LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 28, 2009

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: **HB3454** by Otto (relating to the determination of the value of property for ad valorem tax purposes, including appeals of appraisal review board orders determining protests of property value determinations, and the use of certain values by school districts in adopting tax rates.), **As Passed 2nd House**

Estimated Two-year Net Impact to General Revenue Related Funds for HB3454, As Passed 2nd House: an impact of $0 through the biennium ending August 31, 2011.

The bill's provision prohibiting a chief appraiser from separately appraising personal property that is valued as a portion of the income of the real property could create a cost to the state, in addition to the costs presented below, through the operation of the school finance formulas, but only to the extent that chief appraisers are currently double counting the value of personal property by including it in an income appraisal of the real property and also including it by another method.

The provisions of the bill related to the temporary cessation of typical agricultural activities during a drought would also create a cost to the state through the operation of the school funding formulas.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2010	$0
2011	$0
2012	$0
2013	$0
2014	$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain/(Loss) from *School Districts*	Probable Revenue Gain/(Loss) from *Counties*
2010	($6,941,000)	($1,833,000)
2011	($7,341,000)	($2,072,000)
2012	($7,641,000)	($2,273,000)
2013	($8,070,000)	($2,386,000)
2014	($8,577,000)	($2,522,000)

Fiscal Analysis

The bill would prohibit the representation of the appraisal review board by a person who serves as legal counsel for the appraisal district.

The bill would prohibit an increase in the appraised value of property after the value had been determined by an appeal to the appraisal review board, binding arbitration, or court decision unless the increase is reasonably supported by substantial, reliable evidence after considering all the evidence in the record.

The bill would limit sales that could be used as comparable sales in developing appraisals to sales that occurred within two years of the appraisal date unless insufficient comparable sales occurred within two years of the appraisal date to form a representative sample. The bill would require that a comparable sale price be adjusted for market changes during the period between the date of the sale and the appraisal date. The bill would include additional factors to be considered before using a sale as a comparable.

The bill would also prohibit a chief appraiser from separately appraising personal property that is valued as a portion of the income of the real property when appraising the property based on rental income. The market value of the real property would be required to include the combined value of the real and personal property.

The bill would provide that the eligibility of land qualified for agricultural appraisal does not end in situations in which a drought declared by the Governor causes the temporary cessation of typical agricultural activities if the landowner intends to resume the agricultural use when the drought ceases.

The bill would require that tax assessors for school districts estimate the values for each school district and submit them to the districts. Each school district would be required to calculate the effective and rollback tax rates using the estimate and adopt a tax rate before the later of September 30 or the 60th day after the date the estimate of the taxable value of property in the district is received.

The bill would disallow appraisal review board communications outside the hearing regarding a factual or hypothetical situation that is similar to a situation that is the subject of the protest.
The bill would amend Chapter 41A of the Tax Code, regarding property tax appraisal appeals and binding arbitration. Under current law, an appeal through binding arbitration is restricted to appeals that do not involve any matter in dispute other than the determination of the appraised or market value of the property. This bill would remove that restriction and include appeals based on equity.

The bill would provide for an expedited arbitration with not more than one hour of argument and testimony by each side involved in the protest. The deposit for an expedited arbitration would be $250, compared to the $500 deposit for the existing arbitration process.

The bill would add a continuing education requirement for arbitrators and would require them to renew their arbitration service agreement with the Comptroller on or as near as possible to the date on which the person's license or certification issued under Chapters 901, 1101, or 1103 of the Occupations Code, is renewed. The bill would add the requirement that an arbitrator in an appeal regarding property other than real property to be licensed as a certified public accountant. If an arbitrator fails to renew an agreement, the Comptroller would be required to remove the person from the arbitration registry.

The bill's proposed requirement for appraisers to consider proper evidence before increasing the appraised value of properties that were successfully protested in the previous year would not prevent appraisal districts from appraising the properties at market value because property tax appraisers are currently required to follow the Uniform Standards of Professional Appraisal Practice (USPAP) which requires such evidence.

