

- SUBJECT:** Revising provisions governing property appraisal review boards
- COMMITTEE:** Ways and Means — committee substitute recommended
- VOTE:** 7 ayes — Hilderbran, Otto, Bohac, Button, Eiland, N. Gonzalez, Strama  
0 nays  
2 absent — Martinez Fischer, Ritter
- WITNESSES:** For — Debra Bawcom-Roberson, Texas Association of Property Tax Professionals; John Brusniak, National Association of Property Tax Attorneys; Lorri Michel, Texas Association of Property Tax Professionals; Ken Nolan, Dallas Central Appraisal District; James Popp, Popp Hutcheson; (*Registered, but did not testify*: George Allen, Texas Apartment Association; Justin Bragiel, Texas Hotel & Lodging Association; George Christian, Texas Taxpayers and Research Association; Stephanie Gibson, Ryan and Co.; Daniel Gonzalez, Texas Association of Realtors; James LeBas, Texas Chemical Council, AECT, TxOGA; Chet Morrison, Texas Association of Property Tax Professionals; Kelli Morrison, Morrison & Head LP; Melissa Ramirez, American Property Tax Counsel; Scott Retzliff, Texas Association of Property Tax Professionals; Bradley Gates II)  
  
Against — Dick Lavine  
  
On — Michael Amezquita, Bexar Appraisal District; Debbie Cartwright, Comptroller of Public Accounts; Marya Crigler, Travis Central Appraisal District; Alvin Lankford, Williamson Central Appraisal District; Jim Robinson, Texas Association of Appraisal Districts; (*Registered, but did not testify*: Rodrigo Carreon)
- BACKGROUND:** Appraisal Review Boards (ARBs) are independent groups of citizens appointed to resolve disputes between taxpayers and resolve disputes between taxpayers and the appraisal district. In most counties, members of an appraisal review board (ARB) are appointed by resolution of a majority of the board of directors of an appraisal district.
- DIGEST:** CSHB 585 would modify provisions governing property tax appraisals.

**Appointments of ARB members.** Under the bill, the local administrative district judge would appoint members of the ARB for all counties with a population more than 120,000 (amounting to 35 counties). The local administrative district judge or a board of directors of the appraisal district could remove a member of the review board if there was clear and convincing evidence of repeated bias or misconduct.

A member of the appraisal district board would be prohibited from communicating with the local administrative district judge regarding the appointment of appraisal review board members. This prohibition would not apply to a communication between:

- a member of an appraisal review board and the local administrative district judge regarding the member's reappointment;
- the taxpayer liaison officer and the judge in the course of the officer's clerical duties so long as the officer did not offer an opinion or comment regarding the appointment of ARB members; or
- a chief appraiser and another party regarding whether an applicant owed any delinquent property taxes.

A chief appraiser or another employee of the appraisal district would be prohibited from communicating with a member of the appraisal review board, appraisal board of directors, or the local administrative law judge. Violating this provision would be a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000).

Local administrative district judges would appoint review board members as soon as practicable after January 1, 2014. Certain provisions would only apply to members appointed before that date.

**Multiple property appeals.** A petition filed by an owner or lessee could include multiple properties that were owned or leased by the same person and were of a similar type or were part of the same economic units and typically would sell as a single property. A petition so filed could be amended to include additional properties in the same county owned or leased by the same person and of a similar type.

The bill would modify procedures governing the determination of whether a plaintiff was a proper party to bring a petition.

**Comptroller actions.** The comptroller would prepare model hearing procedures that appraisal review boards would have to follow. The model procedures would include specific elements in the bill. The comptroller could develop different procedures for different categories of districts, defined by population, number of protests filed, and other factors.

The comptroller would design a survey to provide the public an opportunity to offer comments and suggestions concerning an appraisal review board. The survey form would be provided to each property owner at or before each protest hearing.

As part of training to be an appraisal review board member, each trainee would have to pledge to comply with the requirements governing appraisal proceedings. The comptroller would prescribe the form to be used for this purpose.

**Taxpayer liaison.** A taxpayer liaison officer would be responsible for receiving and compiling a list of comments and suggestions submitted by the chief appraiser, a property owner, or an owner's agent. The liaison would forward the list to the comptroller. Taxpayer liaison officers would have to provide public information to assist property owners and inform them of the procedures for filing comments and suggestions.

The bill would extend the requirement to appoint a taxpayer liaison officer to counties with a population of more than 120,000 from a current minimum of 125,000 (adding Gregg, Grayson, Potter, and Randall counties).

Taxpayer liaison officers also would be responsible for providing clerical assistance to local administrative district judge in selecting appraisal review board members.

**ARB hearings.** The bill would modify provisions governing ARB hearings. A protest hearing for a property owner not represented by an agent would have to be set for a time and date certain. If the hearing did not begin within two hours of the time set for the hearing, the appraisal review board would postpone the hearing upon request.

Upon a property owner's request, an appraisal review board would schedule same-day hearings on protests for up to 20 designated properties.

The properties would have to be designated in the same notice of protest. A property owner could file no more than one such request per year.

**Appraisal proceedings.** A property owner submitting evidence of a property appraisal would not be subject to rules governing licensed property appraisers. Evidence and other testimony offered at an appraisal review board hearing would not be admissible in an appeal unless it met certain conditions specified in the bill.

The bill would affirm that a property owner who submitted an affidavit to the appraisal board would not waive the right to appear in person. The appraisal review board could consider the affidavit only if the owner did not appear at the protest hearing in person.

If a tax collector did not respond within 90 days to an application for an overpayment or erroneous payment, the application would be presumed denied. Upon being denied the claim, the taxpayer could file suit in district court to seek payment of the refund. A taxpayer who prevailed would be awarded court costs and reasonable attorney's fees.

