

1-1 By: Villarreal (Senate Sponsor - Hinojosa) H.B. No. 1887
1-2 (In the Senate - Received from the House April 26, 2011;
1-3 April 29, 2011, read first time and referred to Committee on
1-4 Finance; May 17, 2011, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 11, Nays 0;
1-6 May 17, 2011, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 1887 By: Hinojosa

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to tax administration of and procedures for property tax
1-11 protests and appeals; changing the elements of an offense.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Section 1.111(j), Tax Code, is amended to read as
1-14 follows:

1-15 (j) An individual exempt from registration as a property tax
1-16 consultant under Section 1152.002, Occupations Code, who is not
1-17 supervised, directed, or compensated by a person required to
1-18 register as a property tax consultant under that chapter and who
1-19 files a protest with the appraisal review board on behalf of the
1-20 property owner is entitled to receive all notices from the
1-21 appraisal district and appraisal review board regarding the
1-22 property subject to the protest until the authority is revoked by
1-23 the property owner as provided by this section. An individual to
1-24 which this subsection applies who is not designated by the property
1-25 owner to receive notices, tax bills, orders, and other
1-26 communications as provided by Subsection (f) or Section 1.11 shall
1-27 file a statement with the protest that includes:

1-28 (1) the individual's name and address;

1-29 (2) a statement that the individual is acting on
1-30 behalf of the property owner; and

1-31 (3) a statement of the basis for the individual's
1-32 exemption from registration under Section 1152.002, Occupations
1-33 Code.

1-34 SECTION 2. Section 5.041, Tax Code, is amended by amending
1-35 Subsections (c), (e-1), and (e-3) and adding Subsections (g) and
1-36 (h) to read as follows:

1-37 (c) The comptroller may contract with service providers to
1-38 assist with the duties imposed under Subsection (a), but the course
1-39 required may not be provided by an appraisal district, the chief
1-40 appraiser or another employee of an appraisal district, a member of
1-41 the board of directors of an appraisal district, a member of an
1-42 appraisal review board, or a taxing unit. The comptroller may
1-43 assess a fee to recover a portion of the costs incurred for the
1-44 training course, but the fee may not exceed \$50 per person trained.

1-45 (e-1) In addition to the course established under
1-46 Subsection (a), the comptroller shall approve curricula and provide
1-47 materials for use in a continuing education course for members of an
1-48 appraisal review board. The curricula and materials must include
1-49 information regarding:

1-50 (1) the cost, income, and market data comparison
1-51 methods of appraising property;

1-52 (2) the appraisal of business personal property;

1-53 (3) the determination of capitalization rates for
1-54 property appraisal purposes;

1-55 (4) the duties of an appraisal review board;

1-56 (5) the requirements regarding the independence of an
1-57 appraisal review board from the board of directors and the chief
1-58 appraiser and other employees of the appraisal district;

1-59 (6) the prohibitions against ex parte communications
1-60 applicable to appraisal review board members;

1-61 (7) the Uniform Standards of Professional Appraisal
1-62 Practice;

1-63 (8) the duty of the appraisal district to substantiate

the district's determination of the value of property;

(9) the requirements regarding the equal and uniform appraisal of property;

(10) the right of a property owner to protest the appraisal of the property as provided by Chapter 41; and

(11) a detailed explanation of each of the actions described by Sections 25.25, 41.41(a), 41.411, 41.412, 41.413, 41.42, and 41.43 so that members are fully aware of each of the grounds on which a property appraisal can be appealed.

(e-3) The comptroller may 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. The comptroller may assess a fee to recover a portion of the costs incurred for the continuing education course, but the fee may not exceed \$50 for each person trained.

(g) Except during a hearing or other appraisal review board proceeding and as provided by Subsection (h) and Section 6.411(c-1), the following persons may not communicate 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) An appraisal review board may 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. Sections 6.411(a), (b), and (c-1), Tax Code, are amended to read as follows:

(a) 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 [an] appraisal district for which the appraisal review board is established in violation of Section 41.66(f).

