

- SUBJECT:** Allowing appeals to small claims court in disputes about property taxes
- COMMITTEE:** Local Government Ways and Means — committee substitute recommended
- VOTE:** 7 ayes — Hill, Hegar, Laubenberg, McReynolds, Mowery, Puente, Quintanilla
0 nays
- WITNESSES:** For — Christopher Faurie; Betty Lee Hart; Dan Hart, Taxpayers for Equal Appraisal; Mary Ann Leveridge; Jerry J. Mikus Jr.; Gerald R. Proctor

Against — John L. deNoyelles and Michael Barnett, Smith County Appraisal District; Phil Lynch, Ellis Central Appraisal District; Foy Mitchell, Jr., Texas Association of Appraisal Districts

On — Donald Lee, Texas Conference of Urban Counties; Jim Robinson, Texas Association of Appraisal Districts
- BACKGROUND:** Texas Constitution, Art. 8, sec. 18 requires a single appraisal of the market value of all property in a county subject to ad valorem taxation. Tax Code, sec. 41.01 establishes an appraisal review board (ARB) to hear protests by property owners regarding appraised value of their property. Ch. 42 provides for a property owner's appeal of an ARB decision to a district court.
- DIGEST:** CSHB 396 would allow a property owner to appeal an adverse ARB decision to a small claims court, rather than to district court, if the amount of taxes due on the disputed appraised value did not exceed \$5,000. The bill would define the venue of such an action in small claims court as any justice precinct in the county where the ARB was located.

Neither the taxpayer nor the appraisal district could appeal the final judgment of the small claims court in an appeal of an ARB decision. However, the small claims court would have to dismiss the appeal of the ARB decision if the court found that the disputed amount exceeded \$5,000. In that event, the property owner could appeal the order to district court by filing a petition for review within 30 days of the dismissal.

CSHB 396 would specify that the ARB would not have to be represented by legal counsel in the small claims court.

The bill would take effect September 1, 2003. It would apply to an appeal of an ARB decision without regard to when the order was issued.

**SUPPORTERS
SAY:**

CSHB 396 would give taxpayers, particularly elderly homeowners on fixed incomes, an opportunity to challenge unreasonable decisions by an ARB without hiring a lawyer and filing suit in a district court. Most homeowner disputes involve amounts of less than \$5,000. Challenges to appraisals of large commercial or industrial properties may run to hundreds of thousands or millions of dollars. Those taxpayers can afford specialized tax lawyers, and some attorneys accept these kinds of cases on a contingency basis, receiving payment as a percentage of the award. Most homeowners cannot afford to retain tax lawyers for fees of \$5,000 or more or pay the filing fees for district courts. CSHB 396 would allow taxpayers to argue their own cases in a less formal setting than district court.

Allowing an inexpensive and independent review of ARB decisions would help restore public confidence in the integrity of the appraisal process. Existing law intends that ARBs are to function as a check and balance to decisions by chief appraisers and their staffs. However, some taxpayers perceive ARBs as agents of the appraisal districts. Many civic-minded people find the appraisal review process frustrating and unresponsive.

Precluding appeals of a small claim court judgment would prevent the appraisal district from forcing a taxpayer to retain legal counsel and incur additional expenses to collect a rightful judgment. It also would protect the appraisal district from further litigation costs if a taxpayer wanted to pursue a frivolous claim. The bill also would allow the ARB to send an appraiser or other staff members to small claims court, rather pay up to \$175 an hour to have the county attorney's office represent the ARB in the dispute.

CSHB 396 would provide flexibility in assigning these cases by allowing the appeals to be heard in any justice of the peace court in the county, rather than tying it to where the property was located. Counties typically have procedures to assign cases and balance the workload of justice of the peace courts.

Justices of the peace have expertise in handling lawsuits dealing with complex issues. They decide on landlord and tenant disputes and issue rulings on evictions. Texans trust the type of justice these courts provide, so there is no need to create a separate administrative process to hear appeals of ARB decisions.

All judges, except for some municipal judges, are elected officials and are subject to political pressures of some kind. District judges must answer to the same county voters as do justices of the peace.

**OPPONENTS
SAY:**

Justice of the peace courts are not the appropriate venue to hear tax appraisal cases. These courts already are overloaded with cases, particularly in urban counties. Also, allowing any justice of the peace precinct to hear these cases would encourage venue shopping. The bill would provide no guarantees that the caseload would be distributed evenly. The justices would have to hear these cases, not simply have their clerks read from schedules of fines, as with traffic tickets. If 3,000 to 6,000 of these cases went to small claims court in Harris County, the county would have to spend millions of dollars to fund the equivalent of a new full-time justice of the peace court.

Justices of the peace lack specialized training to handle complex real estate cases, and they could decide these cases on a personal or political basis to gain support from voters at their next election. The taxing entities — and taxpayers who do not protest their taxes — could be penalized by a series of judgments made by a justice of a peace who “played to the audience.”

The bill should allow appeals of the small claims courts’ decisions to ensure that justice is served. The bill would not save appraisal districts money for legal expenses, because county attorneys would continue to advise them to retain legal counsel in any judicial procedure.

**OTHER
OPPONENTS
SAY:**

The bill should create a separate administrative law process — possibly modeled on the State Office of Administrative Hearings — to provide an intermediate, nonjudicial level of appeals between ARBs and district courts. Such a process could retain hearing officers with expertise and training in property appraisal and the Tax Code.

HB 396
House Research Organization
page 4

NOTES:

As filed, HB 396 would have allowed appeals of ARB decisions to be heard in any justice precinct where all or part of the property was located. The committee substitute added the provision that the ARB need not be represented by an attorney.

A similar bill, HB 981 by Solomons, was considered in a public hearing by the House Local Government Ways and Means Committee on February 27 and left pending.