

SUBJECT: Allowing SOAH to a hear certain appeals of property tax appraisals

COMMITTEE: Ways and Means — committee substitute recommended

VOTE: 10 ayes — Oliveira, Otto, Bohac, Hartnett, Hilderbran, C. Howard,
P. King, Paxton, Taylor, Villarreal

0 nays

1 absent — Peña

WITNESSES: For — John Kennedy, Texas Taxpayers and Research Association; Marc Ross, Texas Apartment Association; (*Registered, but did not testify*: Kathy Barber, Texas Retailers Association; Justin Bragiel, Texas Hotel & Lodging Association; George Christian, Texas Taxpayers and Research Association; Jeff Crozier, Rural Rental Housing Association of Texas; June Deadrick, Center Point Energy; Doug DuBois, Texas Petroleum Marketers & Convenience Store Association; Aurora Flores-Ortiz, Texas Association of Counties; Daniel Gonzalez, Texas Association of Realtors; Chris Hughes, Total Services, Inc.; James LeBas, Texas Oil and Gas Association, Texas Chemical Council, Koch Companies, Association of Electric Companies of Texas; Donald Lee, Texas Conference of Urban Counties; Lance Lively, NFIB Texas; Mark Mendez, Tarrant County, Julie W. Moore, Occidental Petroleum; Ned Muñoz, TX Association of Builders; Royce Poinsett, Exxon Mobil; James Popp; Cindy Segovia, Bexar County Commissioners Court; Jason Skaggs, TX and Southwestern Cattle Raisers Association; Donna Warndof, TX Independent Producers & Royalty Owners Association; Josh Winegarner, Texas Cattle Feeders Association)

Against — (*Registered, but did not testify*: Amy Sallusti, Geary Porter & Donovan, P.C.)

On — Cathleen Parsley, State Office of Administrative Hearings; (*Registered, but did not testify*: Ken Nolan, Dallas CAD, Texas Association of Appraisal Districts.; Jim Robinson, Texas Association of Appraisal Districts; Kerry Sullivan, State Office of Administrative Hearings)

BACKGROUND: Under Tax Code, ch. 41, a property-tax payer may appeal the assessed value of property to the local appraisal review board (or ARB). A taxpayer may appeal a decision by the ARB to district court under the Tax Code, ch. 42. If the value of the property in question is less than \$1 million, the taxpayer also may appeal an ARB decision through binding arbitration under Tax Code, ch. 41A.

DIGEST: CSHB 3612 would create a pilot program to allow taxpayer appeals of ARB decisions involving property values of more than \$1 million in certain counties to be heard by the State Office of Administrative Hearings (SOAH).

Establishing a pilot program. CSHB 3612 would amend Government Code, ch. 2003 to direct SOAH to develop a pilot program for a property owner to appeal an ARB decision regarding a protest of appraised or market value if the appraised or market value was more than \$1 million. SOAH would have to develop this program by January 1, 2010. The pilot program would cover Bexar, Cameron, Dallas, El Paso, Harris, Tarrant, and Travis counties for a three-year period beginning January 1, 2010. The program would cover real or personal property, not including industrial property or minerals. The program would expire in 2013.

Education and training for administrative law judges. An administrative law judge (or ALJ) would be required to have knowledge of each of the appraisal methods a chief appraiser may use to determine the appraised value or the market value of property. An ALJ also would be required to know the proper method for determining an appeal of a protest, including a protest brought on the ground of unequal appraisal. An ALJ would be entitled to attend, without charge, one or more courses offered by the comptroller to train and educate ARB members.

Notice and contents of an appeal to SOAH. To appeal an ARB order to SOAH, a property owner would have to file with the chief appraiser of the appraisal district no later than the 15 days after the date the property owner received notice of the ARB order a completed notice of appeal to SOAH and a filing fee of \$300. As soon as practicable after receipt of this notice, the chief appraiser for the appraisal district would submit details of the appeal to SOAH and request an ALJ to hear the appeal.

SOAH's chief ALJ would prescribe the form of the notice of appeal. The form would require the property owner to provide:

- a copy of the order of the ARB;
- a brief statement that explained the basis for the property owner's appeal of the ARB order; and
- a statement of the property owner's opinion of the appraised or market value of the property that was subject to appeal.

When delivering notice of an order to a taxpayer, an ARB would have to include a notice of the property owner's rights under this bill and a copy of the form prescribed by the chief ALJ for notice of an appeal.