(b) 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 [chief appraiser or other employee] 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 [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) 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. Section 6.412(a), Tax Code, is amended to read as follows:

(a) An individual is ineligible to serve on an appraisal review board if the individual:

(1) is related within the second degree by consanguinity or affinity, as determined under Chapter 573, Government Code, to an individual who is engaged in the business of appraising property for compensation for use in proceedings under this title or of representing property owners for compensation in proceedings under this title in the appraisal district for which the appraisal review board is established; ~~or~~

(2) owns property on which delinquent taxes have been owed to a taxing unit for more than 60 days after the date the individual knew or should have known of the delinquency unless:

(A) the delinquent taxes and any penalties and interest are being paid under an installment payment agreement under Section 33.02; or

(B) a suit to collect the delinquent taxes is deferred or abated under Section 33.06 or 33.065; or

(3) is related within the third degree by consanguinity or within the second degree by affinity, as determined under Chapter 573, Government Code, to a member of the appraisal district's board of directors.

SECTION 5. Section 6.43, Tax Code, is amended to read as follows:

Sec. 6.43. PERSONNEL. (a) The appraisal review board may employ legal counsel as provided by the district budget or use the services of the county attorney ~~[and may use the staff of the appraisal office for clerical assistance].~~

(b) Except as provided by Subsection (c), an attorney may not serve 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 Section 1.111 or 25.25 of this code, Subtitle F of this title, or Subchapter Z, Chapter 2003, Government Code.

(c) The county attorney for the county in which the appraisal district is established may 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) An attorney who serves as legal counsel for an appraisal review board may not act as an advocate in a hearing or proceeding conducted by the board. The attorney may provide advice to the board or a panel of the board during a hearing or proceeding and shall 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 attorney shall 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 a party.

(e) An appraisal district may specify in its budget whether the appraisal review board may employ legal counsel or must use the services of the county attorney. If the budget authorizes the board to employ legal counsel, the budget must provide for reasonable compensation to be paid to the attorney serving as legal counsel. An appraisal district may not require the board to employ a specific attorney as legal counsel.

(f) The appraisal office may provide clerical assistance to

the appraisal review board, including assisting the board with the scheduling and arranging of hearings.

SECTION 6. Sections 25.25(c), (e), and (g), Tax Code, are amended to read as follows:

(c) The appraisal review board, on motion of the chief appraiser or of a property owner, may direct by written order changes in the appraisal roll for any of the five preceding years to correct:

(1) clerical errors that affect a property owner's liability for a tax imposed in that tax year;

(2) multiple appraisals of a property in that tax year; ~~or~~

(3) the inclusion of property that does not exist in the form or at the location described in the appraisal roll; or

(4) 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) If the chief appraiser and the property owner do not agree to the correction before the 15th day after the date the motion is filed, a party bringing a motion under Subsection (c) or (d) is entitled on request to a hearing on and a determination of the motion by the appraisal review board. A party bringing a motion under this section must describe the error or errors that the motion is seeking to correct. Not later than 15 days before the date of the hearing, the board shall deliver written notice of the date, time, and place of the hearing to the chief appraiser, the property owner, and the presiding officer of the governing body of each taxing unit in which the property is located. The chief appraiser, the property owner, and each taxing unit are entitled to present evidence and argument at the hearing and to receive written notice of the board's determination of the motion. A property owner who files the motion must comply with the payment requirements of Section 25.26 ~~[42.08]~~ or forfeit the right to a final determination of the motion.

(g) Within 60 ~~[45]~~ days after receiving notice of the appraisal review board's determination of a motion under this section or of a 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, the property owner or the chief appraiser may file suit to compel the board to order a change in the appraisal roll as required by this section.

SECTION 7. Chapter 25, Tax Code, is amended by adding Section 25.26 to read as follows:

Sec. 25.26. FORFEITURE OF REMEDY FOR NONPAYMENT OF TAXES.

(a) 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. However, that delinquency date applies only to the amount of taxes required to be paid under Subsection (b). 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) Except as provided by Subsection (d), a property owner who files a motion under Section 25.25 must 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) 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. 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) After filing an oath of inability to pay the taxes at issue, a property owner may 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. On the motion of a party, the board shall determine compliance with this section in the same manner and by the same procedure as provided by Section 41.4115(d) and may set such terms and conditions on any grant of relief as may be reasonably required by the circumstances.

SECTION 8. Section 41.411(c), Tax Code, is amended to read as follows:

(c) A property owner who protests as provided by this section must comply with the payment requirements of Section 41.4115 [42.08] or the property owner forfeits the property owner's right to a final determination of the protest. ~~[The delinquency date for purposes of Section 42.08(b) 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).]~~

SECTION 9. Subchapter C, Chapter 41, Tax Code, is amended by adding Section 41.4115 to read as follows:

Sec. 41.4115. FORFEITURE OF REMEDY FOR NONPAYMENT OF TAXES.

