence in the record is considered as a
1-58 whole. If the appraised value is finally determined in a protest
1-59 under Section 41.41(a)(2) or an appeal under Section 42.26, the
1-60 chief appraiser may satisfy the requirement to reasonably support
1-61 by substantial evidence an increase in the appraised value of the
1-62 property in the following tax year by presenting evidence showing
1-63 that the inequality in the appraisal of property has been corrected

2-1 with regard to the properties that were considered in determining
2-2 the value of the subject property. The burden of proof is on the
2-3 chief appraiser to support an increase in the appraised value of
2-4 property under the circumstances described by this subsection, not
2-5 on the property owner.

2-6 SECTION 4. Sections 23.013, 23.014, and 23.24, Tax Code,
2-7 are amended to read as follows:

2-8 Sec. 23.013. MARKET DATA COMPARISON METHOD OF APPRAISAL.

2-9 (a) If the chief appraiser uses the market data comparison method
2-10 of appraisal to determine the market value of real property, the
2-11 chief appraiser shall use comparable sales data and shall adjust
2-12 the comparable sales to the subject property.

2-13 (b) A sale is not considered to be a comparable sale unless
2-14 the sale occurred within 24 months of the date as of which the
2-15 market value of the subject property is to be determined, except
2-16 that a sale that did not occur during that period may be considered
2-17 to be a comparable sale if enough comparable properties were not
2-18 sold during that period to constitute a representative sample.

2-19 (c) A sale of a comparable property must be appropriately
2-20 adjusted for any change in the market value of the comparable
2-21 property during the period between the date of the sale of the
2-22 comparable property and the date as of which the market value of the
2-23 subject property is to be determined.

2-24 (d) Whether a property is comparable to the subject property
2-25 shall be determined based on similarities with regard to location,
2-26 square footage of the lot and improvements, property age, property
2-27 condition, property access, amenities, views, income, operating
2-28 expenses, occupancy, and the existence of easements, deed
2-29 restrictions, or other legal burdens affecting marketability.

2-30 Sec. 23.014. EXCLUSION OF PROPERTY AS REAL PROPERTY.

2-31 Except as provided by Section 23.24(b), in [In] determining the
2-32 market value of real property, the chief appraiser shall analyze
2-33 the effect on that value of, and exclude from that value the value
2-34 of, any:

- 2-35 (1) tangible personal property, including trade
- 2-36 fixtures;
- 2-37 (2) intangible personal property; or
- 2-38 (3) other property that is not subject to appraisal as
- 2-39 real property.

2-40 Sec. 23.24. FURNITURE, FIXTURES, AND EQUIPMENT. (a) If
2-41 real property is appraised by a method that takes into account the
2-42 value of furniture, fixtures, and equipment in or on the real
2-43 property, the furniture, fixtures, and equipment shall not be
2-44 subject to additional appraisal or taxation as personal property.

2-45 (b) In determining the market value of the real property
2-46 appraised on the basis of rental income, the chief appraiser may not
2-47 separately appraise or take into account any personal property
2-48 valued as a portion of the income of the real property, and the
2-49 market value of the real property must include the combined value of
2-50 the real property and the personal property.

2-51 SECTION 5. Subchapter D, Chapter 23, Tax Code, is amended by
2-52 adding Section 23.522 to read as follows:

2-53 Sec. 23.522. TEMPORARY CESSATION OF AGRICULTURAL USE DURING
2-54 DROUGHT. The eligibility of land for appraisal under this
2-55 subchapter does not end because the land ceases to be devoted
2-56 principally to agricultural use to the degree of intensity
2-57 generally accepted in the area if:

2-58 (1) a drought declared by the governor creates an
2-59 agricultural necessity to extend the normal time the land remains
2-60 out of agricultural production; and

2-61 (2) the owner of the land intends that the use of the
2-62 land in that manner and to that degree of intensity be resumed when
2-63 the declared drought ceases.

2-64 SECTION 6. Section 26.04, Tax Code, is amended by adding
2-65 Subsection (d-1) to read as follows:

2-66 (d-1) This subsection applies only to a school district.
2-67 Notwithstanding Subsections (a), (b), and (c), on receipt of the
2-68 estimate of the taxable value of property in the district under
2-69 Section 26.01(e):

3-1 (1) the assessor for the district shall:
 3-2 (A) determine an estimate of the values specified
 3-3 in Subsection (a) for the district using the estimated value
 3-4 provided under Section 26.01(e); and
 3-5 (B) submit an appraisal roll to the governing
 3-6 body of the district showing an estimate of each item of information
 3-7 specified by Subsection (b), using the estimated values provided
 3-8 under Section 26.01(e) and determined under Paragraph (A); and
 3-9 (2) an officer or employee designated by the governing
 3-10 body of the school district shall calculate the effective tax rate
 3-11 and the rollback tax rate for the district using the estimates
 3-12 described by Subdivision (1).

