

BILL ANALYSIS

Senate Research Center
82R28139 ALL-F

C.S.H.B. 1887
By: Villarreal (Hinojosa)
Finance
5/12/2011
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

C.S.H.B. 1887 amends current law relating to tax administration of and procedures for property tax protests and appeals and changes the elements of an offense.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1.111(j), Tax Code, as follows:

(j) Entitles an individual exempt from registration as a property tax consultant under Section 1152.002 (Exemptions from Registration), Occupations Code, who is not supervised, directed, or compensated by a person required to register as a property tax consultant under that chapter and who files a protest with the appraisal review board on behalf of the property owner to receive all notices from the appraisal district and appraisal review board regarding the property subject to the protest until the authority is revoked by the property owner as provided by this section. Requires an individual to which this subsection applies who is not designated by the property owner to receive notices, tax bills, orders, and other communications as provided by Subsection (f) or Section 1.11 (Communications to Fiduciary) to file a statement with the protest that includes:

- (1) the individual's name and address;
- (2) a statement that the individual is acting on behalf of the property owner; and
- (3) a statement of the basis for the individual's exemption from registration under Section 1152.002, Occupations Code.

SECTION 2. Amends Section 5.041, Tax Code, by amending Subsections (c), (e-1), and (e-3) and adding Subsections (g) and (h), as follows:

(c) Authorizes the comptroller of public accounts (comptroller) to contract with service providers to assist with the duties imposed under Subsection (a) (relating to requiring the comptroller to perform certain actions in the training of appraisal review board members), but prohibits the course required from being provided by an appraisal district, the chief appraiser or another employee of an appraisal district, a member of the board of directors of an appraisal district, a member of an appraisal review board, or a taxing unit.

(e-1) Requires that the curricula and materials include certain information, including information regarding a detailed explanation of each of the actions described by Sections 25.25 (Correction of Appraisal Roll), 41.41(a) (relating to entitling a property to protest before the appraisal review board certain actions), 41.411 (Protest of Failure to Give Notice), 41.412 (Person Acquiring Property After January 1), 41.413 (Protest by Person Leasing Property), 41.42 (Protest of Situs), and 41.43 (Protest of Determination of Value

or Inequality of Appraisal) so that members are fully aware of each of the grounds on which a property appraisal can be appealed.

(e-3) Authorizes the comptroller to contract with service providers to assist with the duties imposed under Subsection (e-1), but the course required by that subsection may not be provided by an appraisal district, the chief appraiser or another employee of an appraisal district, a member of the board of directors of an appraisal district, a member of an appraisal review board, or a taxing unit.

(g) Prohibits the following persons, except during a hearing or other appraisal review board proceeding and as provided by Subsection (h) and Section 6.41(c-1), from communicating with a member of an appraisal review board about a course provided under this section or any matter presented or discussed during the course:

(1) the chief appraiser of the appraisal district for which the appraisal review board is established;

(2) another employee of the appraisal district for which the appraisal review board is established;

(3) a member of the board of directors of the appraisal district for which the appraisal review board is established;

(4) an officer or employee of a taxing unit that participates in the appraisal district for which the appraisal review board is established; and

(5) an attorney who represents or whose law firm represents the appraisal district or a taxing unit that participates in the appraisal district for which the appraisal review board is established.

(h) Authorizes an appraisal review board to retain an appraiser certified by the Texas Appraiser Licensing and Certification Board to instruct the members of the appraisal review board on valuation methodology if the appraisal district provides for the instruction in the district's budget.

SECTION 3. Amends Section 6.411(a), (b), and (c-1), Tax Code, as follows:

(a) Provides that a member of an appraisal review board commits an offense if the member communicates with the chief appraiser or another employee or a member of the board of directors of the appraisal district for which the appraisal review board is established in violation of Section 41.66(f) (relating to prohibiting a member of the appraisal review board from communicating with another person information concerning certain topics).