(a) 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. However, 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). 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) Except as provided in Subsection (d), a property owner who files a protest under Section 41.411 must 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) 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. 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) After filing an oath of inability to pay the taxes at issue, a property owner may 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. On the motion of a party, the board shall hold a hearing to review and determine compliance with this section, and the reviewing board may set such terms and conditions on any grant of relief as may be reasonably required by the circumstances. If the board determines that the property owner has not substantially complied with this section, the board shall dismiss the pending protest. If the board determines that the property owner has substantially but not fully complied with this section, the board shall dismiss the pending protest unless the property owner fully complies with the board's determination within 30 days of the determination.

SECTION 10. Section 41.44, Tax Code, is amended by adding Subsection (e) to read as follows:

(e) Notwithstanding any other provision of this section, a notice of protest may not be found to be untimely or insufficient based on a finding of incorrect ownership if the notice:

(1) identifies as the 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. Section 41.47, Tax Code, is amended by adding Subsection (c) to read as follows:

(c) If the protest is of the determination of the appraised value of the owner's property, the appraisal review board must 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 or 25.23; and

(2) as finally determined by the board.

SECTION 12. Section 42.01, Tax Code, is amended to read as follows:

Sec. 42.01. RIGHT OF APPEAL BY PROPERTY OWNER. (a) A property owner is entitled to appeal:

(1) an order of the appraisal review board determining:

(A) a protest by the property owner as provided by Subchapter C of Chapter 41; ~~or~~

(B) a determination of an appraisal review board on a motion filed under Section 25.25; or

(C) 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; or

(2) an order of the comptroller issued as provided by Subchapter B, Chapter 24, apportioning among the counties the appraised value of railroad rolling stock owned by the property owner.

(b) 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) is entitled 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. Subchapter A, Chapter 42, Tax Code, is amended by adding Section 42.016 to read as follows:

Sec. 42.016. INTERVENTION IN APPEAL BY CERTAIN PERSONS. A person is entitled 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 and 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. Section 42.21(b), Tax Code, is amended to read as follows:

(b) A petition for review brought under Section 42.02 must be brought against the owner of the property involved in the appeal. A petition for review brought under Section 42.031 must be brought

7-1 against the appraisal district and against the owner of the
 7-2 property involved in the appeal. A petition for review brought
 7-3 under Subdivision (2) ~~[or (3)]~~ of Section 42.01 or under Section
 7-4 42.03 must be brought against the comptroller. Any other petition
 7-5 for review under this chapter must be brought against the appraisal
 7-6 district. A petition for review may ~~[is]~~ not ~~[required to]~~ be
 7-7 brought against the appraisal review board~~[, but may be brought~~
 7-8 ~~against the appraisal review board in addition to any other~~
 7-9 ~~required party, if appropriate]~~. An appraisal district may hire an
 7-10 attorney that represents the district to represent the appraisal
 7-11 review board established for the district to file an answer and
 7-12 obtain a dismissal of a suit filed against the appraisal review
 7-13 board in violation of this subsection.

7-14 SECTION 15. Subchapter B, Chapter 42, Tax Code, is amended
 7-15 by adding Section 42.226 to read as follows:

7-16 Sec. 42.226. MEDIATION. On motion by a party to an appeal
 7-17 under this chapter, the court shall enter an order requiring the
 7-18 parties to attend mediation. The court may enter an order requiring
 7-19 the parties to attend mediation on its own motion.

7-20 SECTION 16. Section 42.23, Tax Code, is amended by adding
 7-21 Subsections (f) and (g) to read as follows:

7-22 (f) For purposes of a no-evidence motion for summary
 7-23 judgment filed by a party to an appeal under this chapter, the offer
 7-24 of evidence, including an affidavit or testimony, by any person,
 7-25 including the appraisal district, the property owner, or the
 7-26 owner's agent, that was presented at the hearing on the protest
 7-27 before the appraisal review board constitutes sufficient evidence
 7-28 to deny the motion.

7-29 (g) For the sole purpose of admitting expert testimony to
 7-30 determine the value of chemical processing property or utility
 7-31 property in an appeal brought under this chapter and for no other
 7-32 purpose under this title, including the rendition of property under
 7-33 Chapter 22, the property is considered to be personal property.