Scope of appeal and the hearing. The SOAH hearing would be by trial de novo. Except under certain circumstances, the ALJ would not admit previous actions by the ARB into evidence. The Texas Administrative Procedure Act and the Texas Rules of Evidence would not apply to these hearings. Prehearing discovery would be limited to the exchange of documents the parties would rely on during the hearing. Any expert testimony would be reduced to writing and included in the exchange of documents. Any relevant evidence would be admissible, subject to the imposition of reasonable time limits and the parties' compliance with reasonable procedural requirements imposed by the ALJ, including a schedule for the prehearing exchange of documents to be relied on. An ALJ could consider factors such as the hearsay nature of testimony, the qualifications of witnesses, and other restrictions on the admissibility of evidence under the Texas Rules of Evidence in assessing the weight to be given to the evidence admitted.

The hearing would be held in the county of the appraisal district whose valuation was at issue. The hearing could not be held in a facility controlled by the appraisal district.

Representation of parties. A property owner would be allowed to be represented at the hearing by:

- the property owner;
- an attorney licensed in Texas;
- a certified public accountant; or
- any other person who was not otherwise prohibited from appearing before a SOAH hearing.

The appraisal district could be represented by the chief appraiser or a person designated by the chief appraiser.

Final Determination. As soon as practicable, but not later than the 30th day after the date the hearing was concluded, the ALJ would issue a determination and send a copy to the property owner and the chief appraiser. The determination would:

- include determinations of the appraised or market value of the property that was the subject of the appeal;
- include a brief analysis of the ALJ's rationale for and key findings in support of the determination, but not necessarily a detailed discussion of the evidence admitted or the contentions of the parties;
- be allowed to include any remedy or relief that a court may order under the Tax Code, ch. 42 in an appeal relating to the appraised or market value of property; and
- be required to specify whether the appraisal district or the property owner was required to pay the costs of the hearing and the amount of those costs.

SOAH, by rule, would be allowed to implement processes under which:

- the ALJ would issue a proposal for determination to the parties;
- the parties would be given a reasonable period in which to make written objections to the proposal; and
- the ALJ would be authorized to take into account those objections before issuing a final determination.

Loser pays provision. If the ALJ determined that the appraised or market value was closer to the property owner's opinion of the appraised or market value than that proposed by the ARB, then:

- SOAH would refund the property owner's filing fee;
- the appraisal district would pay the cost of the appeal; and
- the chief appraiser would correct the appraised or market value of the property on the appraisal roll to reflect the ALJ's determination.

If the ALJ determined that the appraised or market value was closer to the ARB's opinion of the appraised or market value than that proposed by the property owner, then:

- SOAH would retain the property owner's filing fee;
- the chief appraiser would correct the appraised or market value of the property on the appraisal roll to reflect the ALJ's determination, if the value determined by the ALJ was less than the value determined by the ARB; and
- the property owner would pay the costs of the appeal minus the filing fee.

Payment of property taxes pending an appeal. A pending appeal to SOAH would not affect the delinquency date for due property taxes. A property owner who appealed an ARB order to SOAH would be required to pay taxes on the property subject to the appeal in an amount equal to the taxes due on the portion of the taxable value of the property that was not in dispute. If the final determination of the appeal decreased the property owner's tax liability to an amount less than the amount of the taxes paid, each taxing unit would refund to the property owner the difference between the amount of taxes paid and the amount of taxes for which the property owner was liable.

A property owner would not be able to appeal to SOAH if the taxes on the property subject to the appeal were delinquent. An ALJ who determined that the taxes were delinquent would dismiss the appeal with prejudice. Such a dismissal would result in the property owner forfeiting the application fee to SOAH.

Judicial appeal. A final determination would be appealable to a district court in the manner provided by the Tax Code, ch. 42, except that a party would not be entitled to a jury trial. A chief appraiser would not be able to bring an appeal unless the board of directors of the appraisal district voted to allow it. The provisions of the Tax Code, ch. 42, that regulate the appeal of an ARB decision to a district court would apply to an appeal of an ALJ determination to a district court.

An appeal to SOAH would not prevent the property owner from seeking judicial review of the order of the ARB. The 45-day window for filing an appeal of an ARB decision to a district court would be suspended beginning on the date of the notice of appeal was filed and ending on the date the ALJ issued the determination.

Report to the Legislature. Not later than January 1, 2013, the office and the chief appraisers of the appraisal district established in the counties in

which the pilot program would be implemented would submit a report to the Legislature that would include:

- the number of appeals in each appraisal district;
- the number of appeals that were settled before being heard by an ALJ;
- the number of appeals brought on the ground of excessive appraisal;
- the number of appeals brought on the ground of unequal appraisal;
- the number of judicial appeals of an ALJ's determination for each appraisal district; and
- any recommendations for future legislative action that the SOAH or the chief appraisers considered appropriate.

Effective date. The bill would take effect on January 1, 2010, and would apply only to an ad valorem tax year that began after that date.

