

## **BILL ANALYSIS**

Senate Research Center  
80R10311 JD/YDB-D

H.B. 3494  
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Finance  
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Engrossed

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

Currently, when a property owner feels that the appraised value of the property owner's property, as assessed by the central appraisal district, does not accurately reflect the property's true and taxable value, the taxpayer can challenge that appraised value before the appraisal review board (board). If the outcome of the hearing before the board does not satisfy the property taxpayer, the property owner can appeal that decision through binding arbitration. However, currently the only information that can be considered in binding arbitration is the appraised value as decided by the board and the value that the property taxpayer feels is more accurate.

H.B. 3494 amends the Tax Code to allow parties to an arbitration proceeding to present any evidence relating to the data or appraisal method used by the appraisal district, and allows the property owner to allege and present evidence to show the appraisal review board failed to comply with law. The bill also allows the property owner to file a complaint with the Board of Tax Professional Examiners to allege that the chief appraiser violated a procedural or ethical provision or rule enacted or adopted, provides a process for the review of the allegations, and provides penalties if a violation is proven to exist.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Appraisal Review Board in SECTION 5 (Section 1151.2021, Occupations Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 41A.08(b), Tax Code, as added by Chapter 372, Acts of the 79th Legislature, Regular Session, 2005, as follows:

(b) Authorizes the parties to an arbitration proceeding under this chapter to represent themselves or be represented in the proceeding by an attorney, certified public accountant, property tax consultant, real estate appraiser, or real estate broker. Deletes existing text as it relates to a party's representative acting under power of attorney. Authorizes the property owner who is a party to the arbitration proceeding to present evidence or make arguments in the proceeding. Prohibits a person other than the property owner from serving as a party representative, presenting evidence, or making arguments in an arbitration proceeding under this chapter unless the person is an employee of the appraisal district; is a licensed attorney in this state; is licensed as a real estate broker or salesperson under Chapter 1101 (Real Estate Brokers and Salesperson), Occupations Code, or licensed or certified as a real estate appraiser under Chapter 1103 (Real Estate Appraisers), Occupations Code; is a property tax consultant registered under Chapter 1152 (Property Tax Consultants), Occupations Code; or is certified as a certified public accountant under Chapter 901 (Accountants), Occupations Code.

SECTION 2. Amends Section 41A.08, Tax Code, by adding Subsections (c) and (d), as follows:

(c) Entitles any party in an arbitration hearing under this chapter to present evidence relating to the data or appraisal method used by the appraisal district in determining the market or appraised value of the property that is the subject of the appeal, regardless of whether that evidence was presented to the appraisal review board (board) that determined the protest; and entitles the property owner to allege and present evidence to

show that the board that determined the protest failed to comply with a provision of Subchapter C (Appraisal Review Board), Chapter 6, or another law of this state applicable to the board; a rule adopted by the comptroller applicable to the board or the hearing conducted by the board; or any other substantive or procedural requirement applicable to the board or the hearing conducted by the board.

(d) Requires the arbitrator, if the property owner presents evidence under Subsection (c)(2) to make a determination whether the appraisal review board failed to comply with the statute, rule, or procedural requirement as alleged by the property owner and include that determination in the record of the hearing.

SECTION 3. Amends Section 41A.11, Tax Code, as follows:

Sec. 41A.11. POST APPEAL ADMINISTRATIVE AND COMPLAINT PROCEDURES; DISCIPLINARY ACTION. (a) Creates this subsection from existing text.

(b) Prohibits a property owner from appealing an arbitration award under this chapter to the Board of Tax Professional Examiners.

(c) Authorizes a property owner who alleges that a chief appraiser violated a procedural or ethical provision or rule enacted or adopted under this title, to file a complaint with the Board of Tax Professional Examiners under Chapter 1151 (Property Tax Professionals), Occupations Code .

(d) Requires the board to investigate a complaint filed against a chief appraiser under Subsection (c) and authorizes the board to impose any disciplinary action authorized under Section 1151.202 (Denial of Registration, Disciplinary Action), Occupations Code, for a violation of this title.

SECTION 4. Amends Section 1151.202, Occupations Code, by adding Subsections (a-1) and (a-2), as follows:

(a-1) Authorizes the board to take certain actions for a violation of Title 1 (Property Tax Code), Tax Code.

(a-2) Authorizes the board, in addition to any disciplinary action authorized by Subsection (a-1) for a violation of Title 1, Tax Code, to issue a written reprimand to the registration holder or require the holder to participate in continuing education programs in which the board specifies the courses to be completed and the number of hours required.

SECTION 5. Amends Subchapter E, Chapter 1151, Occupations Code, by adding Section 1151.2021, as follows:

Sec. 1151.2021. SCHEDULE OF SANCTIONS. (a) Requires the board by rule to adopt a schedule of the disciplinary sanctions that the board is authorized to impose under this chapter. Requires the board, in adopting the schedule of sanctions, to ensure that the severity of the sanction imposed is appropriate to the type of violation or conduct that is the basis for disciplinary action.

(b) Requires the board, in determining the appropriate disciplinary action, including the amount of any administrative penalty to assess, to make certain considerations.

