HOUSE COMMITTEE ON LOCAL GOVERNMENT WAYS & MEANS
TEXAS HOUSE OF REPRESENTATIVES
INTERIM REPORT 2008

A REPORT TO THE
HOUSE OF REPRESENTATIVES
81ST TEXAS LEGISLATURE

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Committee On
Local Government Ways & Means

December 29, 2008

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P.O. Box 2910
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The Honorable Tom Craddick
Speaker, Texas House of Representatives
Members of the Texas House of Representatives
Texas State Capitol, Rm. 2W.13
Austin, Texas 78701

Dear Mr. Speaker and Fellow Members:

The Committee on Local Government Ways & Means of the Eightieth Legislature hereby submits its interim report including recommendations and drafted legislation for consideration by the Eighty-first Legislature.

Respectfully submitted,

Fred Hill

Roland Gutierrez | Charlie Howard | Gary Elkins

Mike Villarreal | Chente Quintanilla | Brandon Creighton

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TABLE OF CONTENTS

INTRODUCTION

Over the last several sessions, legislators have heard from constituents frustrated with the current property tax and appraisal system. Each year, Texas property owners receive notices from their local appraisal district which, in many instances, show that their property's value has increased significantly from the previous year. Even though Texas values have increased, the news about the housing situation across the country leads to a misunderstanding of local values. Property owners complain that their property values keep rising even though they are bombarded with news of foreclosures and declining house values. Fortunately, much of what they are hearing does not relate to Texas. However, foreclosures relating to adjustable rate mortgages have been as prevalent in Texas as in many other areas of the country. As a result, many areas of our state have seen increasing numbers of property value protests filed with local Central Appraisal Districts (CADs). The process and the perception of the public regarding the role of the CADs and local governments have increased the frustration of some who have not been satisfied with their experience with the system. Property taxpayers equate rising values with higher taxes rather than relating the tax rates implemented by local governments as the reason for their increasing property taxes.

Despite these complaints, experts have indicated that the Texas property tax system is in many ways the best in the nation. One former chief appraiser put it this way:

> We are blessed with the best property tax system in the country. In my prior life I dealt with some other states in this business, and I can tell you that this system is an excellent system.[1]

In a report released recently by *Kiplinger Personal Finance* listing the "Retiree Tax Heavens (and Hells)" around the United States, seven states, including Texas, were lauded for not having a state income tax.[2] In addition, Texas property taxes, when compared to those states without an income tax, are slightly above the median per capita. Additionally, Texas ranks 49th in state taxation per capita.[3] Texas is a bargain to its citizens from a tax perspective. If Texas did not rely so heavily upon the local property tax to support its schools, then our state would rank among the lowest in that category of taxation as well.

The Legislature has taken great pains to ensure that the property tax system in Texas has been administered fairly and impartially at the local level. Legislators have passed laws to help insulate the process from external political pressure and to increase public confidence in local officials.

The majority of this report deals with the property tax and appraisal system in Texas. The system is not perfect, and there will always be room for improvement. We have examined the structure and operations of central appraisal districts to see how these districts might operate more efficiently and openly. We have looked at taxpayer protections currently in effect and how they can be improved. We have examined how uniform standards are being enforced and how the state can make sure that appraisers are following all applicable rules and laws. We have recommended changes to the appeals system to ensure that citizens can easily resolve any valuation disputes that they may have with an appraisal district. We have also taken a look at how recent legislative changes have affected property owners whose properties overlap county borders or who are in jurisdictions that have recently had to use multiple appraisal districts to

appraise their properties. Furthermore, we have examined public participation in the tax rate and budget hearing process of local governments to see how more people can make their voices heard.

This committee, along with the Committee on Urban Affairs, evaluated the process by which local appraisers value rent-restricted affordable housing properties. Owners of these properties need a uniform standard so that they can continue providing affordable housing for low-income Texans. We have also looked at what changes the Legislature may need to make in order to ensure that these properties are being properly evaluated.

This committee has also looked at the allocation of local government sales taxes. Recent developments both in Texas and nationally have brought attention to sales tax sourcing and revenue reallocation. Though these issues are largely technical and not as prominent as property tax issues, they can have lasting effects on local governments and the citizens of Texas. We have examined how the Comptroller allocates local sales tax revenue to local governments and changes we can make to improve the system. We have also looked at a national movement that could impact how Texas administers its local sales taxes.

Finally, we have looked at the valuation of properties used for ecological research. There is no clear definition in the Tax Code as to how these properties should be appraised. As a result, many property owners are exploiting this method of valuation in order to receive revaluation when it may not be appropriate. We have examined current statutes and guidelines for these properties and made a determination as how best to clarify in statute the valuation of what have become known as “ecolabs.”

HOUSE COMMITTEE ON LOCAL GOVERNMENT WAYS & MEANS

INTERIM STUDY CHARGES

1. Study whether Texas law should be amended on the methods used to determine the "place of business" of retail operations under Chapter 321, Tax Code, governing municipal sales taxes, and whether better-defined procedures and limitations should be enacted to assist the Comptroller in determining reallocation of sales tax revenues from one municipality to another.

2. Review provisions for local government notices on potential tax rate increases and clarify potentially conflicting statutes. Look at requiring two (rather than one) public hearings on the tax rate increase.

3. Examine the addition of members to the board of directors of appraisal districts who are not appointed by the taxing jurisdictions of the district. Determine methods for appointing these additional directors.

4. Examine the system for appraising property for property tax purposes:

a) Study the implementation and effects of HB 1010, 80th Legislature, Regular Session.
b) Consider whether the statutory system for choosing the Central Appraisal District Board of Directors and governing the board's operation adequately protects the public interest.
c) Evaluate whether the authority of the chief appraiser should be limited.
d) Consider alternative methods and procedures for conducting the Comptroller's School Property Value Study to ensure both the equitable distribution of state school aid and a more stringent review of local appraisal practices.
e) Examine constitutional and statutory constraints on the enforcement of uniform appraisal standards across the state and the ability of the state to provide oversight of appraisal districts.
f) Consider ways to improve appraisal district efficiency, transparency and services, including, but not limited to, the reconfiguration of appraisal districts.
g) Evaluate changes in the property valuation appeal system that could expedite and reduce the cost of dispute resolution.

5. Research the policies and procedures by which local tax appraisers value rent-restricted affordable housing properties and authorize legislatively established tax exemptions. Evaluate application and interpretation of existing statutes by local appraisal districts to affordable housing properties throughout the life cycle of developments. Make recommendations for statutory changes. (Joint Interim Charge with the House Committee on Urban Affairs)

6. Monitor the agencies and programs under the committee's jurisdiction.

CHARGE #1

Study whether Texas law should be amended on the methods used to determine the "place of business" of retail operations under Chapter 321, Tax Code, governing municipal sales taxes, and whether better-defined procedures and limitations should be enacted to assist the Comptroller in determining reallocation of sales tax revenues from one municipality to another.

Since 1968, Texas municipalities have had the authority to levy a sales tax of up to one percent that normally goes into general revenue. They may levy an additional one percent for certain specific purposes, including, but not limited to property tax relief; economic development; special projects; and street repair. In 2007, cities received $4.5 billion in property tax revenues.[4]

Municipal Sales Tax Sourcing

Municipal sales tax revenues on intrastate sales are generally distributed, or sourced, based on the location of the seller's place of business. The Tax Code defines a place of business as an "established outlet, office, or location operated by the retailer or the retailer's agent or employee for the purpose of receiving orders for taxable items and includes any location at which three or more orders are received by the retailer during a calendar year."[5] Out-of-state shipments and goods bought outside of Texas and brought into the state are sourced to the destination of the good, but the payment of this use tax is voluntary.