(b) Provides that a chief appraiser or another employee of an appraisal district, a member of a board of directors of an appraisal district, or a property tax consultant or attorney representing a party to a proceeding before the appraisal review board commits an offense if the person communicates with a member of the appraisal review board established for the appraisal district with the intent to influence a decision by the member in the member's capacity as a member of the appraisal review board, rather than if the chief appraiser or other employee communicates with a member of the appraisal review board established for the appraisal district in a circumstance in which the appraisal review board member is prohibited by Section 41.66(f) from communicating with the chief appraiser or other employee.

(c-1) Provides that this section does not apply to communications involving the chief appraiser or another employee or a member of the board of directors of an appraisal district and a member of the appraisal review board:

- (1) during a hearing on a protest or other proceeding before the appraisal review board;
- (2) that constitute social conversation;
- (3) that are specifically limited to and involve administrative, clerical, or logistical matters related to the scheduling and operation of hearings, the processing of documents, the issuance of orders, notices, and subpoenas, and the operation, appointment, composition, or attendance at training of the appraisal review board; or
- (4) that are necessary and appropriate to enable the board of directors of the appraisal district to determine whether to appoint, reappoint, or remove a person as a member or the chairman or secretary of the appraisal review board.

SECTION 4. Amends Section 6.412(a), Tax Code, to provide that an individual is ineligible to serve on an appraisal review board if the individual meets certain criteria, including if the individual is related within the third degree by consanguinity or within the second degree by affinity, as determined under Chapter 573 (Degrees of Relationship; Nepotism Prohibitions), Government Code, to a member of the appraisal district's board of directors.

SECTION 5. Amends Section 6.43, Tax Code, as follows:

Sec. 6.43. PERSONNEL. (a) Creates this subsection from existing text. Authorizes the appraisal review board to employ legal counsel as provided by the district budget or use the services of the county attorney. Deletes existing text authorizing the appraisal review board to use the staff of the appraisal office for clerical assistance.

(b) Prohibits an attorney, except as provided by Subsection (c), from serving as legal counsel for the appraisal review board if the attorney or member of the attorney's law firm has during the year before the date of the appraisal review board's hiring of the attorney represented a property owner who owns property in the appraisal district, a taxing unit that participates in the appraisal district, or the appraisal district in a matter addressed by Section 1.111 (Representation of Property Owner) or 25.25 of this code, Subtitle F (Remedies) of this title, or Subchapter Z (Pilot Program: Appeals from Appraisal Review Board Determinations in Certain Counties), Chapter 2003 (State Office of Administrative Hearings), Government Code.

(c) Authorizes the county attorney for the county in which the appraisal district is established to provide legal services to the appraisal review board notwithstanding that the county attorney or an assistant to the county attorney represents or has represented the appraisal district or a taxing unit that participates in the appraisal district in any matter.

(d) Prohibits an attorney who serves as legal counsel for an appraisal review board from acting as an advocate in a hearing or proceeding conducted by the board. Authorizes the attorney to provide advice to the board or a panel of the board during a hearing or proceeding and is required to disclose to the board all legal authority in the controlling jurisdiction known to the attorney to be relevant to the matter and not disclosed by the parties. Requires the attorney to disclose to the board a material fact that may assist the board or panel in making an informed decision regardless of whether the fact is adverse to the position of the party.

(e) Authorizes an appraisal district to specify in its budget whether the appraisal review board is authorized to employ legal counsel or is required to use the services of the county attorney. Requires that the budget, if the budget authorizes the board to employ legal counsel, provide for reasonable compensation to be paid to the attorney serving as legal counsel. Prohibits an appraisal district from requiring the board to employ a specific attorney as legal counsel.

(f) Authorizes the appraisal office to provide clerical assistance to the appraisal review board, including assisting the board with the scheduling and arranging of hearings.

SECTION 6. Amends Sections 25.25(c), (e), and (g), Tax Code, as follows:

(c) Authorizes the appraisal review board, on motion of the chief appraiser or of a property owner, to direct by written order changes in the appraisal roll for any of the five preceding years to correct certain errors, including an error in which property is shown as owned by a person who did not own the property on January 1 of that tax year.