3-13 SECTION 7. Section 26.05, Tax Code, is amended by adding
 3-14 Subsection (a-1) to read as follows:

3-15 (a-1) This subsection applies only to a school district.
 3-16 The governing body of the school district shall adopt a tax rate for
 3-17 the current tax year before the later of September 30 or the 60th
 3-18 day after the date the estimate of the taxable value of property in
 3-19 the district is received under Section 26.01(e) using the values
 3-20 estimated under that section and Section 26.04(d-1).

3-21 SECTION 8. Section 41.66(f), Tax Code, is amended to read as
 3-22 follows:

3-23 (f) A member of the appraisal review board may not
 3-24 communicate with another person concerning:

3-25 (1) the evidence, argument, facts, merits, or any
 3-26 other matters related to an owner's protest, except during the
 3-27 hearing on the protest; ~~or~~

3-28 (2) a property that is the subject of the protest,
 3-29 except during a hearing on another protest or other proceeding
 3-30 before the board at which the property is compared to other property
 3-31 or used in a sample of properties; or

3-32 (3) a factual or hypothetical situation that is
 3-33 substantially similar to a situation that is the subject of the
 3-34 protest, except during the hearing on the protest.

3-35 SECTION 9. Section 41A.01, Tax Code, is amended to read as
 3-36 follows:

3-37 Sec. 41A.01. RIGHT OF APPEAL BY PROPERTY OWNER. As an
 3-38 alternative to filing an appeal under Section 42.01, a property
 3-39 owner is entitled to appeal through binding arbitration under this
 3-40 chapter an appraisal review board order determining a protest filed
 3-41 under Section 41.41(a)(1) concerning the appraised or market value
 3-42 of ~~real~~ property if:

3-43 (1) the property qualifies as the owner's residence
 3-44 homestead under Section 11.13; or

3-45 (2) the appraised or market value, as applicable, of
 3-46 the property as determined by the order is \$1 million or less ~~and~~

3-47 ~~[(2) the appeal does not involve any matter in dispute~~
 3-48 ~~other than the determination of the appraised or market value of the~~
 3-49 ~~property].~~

3-50 SECTION 10. Section 41A.03(a), Tax Code, is amended to read
 3-51 as follows:

3-52 (a) To appeal an appraisal review board order under this
 3-53 chapter, a property owner must file with the appraisal district not
 3-54 later than the 45th day after the date the property owner receives
 3-55 notice of the order:

3-56 (1) a completed request for binding arbitration under
 3-57 this chapter in the form prescribed by Section 41A.04; and

3-58 (2) an arbitration deposit ~~[in the amount of \$500,~~
 3-59 made payable to the comptroller in the amount of:

3-60 (A) \$500; or

3-61 (B) \$250, if the property owner requests
 3-62 expedited arbitration under Section 41A.031.

3-63 SECTION 11. Chapter 41A, Tax Code, is amended by adding
 3-64 Section 41A.031 to read as follows:

3-65 Sec. 41A.031. EXPEDITED ARBITRATION. (a) A property owner
 3-66 is entitled to an expedited arbitration if the property owner
 3-67 includes a request for expedited arbitration in the request filed
 3-68 under Section 41A.03 and pays the required deposit.

3-69 (b) An expedited arbitration must provide for not more than

4-1 one hour of argument and testimony on behalf of the property owner
4-2 and not more than one hour of argument and testimony on behalf of
4-3 the appraisal district.

4-4 (c) The comptroller shall adopt rules and processes to
4-5 assist in the conduct of an expedited arbitration.

4-6 SECTION 12. The heading to Section 41A.06, Tax Code, is
4-7 amended to read as follows:

4-8 Sec. 41A.06. REGISTRY AND INITIAL QUALIFICATION
4-9 [QUALIFICATIONS] OF ARBITRATORS.

4-10 SECTION 13. Section 41A.06(b), Tax Code, is amended to read
4-11 as follows:

4-12 (b) To initially qualify to serve as an arbitrator under
4-13 this chapter, a person must:

4-14 (1) have completed at least 30 hours of training in
4-15 arbitration and alternative dispute resolution procedures from a
4-16 university, college, or legal or real estate trade association;

4-17 (2) have been licensed or certified continuously
4-18 during the five years preceding the date the person agrees to serve
4-19 as an arbitrator, as:

4-20 (A) [~~be licensed as~~] a real estate broker or
4-21 salesperson under Chapter 1101, Occupations Code;

4-22 (B) [~~, or be licensed or certified as~~] a real
4-23 estate appraiser under Chapter 1103, Occupations Code; or

4-24 (C) a certified public accountant under Chapter
4-25 901, Occupations Code; and

4-26 (3) agree to conduct an arbitration for a fee that is
4-27 not more than 90 percent of the amount of the arbitration deposit
4-28 required by Section 41A.03.