Sales taxes are sourced differently depending on the number of locations that are listed on a company's sales tax permit, but all transactions that are taxable are sourced based on the origin of the shipment. If the seller has only one place of business in Texas, all sales tax revenue that the seller collects goes to the city in which the seller is located. The overwhelming majority of retailers—94% of all sales tax permits filed—have only one location in the state.[6] The confusion of sales tax sourcing comes from the remaining six percent. The Comptroller sends the sales tax revenue from these sales to the seller's place of business where the customer took possession of the item or from where the item was shipped.

Generally, determining whether a location is a place of business is simple. A warehouse, billing office or distribution center usually is not considered a place of business, so if a customer goes into a retail store to purchase an item which will be shipped to them, the sales tax revenue will likely be sourced to the city where the retail store is located. If one of those auxiliary service locations, however, receives at least three orders in the given calendar year, all sales taxes that are generated from sales of merchandise that is shipped from that location can be sourced to the city in which the warehouse is situated.

The Comptroller's office may go to a location to determine whether it is a place of business, but those staff members must be asked to come and examine the location or be alerted to the possible inaccuracies by someone who is familiar with the business. When the Comptroller's office does send staff to examine a place of business, they look for several factors that can help determine whether it is a place of business. The location must have employees and an operating office. It must have separate books and records. It must sell all of its products equal to or greater than their cost. The office must have the ability to process orders and resolve any deficiencies in the shipment. The office also must not relocate from one city to another solely for the purpose of obtaining a tax rebate or other decreased tax liability.[7]

The standard of receiving three orders is nebulous. The Tax Code does not define "order." Though there is no confirmation of this happening, some companies are believed to have construed "order" to mean a sale of coffee to an employee or some other kind of sale not available to the public. This vagueness allows tax consultants to contract with cities to lobby the Comptroller to change the sourcing of sales taxes. These cities can then develop sales tax rebate agreements with companies who have a warehouse within their city and amend their sales tax

returns to show that those warehouses are places of business.

Reallocation of Sales Tax Revenue

Occasionally, the Comptroller sends sales tax revenue to the wrong municipality. The Comptroller may audit sales tax returns to determine if the money was properly allocated, or businesses may amend their sales tax returns. Sometimes, the business puts an incorrect address or puts the wrong total amount of taxes for a year on the return. Other times, however, the only purpose for amending the return is to change the place of business for purposes of obtaining a sales tax rebate from a city. The Tax Code provides for a four-year period over which any misallocated sales tax revenue may be redistributed to the proper city by the Comptroller.

Reallocation of sales tax revenue is punitive to cities that have the revenue taken from them. The cities no longer can count on a source of revenue that they have considered when agreeing to issue bonds and other long-term obligations and plans. The cities also have to pay back revenue that has already been spent. In essence, a city would be punished twice for a mistake or oversight that is not its fault.

When the Comptroller determines that sales tax money should be reallocated, the Comptroller has determined that only taxpayers have standing to pursue the administrative law process to resolve the dispute. Cities are not told why the Comptroller has reallocated the money. They are only told that they are required to pay it back out of future sales tax receipts. If they want to challenge the Comptroller's ruling or get any sort of explanation, they have to file a lawsuit against the Comptroller.

Revenue Sharing

Cities can resolve some of the issues of sales tax revenue sourcing and reallocation by implementing revenue sharing agreements among themselves. In these arrangements, cities that have retail stores and cities that have the warehouses that deliver to those stores' customers can agree to share revenue from those sales. Both of these types of cities have demands on their services, and under the current system, cities can get caught up in a race to see who can rebate the most sales taxes to companies with multiple places of business. Cooperation among cities would leave all cities better off than they currently are. Many cities may be open to using these agreements, but they have not held any open forums to discuss the issue in depth.

Cities already employ similar agreements in other ways. The rebate agreements that cities enter into with companies to get them to amend their sales tax returns are a form of revenue sharing. When the Comptroller distributes sales tax revenue to a city that has a rebate agreement the city rebates to the company a certain amount of sales tax revenue out of its budget and calls it economic development.

Several small issues are currently delaying widespread adoption of these arrangements. Such agreements would require businesses to track and submit additional data. At the time of the sale, a company may not know from where the purchased item would be shipped. The company would have to ensure that it is tracking all of its shipments in order to report to the cities which

ones would be entitled to a portion of the revenue. Current rebate agreements between cities and companies might also be in jeopardy. This would depend on whether the agreement requires a percentage to be repaid to the company or if it requires a certain fixed dollar amount to be repaid. Additionally, cities that benefit from the current system might be hesitant to give up a portion of the revenue that they are receiving.

Streamlined Sales Tax Project

Currently, states cannot levy state or local taxes on out-of-state catalog and online transactions. In 1992, the U.S. Supreme Court ruled, in *Quill v. North Dakota*, that the sourcing requirements of the numerous jurisdictions would be overly burdensome on interstate commerce. As a result, states and local governments are not receiving sales tax revenue as consumers take advantage of the convenience of these types of transactions over traditional exchanges where a customer goes to a physical store and purchases an item.

Over the last eight years, several states have been working on what they have named the Streamlined Sales Tax Project to develop an agreement on a set of uniform sourcing guidelines for local sales taxes and convince states to adopt similar sourcing laws based on this agreement. These states hope that Congress will look at these uniform provisions and pass legislation that would overturn the *Quill* decision and allow states to collect local sales taxes. The agreement currently only applies to tangible personal property and not leases and rentals, services or digital goods.

During the course of determining these guidelines, several provisions have caused many states, including Texas, to withhold adopting those provisions. Originally, the agreement called for destination sourcing on all shipments of goods. Texas and many other states which use origin sourcing on intrastate shipments objected to this change. Last year, the group amended the agreement to allow origin sourcing on intrastate shipments based on where the order and all information relating to it is received and processed. The agreement also calls for destination sourcing for taxable services. Texas passed this provision in 2003, but it was never enforced by the Comptroller's office and was later repealed.

Adoption of the agreement's provisions has many benefits for all parties involved in taxable transactions. Many companies that would be taxed under legislation that the members of the project are seeking are voluntarily complying with these regulations. They do this in order to get favorable consideration on potential back taxes that may be levied. Member states require companies in their states who ship goods to other states to register in those other states. These states share revenue collected under this voluntary compliance. Large multi-state businesses would also benefit from these changes. Uniform sales tax laws would reduce compliance costs for the companies involved. These companies would no longer have to have employees who specialize in every state's sourcing guidelines. Smaller retailers would enjoy a level playing field with larger retailers who sell online and through catalogs. These larger retailers do not have to charge their customers sales taxes, so they are enjoying a benefit that local retailers cannot use.

The agreement's adoption also comes with considerable downsides. For one, changing sales tax sourcing in Texas could produce potentially burdensome revenue shifts between cities. Cities that have planned for their long-term financial futures under the current sales tax system might be unable to continue to provide the level of services which they have been providing to their

citizens. These cities also may not be able to meet bond obligations and other long-term agreements which they have made. While cities that have little retail and a lot of remote consumption stand to gain significant amounts of revenue, distribution centers which have over time built their foundation on the current system of origin sourcing would be left in a lurch.

Additionally, though these taxes are currently levied but cannot be collected, any change that would require the collection of sales taxes on out-of-state remote consumption would result in a large tax increase to the citizens of Texas. Texas loses $541 million per year in sales tax revenue due to e-commerce and catalog sales, and local governments lose $150 million per year.[8] While Texas is a large state, and much of that lost revenue would be from out-of-state purchasers, Texans would be subject to higher taxes on these purchases.

Recommendations

Currently, the Texas Municipal League (TML) is holding a series of meetings with Texas cities regarding various aspects of Texas' sales tax system. TML is examining sourcing, reallocation and Streamlined Sales Tax issues. Since the sales tax system in question impacts the cities greatly, the committee awaits TML's findings. The governing bodies of cities are more acutely aware of the issues and potential consequences that these changes would have on them. It will be far easier to implement changes which cities have already discussed and agreed upon than to force a mandate to change upon the cities.