**SUPPORTERS
SAY:**

CSHB 3612 would create a pilot program that would provide an interim step between an ARB decision and an appeal to district court. Many taxpayers are unhappy with the ARB process but cannot afford to appeal their cases to district court, as the cost of doing so often exceeds the shift in appraised value they hoped to obtain. Under current law, property owners whose property is valued at less than \$1 million have the option of going to binding arbitration. Doing so can save tens of thousands of dollars off the cost of going to district court. However, property owners whose property is valued at more than \$1 million do not have this option. CSHB 3612 would allow these property owners, if the property in question existed in one of the seven most populous Texas counties, to take their appeals to the SOAH. SOAH expects the average cost of these hearings to be between \$1,500 and \$2,000. This would result in significant cost savings compared to an appeal in district court and would open up an avenue for a meaningful and professional appeal to those who otherwise might not find it economical to pursue one.

CSHB 3612 would promote confidence and professionalism in the appraisal system. Taxpayers would have an avenue for an appeal that would be independent of the appraisal district, increasing confidence in the system. Further, as ALJs heard these tax appeals, they would become more expert, and a body of opinions would form that would better direct future tax appraisal practices. These would be deterrents for everything from poor appraisal practices to frivolous appeals.

CSHB 3612 also would help speed up the appeals process, as ALJs would resolve cases in about 30 days. Under the current system, some appeals have taken longer than two years to be resolved by district courts. Further, CSHB 3612 would not promote a proliferation of frivolous appeals because those who lost would be required to pay for the cost of the appeal to SOAH. The chief appraiser would be able to appeal to SOAH if the appraisal district's board of directors voted to allow it. This also would provide an important check on possible misuse of this appeals process.

CSHB 3612 would require that appeals from SOAH to district court be by a trial de novo in order to protect the interests of property owners. One of the goals of CSHB 3612 would be to open up the appeals process to those who otherwise would find it uneconomical to appeal. If the standard of appeal were substantial evidence, then a tax payer would have to be represented by an attorney in order to follow rules of evidence and procedure and to ensure that issues would be preserved for appeal. CSHB 3612 would allow a tax payer to be represented by anyone who currently can represent a taxpayer before an ARB.

Even though a trial de novo standard would allow parties two chances at appeal, CSHB 3612 would require that the findings of the ALJ be admissible in district court and the party that lost the SOAH hearing be required to pay for that hearing. This would help to deter automatic appeals and should result in district courts having to hear fewer property tax appeals.

Creating an appeals system for certain property-tax appraisals through SOAH would be a better approach than allowing non-binding arbitration. SOAH hearings would prevent more litigation than non-binding arbitration would because non-binding arbitration would not prevent a party from simply appealing a case to district court. Further, because SOAH is independent of any taxing entity, taxpayers would feel that they had received a fair and impartial hearing, something many taxpayers feel they do not currently receive at ARB hearings.

The SOAH appeals system that CSHB 3612 would establish would be a pilot program. It would expire after three years unless the Legislature renewed it, and it would apply only to the seven largest urban counties. This program would be limited enough to allow the Legislature to evaluate it and improve it as needed or scrap it in favor of a better solution.

OPPONENTS
SAY:

CSHB 3612 would not reduce the amount of litigation surrounding property-tax appraisal because it would require that an appeal from a SOAH decision to district court be by trial de novo. Because litigants would not be bound by the decisions of an ALJ, they would not be deterred from trying a second appeal before a district court.

A better approach would be to allow property owners whose properties were valued at more than \$1 million to go to non-binding arbitration as an option before they appealed to district court. This option would reduce the number of cases that ended up before district court, would use the already well established arbitration system, and would not require an expansion of SOAH's duties.

NOTES:

The committee substitute differs from the bill as filed by adding rules on the kinds of evidence that would be admissible during an appeal from an ARB before SOAH; specifying that the Texas Administrative Procedure Act, ch. 2001, Government Code, and the Texas Rules of Evidence would not apply; limiting prehearing discovery to the exchange of documents the parties would rely on during the hearing; providing that any expert testimony be reduced to writing and included in the exchange of documents; requiring that any relevant evidence be admissible, subject to the imposition of reasonable time limits and the parties' compliance with reasonable procedural requirements imposed by the ALJ, including a schedule for the prehearing exchange of documents to be relied on; and allowing an ALJ to consider factors such as the hearsay nature of testimony, the qualifications of witnesses, and other restrictions on the admissibility of evidence under the Texas Rules of Evidence in assessing the weight to be given to the evidence admitted. The committee substitute also would require the final determination to contain a brief analysis of the ALJ's rationale for and set out the key findings in support of the determination but not require it to contain a detailed discussion of the evidence admitted or the contentions of the parties.