

By: Williams

S.B. No. 771

Substitute the following for S.B. No. 771:

By: Otto

C.S.S.B. No. 771

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the determination of the value of property for ad  
3 valorem tax purposes, including appeals through binding  
4 arbitration of appraisal review board orders determining protests  
5 of property value determinations.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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

9 (b) The market value of property shall be determined by the  
10 application of generally accepted appraisal methods and  
11 techniques. If the appraisal district determines the appraised  
12 value of a property using mass appraisal standards, the mass  
13 appraisal standards must comply with the Uniform Standards of  
14 Professional Appraisal Practice. The same or similar appraisal  
15 methods and techniques shall be used in appraising the same or  
16 similar kinds of property. However, each property shall be  
17 appraised based upon the individual characteristics that affect the  
18 property's market value, and all available evidence that is  
19 specific to the value of the property shall be taken into account in  
20 determining the property's market value.

21 (c) Notwithstanding any provision of this subchapter to the  
22 contrary, if the appraised value of property in a tax year is  
23 lowered under Subtitle F, the appraised value of the property as  
24 finally determined under that subtitle is considered to be the

1 appraised value of the property for that tax year. In the following  
2 tax year, the chief appraiser may not increase the appraised value  
3 of the property unless the increase by the chief appraiser is  
4 reasonably supported by substantial evidence when all of the  
5 reliable and probative evidence in the record is considered as a  
6 whole. If the appraised value is finally determined in a protest  
7 under Section 41.41(a)(2) or an appeal under Section 42.26, the  
8 chief appraiser may satisfy the requirement to reasonably support  
9 by substantial evidence an increase in the appraised value of the  
10 property in the following tax year by presenting evidence showing  
11 that the inequality in the appraisal of property has been corrected  
12 with regard to the properties that were considered in determining  
13 the value of the subject property. The burden of proof is on the  
14 chief appraiser to support an increase in the appraised value of  
15 property under the circumstances described by this subsection.

16 SECTION 2. Sections 23.013, 23.014, and 23.24, Tax Code,  
17 are amended to read as follows:

18 Sec. 23.013. MARKET DATA COMPARISON METHOD OF APPRAISAL.

19 (a) If the chief appraiser uses the market data comparison method  
20 of appraisal to determine the market value of real property, the  
21 chief appraiser shall use comparable sales data and shall adjust  
22 the comparable sales to the subject property.

23 (b) A sale is not considered to be a comparable sale unless  
24 the sale occurred within 24 months of the date as of which the  
25 market value of the subject property is to be determined, except  
26 that a sale that did not occur during that period may be considered  
27 to be a comparable sale if enough comparable properties were not

1 sold during that period to constitute a representative sample.

2 (c) A sale of a comparable property must be appropriately  
3 adjusted for any change in the market value of the comparable  
4 property during the period between the date of the sale of the  
5 comparable property and the date as of which the market value of the  
6 subject property is to be determined.

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

13 Sec. 23.014. EXCLUSION OF PROPERTY AS REAL PROPERTY.  
14 Except as provided by Section 23.24(b), in [~~In~~] determining the  
15 market value of real property, the chief appraiser shall analyze  
16 the effect on that value of, and exclude from that value the value  
17 of, any:

18 (1) tangible personal property, including trade  
19 fixtures;

20 (2) intangible personal property; or

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

23 Sec. 23.24. FURNITURE, FIXTURES, AND EQUIPMENT. (a) If  
24 real property is appraised by a method that takes into account the  
25 value of furniture, fixtures, and equipment in or on the real  
26 property, the furniture, fixtures, and equipment shall not be  
27 subject to additional appraisal or taxation as personal property.

1       (b) In determining the market value of the real property  
2 appraised on the basis of rental income, the chief appraiser may not  
3 separately appraise or take into account any personal property  
4 valued as a portion of the income of the real property, and the  
5 market value of the real property must include the combined value of  
6 the real property and the personal property.

7       SECTION 3. Subchapter D, Chapter 23, Tax Code, is amended by  
8 adding Section 23.522 to read as follows:

9       Sec. 23.522. TEMPORARY CESSATION OF AGRICULTURAL USE DURING  
10 DROUGHT. The eligibility of land for appraisal under this  
11 subchapter does not end because the land ceases to be devoted  
12 principally to agricultural use to the degree of intensity  
13 generally accepted in the area if:

14               (1) a drought declared by the governor creates an  
15 agricultural necessity to extend the normal time the land remains  
16 out of agricultural production; and

17               (2) the owner of the land intends that the use of the  
18 land in that manner and to that degree of intensity be resumed when  
19 the declared drought ceases.