The Legislature should examine the definition of "order" in defining a place of business. Such a nebulous standard is easily abused. The Legislature should ensure that these orders are legitimate and not just nominal sales to employees. The Legislature should amend the Tax Code to ensure that such sales are available to the public and that the public knows that the place of business receives and processes orders for the companies.

The existing reallocation provision is overly punitive. Sales tax revenues that are reallocated solely because the company changes the place of business to which the taxes are sourced should be only prospective. Cities should not be punished because a company later decides to change its place of business in order to work out a rebate agreement with another city. This would allow future sales taxes to go to the correct location without being burdensome on cities who were acting in good faith. The reallocation period for other changes, such as a mistake in the address of a place of business or another error in the return should be shortened to two years rather than four. While this would impact cities to an extent, it would not harm them as much as reallocation based merely on the place of business changing for tax rebate purposes.

Furthermore, the Legislature should allow cities to challenge reallocation decisions through the administrative law process. This process is more efficient for both sides than a lawsuit between a city and the Comptroller. Cities would have the opportunity to hear why they are not entitled to sales tax revenue and present a case against the reallocation. An administrative law judge could hear the matter and expedite a decision.

To mitigate the effects of any sourcing changes or reallocations, cities should employ revenue sharing. These agreements should remain voluntary for cities to create, and the cities should discuss using these statewide. A local solution to these issues is preferable to a legislative mandate.

The Legislature needs to monitor the Streamlined Sales Tax Project but be careful about adopting any changes that would be catastrophic for cities. There will likely be calls to adopt the project's agreement because state revenues stand only to benefit from these potential new sales taxes; however, changing these rules upon which cities have based planning decisions for years—if not decades—could be costly for all Texans. The Legislature should only implement the recommendation of the agreement which would minimally affect Texas cities and has their support.

Any changes need to be narrowly tailored to ensure that they do not create larger problems. There will always be unintended consequences, and to the greatest extent possible, the Legislature should ensure that these consequences are minimal. Drastic changes could be worse for our system than the current problems in the system.

CHARGE #2

Review provisions for local government notices on potential tax rate increases and clarify potentially conflicting statutes. Look at requiring two (rather than one) public hearings on the tax rate increase.

The 79th Legislature, in its regular session, passed two bills that created conflicting amendments to the language required on a notice issued by a taxing entity for a proposed tax increase. The notice did not clearly define for the taxpayer what the impact of the potential tax rate would have on individual property taxes. HB 3189 was designed to simplify these notices for taxpayers but failed to accomplish its purpose. While the bill passed the House, it ultimately died in the Senate.

Numerous witnesses testified in front of the Committee on Local Government Ways and Means —and many members have acknowledged—that the focus on reducing taxes should not be on the appraisal value but on the tax rate set by the taxing jurisdictions. Public hearings are the correct way to expose the planned use of local taxes and to offer the public an opportunity to express any comments or concerns regarding the proposed tax rate, yet it appears that statewide turnout at these public hearings is low or non-existent. Therefore, the committee examined how to simplify the notice and hearing process to increase participation in hearings and to also increase public confidence in local governments.

Hearing Requirements

Taxing units other than school districts must hold two public hearings before they adopt a tax rate which would raise more property tax revenue than the prior year.[9] These hearings allow taxpayers to express their opinions regarding any proposed tax increase and to allow the members of the governing body of the taxing unit to justify the increase in property taxes.

These hearings must be scheduled at different times to accommodate the schedules of as many citizens as possible. The second hearing must be held at least three days after the first hearing, and both hearings must occur on weekdays that are not public holidays in a publicly-owned building or, if unavailable, a suitable building to which the public normally has access.[10]

Additionally, the governing body of each taxing entity must openly vote in a specific manner to approve the tax increase. At each hearing, the governing body must announce the date, time and place of the meeting at which they will be voting on the proposed tax increase. After those hearings are held, the governing body must make a motion—separate from the adoption of the budget—to adopt an ordinance, resolution or order that sets the tax rate that raises more property tax revenue. The vote to adopt this order is a record vote, and the form and language of the motion and the order are specified in Section 26.05(b), Tax Code, so that the public can clearly know how each of their elected officials voted.

Despite the intent of the law to involve the public in the property tax adoption process, this committee has seen a statewide lack of interest in these hearings. Anecdotal evidence presented in interim hearings has shown that only a handful of people show up in even the large urbanized areas—and in some case, “handful” is probably a generous description of the size of the turnout.

Notice Provisions

Prior to a governing body holding hearings they must provide the public with notice of the hearings at least seven days prior to the hearing. Section 26.06(c) provides that the notice must either be delivered by mail to each property owner or published in a newspaper; however, the notices are generally just published in a newspaper. If the taxing entity has a website, the notice must be published there from its initial publication until the second hearing is concluded. Section

26.065 also provides that, in addition to the website, if the taxing entity has free access to a television channel, it must post the notice on that station for sixty seconds five times a day.

It is unclear why citizens do not choose to pay more attention to or act on the notices. Some witnesses have pointed out the lack of clarity in the tax hearing notices. For one, the notice deals with the effective tax rate (ETR). While this rate is designed to simply show taxpayers what the property tax rate is that raises the same revenue as last year on the current year's appraisal roll, in reality, it is more complex. For taxing entities other than school districts, there are 24 steps to calculate this rate on the Comptroller's 2008 Effective Tax Rate Worksheet.[11] If the jurisdiction levies an additional sales tax to ease the property tax burden, the entity must complete six more steps to figure out its ETR.[12] Though the legislature has tried to simplify this process and make truth-in-taxation simpler for the average citizen, this shows that there is not a simple solution.

Witnesses have also asserted that citizens are not motivated to participate in the process because the notices for the tax rate hearings deal with the value and taxes of average homesteads, not an individual property owner's tax bill. The notion of the average homestead changes every year. A home whose value this year is considered the average value might appreciate or depreciate differently from other houses, no longer making it an average homestead. The notice of the meeting where the tax rate will actually be voted on also does not account for the individual homeowner. It simply compares property tax revenue raised last year with the proposed property tax revenue to be raised on this year's appraisal roll, less taxes on new construction. Those aggregate numbers may be significantly large, but they do nothing to show individual property owners their portion of the tax increase.

The only true representation to a property owner of their share of an entity's property taxes is their tax bill, which comes only after the tax rates are set and there is no further opportunity to make their opinion heard. This bill, however, is often confused with the appraisal notice. Article VIII, Section 21 of the Texas Constitution requires that when a property is revalued, the owner's notice of revaluation include a reasonable estimate of the taxes they would pay based on this revaluation. The chief appraiser lists on the appraisal notice the taxable value of the property in each taxing entity multiplied by the previous year's tax rate in that entity. Those values are then added together to provide an estimated tax value.

Due to these notices of estimated taxes, many people go to the CAD not to protest the value of their property solely, but to protest their taxes. This perception is enhanced by some elected officials allowing upset constituents to hold the CAD responsible for the higher taxes since the governing body of the entity has either held the tax rate constant or lowered the rate. Many citizens are not aware that even if a taxing entity maintains the same rate or a lower rate that is higher than the ETR, its governing body must make a motion and vote to approve even the consideration of an increase in total taxes. This means that some elected officials are misleading the public in implying that they are not raising their taxes when they leave the tax rate the same during a time of rising values even though the law clearly states that they must take a record vote to do so.

Recommendations

The Property Tax Code already requires two hearings on potential tax rate increases. We have seen no evidence that additional hearings are necessary or would increase public participation. In

many jurisdictions, regular meetings of the governing body to discuss other issues have higher attendance than budget and tax rate hearings. Local governments should continue to seek out ways to reach out to the public throughout their budget and tax rate adoption process and work to schedule hearings for times and places that will encourage maximum participation from citizens.