An appraisal review board with panels could consider the type of property subject to protest; otherwise, panel assignments would be random. A taxing unit could charge electronic filing fees associated with collecting delinquent taxes.

**Other provisions.** An appraisal district or review board could not make decisions on the membership of a panel based on a member's previous voting record. Property owners who appealed a protest and had to pay taxes due while the appeal was pending could pay the taxes imposed on the property in the preceding year, if this was lower than certain other amounts.

A person would have to apply to receive certain allocations identified in state law. The application would have to be re-submitted annually. The bill would create other procedures governing allocation applications.

The bill would repeal provisions entitling a property owner to expedited arbitration.

**Effective date.** This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it

would take effect September 1, 2013. Certain provisions would take effect January 1, 2014.

**SUPPORTERS  
SAY:**

CSHB 585 would improve the transparency and accountability of ARB processes and would make procedures relating to protests and appeals more efficient, effective, and responsive. The bill would make changes to combat the widespread perception of bias and lack of responsiveness of ARBs and appraisal districts. Improving the fairness of the appraisal appeal process additionally would save taxpayer funds by reducing the proportion of cases that end up in court.

**Appointments of ARB members.** CSHB 585 would take a decisive measure to underline the independence and impartiality of ARBs in the 35 counties covered by the bill. Empowering local administrative district judges to appoint ARB members would break the chain of perceived accountability of ARB members — who are supposed to be providing property owners with a fair and impartial hearing — to appraisal district boards and hence to appraisal districts. It is common for one who is appointed to a certain task to feel beholden to whosoever made the appointment.

Local administrative district judges are naturally fair and impartial arbiters of disputes, which make them excellent candidates to choose ARB members. Of equal importance, the judges are completely separate and independent of county appraisal districts. There would be no justifiable perception of bias in ARB appointments made by a judge.

Harris and Fort Bend counties both have piloted granting local administrative district judges the task of appointing ARB members and have returned with favorable reports. The processes in both counties have been well implemented and have been met with a positive response among residents.

**Penalties for communication.** CSHB 585 simply would extend to the new process ex parte provisions in existing law that prohibit a member on an appraisal district or ARB board from communicating with the chief appraiser on matters relating to the appraisal of property. While the penalties in the code may be stiff, they are judiciously enforced. Adding the penalties creates a bright line around prohibited behavior that institutions can internalize into their rules and processes.

**Multiple property protests.** CSHB 585 would allow a property owner or someone representing an owner to combine similar properties owned by the same plaintiff into one single lawsuit. This measure would provide for judicial economy and not significantly change current practices. In general, a property owner who currently wanted to protest the value of many properties would negotiate these properties synchronously so they would not have to be individually litigated. CSHB 585 would codify this practice and increase the efficiency of the protest process.

**Comptroller actions.** The bill would expand the comptroller's authority to include development of model procedural requirements and processes that ARBs would be required to follow. This measure would bring increased uniformity to hearing procedures statewide. In addition, it would require the comptroller to develop procedures for taxpayers to register complaints about the system. The complaints would be published in a report by the comptroller. Making complaints transparent would motivate ARBs to improve their processes and give them guidance on how best to do so.

**Other provisions.** CSHB 585 would make a variety of other changes that would improve the fairness and efficiency of property appraisal appeals. For example, it would require the scheduling of an ARB hearing for a taxpayer not represented by an agent for a time certain. If a hearing for a property owner was not held within two hours of the scheduled time, the property owner may request a postponement.

In addition, under the bill, property owners wishing to file protests on multiple properties would be able to schedule the hearing for up to 20 properties on a single day, thereby increasing convenience and ease for property owners.

OPPONENTS  
SAY:

CSHB 585 would make some unfortunate revisions to processes governing ARB appointments, property appeals, and other processes.

**Appointments of ARB members.** Moving the authority to appoint ARB members from appraisal district boards to local administrative district judges would create more problems than it would solve. Interviewing and choosing applicants for county review boards is far afield from the normal responsibilities of a judge. Local administrative district judges do not necessarily possess any specialized knowledge about appraisal districts or specifically property appraisal in general.

Further, this would impose a significant burden on local administrative district judges without providing any additional resources to offset the expanded duties. Some counties, such as Travis County, routinely receive more than 200 applicants for ARB positions. It takes significant resources to sort through and conduct interviews for this number of applicants. There is no guarantee that local administrative district judges in the 35 most populous counties in the state would have the time, expertise, or inclination to assume this responsibility.

**Multiple property appeals.** CSHB 585 could greatly strengthen the ability of property lawyers to profit from the property appraisal appeals process. Allowing property owners or their representatives to combine properties in large suits would open the door for lawyers to assemble all sorts of loosely related properties into single suits and litigate them to the maximum potential gain. For example, under the bill, a suit could assemble eight pharmacies that had very little in common other than they were located in the same county. This would encourage more litigation, generally of commercial properties, as it would decrease the expense and increase the convenience of appealing property appraisals.

It is important to remember that ultimately county taxpayers pay the price of increased litigation.

**Criminal penalties.** The bill would create a stiff penalty of a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) for "communications" between the local administrative law judge and other parties regarding the appointment of ARB members. This would contribute to the over criminalization that is rampant in state statutory and administrative law. Even if the intent is valid, it is disproportionately harsh to penalize someone with possible jail time for "communications" on a particular matter.

**Other provisions.** The bill would make other procedural changes that could interfere with and hamper appraisal district functions. For example, enhancing property owners' ability to postpone a hearing could create issues for districts that are under pressure to certify the property rolls by certain deadlines.