

BILL ANALYSIS

C.S.H.B. 2078
By: Villarreal
Ways & Means
Committee Report (Substituted)

BACKGROUND AND PURPOSE

A property owner who protests an appraisal district's appraisal of property generally must rely on an appraisal review board to conduct an independent review of the disputed property appraisal. To improve an appraisal review board's independence and capacity, the Texas Legislature recently enacted legislation directing the comptroller of public accounts to provide training to appraisal review board members. C.S.H.B. 2078 seeks to further ensure an appraisal review board's independence by prohibiting an appraisal district or an appraisal review board from conducting its own training of appraisal review board members and limiting communication between an appraisal district and an appraisal review board to certain subjects, among other provisions.

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. 2078 amends the Tax Code to add the chief appraiser or another employee of an appraisal district, a member of the board of directors of an appraisal district, and a member of an appraisal review board to the entities prohibited from providing a required course for the training and education of appraisal review board members and a required continuing education course for appraisal review board members. The bill adds a detailed explanation of each of the actions described by provisions of law relating to a correction of an appraisal roll to the information required to be included in the curricula and materials used in such a continuing education course.

C.S.H.B. 2078 prohibits the following persons from communicating with a member of an appraisal review board about a course provided for the education or training of appraisal review board members or any other matter presented or discussed during the course: the chief appraiser of the appraisal district for which the appraisal review board is established; another employee of the appraisal district for which the appraisal review board is established; a member of the board of directors of the appraisal district for which the appraisal review board is established; an officer or employee of a taxing unit that participates in the appraisal district for which the appraisal review board is established; and an attorney who represents or whose law firm represents the appraisal district or a taxing unit for which the appraisal review board is established.

C.S.H.B. 2078 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.

C.S.H.B. 2078 expands the conditions constituting an offense relating to communication between a member of an appraisal review board and the chief appraiser or another employee of

the appraisal district for which the review board is established to include communication with a member of the board of directors of the appraisal district for which the review board is established. The bill makes it an offense for 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 to communicate with a member of the 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. The bill removes language making it an offense for a chief appraiser or another employee of an appraisal district to communicate with a member of the appraisal review board in a circumstance in which the appraisal review board member is prohibited from communicating with the chief appraiser or other employee under provisions of law relating to administrative hearing procedures.

C.S.H.B. 2078 expands the exceptions to these ex parte communications offenses to include communications between specified entities that occur during a hearing on a protest or other proceeding before the appraisal review board; that constitute social conversation; or 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. The bill includes a member of the board of directors of an appraisal district among those entities and specifies that the exception for communications that are specifically limited to and involve administrative, clerical, or logistical matters related to the operation of the appraisal review board include such matters related to the appointment, composition, or attendance at training of the appraisal review board.

C.S.H.B. 2078 makes an individual ineligible to serve on an appraisal review board if the individual is related within the third degree by consanguinity or within the second degree by affinity to a member of the appraisal district's board of directors.

C.S.H.B. 2078 prohibits an attorney from serving as legal counsel for the appraisal review board if the attorney or a 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 Tax Code provisions relating to representation of a property owner, a correction of an appraisal roll, collections and delinquency, or remedies or Government Code provisions relating to appeals of appraisal review board determinations in certain counties. The bill 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.

C.S.H.B. 2078 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. The bill authorizes the attorney to provide advice to the board or a panel of the board during a hearing or proceeding and requires the attorney 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. The bill 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. The bill 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. The bill requires the budget, if it authorizes the board to employ legal counsel, to provide for reasonable compensation to be paid to the attorney serving as legal counsel. The bill prohibits an appraisal district from requiring the board to employ a specific attorney as legal counsel. The bill authorizes the appraisal office to provide clerical assistance to the appraisal review board, including assisting the board with the scheduling and arranging of hearings.

C.S.H.B. 2078 prohibits a petition for review from being brought against an appraisal review

board and removes language establishing that a petition for review is not required to be brought against the appraisal review board, but is authorized to be brought in addition to any other required party, if appropriate. The bill 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 prohibition. The bill makes a technical correction.