Furthermore, the Constitution should be amended to remove the misleading estimated tax calculations from the appraisal notice. This will help clarify the role the taxing entities play in determining the tax rate and thereby being responsible for a property owner's total tax bill. By placing the focus on the taxing entities themselves, the role of the CAD in property valuation will be clearer to the taxpayer.

Additionally, the Legislature needs to find a more effective way for local governments to reach taxpayers and notify them of tax hearings. Newspaper circulations are declining, and there is not one single source today from which people get their news. Local governments should be more proactive in reaching out to taxpayers to seek their input. Between the time that they set their preliminary budgets and hold their tax increase hearings, local governments—or whomever they contract with to collect their taxes—should be required to mail a notice to all property owners within their jurisdictions.

Finally, the Legislature should clarify the required language for hearing notices. At the top of each notice, each local government should include text mandated by statute that informs taxpayers that even though the proposed tax rate may be lower than the previous year's tax rate, either the total taxes levied or the taxes levied on each property owner may increase. The text should also notify property owners to consult their appraisal notice to determine how the proposed changes would affect them.

To that end, each notice of a tax increase should contain three tax rates: last year's maintenance and operations (M&O) tax rate, the effective M&O tax rate or some other simpler calculation that would allow taxpayers to compare the previous year's taxes with the current year's taxes and the proposed M&O tax rate. The property owner could then multiply these rates by the taxable value on their property for the current year and the previous year to see how they will be impacted by the proposed tax increase. This would require some additional costs and additional justification for the taxing entities to increase the property tax revenues, but it should be incumbent upon those entities to justify their budget increases to their citizens, who can then realistically examine those changes and provide informed feedback.

CHARGES #3 & #4B[13]

Examine the addition of members to the board of directors of appraisal districts who are not appointed by the taxing jurisdictions of the district. Determine methods for appointing these additional directors.

Consider whether the statutory system for choosing the Central Appraisal District Board of Directors and governing the board's operation adequately protects the public interest.

The appraisal of property for ad valorem tax purposes has been administered locally within a central appraisal district (CAD) since the passage of the Peveto bill in 1979. Section 6.03, Tax Code, provides for the governance of each CAD by a board of directors chosen by the taxing entities. Since there is no direct public control over the boards' selection and operation, the perception by some is that these boards are acting in order to increase the taxable value of property in the CAD, and consequently the property tax revenue of the taxing entities within the CAD, at the expense of the public interest. In order to evaluate these concerns, we must determine the public interest, look at how these boards are selected, examine their duties and develop any modifications that would further protect the public interest.

Public Interest

The Constitution fairly well sums up the public interest when it comes to taxes: "Taxation shall be equal and uniform." Regarding property taxes, the Constitution clearly states the standard for equality and uniformity: "All real property and tangible personal property, unless exempt as required or permitted by this Constitution...shall be taxed in proportion to its value." Therefore, property owners are best served when all property is valued at its market value.

This seems like an easy enough goal to achieve; in reality, things are much more difficult. Some citizens are increasingly frustrated with the current appraisal system. Even if their properties are valued at market value, some property owners bemoan the fact that their property valuations are based on a subjective figure—essentially someone's guess as to what property is worth—determined by CAD staffers. Witnesses before the Committee on Local Government Ways and Means have testified that property owners are further frustrated when they have to appeal to an appraisal review board (ARB) that was hired by the CAD board to get some relief on their property values.

To maintain the public interest of fair and equal appraisal and taxation regarding the makeup and operation of the board of directors, great care should be taken to insulate the appraisal process from the political process. The public should be certain that the appraisers carry out their constitutional and statutory duties to value property at its market value professionally and without undue influence from taxing entities—or for that matter outside special interests who seek to gain advantages over other taxpayers. Even though there may be such a perception on the part of some, there is nothing more than anecdotal evidence; we heard no hard evidence of collusion on the part of the CAD board and the chief appraiser or ARB members during our hearings.

Selection of CAD Board Members

Each CAD is governed by a board with a minimum of five directors. They are chosen by the taxing jurisdictions who participate in the district voting in proportion to the value of their total property taxes levied relative to the total property taxes levied within the CAD.[14] The board of directors or three-fourths of the taxing jurisdictions may either increase the number of board members or change the method by which those directors are selected. Members of the governing body of a taxing jurisdiction may serve on the CAD board of directors, but employees of a taxing jurisdiction may not unless they also serve on the governing board or as an elected official of the taxing jurisdiction.

Allocation of Hospital District Taxes

Several large urban counties are allowed to levy taxes for the purposes of operating a hospital district. The provisions in the Tax Code that call for the allocation of voting strength in determining the composition of the board of directors of a CAD, however, do not account for these provisions. While this seems like a minor consideration, there are some counties in which half of the taxes which they levy go toward the operation of a hospital district. As a result, these counties are not receiving the proper proportion of the decision-making power regarding the selection of the board of directors, if that is to be the basis of determining the board's composition.

Duties of the Board

While the board of directors has a number of official duties, three of those duties have a significant impact on the appraisal process: appointment of a chief appraiser to administer the CAD office at the pleasure of the board; approval of the district's operating budget prepared by the chief appraiser; and the appointment of the (ARB), which hears appraisal protests from property owners seeking to get their property values lowered.

There is a common perception among many citizens that the board of directors works to directly increase property values. They feel the board can pressure the chief appraiser into raising property values to increase property tax revenues for the entities that appointed the board members. To counter these feelings, the legislature has put in place several taxpayer protections over the past few sessions to prevent this kind of unethical behavior. For example, the board of directors cannot link the chief appraiser's salary to any change in the appraisal roll in the district, nor can any board member discuss the appraisal of a specific piece of property with the chief appraiser outside of a public meeting.[15]

One of the most common complaints heard by the committee, however, comes from the board of directors appointing the members of the ARB. Throughout the committee's hearings, we have heard from numerous witnesses who spoke of a public perception that "the fox is guarding the henhouse." It is easy to see how skeptical citizens could arrive at this conclusion: the ARB is charged with hearing and deciding on property owners' complaints in a fair manner, but they are appointed by the same people who hired the person against whom the owner is complaining. As such, much of the criticism being directed at the board of directors of each CAD is likely being misapplied and should rather be focused on how to fix the appeals process.

Addition of Board Members

Many Texans have called for the board of directors of a central appraisal district to be accountable to the public. In the current system, the public has no choice in deciding who serves on the board of directors. Therefore, citizens have no recourse to take any direct, meaningful action against board members if they suspect any malfeasance.

In our hearing process, some witnesses discussed various ways in which boards of directors might be more accountable to the public. They called for either a modification of the existing structure of CAD boards of directors or the addition of board members to allow for some portion of the board to be appointed without the influence of the taxing entities. Some advocated the

appointment of additional directors by an entity with no stake in the property taxes of a CAD while others called for the election of some or all of the directors.

Several experts that testified before the Committee on Local Government Ways and Means suggested that the district judges that have jurisdiction over a county in which a CAD lies could appoint two members to the board. Judges are elected to fairly interpret the laws, and citizens bestow upon these judges a large amount of trust and respect to act fairly at all times. It has been proposed that board members appointed by judges would help the board effectively carry out their duties and protect the public interest from the perception of impartial and fair appraisals. However, the judges contacted about this issue have expressed no interest in undertaking this added responsibility.

Another proposal is for citizens to directly elect some or all of the members of the board of directors of a CAD. According to proponents of this plan, the elected board members could advocate on behalf of taxpayers without feeling the perceived pressure to increase property values. They would not have to hire a chief appraiser who would increase values or to appoint ARB members that would not question the values of the CAD staff. They also contend that this would also increase transparency into the operations of the CAD.