(e) Requires a property owner who files the motion to comply with the payment requirements of Section 26.26, rather than Section 42.08 (Forfeiture of Remedy for Nonpayment of Taxes), or forfeit the right to a final determination of the motion.

(g) Authorizes the property owner or the chief appraiser, within 60 days, rather than 45 days, after receiving notice of the appraisal review board's determination of a motion under this section or of determination of the appraisal review board that the property owner has forfeited the right to a final determination of a motion under this section for failing to comply with the prepayment requirements of Section 25.26, to file suit to compel the board to order a change in the appraisal roll as required by this section.

SECTION 7. Amends Chapter 25, Tax Code, by adding Section 25.26, as follows:

Sec. 25.26 FORFEITURE OF REMEDY FOR NONPAYMENT OF TAXES. (a) Provides that the pendency of a motion filed under Section 25.25 does not affect the delinquency date for the taxes on the property that is the subject of the motion. Provides, however, that that delinquency date applies only to the taxes required to be paid under Subsection (b). Provides that, if the property owner complies with Subsection (b), the delinquency date for any additional amount of taxes due on the property is determined in the manner provided by Section 42.42(c) (relating to requiring the assessor for each affected taxing unit to prepare and mail a supplemental tax bill) for the determination of the delinquency date for additional taxes finally determined to be due in an appeal under Chapter 42 (Judicial Review), and that additional amount is not delinquent before that date.

(b) Requires a property owner who files a motion under section 25.25, except as provided by Subsection (d), to pay the amount of taxes due on the portion of the taxable value of the property that is the subject of the motion that is not in dispute before the delinquency date or the property owner forfeits the right to proceed to a final determination of the motion.

(c) Provides that a property owner who pays an amount of taxes greater than that required by Subsection (b) does not forfeit the property owner's right to a final determination of the motion by making the payment. Provides that, if the property owner files a timely motion under Section 25.25, taxes paid on the property are considered paid under protest, even if paid before the motion is filed.

(d) Authorizes a property owner, after filing an oath of inability to pay the taxes at issue, to be excused from the requirement of prepayment of tax as a prerequisite to the determination of a motion if the appraisal review board, after notice and hearing, finds that such prepayment would constitute an unreasonable restraint on the property owner's right of access to the board. Requires the board, on the motion of a party, to determine compliance with this section in the same manner and by the same procedure as provided by Section 41.4115(d) and is authorized to set such terms and conditions on any grant of relief as may be reasonably required by the circumstances.

SECTION 8. Amends Section 41.411(c), Tax Code, as follows:

(c) Requires a property owner who protests as provided by this section to comply with the payment requirements of Section 41.4115, rather than Section 42.08, or the property owner forfeits the property owner's right to a final determination of the protest. Deletes existing text providing that the delinquency date for purposes of Section 42.08(b) (relating to requiring a property owner who appeals to pay taxes on the property subject to the appeal in the required amount before the delinquency date or the property owner forfeits the right to proceed to a final determination of the appeal) for the taxes on the property subject to a protest under this section is postponed to the 125th day after the date that one or more taxing units first delivered written notice of the taxes due on the property, as determined by the appraisal review board at a hearing under Section 41.44(c-3) (relating to entitling a property owner who files a protest to a hearing solely on the issue of whether one or more taxing units timely delivered a tax bill under certain conditions).

SECTION 9. Amends Subchapter C, Chapter 41, Tax Code, by adding Section 41.4115, as follows:

Sec. 41.4115. **FORFEITURE OF REMEDY FOR NONPAYMENT OF TAXES.** (a) Provides that the pendency of a protest under Section 41.411 does not affect the delinquency date for the taxes on the property subject to the protest. Provides, however, that that delinquency date applies only to the amount of taxes required to be paid under Subsection (b) and, for purposes of Subsection (b), that delinquency date is postponed to the 125th day after the date one or more taxing units first delivered written notice of the taxes due on the property, as determined by the appraisal review board at a hearing under Section 41.44(c-3). Provides that, if the property owner complies with Subsection (b), the delinquency date for any additional amount of taxes due on the property is determined in the manner provided by Section 42.42(c) for the determination of the delinquency date for additional taxes finally determined to be due in an appeal under Chapter 42, and that additional amount is not delinquent before that date.

