

BILL ANALYSIS

Senate Research Center

H.B. 3612
By: Otto et al. (Williams)
Intergovernmental Relations
5/11/2009
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

When a central appraisal district (CAD) determines that the appraised value of a property is \$1 million or more, state law currently authorizes the taxpayer to appeal the determination to an appraisal review board (ARB) and, if the taxpayer determines it to be necessary, to further appeal the ARB's decision to district court. However, a perception exists among taxpayers that the ARB is an extension of the CAD, and as such will act in the best interests of the CAD, rather than the taxpayer. To change this perception, the system itself must be changed. Many cases appealed to the ARB are complex and require extensive knowledge of property tax and real estate law. A district court offers the assurance of proper consideration and understanding of the arguments being presented. However, appealing to district court can be a time-consuming and expensive process, thereby reducing the number of taxpayers who choose to pursue such an appeal. An alternative to the current process is needed to reduce litigation expenses, while continuing to provide a neutral third party to hear arguments and issue decisions.

H.B. 3612 creates a three-year pilot program in Bexar, Cameron, Dallas, El Paso, Harris, Tarrant, and Travis Counties under which a property owner may appeal the ARB's determination on real and personal property valued over \$1 million to the State Office of Administrative Hearings.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the chief administrative law judge in SECTION 1 (Section 2003.906, Government Code) of this bill.

Rulemaking authority is expressly granted to the State Office of Administrative Hearings in SECTION 1 (Section 2003.911, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 2003, Government Code, by adding Subchapter z, as follows:

SUBCHAPTER Z. PILOT PROGRAM: APPEALS FROM APPRAISAL REVIEW BOARD DETERMINATIONS IN CERTAIN COUNTIES

Sec. 2003.901. PILOT PROGRAM. (a) Requires the State Office of Administrative Hearings (SOAH) to develop a pilot program under which, as an alternative to filing an appeal under Section 42.01 (Right of Appeal by Property Owner), Tax Code, a property owner is authorized to appeal to SOAH an appraisal review board (board) order determining a protest concerning the appraised or market value of property brought under Section 41.41(a)(1) (relating to a determination of the appraised value of the owner's property, or in certain other cases, determination of its appraised or market value) or (2) (relating to unequal appraisal of the owner's property), Tax Code, if the appraised or market value, as applicable, of the property that was subject of the protest, as determined by the board order, is more than \$1 million.

(b) Requires that the pilot program be developed and implemented in conformance with the provisions of this subchapter.

Sec. 2003.902. COUNTIES INCLUDED. Requires that the pilot program be implemented in Bexar, Cameron, Dallas, El Paso, Harris, Tarrant, and Travis Counties

for a three-year period beginning with the ad valorem tax year that begins January 1, 2010.

Sec. 2003.903. **APPLICABILITY TO REAL AND PERSONAL PROPERTY.** Requires that the pilot program be applicable to a determination of the appraised or market value made by the board in connection with real or personal property, other than industrial property or minerals.

Sec. 2003.904. **EDUCATION AND TRAINING OF ADMINISTRATIVE LAW JUDGES.** (a) Requires an administrative law judge assigned to hear an appeal brought under this subchapter 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 under Chapter 23 (Appraisal Methods and Procedures), Tax Code, and the proper method for determining an appeal of a protest, including a protest brought on the ground of unequal appraisal.

(b) Entitles an administrative law judge to attend one or more training and education courses under Sections 5.04 (Training and Education of Appraisers) and 5.041 (Training of Appraisal Review Board Members), Tax Code, to receive a copy of the materials used in a course, or both, without charge.

Sec. 2003.905. **NOTICE OF APPEAL TO OFFICE.** (a) Requires a property owner, to appeal a board order to SOAH under this subchapter, to file with the chief appraiser of the appraisal district not later than the 30th day after the date the property owner receives notice of the order a completed notice of appeal to SOAH in the form prescribed by Section 2003.906, and a filing fee in the amount of \$300, made payable to SOAH.

