

**SUBJECT:** Amending ARB hearing procedures, allowing limited binding arbitration

**COMMITTEE:** Ways and Means — committee substitute recommended

**VOTE:** 11 ayes — Meyer, Thierry, Button, Cole, Guerra, Martinez Fischer, Murphy, Noble, Rodriguez, Sanford, Shine

0 nays

**WITNESSES:** For — James Popp, Popp Hutcheson; Alvin Lankford, Texas Association of Appraisal Districts; Ray Head, Texas Association of Property Tax Professionals; (*Registered, but did not testify*: Galt Graydon, Citizens for Appraisal Reform; James LeBas, Independent Bankers Association of Texas, Texas Apartment Association, and Texas Association of Manufacturers; Daniel Gonzalez, Popp Hutcheson; Carrie Simmons, Texas Hotel and Lodging Association; Daniel Gonzalez and Julia Parenteau, Texas Realtors; Dale Craymer, Texas Taxpayers and Research Association; Kate Alexander, Travis Central Appraisal District)

Against — None

**BACKGROUND:** Some have suggested that the system for appraising property for property tax purposes could be made more efficient and accountable by ensuring oversight of the hearing procedures adopted by appraisal review boards and giving taxpayers the opportunity to pursue certain actions.

**DIGEST:** CSHB 988 would require appraisal review boards (ARBs) to adopt hearing procedures that conformed with model procedures issued by the comptroller and would establish a process for property owners to request limited binding arbitration to compel an ARB or chief appraiser of an appraisal district to take certain action.

**ARB hearing procedures.** CSHB 988 would require an ARB by rule to adopt procedures for hearings. Before adopting the hearing procedures, the ARB would have to hold a public hearing to consider the procedures. By May 15 each year, the board would have to hold the hearing, make any

amendments, and by resolution finally adopt the procedures. The ARB would have to comply with model hearing procedures prepared by the comptroller when adopting the procedures.

The bill would require the ARB to distribute copies of the adopted hearing procedures to the board of directors of the appraisal district, the taxpayer liaison officer, and the comptroller no later than 15 days after the board adopted the procedures.

The ARB would have to post a copy of the hearing procedures in a prominent place in each room the board conducted hearings and on the appraisal district's website.

CSHB 988 would require ARBs to conduct hearings in accordance with the adopted hearing procedures.

A property owner or the chief appraiser of an appraisal district could file a complaint with the taxpayer liaison officer alleging that the ARB had adopted or was implementing hearing procedures that were not in compliance with the model hearing procedures prepared by the comptroller or was not complying with procedural requirements. The taxpayer liaison officer would have to investigate the complaint and report findings to the board of directors of the appraisal district. The board would have to direct the chairman of the ARB to take remedial action if it determined the allegations were true. The board could remove the chairman of the ARB from that position if it determined the chairman had failed to take the actions necessary to bring the ARB into compliance.

**Taxpayer liaison officers.** The bill would require all appraisal districts, rather than just those created for a county with a population over 120,000, to appoint a taxpayer liaison officer.

A person could serve as the taxpayer liaison officer for more than one appraisal district if each district was established for a county with population under 120,000.

A taxpayer liaison officer would have to forward to the comptroller filed comments, complaints, and suggestions by December 31 each year.

A taxpayer liaison officer would not commit an offense for ex parte communications under Tax Code ch. 6 if the officer communicated with the chief appraiser or another employee of the appraisal district, a member of the ARB, a member of the district's board of directors, a property tax consultant, a property owner, or another person if the communication was made in the good faith exercise of the officer's statutory duties.

**ARB oversight.** The bill would specify that an ARB could adopt procedures that supplemented the model hearing procedures, provided that the supplemental procedures did not contradict or circumvent the model hearing procedures.

The comptroller each year would have to review the hearing procedures adopted by each ARB to determine whether the procedures incorporated the model procedures.

**ARB survey, report.** The annual report issued by the comptroller that summarizes ARB survey information also would have to include a summary of the comments, complaints, and suggestions submitted by taxpayer liaison officers, the results of the comptroller's review of ARB hearing procedures, and the results of requests for limited binding arbitration filed with the comptroller during the preceding tax year. The report could not disclose the identity of an individual who submitted a comment, complaint, suggestion, or request for arbitration.

**Limited binding arbitration.** A property owner who filed a notice of protest could file a request for limited binding arbitration to compel the ARB or chief appraiser to:

- rescind procedural rules that were not in compliance with model hearing procedures prepared by the comptroller;
- schedule a hearing on a protest;
- deliver requested information to the property owner;

- allow the property owner to offer evidence, examine or cross-examine witnesses or other parties, and present arguments;
- set a hearing for a time and date certain and postpone a hearing that did not begin within two hours of the scheduled time;
- schedule hearings on protests concerning multiple properties identified in the same notice of protest on the same day at the request of the property owner or designated agent; or
- refrain from using or offering as evidence requested information that was not delivered to the property owner at least 14 days before the hearing.

