

SUBJECT: Allowing appraisal value protests through binding arbitration

COMMITTEE: Local Government Ways and Means — committee substitute recommended

VOTE: 5 ayes — Hill, Elkins, Puente, Quintanilla, Uresti

0 nays

2 absent — Hamilton, Laubenberg

WITNESSES: (*On bill as filed:*)

For — Bob Casale, Appraisal and Property Tax Watchdog Group; Dan Hart, Taxpayers For Equal Appraisal; Carlos Higgins, Texas Silver-Haired Legislature; Mark Levin, Taxpayers for Equal Appraisal; Norman Roberts; James Hartnett; Mark Hinkle; Bill Parker (*On committee substitute:* Coach Dan Hart, Taxpayers for Equal Appraisal)

Against — Jim Allison, County Judges and Commissioners Assoc of Texas; David Cobos, Justice of the Peace and Constables Association of Texas; Donald Lee, Texas Conference of Urban Counties; Kenneth Nolan, Dallas Central Appraisal District; Katie Reed, Northside ISD, Texas Association of School Boards, Texas Association of School Administrators

On — Art Cory, Texas Association of Appraisal Districts; Jim Robinson, Texas Association of Appraisal Districts; Dan Wilson, Office of the Comptroller of Public Accounts; Gerald “Buddy” Winn, Texas Association of Appraisal Districts

BACKGROUND: Texas Constitution, Art. 8, sec. 18 requires a single appraisal of the market value of all property in a county subject to ad valorem taxation.

Under Tax Code, ch. 41, property owners may protest appraisal districts’ valuation of their property when suspected errors might adversely affect the owner's concern, including:

- market value;
- unequal appraisal;

- inclusion or exclusion of property on the property tax roll;
- qualification for agricultural or timber status;
- appraisal district authority to make value determinations, ownership; or
- change of land use.

Tax Code, sec. 41.01 establishes an appraisal review board (ARB) to hear protests by property owners regarding appraised value of their property. When a property owner files a protest with the county appraisal district (CAD), the ARB issues decisions on such disputes. An ARB is required to:

- determine protests initiated by property owners;
- determine challenges initiated by taxing units;
- correct clerical errors in appraisal records and appraisal rolls; and
- determine proper granting of exemptions

Ch. 42 allows a property owners to appeal ARB decisions to district court.

DIGEST:

CSHB 182 would allow a property owner to protest appraisal values of residential real property through binding arbitration instead of the ARB process when the value of the property was \$1 million or less. The arbitration would be valid and enforceable under the Civil Practice and Remedies Code. Taxpayers would be informed of this alternative through chief appraiser notices of appraisal value to property owners.

To pursue binding arbitration, a property owner would submit a formal request by the later of May 31 or within 30 days after a notice of appraised value was mailed, unless the owner could show good cause for missing the deadline. The formal request would consist of a brief summary of the protest and any additional pertinent information. The property owner also would submit a deposit to the comptroller, equal to the lesser of \$750 or 0.25 percent of the protested appraisal value, rounded up to the nearest dollar. Upon receipt of the binding arbitration request form and the deposit, the CAD would have 10 days to approve the request and submit the form and deposit to the comptroller along with an additional \$250 deposit of its own.

The comptroller would appoint a qualified arbitrator from a registry containing licensed real estate brokers and salespersons or certified appraisers who had formal training in dispute resolution and agreed to

perform arbitration for a maximum fee of \$500. Within 10 days of receiving the registry list, the CAD and the property owner would select an arbitrator or inform the comptroller that they could not agree on an arbitrator, in which case the comptroller would assign one. An arbitrator who was unavailable or unwilling to conduct the arbitration would notify the comptroller, who would select another arbitrator. The arbitrator would set the arbitration date, time, and place, and notify both parties. The parties could represent themselves or be represented by another party at their own expense.

The arbitrator would make an award within five days, including a determination of the property's appraised or market value and any amount to be refunded to the property owner. If the disputed appraisal amount was less than \$200,000 and the arbitrator determined the appraisal value to be less than 95 percent of the protested appraisal, or if the disputed amount was \$200,000 or more and the arbitrator determined the appraisal value to be less than 90 percent of the protested appraisal, the arbitrator would award a refund of the property owner's deposit, to be paid within 30 days by the CAD.

When arbitration favored the property owner, the CAD deposit would go toward the arbitrator's fee and the comptroller would make up any difference. When arbitration favored the CAD, the property owner would lose the deposit and the comptroller would apply deposits from the property owner and the CAD to the arbitrator's fee. Any remaining balance would return to the CAD.