The bill's requirements that appraisers select only the comparable sales that occurred within two years of the appraisal date unless a reasonable number of such sales are unavailable, that appraisers adjust sales for market changes between the sale date and the appraisal date, and that appraisers consider reasonable factors when selecting comparable sales are also in substantial accord with USPAP and International Association of Assessing Officers standards. As a result, these provisions would not create a significant fiscal impact on the state or local taxing units.

The bill's provision prohibiting a chief appraiser from separately appraising personal property that is valued as a portion of the income of the real property could create a cost to the state and to local taxing units, but only to the extent that chief appraisers are currently double counting the value of personal property by including it in an income appraisal of the real property and also including it by another method. Insufficient information is available about the extent of this practice. As a result, the cost cannot be estimated.

The provisions of the bill related to the temporary cessation of typical agricultural activities during a drought would create a cost to taxing units and to the state through the operation of the school funding formulas. Because information regarding the number of acres of land subject to denial of agricultural use appraisal because of drought is unavailable, the cost cannot be estimated.

The bill's provisions regarding school district rate calculation would affect only protest procedures or property tax processes but would not affect appraisal methods, exemptions or tax rates. As a result they would have no significant effect on tax revenues or state funding.

The provisions of the bill related to arbitration would modify a part of the appeal process and expand the kind of issues that are eligible for arbitration. The substantive rights of property owners would not be affected. The actions of arbitrators in deciding future arbitrations cannot be predicted. As a result, the fiscal impact cannot be estimated.

The bill would amend Subchapters C and D of Chapter 23 of the Tax Code, regarding property appraisal methods, to eliminate the requirement in current law that interest at the rate provided for delinquent property taxes be added to the additional tax due when agricultural land is diverted to nonagricultural use. The bill would also make conforming Tax Code amendments to eliminate references to the interest requirement.

The bill would create the Oil and Gas Valuation Advisory Committee to determine the current calendar year statewide average price for oil and gas using market-based data and methodology. Certain costs could be associated with the Advisory committee, but are not expected to be significant.

Methodology

The requirements to qualify as agricultural lands under Subchapter C are very stringent and include requirements that land must be owned by an individual, not a corporation, partnership, trust or other business entity. Agriculture must be the owner's primary occupation and source of income. Very few acres across the state qualify under this Subchapter. The roll-back tax for these lands is three years instead of five. Eliminating the interest for these additional taxes is not estimated to have a significant impact.

Currently, qualified open-space land Subchapter D that changes to a nonagricultural use receives what is referred to as a "roll-back tax." This additional tax is the difference between taxes that would have been paid at market value and those paid based on productivity value for the previous five years plus 7 percent interest per year. This bill would eliminate the interest payment, creating a cost to counties and school districts.

Based on discussions with appraisal districts, the number of acres under Subchapter D undergoing changes to nonagricultural use was determined. Values were projected and the lost interest estimated. No losses to cities were estimated because very few qualified open-space lands are in cities. The projected county and school district tax rates were applied to the interest lost in each year to estimate their respective losses. There would be no loss to the state because interest payments are not included in school funding formulas.

Local Government Impact

The estimated fiscal implication to school districts and counties, for certain provisions of the bill, are reflected in the table above. No losses to cities were estimated because very few qualified open-space lands are in cities.

The bill's provision prohibiting a chief appraiser from separately appraising personal property that is valued as a portion of the income of the real property could create a cost to local taxing units, but only to the extent that chief appraisers are currently double counting the value of personal property by including it in an income appraisal of the real property and also including it by another method. Insufficient information is available about the extent of this practice. As a result, the cost cannot be estimated.

The provisions of the bill related to the temporary cessation of typical agricultural activities during a drought would create a cost to taxing units. Because information regarding the number of acres of land subject to denial of agricultural use appraisal because of drought is unavailable, the cost cannot be estimated.

Source Agencies: 304 Comptroller of Public Accounts

LBB Staff: JOB, MN, SD, SJS