SECTION 6. Amends Chapter 1151, Occupations Code, by adding Subchapter G, as follows:

#### SUBCHAPTER G. ADMINISTRATIVE PENALTY

Sec. 1151.301. IMPOSITION OF PENALTY. Authorizes the board to impose an administrative penalty against a person who violates this chapter, a rule adopted under this chapter, or Title 1, Tax Code.

Sec. 1151.302. AMOUNT OF PENALTY. (a) Prohibits the amount of the administrative penalty from exceeding \$1,000 for each violation. Provides that each day of a continuing violation is a separate violation.

(b) Requires the amount of the penalty to be based on the seriousness of the violation; the history of previous violations; the amount necessary to deter a future violation; efforts to correct the violation; and any other matter that justice may require.

Sec. 1151.303. NOTICE OF VIOLATION AND PENALTY. (a) Requires the board, if, after investigating a possible violation and the facts surrounding that possible violation, the board determines that a violation occurred, to give written notice (notice) of the violation to the person alleged to have committed the violation.

(b) Requires the notice to include certain information.

Sec. 1151.304. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Authorizes the person, not later than the 20th day after the date the person receives the notice, to accept the board's determination, including the proposed administrative penalty; or make a written request for a hearing on that determination.

(b) Requires the executive director of the Board of Tax Professional Examiners (executive director) or that executive director's designee by order, if the person accepts the board's determination, to approve the determination and impose the proposed penalty.

Sec. 1151.305. HEARING. (a) Requires the board, if the person timely requests a hearing, to take certain actions.

(b) Requires the hearings examiner to make findings of fact and conclusion of law and promptly issue to the executive director or that executive director's designee a proposal for decision as to the occurrence of the violation and the amount of any proposed administrative penalty.

Sec. 1151.306. DECISION BY EXECUTIVE DIRECTOR. (a) Authorizes the executive director or the executive director's designee by order, based on the findings of fact and conclusions of law and the recommendations of the hearing examiner, to determine that a violation has occurred and impose an administrative penalty or determine that a violation did not occur.

(b) Requires the board to give notice of the order to the person. Requires the notice to include certain information.

Sec. 1151.307. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Requires the person, not later than the 30th day after the date on which the order becomes final, to pay the administrative penalty; pay the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both; or without paying the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both.

(b) Authorizes a person who acts under Subsection (a)(3) to, within the 30-day period, stay enforcement of the penalty by paying the penalty to the court for placement in an escrow account; or giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the order is final; or request the court to stay enforcement of the penalty by filing with the court a sworn affidavit of the person stating that the

person is financially unable to pay the penalty and financially unable to give the superseas bond; and giving a copy of the affidavit to the board by certified mail.

(c) Authorizes the board, if the board receives a copy of an affidavit as provided by Subsection (b)(2), to file with the court a contest to the affidavit not later than the fifth day after the date the copy is received.

(d) Requires the court to hold a hearing on the facts alleged in the affidavit as soon as practicable and requires the court to stay the enforcement of the penalty on finding that the alleged facts are true. Provides that the person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Sec. 1151.308. COLLECTION OF PENALTY. Authorizes the board, if the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, to refer the matter to the attorney general for collection.

Sec. 1151.309. DETERMINATION BY COURT. (a) Authorizes the court to uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced amount, if the court sustains the determination that a violation occurred.

(b) Requires the court, if it does not sustain the determination that a violation occurred, to order that a penalty is not owed.

Sec. 1151.310. REMITTANCE OF PENALTY AND INTEREST. (a) Requires the court if, after judicial review, the administrative penalty is reduced or not imposed by the court, to take certain actions after the judgment becomes final.

(b) Provides that the interest paid under Subsection (a)(1) is accrued at the rate charged on loans to depository institutions by the New York Federal Reserve Bank. Requires the interest to be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Sec. 1151.311. EXPENSES AND COSTS. (a) Defines "reasonable expenses and costs."

(b) Authorizes the board to assess reasonable expenses and costs against a person in an administrative hearing if, as a result of the hearing, an administrative penalty is assessed against the person. Requires the person to pay expenses and costs assessed under this subsection not later than the 30th day after the date the order of the executive director or that executive director's designee requiring the payment of expenses and costs is final. Authorizes the board to refer the matter to the attorney general for collection of the expenses and costs.

(c) Authorizes the attorney general, if the attorney general bring an action against a person to enforce an administrative penalty assessed under this subchapter and the person is found liable for an administrative penalty, to recover, on behalf of the attorney general and the board, reasonable expenses and costs.

Sec. 115.312. ADMINISTRATIVE PROCEDURE. Provides that a proceeding under Subchapter G is subject to Chapter 2001( Administrative Procedure), Government Code.

SECTION 7. Repealer: Section 41A.08(b) (regarding representation of certain parties to an arbitration proceeding), Tax Code, as added by Chapter 912, Acts of the 79th Legislature, Regular Session, 2005.

SECTION 8. Makes application of this Act prospective.

SECTION 9. Effective date: upon passage or September 1, 2007.