

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

April 25, 2017

TO: Honorable Dennis Bonnen, Chair, House Committee on Ways & Means

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB3168 by Geren (Relating to ad valorem taxation; authorizing fees.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB3168, As Introduced: a negative impact of (\$18,785,000) through the biennium ending August 31, 2019.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2018	(\$9,475,000)
2019	(\$9,310,000)
2020	(\$18,266,000)
2021	(\$18,741,000)
2022	(\$19,245,000)

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from <i>General Revenue Fund</i> 1	Probable Savings/(Cost) from <i>Foundation School</i> <i>Fund</i> 193	Probable Revenue Gain/(Loss) from <i>School Districts</i>	Probable Revenue Gain/(Loss) from <i>Counties</i>
2018	(\$9,475,000)	\$0	\$0	\$0
2019	(\$9,275,000)	(\$35,000)	(\$10,824,000)	(\$3,186,000)
2020	(\$9,275,000)	(\$8,991,000)	(\$2,540,000)	(\$3,368,000)
2021	(\$9,275,000)	(\$9,466,000)	(\$2,780,000)	(\$3,561,000)
2022	(\$9,275,000)	(\$9,970,000)	(\$3,035,000)	(\$3,764,000)

Fiscal Year	Probable Revenue Gain/(Loss) from Cities	Probable Revenue Gain/(Loss) from Other Special Districts	Change in Number of State Employees from FY 2017
2018	\$0	\$0	98.0
2019	(\$3,259,000)	(\$2,404,000)	98.0
2020	(\$3,409,000)	(\$2,538,000)	98.0
2021	(\$3,567,000)	(\$2,679,000)	98.0
2022	(\$3,731,000)	(\$2,828,000)	98.0

Fiscal Analysis

The bill amends Chapter 5 of the Tax Code, regarding state administration of property tax, to require the Comptroller to consult with property owners, individuals engaged in the business of representing property owners in proceedings under the Property Tax Code, and with chief appraisers when approving the currently required curricula and providing materials for appraisal review board member training and the continuing education training. The bill provides that a revision of the Appraisal Review Board Manual must be approved with unanimous agreement of a committee selected by the Comptroller and representing, equally, property owners, individuals engaged in the business of representing property owners in proceedings under the Property Tax Code, and chief appraisers. The Comptroller would have to ensure that the appraisal review board training includes at least one component in which these individuals and other representatives of appraisal districts and appraisal review boards are allowed to participate. An appraisal review board would be required to comply with all procedural requirements included in the Appraisal Review Board Manual prepared and issued by the Comptroller.

The bill creates the Office of Local Property Tax Ombudsman in the Comptroller's office to resolve property owner complaints. This office would resolve complaints involving alleged violations of procedural requirements imposed by law, Comptroller rule, or by procedural rules established by the appraisal review board regarding the activities of an appraisal district, appraisal review board, chief appraiser, or appraisal review board member. The office would be subject to sunset on September 1, 2021. The ombudsman would be appointed by the Comptroller with advice of the Governor, Lieutenant Governor, and Speaker of the House of Representatives and the bill sets forth eligibility requirements for the ombudsman and provides for a two year term. The Comptroller is required to provide the ombudsman with sufficient funds to employ professional and administrative staff and provide sufficient office space, equipment, and necessary supplies. A filed complaint may allege the violation of any procedural requirement including specified items, but may not address a substantive issue or merits of a motion filed under Tax Code Section 25.25 or a protest filed under Tax Code Chapter 41. The office must notify the appraisal district by certified mail, return receipt requested, of a filed complaint. The office may investigate a complaint and gather necessary information and documents. A complaint may be resolved through alternative dispute resolution and may be resolved without a hearing. A ruling must be in writing and provide for any appropriate remedy, including the dismissal of the complaint and a public reprimand of an appraisal district, appraisal review board, chief appraiser, appraisal review board member, or other person. The ombudsman would have to send notice of the ruling by certified mail, return receipt requested, to each party to the complaint. A ruling by the ombudsman may be appealed to district court for a de novo review. The bill would require the Comptroller to adopt rules to administer the office, including requiring and establishing filing and administrative fees necessary to defray costs. The ombudsman must be appointed and the rules must be adopted not later than February 1, 2018, and a complaint may not be filed before March 1, 2018.

The bill amends Chapter 6 of the Tax Code, relating to local property tax administration, to provide that an appraisal review board is appointed by the local administrative district judge in

counties with a population of 75,000 or more (rather than 120,000 or more). This applies to the appointment of appraisal review board members to terms beginning on or after January 1, 2019. This bill provides that in counties with a population of 120,000 or more special appraisal review panels must be assigned for certain property categories and provides for adjusting the number of appraisal review board members, the qualifications and appointment of the appraisal review board members of these panels, special panel hearing scheduling, and modification of the notice of appraised value and protest form for these panels. An appraisal review member would be ineligible to serve after three terms (including as an auxiliary member) in a county with a population of 120,000 or more. The current term limit is three consecutive terms. This does not affect the eligibility of a person serving on the appraisal review board immediately before January 1, 2018. The bill allows the appraisal review board to select their own chair and secretary (rather than have the board of directors of the appraisal district make these selections). The concurrence of a majority of the appraisal review board members or panel present is sufficient for a recommendation, determination, decision, or other action. The concurrence of more than a majority may not be required. The bill repeals Section 6.414 of the Tax Code relating to auxiliary appraisal review board members.

