

## **BILL ANALYSIS**

Senate Research Center  
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C.S.S.B. 1286  
By: Bettencourt  
Finance  
4/10/2017  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Electronic Hearing Evidence Submitted to the Appraisal Review Board

Sections 41.45(h), 41.45(o), 41.45(p), Tax Code

#### Summary

This portion of the bill aims to ensure a secure, consistent, and professional experience for property owners and their agents at Appraisal Review Board hearings by asking the comptroller's office to create rules (as needed) on the method, format, and retention of electronic hearing evidence and audiovisual equipment.

Property owners or their agents are currently allowed to present written evidence or electronic, magnetic, or digital reproductions of evidence preserved on portable devices at Appraisal Review Board hearings (S.B. 1394 — 84th Legislature, Regular Session). The Tax Code, however, does not provide further details regarding the maintenance of electronic evidence submitted by the chief appraiser, the property owner, or the owner's agent in the Appraisal Review Board hearing record.

Further, due to rapid development, proliferation, and obsolescence of electronic media (disc, handheld, email), the lack of specificity in the bill poses an unreasonable burden on appraisal districts to ensure robust security and data maintenance measures, while anticipating and supporting hardware, software, licensing, and staff trained in the capture of each and every possible format (ex. photos on a cell phone). The varying file types, size, and formats present a massive challenge to appraisal districts.

Additionally, confusion exists between appraisal districts on the form of the portable device and the associated media requirements. The lack of clarity also applies to the form of audiovisual equipment that the appraisal district is required to provide to property owners or their agents, if the district uses such equipment.

S.B. 1286 asks the Texas Comptroller's Office to create rules on the form and requirements for electronic hearing evidence submitted to the Appraisal Review Board.

#### Enhancements to Arbitration Process

Sections 41A.061(c), 41A.07(a), 41A.07(e), 41A.07(f), 41A.07(g), Tax Code

#### Summary

This portion of S.B. 1286 proposes increasing the resolution speed, transparency, and credibility of the arbitration process. Under the proposed language, the comptroller's office would eliminate an arbitrator's eligibility from cases with a conflict of interest, randomly select arbitrators using geographic constraints, and would allow for the removal of arbitrators following clear and convincing evidence of repeated misconduct or bias.

#### Analysis

During the past three years, the Harris County Appraisal District has seen a nearly 700 percent increase in the volume of requests for arbitration. In general, the arbitration program in Texas is a fair and just system, granting an appropriate avenue for post-Appraisal Review Board appeals. However, some events during the past three years have raised questions and concerns by property owners and appraisal districts concerning the integrity of arbitration.

The Tax Code provides property owners the option to arbitrate certain property tax disputes. As part of the arbitration process, the Tax Code sets out requirements for the appointment of arbitrators. At present, the Tax Code allows for local discretion in selecting arbitrators utilizing a registry maintained by the comptroller. Both the property owner and appraisal district must attempt to use the registry, but do not have to agree to an arbitrator under the current law.

S.B. 1286 amends Section 41A.07 to shorten this process by requiring the comptroller to appoint an eligible arbitrator. This change alone will eliminate multiple mailings and will shorten the overall arbitration process by approximately 30 days.

The proposed language amends eligibility to be appointed as an arbitrator by requiring the arbitrator to be a resident in the county in which the property subject to appeal is located. If an eligible arbitrator is not available in the county, one may be appointed from a county no farther than 50 miles away. Further changes prevent a person from serving as an arbitrator if they have served as an officer or employee of the appraisal district, served as a member of the Appraisal Review Board in the county, or if they have represented a person for compensation in a proceeding in the appraisal district in which the property that is subject to appeal is located. Finally, a person may not be appointed to serve as an arbitrator if the comptroller determines not to appoint them for good cause (information or evidence indicating repeated bias or misconduct).

Section 41A.061(c) is amended to allow the comptroller to remove an arbitrator for good cause. Evidence for the removal must be clear and convincing and demonstrate repeated displays of bias or misconduct.