(b) Requires the chief appraiser, as soon as practicable after receipt of a notice of appeal, to indicate, where appropriate, those entries in the records that are subject to the appeal; submit the notice of appeal and filing fee to SOAH; and request the appointment of a qualified administrative law judge to hear the appeal.

Sec. 2003.906. **CONTENTS OF NOTICE OF APPEAL.** Requires the chief administrative law judge by rule to prescribe the form of a notice of appeal under this subchapter. Requires that the form require the property owner to provide a copy of the order of the board; a brief statement that explains the basis for the property owner's appeal of the order; and a statement of the property owner's opinion of the appraised or market value, as applicable, of the property that is the subject of the appeal.

Sec. 2003.907. **NOTICE TO PROPERTY OWNERS.** Requires a board of an appraisal district established in a county listed in Section 2003.902 that delivers notice of issuance of an order described by Section 2003.901 of this code pertaining to property described by Section 2003.903 of this code and a copy of the order to a property owner as required by Section 41.47 (Determination of Protest), Tax Code, to include with the notice and copy a notice of the property owner's rights under this subchapter; and a copy of the notice of appeal prescribed by Section 2003.906.

Sec. 2003.908. **DESIGNATION OF ADMINISTRATIVE LAW JUDGE.** (a) Requires SOAH, as soon as practicable after SOAH receives a notice of appeal and the filing fee, to designate an administrative law judge to hear the appeal.

(b) Requires the administrative law judge, as soon as practicable after the administrative law judge is designated, to set the date, time, and place of the hearing on the appeal.

(c) Requires the hearing to be held in a building or facility that is owned or partly or entirely leased by SOAH and located in the county in which the applicable appraisal district is established, except that if SOAH does not own or lease a building or facility in the county, the hearing is authorized to be held in any public or privately owned building or facility in that county, preferably a building or facility in which SOAH regularly conducts business. Prohibits the hearing from

being held in a building or facility that is owned, leased, or under the control of the appraisal district.

Sec. 2003.909. SCOPE OF APPEAL; HEARING. (a) Provides that an appeal is by trial de novo. Prohibits the administrative law judge from admitting into evidence the fact of previous action by the board, except as otherwise provided by this subchapter.

(b) Provides that Chapter 2001 (Administrative Procedure) and the Texas Rules of Evidence (TRE) do not apply to a hearing under this subchapter. Provides that prehearing discovery is limited to the exchange of documents the parties will rely on during the hearing. Requires that any expert witness testimony be reduced to writing and included in the exchange of documents.

(c) Provides that any relevant evidence is admissible, subject to the imposition of reasonable time limits and the parties' compliance with reasonable procedural requirements imposed by the administrative law judge, including a schedule for the prehearing exchange of documents to be relied on.

(d) Authorizes an administrative law judge to consider factors such as the hearsay nature of testimony, the qualifications of witnesses, and other restrictions on the admissibility of evidence under TRE in assessing the weight to be given to the evidence admitted.

Sec. 2003.910. REPRESENTATION OF PARTIES. (a) Authorizes a property owner to be represented at the hearing by the property owner, an attorney who is licensed in this state, a certified public accountant, a registered property tax consultant, or any other person who is not otherwise prohibited from appearing in a hearing held by SOAH.

(b) Authorizes the appraisal district to be represented by the chief appraiser or a person designated by the chief appraiser.

Sec. 2003.911. DETERMINATION OF ADMINISTRATIVE LAW JUDGE. (a) Requires the administrative law judge, as soon as practicable, but not later than the 30th day after the date the hearing is concluded, to issue a determination and send a copy to the property owner and the chief appraiser.

(b) Provides that the determination:

(1) is required to include a determination of the appraised or market value, as applicable, of the property that is subject of the appeal;

(2) is required to contain a brief analysis of the administrative law judge's rationale for and set out the key findings in support of the determination but is not required to contain a detailed discussion of the evidence admitted or the contentions of the parties;

(3) is authorized to include any remedy or relief a court may order under Chapter 42 (Judicial Review), Tax Code, in an appeal relating to the appraised or market value of property; and

(4) is required to specify whether the appraisal district or the property owner is required to pay the costs of the hearing and the amount of those costs.