While transparency and accountability should always be the goal of the CAD board, the direct election of the board of directors of a CAD does not appear to be a workable solution. First, there is only one platform on which someone could run and expect to win: to lower property values. Though the board of directors cannot directly influence the values of the property within its boundaries, the candidates can pledge to fire the chief appraiser or hire one that will lower or hold steady all values. The board candidates could also say that they will only appoint members to the ARB that would always rule to lower values. Neither of these actions would be in the best interest of the public. Furthermore, special interests who would have the resources to finance a county-wide election could seek advantages for themselves and similar property owners. This would create an inequitable appraisal system that would shift the property tax burden to those without strong relationships with board members.

Recommendations

Much of the ire directed at the board of directors has been misplaced. The public perception is that ARB members mistreat property owners and do not listen to them because they are employed by the board. Restructuring the board of directors to have members that directly represent the public will only make insignificant changes in perception if the board still appoints the ARB.

In order to improve public confidence in the appraisal system, the appeals process as it relates to the ARB should be separated from the board of directors and made more independent and professional.[16] This will demonstrate to the public that when they protest their property values, they will be getting a fair hearing from an impartial entity which will decide on the case based on the evidence presented. It is the committee's recommendation that the ARB should be under the supervision of the Comptroller's office or another yet to be created state agency which will oversee the property tax system.

The Tax Code should be amended to allow counties which levy taxes on behalf of a hospital district to count those taxes as a part of their total taxes levied as it relates to the voting strength among the local governments. This idea has been proposed previously yet has never advanced very far through the legislative process despite the absence of any major opposition. Such a change would maintain the intent of the Tax Code regarding the allocation to taxing entities of voting strength.

CHARGE #4

Examine the system for appraising property for property tax purposes:

- Study the implementation and effects of HB 1010, 80th Legislature, Regular Session.
- Evaluate whether the authority of the chief appraiser should be limited.
- Consider alternative methods and procedures for conducting the Comptroller's School Property Value Study to ensure both the equitable distribution of state school aid and a more stringent review of local appraisal practices.
- Examine constitutional and statutory constraints on the enforcement of uniform appraisal standards across the state and the ability of the state to provide oversight of appraisal districts.
- Consider ways to improve appraisal district efficiency, transparency and services, including, but not limited to, the reconfiguration of appraisal districts.
- Evaluate changes in the property valuation appeal system that could expedite and reduce the cost of dispute resolution.

Implementation and Effects of HB 1010

Prior to this past session, a property owner who wanted to resolve any discrepancies or appeal the value of the property that straddled county boundaries faced additional obstacles to obtaining relief on appraisal mistakes. The chief appraisers in the multiple CADs in which the property was situated separately appraised the property, listing the portion that is in the CAD separate from the rest of the property. CADs could develop interlocal agreements to streamline this process, but in many cases, the CADs did not do that. This led to duplication of efforts by appraisers and different values from different CADs. Last interim this committee examined "whether it is more efficient to appraise property on a county line basis" and recommended realigning CAD boundaries with county lines. [17]

HB 1010 streamlined the appraisal process for property that straddles the boundaries of more than one CAD. It removed a portion of the Tax Code that allowed taxing jurisdictions to elect to be part of one CAD if it is situated in multiple counties and aligned CAD boundaries with county boundaries.[18] It also called for coordination between chief appraisers that share a common piece of property. HB 1010 became effective January 1, 2008.

Property owners have generally been happy with this so far. The chief appraiser of Harris CAD indicated that HB 1010 solved 99% of the problems caused by properties overlapping county lines. By requiring these CADs to work together, property owners only have to deal with one appraisal notice. Similarly, CADs can operate more efficiently by eliminating the duplication of efforts between them.

There have also been some hardships created with the new law. Some property owners saw large increases in their values as new appraisers were valuing their properties for the first time. According to the *Austin American-Statesman*, 2,650 properties in the Marble Falls ISD boundaries within Travis County saw an average increase of 58% between their 2007 values and the preliminary 2008 values. Prior to 2008, the Travis CAD accepted the value of the Burnet CAD, which performed all appraisals for Marble Falls ISD. Since the change in law only became effective this year—and the appeals process for property owners is ongoing—it is difficult to determine the impact of the boundary realignment on appraised values for taxpayers. As appraisal rolls are finalized, it will be important to see how the statutory change affects the public interest of a fair appraisal system that determines the taxable value of each property at its market value.

HB 1010 also increased in the appraisal costs for some taxing entities that lie in multiple counties. These entities had previously chosen to use one CAD to perform all appraisal functions. They had interlocal agreements with the CAD's of the various counties in which the entities sat so that they would receive the appraisal roll from one county and would only have to pay one district to obtain that roll. These entities now have to pay multiple districts at an increased cost to the taxpayers. Agua Dulce ISD, for example, faced a 66% increase in appraisal costs between 2007 and 2008 as they had to pay two CADs rather than only having to pay one district per an interlocal agreement between the CADs and the school district.[19]

Outstanding Appraisal Actions

When HB 1010 became effective, certain CADs had pending appeals, both in front of the ARB

and in courts, on property that was now within the boundaries of another CAD and it was unclear on how to dispose of those matters. The Attorney General issued two opinions regarding these questions, determining that a CAD with outstanding litigation outside of its home county prior to tax year 2008 is still responsible for that litigation and its costs and that a CAD with an appeal before its ARB dealing with a matter prior to tax year 2008 retains authority to determine the result of that matter.[20]

Authority of the Chief Appraiser

One of the most prevalent complaints regarding the property tax system deals with the authority of the chief appraiser. Property owners whose property values increase rapidly from year to year sometimes blame the chief appraiser for arbitrarily raising the property values. This would allow the taxing entities to raise more property tax revenues by maintaining their tax rate at the current level and to say that they are not raising taxes. In light of this perception, it is important to determine what the chief appraiser's duties are and how they affect the appraisal of property and property taxes.

The overall function of the chief appraiser given in the Tax Code is to be the chief administrative officer of a CAD. In this role, the chief appraiser hires his staff; prepares a budget; and oversees the CAD's only responsibility, which is to "[appraise] property in the district for ad valorem tax purposes."[21] Within this general grant of authority, chief appraisers are ultimately responsible for many ministerial tasks, such as evaluating exemption applications, reviewing rendition statements, certifying the tax rolls and equalizing property values. Additionally, they represent the CAD in matters before the ARB or in court. They have the ability to delegate this authority to employees of the CAD in order to prevent one individual from maintaining too much authority or being overwhelmed by the demands of the job.

Chief appraisers must be licensed by the Board of Tax Professional Examiners. Though dissatisfied citizens may file a complaint with the agency against a chief appraiser who acts illegally or unethically, many people are unaware of the Board and its authority. Some of those who are aware of the Board file complaints based more on a disagreement over the appraised value of a property rather than any acts of malfeasance on behalf of the chief appraiser.

State Oversight and Uniform Appraisal Standards

The Texas Constitution prohibits the Legislature from levying a state property tax. This includes not only a direct ad valorem tax but any restrictions which might cause property taxes to essentially be uniformly levied statewide. Additionally, the Peveto property tax package maintained local administration of the system in the Tax Code, with state oversight primarily advisory in nature, in order to appease local officials.

History

Prior to 1977, many school districts appraised their properties below market value. They were trying to avoid having their property owners pay a state property tax for education. These districts had enough room within local tax rate limits to make up for any revenue lost from maintaining lower property values. As a result, the Legislature created the School Tax Assessment Practices Board and the Tax Assessor Examiners Board to ensure that school

districts were correctly appraising the taxable wealth within their boundaries.

The School Tax Assessment Practices Board ensured that school districts were receiving the proper level of state funding based on their taxable property values. It conducted an annual study of the taxable value of property within each school district to ensure that local appraisers were accurately appraising properties. In 1980, the newly created State Property Tax Board (SPTB) took over these duties as well as property-tax related duties from the Ad Valorem Tax Division of the Comptroller's office.[22] In addition to conducting the taxable property wealth study, the Board audited appraisal district functions, set appraisal district standards and developed educational and training material regarding the property tax system.[23] The Board was abolished in 1991, and its powers and duties were transferred to the Comptroller's Property Tax Division (PTD).