20       SECTION 4. Section 41A.01, Tax Code, is amended to read as  
21 follows:

22       Sec. 41A.01. RIGHT OF APPEAL BY PROPERTY OWNER. As an  
23 alternative to filing an appeal under Section 42.01, a property  
24 owner is entitled to appeal through binding arbitration under this  
25 chapter an appraisal review board order determining a protest filed  
26 under Section 41.41(a)(1) concerning the appraised or market value  
27 of [~~rea~~] property if:

1 (1) the property qualifies as the owner's residence  
2 homestead under Section 11.13; or

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

5 ~~[(2) the appeal does not involve any matter in dispute~~  
6 ~~other than the determination of the appraised or market value of the~~  
7 ~~property].~~

8 SECTION 5. Section 41A.03(a), Tax Code, is amended to read  
9 as follows:

10 (a) To appeal an appraisal review board order under this  
11 chapter, a property owner must file with the appraisal district not  
12 later than the 45th day after the date the property owner receives  
13 notice of the order:

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

16 (2) an arbitration deposit ~~[in the amount of \$500,]~~  
17 made payable to the comptroller in the amount of:

18 (A) \$500; or

19 (B) \$250, if the property owner requests  
20 expedited arbitration under Section 41A.031.

21 SECTION 6. Chapter 41A, Tax Code, is amended by adding  
22 Section 41A.031 to read as follows:

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

27 (b) An expedited arbitration must provide for not more than

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

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

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

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

10 SECTION 8. Section 41A.06(b), Tax Code, is amended to read  
11 as follows:

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

14 (1) meet the following requirements, as applicable:

15 (A) be licensed as an attorney in this state; or

16 (B) have:

17 (i) completed at least 30 hours of training  
18 in arbitration and alternative dispute resolution procedures from a  
19 university, college, or legal or real estate trade association; and

20 (ii) been licensed or certified  
21 continuously during the five years preceding the date the person  
22 agrees to serve as an arbitrator as:

23 (a) [~~(2) be licensed as~~] a real estate  
24 broker or salesperson under Chapter 1101, Occupations Code;

25 (b) [~~, or be licensed or certified as~~]  
26 a real estate appraiser under Chapter 1103, Occupations Code; or

27 (c) a certified public accountant

1 under Chapter 901, Occupations Code; and

2 (2) [~~3~~] agree to conduct an arbitration for a fee  
3 that is not more than 90 percent of the amount of the arbitration  
4 deposit required by Section 41A.03.

5 SECTION 9. Chapter 41A, Tax Code, is amended by adding  
6 Section 41A.061 to read as follows:

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

17 (b) To renew the person's agreement to serve as an  
18 arbitrator, the person must:

19 (1) file a renewal application with the comptroller at  
20 the time and in the manner prescribed by the comptroller;

21 (2) continue to meet the requirements provided by  
22 Section 41A.06(b); and

23 (3) during the preceding two years have completed at  
24 least eight hours of continuing education in arbitration and  
25 alternative dispute resolution procedures offered by a university,  
26 college, real estate trade association, or legal association.

27 (c) The comptroller shall remove a person from the registry

1 if the person fails or declines to renew the person's agreement to  
2 serve as an arbitrator in the manner required by this section.

3 SECTION 10. Section 41A.08(b), Tax Code, as added by  
4 Chapters 372 (S.B. 1351) and 912 (H.B. 182), Acts of the 79th  
5 Legislature, Regular Session, 2005, is reenacted and amended to  
6 read as follows:

7 (b) The parties to an arbitration proceeding under this  
8 chapter may represent themselves or, at their own cost, may be  
9 represented by:

- 10 (1) an employee of the appraisal district;
- 11 (2) an attorney who is licensed in this state;
- 12 (3) a person who is licensed as a real estate broker or  
13 salesperson under Chapter 1101, Occupations Code, or is licensed or  
14 certified as a real estate appraiser under Chapter 1103,  
15 Occupations Code; ~~or~~
- 16 (4) a property tax consultant registered under Chapter  
17 1152, Occupations Code; or
- 18 (5) an individual who is licensed as a certified  
19 public accountant under Chapter 901, Occupations Code.

20 SECTION 11. Section 41A.09(b), Tax Code, is amended to read  
21 as follows:

- 22 (b) An award under this section:
- 23 (1) must include a determination of the appraised or  
24 market value, as applicable, of the property that is the subject of  
25 the appeal;
  - 26 (2) may include any remedy or relief a court may order  
27 under Chapter 42 in an appeal relating to the appraised or market



1 value of property;

2 (3) shall specify the arbitrator's fee, which may not  
3 exceed the amount provided by Section 41A.06(b)(2) [~~41A.06(b)(3)~~];

4 (4) is final and may not be appealed except as  
5 permitted under Section 171.088, Civil Practice and Remedies Code,  
6 for an award subject to that section; and

7 (5) may be enforced in the manner provided by  
8 Subchapter D, Chapter 171, Civil Practice and Remedies Code.

9 SECTION 12. (a) Sections 41A.01, 41A.03, and 41A.08, Tax  
10 Code, as amended by this Act, and Section 41A.031, Tax Code, as  
11 added by this Act, apply only to an appeal through binding  
12 arbitration under Chapter 41A of that code that is requested on or  
13 after the effective date of this Act.

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

18 (c) Section 41A.061, Tax Code, as added by this Act, does  
19 not affect the eligibility of a person who is included on the  
20 registry list of qualified arbitrators on the effective date of  
21 this Act to continue to remain on that registry list before the date  
22 on which the person's license or certificate under Chapter 901,  
23 1101, or 1103, Occupations Code, expires unless renewed.

24 SECTION 13. This Act applies only to the appraisal of  
25 property for a tax year beginning on or after the effective date of  
26 this Act.

27 SECTION 14. This Act takes effect January 1, 2010.