4-29 SECTION 14. Chapter 41A, Tax Code, is amended by adding
4-30 Section 41A.061 to read as follows:

4-31 Sec. 41A.061. CONTINUED QUALIFICATION OF ARBITRATOR;
4-32 RENEWAL OF AGREEMENT. (a) The comptroller shall include a

4-33 qualified arbitrator in the registry until the second anniversary
4-34 of the date the person was added to the registry. To continue to be
4-35 included in the registry after the second anniversary of the date
4-36 the person was added to the registry, the person must renew the
4-37 person's agreement with the comptroller to serve as an arbitrator
4-38 on or as near as possible to the date on which the person's license
4-39 or certification issued under Chapter 901, 1101, or 1103,
4-40 Occupations Code, is renewed.

4-41 (b) To renew the person's agreement to serve as an
4-42 arbitrator, the person must:

4-43 (1) file a renewal application with the comptroller at
4-44 the time and in the manner prescribed by the comptroller;

4-45 (2) continue to meet the requirements provided by
4-46 Section 41A.06(b); and

4-47 (3) during the preceding two years have completed at
4-48 least eight hours of continuing education in arbitration and
4-49 alternative dispute resolution procedures offered by a university,
4-50 college, real estate trade association, or legal association.

4-51 (c) The comptroller shall remove a person from the registry
4-52 if the person fails or declines to renew the person's agreement to
4-53 serve as an arbitrator in the manner required by this section.

4-54 SECTION 15. Section 41A.07, Tax Code, is amended by adding
4-55 Subsection (e) to read as follows:

4-56 (e) Notwithstanding any other provision of this section, an
4-57 arbitrator selected or appointed to arbitrate an appeal under this
4-58 chapter regarding property other than real property must be
4-59 licensed as a certified public accountant under Chapter 901,
4-60 Occupations Code.

4-61 SECTION 16. Section 41A.08(b), Tax Code, as added by
4-62 Chapters 372 (S.B. 1351) and 912 (H.B. 182), Acts of the 79th
4-63 Legislature, Regular Session, 2005, is reenacted and amended to
4-64 read as follows:

4-65 (b) The parties to an arbitration proceeding under this
4-66 chapter may represent themselves or, at their own cost, may be
4-67 represented by:

4-68 (1) an employee of the appraisal district;

4-69 (2) an attorney who is licensed in this state;

5-1 (3) a person who is licensed as a real estate broker or
5-2 salesperson under Chapter 1101, Occupations Code, or is licensed or
5-3 certified as a real estate appraiser under Chapter 1103,
5-4 Occupations Code; ~~or~~

5-5 (4) a property tax consultant registered under Chapter
5-6 1152, Occupations Code; or

5-7 (5) an individual who is licensed as a certified
5-8 public accountant under Chapter 901, Occupations Code.

5-9 SECTION 17. (a) Sections 6.411 and 41.66, Tax Code, as
5-10 amended by this Act, apply only to an offense committed on or after
5-11 the effective date of this Act. For purposes of this subsection, an
5-12 offense was committed before the effective date of this Act if any
5-13 element of the offense occurred before that date. An offense
5-14 committed before the effective date of this Act is covered by the
5-15 law in effect when the offense was committed, and the former law is
5-16 continued in effect for that purpose.

5-17 (b) Sections 41A.01, 41A.03, 41A.07, and 41A.08, Tax Code,
5-18 as amended by this Act, and Section 41A.031, Tax Code, as added by
5-19 this Act, apply only to an appeal through binding arbitration under
5-20 Chapter 41A of that code that is requested on or after the effective
5-21 date of this Act.

5-22 (c) Section 41A.06, Tax Code, as amended by this Act,
5-23 applies only to a person who initially qualifies to serve as an
5-24 arbitrator under Chapter 41A, Tax Code, on or after the effective
5-25 date of this Act.

5-26 (d) Section 41A.061, Tax Code, as added by this Act, does
5-27 not affect the eligibility of a person who is included on the
5-28 registry list of qualified arbitrators on the effective date of
5-29 this Act to continue to remain on that registry list before the date
5-30 on which the person's license or certificate under Chapter 901,
5-31 1101, or 1103, Occupations Code, expires unless renewed.

5-32 SECTION 18. This Act applies only to the appraisal of
5-33 property for a tax year beginning on or after the effective date of
5-34 this Act.

5-35 SECTION 19. This Act takes effect January 1, 2010.

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