S.B. 1286 repeals Sections 41A.07(b) and 41A.07(c). (Original Author's / Sponsor's Statement of Intent)

C.S.S.B. 1286 amends current law relating to the system for protesting or appealing certain ad valorem tax determinations.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas comptroller of public accounts in SECTION 1 (Section 41.45, Tax Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 41.45, Tax Code, by amending Subsections (h) and (o) and adding Subsection (p), as follows:

(h) Requires the chief appraiser and the property owner or the owner's agent to, before the hearing on a protest or immediately after the hearing begins, each provide the other with a copy of any written material or material preserved on a portable device, rather than any portable device, designed to maintain a reproduction of a document or image, rather than an electronic, magnetic or digital reproduction of a document or image, that the person intends to offer or submit to the appraisal review board at the hearing. Requires each person to provide the copy of material in the manner and form prescribed by the Texas comptroller of public accounts (comptroller) rule.

(o) Requires the appraisal office to, if the chief appraiser uses audiovisual equipment at a hearing on a protest, provide audiovisual equipment of the same general type, kind and character, as prescribed by comptroller rule, for use during the hearing by the property owner or the property owner's agent.

(p) Requires the comptroller by rule to prescribe the manner and form, including security requirements, in which a person must provide a copy of material under Subsection (h), which must allow the appraisal review board to retain the material as part of the board's hearing record and specifications for the audiovisual equipment provided by an appraisal district for use by a property owner or the property owner's agent under Subsection (o).

SECTION 2. Amends Section 41A.061(c), Tax Code, to require the comptroller to remove a person from the registry if the person fails or declines to renew the person's agreement to serve as an arbitrator in the manner required by this section or the comptroller determines by clear and convincing evidence that there is good cause to remove the person from the registry, including evidence of repeated bias or misconduct by the person while acting as an arbitrator.

SECTION 3. Amends Section 41A.07, Tax Code, by amending Subsection (a) and adding Subsections (e), (f), and (g), as follows:

(a) Requires the comptroller to, on receipt of the request and deposit under Section 41A.05, appoint an eligible arbitrator who is listed in the comptroller's registry and send notice to the appointed arbitrator requesting the individual to conduct the hearing on the arbitration. Deletes existing text requiring the comptroller to send the property owner and the appraisal district a copy of the comptroller's registry of qualified arbitrators and request that the parties select an arbitrator from the registry. Deletes existing text authorizing the comptroller to send a copy of the registry to the parties by regular mail in paper form or may send the parties written notice of the Internet address of a website at which the registry is maintained and may be accessed. Deletes existing text requiring the parties to select an arbitrator from the registry.

(e) Requires the arbitrator to, in order to be eligible for appointment, reside in the county in which the property that is the subject of the appeal is located or reside in this state if no available arbitrator on the registry resides in that county.

(f) Provides that a person is not eligible for appointment as an arbitrator under Subsection (a) if at any time during the preceding five years, the person has represented a person for compensation in a proceeding under this title in the appraisal district in which the property that is the subject of the appeal is located; served as an officer or employee of that appraisal district; or served as a member of the appraisal review board for that appraisal district.

(g) Prohibits the comptroller from appointing an arbitrator under Subsection (a) if the comptroller determines that there is good cause not to appoint the arbitrator, including information or evidence indicating repeated bias or misconduct by the person while acting as arbitrator.

SECTION 4. Repealers: Sections 41A.07(b) (relating to requiring the appraisal district to notify the comptroller of certain matters by a certain date) and (c) (relating to requiring the comptroller to appoint certain arbitrators and send notice to the appointed arbitrator), Tax Code.

SECTION 5. Requires the comptroller to adopt rules as provided by Section 41.45(p), Tax Code, as added by this Act, not later than January 1, 2018.

SECTION 6. Provides that the changes in law made by this Act to Section 41.45, Tax Code, apply only to a protest for which the notice of protest was filed by a property owner with the appraisal review board established for an appraisal district on or after January 1, 2018.

SECTION 7. Provides that the changes in law made by this Act to Section 41A.07, Tax Code, apply only to a request for binding arbitration received by the comptroller from an appraisal district on or after the effective date of this Act.

SECTION 8. Effective date: September 1, 2017.