(c) Provides that if the administrative law judge determines that the appraised or market value, as applicable, of the property that is the subject of the appeal is nearer to the property owner's opinion of the appraised or market value, as applicable, of the property as stated in the request for the hearing submitted by the property owner than the value determined by the board:

- (1) SOAH, on receipt of a copy of the determination, shall refund the property owner's filing fee;
- (2) the appraisal district, on receipt of a copy of the determination, shall pay the costs of the appeal as specified in the determination; and
- (3) the chief appraiser shall correct the appraised or market value, as applicable, of the property shown in the appraisal roll to reflect the administrative law judge's determination.

(d) Provides that if the administrative law judge determines that the appraised or market value, as applicable, of the property that is the subject of the appeal is not nearer to the property owner's opinion of the appraised or market value, as applicable, of the property as stated in the property owner's request for a hearing than the value determined by the board:

- (1) SOAH, on receipt of a copy of the determination, shall retain the property owner's filing fee;
- (2) the chief appraiser shall correct the appraised or market value, as applicable, of the property as shown in the appraisal roll to reflect the administrative law judge's determination if the value as determined by the administrative law judge is less than the value as determined by the board; and
- (3) the property owner shall pay the difference between the costs of the appeal as specified in the determination and the property owner's filing fee.

(e) Authorizes SOAH, notwithstanding Subsection (a), to implement a process under which the administrative law judge issues a proposal for determination to the parties; the parties are given a reasonable period in which to make written objections to the proposal; and the administrative law judge is authorized to take into account those written objections before issuing a final determination.

Sec. 2003.912. PAYMENT OF TAXES PENDING APPEAL. (a) Provides that the pendency of an appeal to SOAH does not affect the delinquency date for the taxes on the property subject to the appeal. Requires a property owner who appeals a board order to SOAH to pay taxes on the property subject to the appeal in an amount equal to the amount of taxes due on the portion of the taxable value of the property that is not in dispute. Requires each taxing unit, if the final determination of the appeal decrease the property owner's tax liability to an amount less than the amount of taxes paid, to refund to the property owner the difference between the amount of taxes paid and the amount of taxes for which the property owner is liable.

(b) Prohibits a property owner from appealing to SOAH if the taxes on the property subject to the appeal are delinquent. Requires an administrative law judge who determines that the taxes on the property subject to an appeal are delinquent to dismiss the pending appeal with prejudice. Requires SOAH, if an appeal is dismissed under this subsection, to retain the property owner's filing fee.

Sec. 2003.913. JUDICIAL APPEAL. (a) Authorizes a final order of an administrative law judge determining an appeal brought under this subchapter to be appealed to a district court in the manner provided by Chapter 42, Tax Code.

(b) Prohibits a chief appraiser from bringing an appeal unless the board of directors of the appraisal district votes to allow the appeal.

(c) Provides that to the extent that they can be made applicable, the provisions of Chapter 42, Tax Code, also apply to an appeal of a final order of an administrative law judge determining an appeal brought under this subchapter.

Sec. 2003.914. EFFECT ON RIGHT TO JUDICIAL APPEAL. Provides that an appeal to SOAH under this subchapter does not prevent the property owner from seeking judicial review of the order of the board. Provides that the period in which a petition for review is required to be filed under Section 42.21 (Petition for Review), Tax Code, is tolled beginning on the date the notice of appeal under this subchapter is filed and ending on the date the administrative law judge issues the judge's determination.

Sec. 2003.915. REPORT TO LEGISLATURE. Requires SOAH and the chief appraisers of the appraisal districts established in the counties in which the pilot program is implemented, not later than January 1, 2013, to submit a report to the legislature that includes certain information.

Sec. 2003.916. EXPIRATION. Provides that this subchapter expires January 1, 2013.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: January 1, 2010.