The bill requires the Comptroller to periodically pay appraisal review board members from funds provided by the appraisal district. The Comptroller would determine the per diem which may be greater for appraisal review board members serving in a special panel. The Comptroller would be required to assess costs required to make these payments to each appraisal district at least quarterly. These funds would be held in bank accounts outside of the state treasury. The Comptroller is required to adopt rules to implement these payments not later than February 1, 2018. This applies to the per diem and reimbursement of actual and necessary expenses for appraisal review board functions that occur on or after March 1, 2018.

The bill amends various Tax Code sections to adjust deadlines beginning on or after January 1, 2019, for the notice of appraised value and property owner protests. The bill amends Tax Code Section 25.25 to allow a property owner to file a motion to correct the appraisal roll for an error regarding the unequal appraisal or excess market value of property if the error resulted in an appraised value of more than one-third of the correct appraised value.

The bill amends Chapter 41 of the Tax Code, regarding local property tax review, to strike language entitling a taxing unit to challenge before the appraisal review board the level of appraisals of any category of property in the district or in any territory in the district, but not the appraised value of a single taxpayer's property. This applies to a petition filed on or after January 1, 2018. For protests scheduled on or after January 1, 2018, the bill prohibits appraisal review board hearings on Sunday and weekday hearings after 7 p.m.

The bill amends Chapter 41A of the Tax Code, relating to binding arbitration, to allow an appraisal review board correction determination under Tax Code Section 25.25 to be appealed to binding arbitration, and to allow property that is not a residence homestead with a value up to \$5 million or less (rather than \$3 million or less) to go to binding arbitration. The deposit for property with the value of more than \$3 million but not more than \$5 million would be \$1,250. Currently, one deposit is allowed for contiguous tracts of land. The bill specifies that a tract of land is considered contiguous with another tract of land if the tract is divided by only a road, railroad track, river, or stream. The bill also modifies the deadline to appeal to binding arbitration from 45 days after notice of the appraisal review board determination to 60 days after that notice. This would apply to a request for binding arbitration filed on or after January 1, 2018.

The bill amends Chapter 42 of the Tax Code, relating to judicial review, to allow property owners to appeal a determination of the appraisal review board of a procedural issue involving a motion

filed under Section 25.25 or a protest filed under Chapter 41. These petitions must be brought against the appraisal review board and if a property owner prevails, the owner may be awarded reasonable attorney fees. This would apply to appeals filed on or after January 1, 2018.

The bill would take effect January 1, 2018 except various provisions would take effect September 1, 2018.

Methodology

Certain provisions of this bill would create a cost to local taxing units and the state through the school finance formula by providing a greater opportunity for property owners to obtain appraised value reductions. These value reduction opportunities would result from the bill's proposals that:

1. effectively extend the binding arbitration filing deadline (45 days after the property owner receives the appraisal review board order) to before the delinquency date (generally February 1 of the following year) for properties that a property owner alleges in an error correction motion are appraised at more than one-third of their proper value;
2. expand the grounds permitted in an error correction motion by residence homestead owners and certain other property owners to include unequal appraisal; and
3. expand the grounds permitted in a court appeal of an order of an appraisal review board regarding an error correction motion or a protest to include procedural issues.

The taxable value loss estimate was based on information from appraisal districts. Projected tax rates were applied to the taxable value losses through the five-year projection period to estimate tax revenue losses to school districts, special districts, cities and counties. Under provisions of the Education Code, the school district tax revenue loss is partially transferred to the state. Projected school funding rates were applied to estimate the state loss and the net school district loss.

In the first year of a taxable value loss, state recapture is reduced (a state loss). Because of the use of lagged year property values, in the second and successive years of a taxable value loss, state recapture is further reduced and the previous year's school district loss related to the Tier 1 rate is generally transferred to the state through the Tier 1 funding formulas (a state loss).

In the school district enrichment formula (Tier 2), property values do not reflect the first-year value loss because of the one-year value lag. Because the formula does reflect a tax collections decline in that year, school districts lose Tier 2 funding creating a state gain. In the second and successive years a large portion of the previous year's enrichment loss is transferred to the state (a state loss).

The school district debt (facilities) funding formula does not reflect the first-year taxable value loss because of lagged property values. In the second and successive years a small portion of the previous year's school district facilities loss is transferred to the state (a state loss).

The administrative cost to the Comptroller's Office includes the funds necessary to hire 98 FTEs to implement provisions of this bill. The cost also includes \$117,000 for postage and peak period seasonal personnel for binding arbitration data entry and verification and processing of per diem reimbursements for appraisal review board personnel.

The bill creates the Office of Local Property Tax Ombudsman in the Comptroller's office to resolve property owner complaints. The Property Tax Assistance Division received almost 14,000 inquiries in calendar year 2016. A review of the inquiries determined that an estimated 5,155 complaints would qualify for referral to the ombudsman. Using the Comptroller's Administrative

Hearings area as a staffing model, it is estimated that the new office would require an ombudsman, 60 investigator/researchers, 27 attorneys, 5 legal assistants, and 5 administrative assistants. The Administrative Hearings area handles approximately 1,250 tax cases a year and has a staff of 28 FTEs.

The bill authorizes the Comptroller's Office to adopt rules establishing filing and administrative fees necessary to defray the costs to administer this subchapter. A filing fee of \$200 assessed on the roughly 5,155 complaints would only generate \$1,031,000. The fee would need to be approximately \$1,750 to fully recoup costs, which would present a significant barrier for taxpayers to access this administrative process.

Technology

There would be a one-time technology cost of \$250,000 in fiscal 2018 to purchase software for an ombudsman complaint tracking system and an ongoing annual cost of \$50,000 to maintain the system

Local Government Impact

The estimated fiscal implication to units of local government is reflected in the table above.

Source Agencies: 304 Comptroller of Public Accounts

LBB Staff: UP, KK, SD, SJS