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 2078 differs from the original by adding the chief appraiser or another employee of an appraisal district, a member of the board of directors of an appraisal district, and a member of an appraisal review board to the entities prohibited from providing a required course for the training and education of appraisal review board members and a required continuing education course for appraisal review board members, whereas the original prohibits an appraisal district and an appraisal review board from conducting the district's or board's own training for appraisal review board members. The substitute omits a provision included in the original prohibiting an appraisal district and an appraisal review board from instructing members to disregard matters taught by the comptroller of public accounts during the comptroller's board member training or to conduct themselves differently from the manner in which they have been instructed by the comptroller.

C.S.H.B. 2078 contains a provision not included in the original adding a detailed explanation of each of the actions described by provisions of law relating to a correction of an appraisal roll to the information required to be included in the curricula and materials used in a continuing education course for members of an appraisal review board.

C.S.H.B. 2078 contains a provision not included in the original prohibiting certain people from communicating with a member of an appraisal review board about a course provided for the education or training of appraisal review board members or any other matter presented or discussed during the course. The substitute contains a provision not included in the original authorizing an appraisal review board to retain a certified appraiser to instruct the members of the appraisal review board on valuation methodology under certain conditions.

C.S.H.B. 2078 contains provisions not included in the original expanding the conditions that constitute certain offenses relating to ex parte communications between a member of an appraisal review board and certain other entities.

C.S.H.B. 2078 differs from the original by expanding the exceptions to those ex parte communications offenses 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 under certain circumstances, including communications that are limited to and involve administrative, clerical, or logistical matters related to the operation, appointment, composition, or attendance at training of the review board and the removal of a person as a member or the chair or secretary of the review board, whereas the original limits contact between the chief appraiser, another employee of an appraisal district, or a member of the appraisal review board and another appraisal review board member only to 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 appraisal review board operation.

C.S.H.B. 2078 contains a provision not included in the original making an individual ineligible to serve on an appraisal review board if the individual is related within the third degree by consanguinity or within the second degree by affinity to a member of the appraisal district's board of directors.

C.S.H.B. 2078 omits provisions included in the original requiring an appraisal district to provide the appraisal review board with independent legal counsel of the appraisal review board's own choosing; clarifying that legal services are to be provided through the county attorney or through other competent attorneys; and making a related conforming change. The substitute differs from the original by prohibiting an attorney from serving as legal counsel for the appraisal review board if the attorney or a 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 certain provisions of the Tax Code and the Government Code, whereas the original prohibits an attorney from representing an appraisal review board if the attorney or any member of the attorney's law firm has, within the preceding twelve month period, represented a property owner, an appraisal district, or a governmental entity in connection with the appraisal, valuation, exemption, or collection of property taxes.

C.S.H.B. 2078 contains a provision not included in the original authorizing 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.

C.S.H.B. 2078 contains provisions not included in the original prohibiting 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; authorizing the attorney to provide advice to the board or a panel of the board during a hearing or proceeding; requiring the attorney 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; and requiring 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.

C.S.H.B. 2078 differs from the original by authorizing an appraisal district to specify in its budget whether the appraisal review board is authorized to employ legal counsel or required to use the services of the county attorney, whereas the original removes a provision of law authorizing the board to employ legal counsel as provided by the district budget. The substitute contains provisions not included in the original requiring the budget to provide for reasonable compensation to be paid to the attorney serving as legal counsel if the budget authorizes the board to employ legal counsel and prohibiting an appraisal district from requiring the board to employ a specific attorney as legal counsel.

C.S.H.B. 2078 differs from the original by authorizing the appraisal office to provide clerical assistance to the appraisal review board, whereas the original authorizes the appraisal review board to use the staff of the appraisal office for clerical assistance.

C.S.H.B. 2078 contains provisions not included in the original prohibiting a petition for review from being brought against an appraisal review board; removing language establishing that a petition for review is not required to be brought against the appraisal review board but is authorized to be brought in addition to any other required party, if appropriate; and authorizing 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 such a prohibition.

C.S.H.B. 2078 differs from the original in nonsubstantive ways reflective of certain bill drafting conventions and contains a technical correction not included in the original. The substitute differs from the original by making the bill's provisions effective September 1, 2011, whereas the original makes the bill's provisions effective on passage or, if the bill does not receive the necessary vote, September 1, 2011.