(b) Requires a property owner who files a protest under Section 41.411, except as provided in Subsection (d), to pay the amount of taxes due on the portion of the taxable value of the property subject to the protest that is not in dispute before the delinquency date or the property owner forfeits the right to proceed to a final determination of the protest.

(c) Provides that a property owner who pays an amount of taxes greater than that required by Subsection (b) does not forfeit the property owner's right to a final determination of the protest by making the payment. Provides that, if the property owner files a timely protest under Section 41.411, taxes paid on the property are considered paid under protest, even if paid before the protest is filed.

(d) Authorizes a property owner, after filing an oath of inability to pay the taxes at issue, to be excused from the requirement of prepayment of tax as a prerequisite to the determination of a protest if the appraisal review board, after notice and hearing, finds that such prepayment would constitute an unreasonable restraint on the property owner's right of access to the board. Requires the board, on motion of a party, to hold a hearing to review and determine compliance with this section, and authorizes the reviewing board to set such terms and conditions on any grant of relief as may be reasonably required by the circumstances. Requires the board, if the board determines that the property owner has not substantially complied with this section, to dismiss the pending protest. Requires the board, if the board determines that the property owner has substantially but not fully complied with this section, to dismiss the pending protest unless the property owner fully complies with the board's determination within 30 days of the determination.

SECTION 10. Amends Section 41.44, Tax Code, by adding Subsection (e), as follows:

(e) Prohibits a notice of protest, notwithstanding any other provision of this section, from being found to be untimely or insufficient based on a finding of incorrect ownership if the notice:

(1) identifies as a property owner a person who is, for the tax year at issue:

(A) an owner of the property at any time during the tax year;

(B) the person shown on the appraisal records as the owner of the property, if that person filed the protest;

(C) a lessee authorized to file a protest; or

(D) an affiliate of or entity related to a person described by this subdivision; or

(2) uses a misnomer of a person described by Subdivision (1)

SECTION 11. Amends Section 41.47, Tax Code, by adding Subsection (c), as follows:

(c) 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 the appraised value of the property:

(1) as shown in the appraisal records submitted to the board by the chief appraiser under Section 25.22 (Submission for Review and Protest) or 25.23 (Supplemental Appraisal Records); and

(2) as finally determined by the board.

SECTION 12. Amends Section 42.01, Tax Code, as follows:

Sec. 42.01. RIGHT OF APPEAL BY PROPERTY OWNER. (a) Creates this subsection from existing text. Entitles a property owner to appeal certain orders, including an order of the appraisal review board determining certain issues, including a determination of an appraisal review board that the property owner has forfeited the right to a final determination of a motion filed under Section 25.25 or of a protest under Section 41.411 for failing to comply with the prepayment requirements of Section 25.26 or 41.4115, as applicable.

(b) Entitles a property owner who establishes that the owner did not forfeit the right to a final determination of a motion or of a protest in an appeal under Subsection (a)(1)(C) (relating to a determination of an appraisal review board that the property owner has forfeited the right to a final determination of a motion) to a final determination of the court, as applicable:

(1) of the motion filed under Section 25.25; or

(2) of the protest under Section 41.411 of the failure of the chief appraiser or appraisal review board to provide or deliver a notice to which the property owner is entitled, and, if failure to provide or deliver the notice is established, of a protest made by the property owner on any other grounds of protest authorized by this title relating to the property to which the notice applies.

SECTION 13. Amends Subchapter A, Chapter 42, Tax Code, by adding Section 42.016, as follows:

Sec. 42.016. INTERVENTION IN APPEAL BY CERTAIN PERSONS. Entitles a person to intervene in an appeal brought under this chapter and the person has standing

and the court has jurisdiction in the appeal if the property that is the subject of the appeal was also the subject of a protest hearing the person:

- (1) owned the property at any time during the tax year at issue;
- (2) leased the property at any time during the tax year at issue and the person filed the protest that resulted in the issuance of the order under appeal; or
- (3) is shown on the appraisal roll as the owner of the property or as a lessee authorized to file a protest and the person filed the protest that resulted in the issuance of the order under appeal.