*Requirements for requesting arbitration.* A property owner could not file a request for limited binding arbitration unless the property owner had delivered written notice to the chairman of the ARB, the chief appraiser, and the taxpayer liaison officer of the procedural requirement with which the property owner alleged the ARB or chief appraiser failed to comply. Such notice would have to be delivered on or before the fifth business day after the date the ARB or chief appraiser was required to comply with the requirement. The property owner also could not file the request unless the ARB chairman or chief appraiser failed to deliver a written statement confirming that the board or chief appraiser would comply or cure a failure to comply with the requirement to the property owner on or before 10 days after the date the notice was delivered.

The failure to comply with a procedural requirement would not be a ground for postponement of a hearing on a protest. An ARB could cure an alleged failure to comply with a procedural requirement that occurred during a hearing by rescinding the order determining the protest and scheduling a new hearing.

A property owner would have to request limited binding arbitration by filing a request with the comptroller no earlier than the 11th day or later than the 30th day after the date the property owner delivered notice of the failure to comply with a procedural requirement. A request would have to be accompanied by an arbitration deposit payable to the comptroller of:

- \$550; or
- \$450, if the property that was the subject of the protest qualified as a residence homestead and the appraised or market value of the property was \$500,000 or less.

The comptroller would have to prescribe the form for submitting a request for limited binding arbitration, which would have to require the property owner to provide:

- a statement that the property owner had provided the required written notice and arbitration deposit;
- a brief statement identifying the procedural requirement with which the property owner alleged the ARB or chief appraiser had failed to comply;
- a description of the action taken or not taken regarding the procedural requirement;
- a description of the property to which the award would apply; and
- any other information reasonably necessary for the comptroller to appoint an arbitrator.

*Appointment of arbitrator.* On receipt of the request and deposit, the comptroller would have to appoint an eligible arbitrator from the registry of qualified persons. An arbitrator under this bill would have to be a licensed attorney and agree to conduct an arbitration for the fees described by the arbitration deposits above. The property owner could not request that the comptroller appoint an initial arbitrator who resided in a certain county.

*Arbitration.* The ARB, the chief appraiser, and the property owner would be parties to a limited binding arbitration conducted under the bill. The ARB could appear by counsel, the chairman, or a person designated by the chairman. The chief appraiser could appear by counsel, in person, or by a designated employee.

The arbitrator would have to make an arbitration award and deliver an electronic copy to the property owner, the chairman of the ARB, the chief

appraiser, and the comptroller.

*Award.* An award would have to include a determination of whether the ARB or chief appraiser failed to comply with a procedural requirement and, if so, direct them to comply with the requirement. If the hearing on the protest had been held and the ARB had issued an order determining the protest, the ARB would have to rescind the order and hold a new hearing that complied with the procedural requirement.

The award also would specify the arbitrator's fee. The award would be final, could not be appealed, and would be enforceable under state law.

If the arbitrator determined that the ARB or chief appraiser failed to comply with the procedural requirement, the comptroller would have to refund the property owner's arbitration deposit, less the amount retained by the comptroller, and the appraisal district would have to pay the arbitrator's fee.

If the arbitrator determined that the ARB or chief appraiser complied with the procedural requirement, the comptroller would have to pay the arbitrator's fee out of the owner's arbitration deposit and refund to the owner their deposit, less the fee and the amount retained by the comptroller.

As soon as practicable after receiving notice of an award, the ARB or chief appraiser would have to take any action required to comply with the award and schedule and conduct a new hearing, if required.

An award would not affect the property owner's right to appeal the final determination of a protest by the ARB.

*Multiple properties, protests, or allegations.* A property owner could request a single limited binding arbitration that covered more than one property, more than one protest hearing, or an allegation of the failure to comply with more than one procedural requirement so long as the bill's requirements were met with regard to each alleged failure to comply. The amount of the arbitration deposit and the amount of the arbitrator's fee

would be computed as if a single property were the subject of the arbitration.

**Applicability, effective date.** Statutes regarding appeal through binding arbitration under Tax Code ch. 41A would apply to a limited binding arbitration under this bill. In the event of a conflict between this bill and another provision of the law, CSHB 988 would control.

The 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, 2021.

NOTES:

According to the fiscal note, the bill would cost \$486,000 in general revenue related funds through fiscal 2022-23, then \$153,000 annually thereafter. These costs relate to an anticipated one-time technology cost to update and enhance the arbitration system and annual staffing costs.