

## **BILL ANALYSIS**

C.S.H.B. 1887  
By: Villarreal  
Ways & Means  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties contend that there are several procedural items relating to property tax protests and appeals that cost taxpayers and appraisal districts needless time and expense and can result in a taxpayer losing an appeal or protest on what amounts to a technicality. These problems include the dismissal of a lawsuit because of an incorrect name, limited information on an appraisal review board order, the filing of motions that cause delay and expense rather than advancing a resolution, a reluctance on the part of taxpayers and appraisal districts to participate in mediation or other forms of inexpensive lawsuit resolution, the difficulty in obtaining expert witnesses in complex industrial cases, delay caused by taxpayers using the spiral down effect of the equal and uniform remedy as it relates to a suit brought on the ground that property is appraised unequally, and the requirement that interest be waived as part of a settlement of a lawsuit appealing a property owner's tax liability. C.S.H.B. 1887 seeks to remedy these problems and make the protest and appeal process under the Tax Code fairer, more efficient, and more effective.

### **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**

C.S.H.B. 1887 amends the Tax Code to prohibit a taxpayer's notice of protest filed with an appraisal review board from being found to be untimely or insufficient based on the fact that the notice is filed by or identifies as the property owner a person who is not the property owner if the person is shown on the appraisal records as the property owner, the person is an affiliate of the property owner, or the identification of the property owner is not materially misleading. The bill requires the appraisal review board, if the protest is of the determination of the appraised value of the owner's property, to state in the order determining the protest the appraised value of the property as shown in the appraisal records submitted to the board by the chief appraiser and as finally determined by the board.

C.S.H.B. 1887 entitles a property owner, not later than the 30th day after the date a party files a motion or plea asserting that a person filing an appeal for judicial review of an appraisal review board order determining a protest lacks standing or the entitlement to appeal such an order because the person is not the property owner, to intervene in the appeal if the notice of protest is filed by or identifies as the property owner a person who is not the property owner and the person is shown on the appraisal records as the property owner or is an affiliate of the property owner or the identification is not materially misleading. The bill requires the district court, on motion by a party to an appeal, to enter an order requiring the parties to attend mediation and authorizes the court to enter an order requiring the parties to attend mediation on its own motion.

C.S.H.B. 1887 establishes that for purposes of a no-evidence motion for summary judgment filed by a party to an appeal for judicial review of an appraisal review board order, the offer of

evidence, including an affidavit or testimony, by any person, including the appraisal district, the property owner, or the owner's agent, that was presented at the hearing on the protest before the appraisal review board constitutes sufficient evidence to deny the motion.

C.S.H.B. 1887 requires an attorney who accepts an engagement or compensation from a third party to represent a person in an appeal seeking judicial review to provide notice to the person represented informing the person that the attorney has been retained by a third party to represent the person; explaining the attorney's ethical obligations to the person in relation to the third party, including the obligation to ensure that the third party does not interfere with the attorney's independent judgment or the attorney-client relationship; describing the specific activities the third party may perform in the appeal; explaining the terms of the compensation to be received by the attorney from the third party; and informing the person that the person's consent is required before the attorney may accept compensation from the third party. The bill requires the attorney to mail the notice by certified mail to the person represented by the attorney not later than the 30th day after the date the attorney accepts the engagement from the third party. The bill authorizes a person to void an engagement that does not comply with these notice provisions and establishes that an attorney who does not comply with these notice provisions violates the Texas Disciplinary Rules of Professional Conduct rule relating to conflicts of interested and prohibited transactions.

C.S.H.B. 1887 requires a separate form to be filed with a taxing unit for each appeal to which the property owner is a party and authorizes a form to be revoked in a written revocation filed with the taxing unit by the property owner. The bill removes a provision establishing that a form remains in effect for all subsequent refunds required until revoked.

#### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2011.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 1887 differs from the original by requiring an appraisal review board, if a protest before the board is of the determination of a property's appraised value, to state in the order determining the protest the appraised value of the property as shown in the appraisal records submitted to the board by the chief appraiser and as finally determined by the board, whereas the original requires the appraisal review board order to contain the appraised value determined by the appraisal review board for each account that was the subject of the protest.

C.S.H.B. 1887 omits a provision included in the original establishing that a district court has jurisdiction over a timely petition for judicial review if, among other conditions, the plaintiff identified in the petition was the owner or lessee of the property on January 1st of the tax year, during the tax year or identified on the appraisal roll.

C.S.H.B. 1887 differs from the original by establishing that, for purposes of a no-evidence motion for summary judgment filed by a party to an appeal, the offer of evidence by any person that was presented at the hearing on the protest before the appraisal review board constitutes sufficient evidence to deny the motion, whereas the original authorizes, for purposes of a no evidence motion for summary judgment filed by an appraisal district, the property owner or the owner's agent to offer evidence of the market value or the equal and uniform value of the property.

C.S.H.B. 1887 differs from the original by requiring a court, on motion by a party to an appeal, to enter an order requiring the parties to attend mediation and authorizing the court, on its own motion, to enter an order requiring the parties to attend mediation, whereas the original requires a party, on the written request of another party filed with the court, to agree to alternative dispute resolution within 90 days; requiring the court, if a party refuses to agree to alternative dispute

resolution, to enter orders requiring alternative dispute resolution; and authorizing the court to impose sanctions for failure to participate in alternative dispute resolution.

C.S.H.B. 1887 omits a provision included in the original establishing that, for the purposes of an appeal of an appraisal by a petition for judicial review, an individual is not required to be a licensed real estate appraiser to offer expert testimony with regard to the market value or equal and uniform value of a property.

C.S.H.B. 1887 omits a provision included in the original requiring, for purposes of granting relief in a suit brought on the ground that property is appraised unequally, the value of the property subject to the suit and the value of a comparable property or sample property used for comparison to be the appraised value determined by the appraisal review board rather than the appraised value determined by the resolution of an appeal.

C.S.H.B. 1887 omits a provision included in the original establishing that certain limitations on the award of attorney's fees to a property owner who prevails in judicial review of a property tax appeal do not apply if the appraisal district refuses to enter into alternative dispute resolution within 240 days of the lawsuit's filing, refuses to hold a settlement conference within that time, or refused to hold an informal hearing before the appraisal review board hearing on the property.

C.S.H.B. 1887 omits provisions included in the original prohibiting a taxing unit from agreeing as part of a settlement of a lawsuit to waive interest and removing language specifying a different interest rate for certain refunds.

C.S.H.B. 1887 contains a provision not included in the original prohibiting a notice of protest from being found to be untimely or insufficient on the basis that the notice is filed by or identifies as the property owner a person who is not the property owner if the person is shown on the appraisal records as the property owner or is an affiliate of the property owner, or the identification is not materially misleading.

C.S.H.B. 1887 contains a provision not included in the original entitling a property owner to intervene in an appeal if a party files a motion or plea asserting that the person filing the appeal lacks standing to appeal because the person is not the property owner if the protest notice meets certain conditions.

C.S.H.B. 1887 contains a provision not included in the original requiring an attorney who accepts an engagement or compensation from a third party to represent a person in an appeal relating to property tax appraisal to provide notice to the person represented containing certain information, setting requirements for the delivery of such notice, and providing penalties for failure deliver such notice.

C.S.H.B. 1887 contains provisions not included in the original requiring a separate form to be filed with a taxing unit for each appeal to which the property owner is a party, authorizing a form to be revoked in a written revocation filed with the taxing unit by the property owner, and removing language establishing that a form remains in effect for all subsequent refunds required until revoked.

C.S.H.B. 1887 contains saving provisions not included in the original.