SECTION 14. Amends Section 42.21(b), Tax Code, as follows:

(b) Requires that a petition for review brought under Section 42.01(2), rather than under Section 42.01(2) or (3), or under Section 42.03 (Right of Appeal by County) be brought against the comptroller. Prohibits a petition for review from being brought against the appraisal review board, rather than provides that a petition for review is not required to be brought against the appraisal review board, but may be brought against the appraisal review board in addition to any other required party, if appropriate. Authorizes an appraisal district to hire an attorney that represents the district to represent the appraisal review board established for the district to file an answer and obtain a dismissal of a suit filed against the appraisal review board in violation of this subsection.

SECTION 15. Amends Subchapter B, Chapter 42, Tax Code, by adding Section 42.226, as follows:

Sec. 42.226. **MEDIATION.** Requires the court, on motion by a party to an appeal under this chapter, to enter an order requiring the parties to attend mediation. Authorizes the court to enter an order requiring the parties to attend mediation on its own motion.

SECTION 16. Amends Section 42.23, Tax Code, by adding Subsections (f) and (g), as follows:

(f) Provides that, for purposes of a no-evidence motion for summary judgment filed by a party to an appeal under this chapter, 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.

(g) Provides that, for the sole purpose of admitting expert testimony to determine the value of chemical processing property or utility property in an appeal brought under this chapter and for no other purpose under this title, including the rendition of property under Chapter 22 (Renditions and Other Reports), the property is considered to be personal property.

SECTION 17. Amends Subchapter B, Chapter 42, Tax Code, by adding Section 42.30, as follows:

Sec. 42.30. **ATTORNEY NOTICE OF CERTAIN ENGAGEMENTS.** (a) Requires an attorney who accepts an engagement or compensation from a third party to represent a person in an appeal under this chapter to provide notice to the person represented:

- (1) informing the person that the attorney has been retained by a third party to represent the person;
- (2) 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;

(3) describing the general activities the third party may perform in the appeal;

(4) explaining that compensation will be received by the attorney from the third party; and

(5) informing the person that the person's consent is required before the attorney may accept compensation from the third party.

(b) 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.

(c) Provides that, notwithstanding the other provisions of this section, an engagement complies with this section if each party related to the engagement, including the person represented in the appeal, the third party, and the attorney, enters into an agreement not later than the 30th day after the date of the filing of the appeal by the attorney that contains the information required by Subsection (a).

(d) Authorizes a person to void an engagement that does not comply with this section. Provides that an attorney who does not comply with this section is presumed to have violated Rules 1.08 and 8.04(a)(9), Texas Disciplinary Rules of Professional Conduct.

SECTION 18. Amends Section 42.43(h), Tax Code, as follows:

(h) Requires that a separate form be filed with a taxing unit under Subsection (g) (relating to requiring the taxing unit to send the refund to the person and address designated on the form) for each appeal to which the property owner is a party. Authorizes a form to be revoked in a written revocation filed with the taxing unit by the property owner. Deletes existing text providing that a form filed with a taxing unit under Subsection (g) remains in effect for all subsequent refunds required by this section until revoked in a written revocation filed with the taxing unit by the property owner.

SECTION 19. (a) Makes application of Section 6.411, Tax Code, as amended by this Act, prospective.

(b) Makes application of Sections 25.25(c), (e), and (g), 25.26, 41.411(c), 41.4115, and 42.01, Tax Code, as added or amended by this Act, prospective.

(c) Provides that Sections 41.44 and 41.47, Tax Code, as amended by this Act, apply only to a protest that is pending on the effective date of this Act or is filed on or after the effective date of this Act.

(d) Provides that Sections 42.016, 42.226, and 42.23, Tax Code, as added or amended by this Act, apply only to an appeal that is pending on the effective date of this Act or is filed on or after the effective date of this Act.

(e) Makes application of Section 42.30, Tax Code, as added by this Act, prospective.

SECTION 20. Effective date: upon passage or September 1, 2011.