7-34 SECTION 17. Subchapter B, Chapter 42, Tax Code, is amended
 7-35 by adding Section 42.30 to read as follows:

7-36 Sec. 42.30. ATTORNEY NOTICE OF CERTAIN ENGAGEMENTS. (a) An
 7-37 attorney who accepts an engagement or compensation from a third
 7-38 party to represent a person in an appeal under this chapter shall
 7-39 provide notice to the person represented:

7-40 (1) informing the person that the attorney has been
 7-41 retained by a third party to represent the person;

7-42 (2) explaining the attorney's ethical obligations to
 7-43 the person in relation to the third party, including the obligation
 7-44 to ensure that the third party does not interfere with the
 7-45 attorney's independent judgment or the attorney-client
 7-46 relationship;

7-47 (3) describing the general activities the third party
 7-48 may perform in the appeal;

7-49 (4) explaining that compensation will be received by
 7-50 the attorney from the third party; and

7-51 (5) informing the person that the person's consent is
 7-52 required before the attorney may accept compensation from the third
 7-53 party.

7-54 (b) The attorney shall mail the notice by certified mail to
 7-55 the person represented by the attorney not later than the 30th day
 7-56 after the date the attorney accepts the engagement from the third
 7-57 party.

7-58 (c) Notwithstanding the other provisions of this section,
 7-59 an engagement complies with this section if each party related to
 7-60 the engagement, including the person represented in the appeal, the
 7-61 third party, and the attorney, enters into an agreement not later
 7-62 than the 30th day after the date of the filing of the appeal by the
 7-63 attorney that contains the information required by Subsection (a).

7-64 (d) A person may void an engagement that does not comply
 7-65 with this section. An attorney who does not comply with this
 7-66 section is presumed to have violated Rules 1.08 and 8.04(a)(9),
 7-67 Texas Disciplinary Rules of Professional Conduct.

7-68 SECTION 18. Section 42.43(h), Tax Code, is amended to read
 7-69 as follows:

8-1 (h) A separate form must be filed with a taxing unit under
8-2 Subsection (g) for each appeal to which the property owner is a
8-3 party. A form may be ~~[remains in effect for all subsequent refunds~~
8-4 ~~required by this section until]~~ revoked in a written revocation
8-5 filed with the taxing unit by the property owner.

8-6 SECTION 19. (a) Section 6.411, Tax Code, as amended by
8-7 this Act, applies only to an offense committed on or after the
8-8 effective date of this Act. An offense committed before the
8-9 effective date of this Act is governed by the law in effect on the
8-10 date the offense was committed, and the former law is continued in
8-11 effect for that purpose. For purposes of this section, an offense
8-12 was committed before the effective date of this Act if any element
8-13 of the offense occurred before that date.

8-14 (b) Sections 25.25(c), (e), and (g), 25.26, 41.411(c),
8-15 41.4115, and 42.01, Tax Code, as added or amended by this Act, apply
8-16 only to a motion to correct an appraisal roll or a protest filed on
8-17 or after the effective date of this Act. A motion to correct an
8-18 appraisal roll or a protest filed before the effective date of this
8-19 Act is governed by the law in effect on the date the motion or
8-20 protest was filed, and the former law is continued in effect for
8-21 that purpose.

8-22 (c) Sections 41.44 and 41.47, Tax Code, as amended by this
8-23 Act, apply only to a protest that is pending on the effective date
8-24 of this Act or is filed on or after the effective date of this Act.

8-25 (d) Sections 42.016, 42.226, and 42.23, Tax Code, as added
8-26 or amended by this Act, apply only to an appeal that is pending on
8-27 the effective date of this Act or is filed on or after the effective
8-28 date of this Act.

8-29 (e) Section 42.30, Tax Code, as added by this Act, applies
8-30 only to a violation committed on or after the effective date of this
8-31 Act. A violation committed before the effective date of this Act is
8-32 governed by the law in effect when the violation was committed, and
8-33 the former law is continued in effect for that purpose.

8-34 SECTION 20. This Act takes effect immediately if it
8-35 receives a vote of two-thirds of all the members elected to each
8-36 house, as provided by Section 39, Article III, Texas Constitution.
8-37 If this Act does not receive the vote necessary for immediate
8-38 effect, this Act takes effect September 1, 2011.

8-39 * * * * *