The Tax Assessor Examiners Board certified tax professionals as "Registered Professional Assessors." This title was a broad designation for a variety of property tax professionals who had completed the educational programs prepared by the SPTB. In 1983, this agency was replaced by the Board of Tax Professional Examiners (BTPE), which continues its functions today. The BTPE expanded the certification process to have different designations for appraisers, tax assessor/collectors and tax collectors. When the Legislature transferred the duties of the SPTB to the PTD, they also decided that the development of educational material should be privatized and gave the responsibility for approving the material to the BTPE.[24]

Board of Tax Professional Examiners

The Board of Tax Professional Examiners "assure[s] the people of Texas that property tax appraisal, assessment and collection of property taxes is practiced by persons who are professional, knowledgeable, competent and ethical."[25] The BTPE certifies and trains people who are appraised in property tax appraisal, assessment and collection. They also hear complaints and take action against any professionals that they oversee and can take disciplinary action.

While the BTPE is statutorily a state check on local appraisers, the agency generally has little effect on the appraisal process. In fiscal year 2006, for example, the agency received seventeen complaints and only reprimanded two people. The year before that, they took no disciplinary action on twelve public complaints.[26] The BTPE should be an effective way to solve property owner complaints, but it is handicapped. It is a small agency. The five-member board employs 3.7 full-time employees to carry out the agency's functions. Though the board is assisted by two advisory committees, these limited resources weaken its ability to properly create and enforce policies.

Property Tax Division

The Property Tax Division (PTD) of the Comptroller's office has the most direct role of oversight of any agency over the property tax system. Section 5.03, Tax Code sets out the general powers and duties of the PTD. The Comptroller adopts rules that establish minimum standards for appraisal districts, allowing for variance according to the different needs of local appraisal districts. The Comptroller is also responsible for designing a form for each appraisal district to use to report on their administration and operations.

The Tax Code also lists other responsibilities in order to accomplish these goals. Sections 5.04 through 5.05, Tax Code, charge the Comptroller with designing manuals and other training programs for appraisers and appraisal review board members and require her to carry out that training. The Comptroller also may provide professional and technical assistance to appraisal districts and publishes an annual report of all appraisal district operations. The PTD also provides citizens information on the property tax system in Texas and informs them of their rights and responsibilities. The division performs a study of the appraised values of the properties within every school district in order to determine the equitable distribution of education funds. This study, which is detailed in a separate heading below, ensures that appraisers are properly determining the market value of properties within their CAD's. The PTD also performs performance audits of CAD's in certain situations.[27]

The Comptroller's office performs these functions with limited resources. This is not a criticism of the PTD; they perform all the functions as well as they can within the constraint of their budget and personnel, but overseeing the operations of every CAD requires a significant amount of financial and personnel resources. As citizens become more concerned about their increasing property taxes, they will want the Comptroller to ensure that the assessment of those taxes is being administered fairly.

Comptroller's Property Value Study

The Texas Education Agency (TEA) determines state education funding by property wealth. In order to ensure that school districts do not receive too much funding from the state due to artificially low local property value, the PTD performs a Property Value Study (PVS) every year in each school district. In this study, the PTD reappraises property within the district to ensure that all property is appraised within a certain margin of error in order to determine the level of local funding and the amount of state funding. It was initially used to ensure that appraisal districts—which prior to the Peveto tax reform package in 1979 routinely valued properties well below market value to keep their property owners from paying a state property tax for schools—were appraising properties at their true market value. It is still used today even though CAD's are more professional in their property appraisals.

Study Overview

Every year, the PTD sends staff members to each school district to determine the market value of property in the district. To determine this overall market value, staff members take a sample of all types of property within a district and sort those by category to determine "state value."[28] Using comparable sales data where available, and other generally accepted appraisal principles when it is not available, the PTD appraises these sample properties. The division then divides the school district's local value by the state value to determine a ratio of the local value to the state value. Then they sort the ratios of all of the samples in ascending order and determine the median level of appraisal. They also calculate a coefficient of dispersion in order to establish how close to the median value all the sample properties are.

The study determines which school districts' local values are valid for determining their level of state education funding. The PTD considers the district's value valid if the median level of appraisal is between 95% and 105% of the state value. If the district's local value is within that range, the TEA uses that value in education funding formulas. If the value is less than 95% of the

state value, the district's value is invalid, and the TEA uses the state value to determine the level of education funding from the state. If the local value is above 105% of the state value, the local value is still deemed invalid but is used to determine education funding.

If a CAD has at least one school district whose local value is deemed invalid but is within a grace period, it undergoes an Appraisal Standards Review (ASR) to determine its conformity to generally accepted appraisal standards. A school district is within the grace period if its current local value is invalid, its previous two local values were valid and the local value is at least 90% of the lower end of the margin of error, or 85.5% of market value under current law. The PTD examines the procedures of the CAD to figure out why the CAD did not arrive at state value. The division prepares a report with recommendations for the CAD, which has one year to implement those recommendations. If the CAD does not implement the recommendations, the PTD appoints a five-member conservatorship to implement the changes within the CAD.

Problems

Using the PVS to determine the appraised value of property within a school district for the purposes of school finance is that it exerts upward pressure on local values. Chief appraisers do not know the state value until after they have done their appraisals. Therefore, they may be more apt to err on the upper end of values rather than fall outside of the margin of error. A school district below the margin of error loses funding from the state through the higher state value being adopted while not being able to obtain local revenue on the difference between the two values. Local values above the margin of error receive less state funding since the higher local value is used, but they determine local funding on the entire amount of the appraisal roll.

Similarly, using the median level of appraisal as the standard for determining the accuracy of the appraisals necessarily results in some properties being incorrectly appraised. If the school district's median level of appraisal is 100% of the state value, half of the properties are appraised below market value while half are appraised above market value. The only way to eliminate this problem is to appraise all properties at 100% of market value, which is difficult to accomplish in a mass appraisal system.

Another problem is the duplication of work that occurs in the study. For one, both the CAD's and the PTD are determining the appraised value of the property. After those entities develop their values, the PTD may then have to review how the CAD determined its value. These efforts could be streamlined if two groups did not have to appraise the same property. The PTD could develop and promulgate appraisal standards and then audit a CAD's application of these standards. If the CAD was not following the standards, the PTD could recommend changes to improve the CAD's performance; if the standards were being used, the CAD would obtain market value which would equal what the PTD would have determined it to be.

Efficiency, Transparency and Services

After rising appraisals, citizens complain most about their experiences with the appraisal district. Already upset with a value that they feel is too high, they are further frustrated when they cannot get the answer that want or an explanation that satisfies them. When a property owner receives their appraisal notice, they may go to the CAD offices to visit the appraiser who valued the property in order to either see why the value increased so rapidly or to get the value corrected.

Sometimes, they may not bring in any outside evidence or they may bring in pictures, comparable sales and other information so that they can state their case. Sometimes they receive an explanation or adjustment that satisfies them and leave appeased. Many times, however, the taxpayer leaves angrier than when they arrived. The appraiser they meet with might show them properties, in the opinion of the taxpayer, that are not comparable to their property, or the appraiser might just tell them that the appraised value is the value and that they should appeal to the ARB.

Due to this experience, many property owners may feel that the appraisal district staff is unqualified to appraise property. Some CAD's find it difficult to retain seasoned appraisers because private sector firms can offer a better compensation package. This leaves the CAD with some inexperienced appraisers and many times they do not have the authority to change the value without approval or further appeals. Property owners can meet with more senior or experienced appraisers, but this generally happens during a settlement conference prior to the start of a trial on a lawsuit that the owner has filed.