The comptroller would have authority to adopt all necessary rules and designate employers to appoint arbitrators. No later than October 1, 2005, appraisal districts would be required to make arbitration forms available and the comptroller would provide a model calculation for arbitration deposits and establish the arbitrator registry.

The bill would take effect September 1, 2005.

**SUPPORTERS
SAY:**

CSHB 182 would provide a more secure and fair means by which property taxpayers could protest appraisal values. The current appraisal appeal process is controlled entirely by political subdivisions of the state. CAD boards appoint ARB members, who are paid by the appraisal districts. While ARBs are meant to function as checks and balances against the decisions of chief appraisers, some taxpayers perceive ARBs as agents of

the appraisal districts and find the appraisal review process frustrating and unresponsive. Arbitration would provide a neutral forum, restoring public confidence in the integrity of the appraisal process.

The bill would give taxpayers, particularly low-income individuals, an opportunity to bypass the ARB and challenge appraisals without hiring a lawyer and filing suit in district court. Most homeowner disputes involve relatively small amounts of money, and the cost of challenging an appraisal along with attorney fees often exceeds the disputed amount. CSHB 182 would allow taxpayers to protest appraisals in a more informal and affordable manner than in district court. In addition, when the arbitrator found for the property owner, the owner would be refunded the arbitration deposit and the property's taxable value would be adjusted. The bill also would protect the appraisal district from further litigation costs if a taxpayer wanted to pursue a frivolous claim.

The margin of error involved in the arbitration decision to side with the taxpayer is very small and thus would minimize protests over insignificant amounts. Only for taxpayers with legitimate protests would arbitration be worthwhile.

The fiscal note attached to the bill anticipates no significant costs to the state, and costs to the Comptroller's Office should be absorbed within existing resources.

**OPPONENTS
SAY:**

A radical change in hearing appraisal protests is not needed. The Constitution requires a single appraisal of the market value of all property in a county subject to ad valorem taxation. The comptroller tests these values and determines the taxable value for school districts. School district values also must pass a value test, which more than 90 percent pass. CADs, while they do share a common concern for the taxpayer, are duty-bound to abide by the Constitution and provide fair-market valuations.

Only CADs and ARB members, trained on the Uniform Standards of Professional Appraisal Practice, should determine appraisals. Through training and continuing education from the comptroller, these professionals practice a standard method of evaluating property at fair-market value. Arbitrators do not necessarily have this level of expertise.

With no administrative fee to offset these costs, the bill would require the comptroller to add six full-time employees to administer the program,

costing \$267,543, in addition to an estimated \$3,762 in technology and fee processing costs. Also, the bill does not specify into which comptroller accounts deposits would go or how the exchange of funds with CADs and property owners would transpire, creating an added layer of administrative inefficiency.

The bill also could change the state's total taxable value, which affects the school funding formula. If the change dramatically decreased total taxable value, the school funding formula could be distorted.

CADs could experience significant financial loss. In 2003, the ARB heard 184,840 protests. If merely a small percent of those protests instead went through arbitration and the property owner prevailed, the appraisal district would owe the amount of the property owner's deposit, plus the arbitration fee. If the property owner prevailed in as few as 25 percent of arbitrated cases, local governments would lose an estimated \$2 million, according to the Legislative Budget Board (LBB).

OTHER
OPPONENTS
SAY:

The bill should not place limits on the value and type of property eligible for arbitration. Properties valued at more than \$1 million and commercial property should be permitted to use arbitration.

While arbitration would create a more fair and secure forum for protests, the end result should not be binding. Taxpayers still should have the option of filing an appeal in court. Arbitration should be an alternative to the ARB, not an alternative to filing in district court.

NOTES:

According to the LBB, the bill would have no significant fiscal impact to the state. The Comptroller's Office estimates that it would spend, within existing resources, \$267,543 per year in personnel costs plus \$3,762 in costs to program the registry and process the fees. The LBB projects that local appraisal districts would lose between \$2 million and \$4 million per year, based on a property owner prevailing in between one-quarter and one-half of an estimated 18,484 arbitrated cases.

The original bill would have allowed a property owner to appeal an adverse ARB decision to small claims court, rather than to district court if the amount of taxes due on the disputed appraised value did not exceed \$5,000. The substitute entirely replaced the original bill, which contained no mention of the proposed binding arbitration program as an alternative to the ARB.

The companion bill, SB 181 by Janek, identical to HB 182 as filed, was left pending in the Senate Jurisprudence Committee on February 23.