Chief appraisers do not have to try to appraise all the properties in a CAD with just their staff. Section 25.01, Tax Code, allows the chief appraiser to enter into a contract with a private appraisal firm to assist with property appraisal. These firms generally have more experienced fee appraisers who can help with initial appraisals of property, particularly parcels that are more complex to appraise. While it may cost districts more to obtain these services, the option allows the CAD to have appraisers with significant experience from the beginning, possibly saving taxpayers time and headaches. Appraisal district staff can then focus on appraising simpler properties and may be able to take an objective view of the appraisal when a property owner protests, since they have no connection to the appraisal.

Some appraisal districts have refused to give any sales information to property owners who want to appeal their appraised value, citing a law that the Legislature passed last session. HB 2188 amended the Government Code to keep certain information obtained from private sources confidential. The Legislature made this change to allow CADs to maintain relationships with multiple listing services (MLS) which provide them with sales data that they need to effectively appraise property. The bill does make an exception to allow property owners or their agents to obtain copies of sales information that the appraiser used to determine the value of the property but will not introduce in the hearing. It also allows the owner or agent to receive sales data on a reasonable number of comparable properties relevant for any matter to be discussed before the appraisal review board. This information must remain confidential by agreement with the MLS and cannot be disclosed except for being used as evidence in the hearing.

Just as property owners need access to information to prepare an effective protest, CADs need information about properties in order to appraise them competently. Several chief appraisers have testified that they appraise properties as well as they can with the information that they have, but they simply do not have enough information to appraise certain properties adequately. MLS listings generally give appraisers sales information for most residential properties, but owners of more expensive houses and commercial and industrial properties withhold or merely do not provide their sales information. Similarly, some commercial property owners are not forthcoming with income and expense statements. With this information, appraisers could more accurately use the income approach to appraise these properties.

While some witnesses and committee members have called for sales price disclosure, others have cautioned against it. Some realtors and commercial property owners cite that most other states with mandatory sales price disclosure also levy a transfer tax on real estate. Others expressed their fear that appraisers would engage in "sales chasing" if they had this information. This is where appraisers merely base their appraisals on the sales prices of the property and other comparable properties without considering other factors.

Business Personal Property Valuation

It is not uncommon for business personal property not to be appraised at true market value. Business owners are required to render a valuation of all their business personal property (BPP) for property tax purposes. CADs, however, have no authority to go to a business and ensure that the rendition statement is accurate. This allows some business owners to pay property taxes on BPP at values below the true market value of this property.

As with sales information, CADs will be able to perform their appraisals of this property more effectively if they have some way to ensure the accuracy of BPP renditions. Giving CADs audit power over these renditions would be effective, but that solution is not likely to be viable. During the regular legislative session, there was strong opposition to allowing CADs to go to businesses and audit their BPP.

Taxpayer Assistance

Many property owners who have not had any experience with appeals or the CAD claim to be overwhelmed when they try to protest their property's appraised value. Though the Comptroller's office and CAD's issue information to taxpayers on their rights and responsibilities, the average property owner has no sophistication with the appraisal process. The taxpayer has to go against professional appraisers at the CAD with many times more experience. While the property owner can hire or appoint a tax consultant to assist them in this process, this is often a needless expense.

Aside from the Comptroller's information regarding the appraisal and appeals process, the only help that a taxpayer may receive without hiring private help is through the taxpayer liaison. The Tax Code requires a CAD in a county with a population of greater than 125,000 to have a taxpayer liaison. This person cannot perform appraisal services for the district and is charged with administering the public access functions of the board of directors under the Tax Code—particularly in Sections 6.04(d), (e) and (f). These duties are primarily providing public access to and information about the board and dealing with complaint resolution. The liaison provides general information about how to access the board and navigate the appeals process but does not help individual taxpayers navigate the process.

Some taxpayers have called for a taxpayer advocate whose job it would be to provide more detailed instruction and information on navigating the appraisal and appeals processes. Allowing one or more persons to focus on these public outreach and assistance goals could reduce the frustration and confusion that taxpayers feel when challenging the appraised value of their properties.

Consolidation

One way to streamline appraisal district operations and allow smaller CADs to combine their resources is consolidation. Sec. 6.02(b), Tax Code, allows the boards of directors of multiple adjoining appraisal districts to create an interlocal agreement to operate a consolidated appraisal district. A consolidated CAD allows taxing entities to take advantage of economies of scale by eliminating the need for high startup costs in multiple counties. Operating with one office, one chief appraiser, one ARB, etc., allows these consolidated CADs to use more resources to hire more qualified appraisers. Taxing entities do not have to shoulder as heavy a burden to finance this improved level of service because the budget can be streamlined and there are more taxing entities over which to divide the budget.

Any inconveniences that might inhibit the ability of multiple CAD's to merge are likely to be minimal. There may be concerns that appraisers might not be familiar with the area in which their properties are located and just randomly assign a value. This problem is also prevalent in separate CADs and would not be unique to consolidated CADs. Since the consolidated appraisal district will have eliminated some of the excesses in the budget, more appraisers could be hired from all parts of the new CAD to ensure that appraisers take local factors into account. Citizens might also resent changing since they have become accustomed to having their property appraised from within the county. Any consolidations should be done with the involvement of the citizens in each county. If they are a part of the consolidation process, they will more readily accept the changes.

One appraisal district that has functioned remarkably well as a consolidated CAD is the Potter-Randall CAD. Amarillo sits in both Potter and Randall Counties. To this end, many properties straddled the county line, causing confusion for taxing entities, appraisers and property owners. The two boards of those counties decided to combine their operations, and have enjoyed much success. They have seen all the benefits of consolidation in reduced costs, streamlined operations and clarity for property owners that straddle the county line. Their voluntary adoption of this system has eliminated much of the resentment that could have arisen had the change been mandated, and the area's shared identity tied to Amarillo has reduced any ill feelings from having appraisers from one county appraising property in another county.

Appeals Process

When a property owner receives an appraisal notice that they think is wrong or otherwise contains an error, the owner has the right to appeal that determination. The appraised or market value of the property is frequently the target of a protest, but the property owner can contend that—among other reasons—their property was unequally appraised, somehow improperly included on the appraisal roll, included in the wrong taxing jurisdictions or denied an exemption or a revaluation to which it should be properly entitled. The current appeals process is designed to maintain local administration.

The property owner frequently meets with an appraiser informally before any formal hearing. They can present evidence to the appraiser that may not have been able to consider when the initial appraisal was done. The appraiser can then explain to the owner how the valuation was arrived at for the property. After they talk, the appraiser can either adjust the valuation of the property based on new information or maintain the appraisal notice's value. In a majority of these

informal meetings, the property owner receives some sort of relief. In the remaining situations, the owner may not present enough compelling evidence to support their case, or the appraiser might not have enough seniority or experience to change the value.

Appraisal Review Board

In the event that the property owner does not receive satisfactory relief in an informal hearing, they may appeal to the appraisal review board by filing a formal protest. The ARB operates in panels of three people among a group of individuals appointed by the board of directors in an appraisal district. Both the appraisal district and the property owner present their evidence before the ARB. Then the ARB deliberates and issues its determination through a written order.

The ARB process does have several drawbacks. It is difficult to find enough people who are sufficiently qualified to hear appeals, particularly on more complex properties. The appeals process can last several months and consume continuous days. Because ARB members are only paid around $150 per day, a working professional with appraisal experience is not likely to give up time from their profession to serve on the ARB. The potentially stressful nature of these hearings might make a taxpayer leery of contesting a complicated case without professional help or at all.

Because ARB members and the staff of the CAD work together daily there is a concern that ARB members can develop relationships with CAD staff members that might preclude them from hearing protests objectively. Many CAD's try to rotate which appraisers present the evidence on behalf of the district before the ARB so that staff members don't work too frequently with specific ARB members. This is often difficult, given the limits on the number of staffers and ARB members. As one witness said, "When you sit [ARB members] right there on a day-in, day-out basis…there becomes an association of familiarity that—if not in fact—certainly implies partiality."[29]

Finally, some citizens may perceive a conflict of interest on the part of the ARB. Citizens who want to protest their property values have to go to the CAD offices and present evidence against the chief appraiser—appointed by the board of directors—or his designee in front of an ARB panel—also appointed by the board of directors. Many citizens have said that this looks very much like "the fox guarding the henhouse." Removing the appointment of ARB members from the board of directors or moving ARB hearings to a separate physical location from the CAD would help to change this public perception.

The property owner, within 45 days of the ARB order, has two options to resolve their protest if the ARB's order was not satisfactory. In certain situations, the property owner may go to binding arbitration. Additionally, they may file a lawsuit in district court against the appraisal district.

Binding Arbitration

The use of binding arbitration, passed by this committee a couple of sessions ago, is the less costly and timelier option but is limited by the Tax Code. A property owner may go to arbitration if the only disagreement is based on the market or appraised value of the property and the property is worth less than $1 million, as determined by the ARB. The property owner must file a form and a $500 deposit with the CAD. The CAD forwards this information to the

Comptroller, who sends the property owner and the CAD a list of qualified arbitrators who may hear the dispute.

Arbitrators must meet certain qualifications in order to mediate a hearing. They must complete 30 hours of training in arbitration; be licensed as a real estate broker, salesperson or arbitrator; and charge a fee of no more than 90% of the deposit. The CAD and the property owner have 20 days to mutually pick an arbitrator before the Comptroller randomly selects a person from their registry to hear the dispute. The arbitrator then schedules the hearing and notifies the involved parties.

The hearing process is similar to an ARB hearing but much less contentious than a trial. Both sides present their evidence and their estimate of value to the arbitrator. Within 20 days, the arbitrator must deliver to both parties a decision. If the arbitrator determines that the value of the property is closer to the owner's opinion of value, the chief appraiser must correct the appraisal roll to show the property's market value, and the CAD must pay the arbitrator's fee. The property owner then receives their deposit back, less 10% that the Comptroller keeps as an administrative fee. If the CAD value is closer to the market value, the Comptroller pays the arbitrator's fee out of the property owner's deposit and refunds the owner whatever amount remains of the deposit after deducting their 10%. If the arbitrator's value is lower than the appraisal district value, the chief appraiser must correct the appraisal roll to reflect that value.

Many property owners have been satisfied with their experience in binding arbitration, but the limits on arbitration preclude many disputes from being settled that way. While most residential homesteads are under the $1 million cap, larger homes and more complex commercial and industrial valuations are outside the scope of arbitration. This cap prevents many small business owners from using this remedy. They might either have to settle for an erroneous value or spend a significant amount of money on a lawsuit. Issues aside from valuation, such as the status of exemptions and erroneous information on the appraisal notice that can be brought before the ARB cannot be considered in an arbitration hearing.

Other considerations may also prevent property owners from pursuing binding arbitration. While the arbitration fee is relatively small, some property owners may not be able to afford risking $500 for a chance that the value will be reduced. Other property owners may look at what the reduced taxes might be and decide that it wasn't worth potentially losing $500, even if the arbitrator accepted their opinions. The arbitrator's determination is also final, leaving the property owner no further appeals if they are still unsatisfied.

District Court

If the property owner is unable to resolve their case due to the constraints on binding arbitration or would prefer the ability to appeal the decision should they be dissatisfied, they may sue the appraisal district in state district court. Prior to the case going to court, the CAD arranges a settlement conference with the property owner and their attorney. Senior CAD staff members—generally including the chief appraiser—and the CAD's attorney meet with the property owner or the property owner's designee in order to resolve the dispute before it goes to trial. The staff members have the seniority and experience to change the appraised value that appraisers in other informal meetings may not have had.

If the two sides cannot reach a settlement, the suit goes into the courtroom as a trial *de novo*—whereas the CAD had the burden of proof before the ARB to prove their value, the property owner must now provide the preponderance of evidence in order to convince the judge to accept their opinion of the property's value. From here, the matter proceeds like any other civil matter before a court.

District court is in certain cases an attractive option. Owners of more valuable properties who have the resources with which to bring the matter to court may get more significant relief. In these cases, the disparities are generally wider than with most single-family residential homesteads, and the difference in the tax bill resulting in a lower property value may justify spending money on attorneys and court fees.

Other factors make lawsuits unattractive for taxpayers. A successful property owner is entitled to recover attorneys fees upon request to the court,[30] but those amounts are limited by statute.[31] This could leave the property owner with significant legal fees beyond what they would save in property taxes. These matters can also take years to resolve, and district court dockets are largely backlogged already.

Equity Appeals

A property owner may receive an acceptable property value—by ARB order, through binding arbitration or in district court—but may have to go through the same process the following year. Property owners may appeal their valuations based on an unequal appraisal. While the appraisal district's value may be the market value, if the property owners can find appraisals of comparable properties that are lower than the properties in question, the ARB must lower the value commensurately. Appraisal districts, then, have to increase the appraised values of properties that had been settled at a lower value the prior year so that other properties appraised are not unfairly lowered below market value. This would shift the property tax burden to other property owners whose appraised values were at their correct market value.

Recommendations

HB 1010 seems to have solved the problem it was intended to solve, despite some fairly minor issues. The Legislature should continue monitoring the costs of complying with the provisions of HB 1010 inasmuch as some taxing entities face higher costs for their appraisal services. It is likely that as the proportion of the property taxes levied by an entity relative to the total taxes levied within a district shift, the portion of the budget in a CAD that the entity is responsible for would decline to a certain extent. Rapid increases in valuations that resulted from properties being appraised by new CAD's for the first time should decrease—provided they are above market value—as property owners protest values and CAD's become more familiar with these properties. There do not need to be any significant changes to this law at this time.

The Legislature could resolve many of the other issues in the system by creating a stand-alone state agency to oversee the local appraisal process. This would require a constitutional amendment to allow the Legislature to create such an agency in statute. The new agency would absorb the duties of the Comptroller's Property Tax Division, the Board of Tax Professional Examiners, the portion of the Department of Licensing and Registration that licenses property tax consultants and any other functions of state agencies that deal with property taxes. As an

alternative, these functions could become part of the Comptroller's Property Tax Division. The new agency would be responsible for developing educational, training and licensing programs for all property tax consultants, chief appraisers, tax assessor/collectors and other property tax professionals. Citizens could file complaints with the agency against any of those individuals for being unprofessional, acting unethically or violating the law. The agency would be able to respond to the matter in an appropriate and timely manner. This check over the authority of chief appraisers would restore some public confidence in these individuals.

The time for second-guessing the work of CADs has passed. The appraisal process in Texas is highly professional, and taxpayers are beginning to understand how the system works better each year. The PTD or its successor should develop and promulgate uniform appraisal standards for CADs. Rather than appraising a sample of properties in every CAD, the agency would review a performance audit that the chief appraiser or a third-party auditor sends to the division. Public companies now must meet a similar audit requirement. The agency could properly oversee all CADs annually without needing significantly more resources. Alternatively, the agency could send its staff members to the CADs to do performance audits. This would ensure that the agency sees exactly how the CADs operate to ensure the public that they are appropriately appraising properties.

Chief appraisers should make better use of private appraisers to effectively and efficiently appraise properties within their CADs. Appraisers can distance themselves from the appraisal notice to objectively evaluate taxpayer complaints prior to an ARB hearing. Appraisal firms are able to hire more seasoned appraisers, and CADs can benefit from the experience of those appraisers without having to compete against the private sector to hire them.

The Legislature should amend the changes that HB 2188 made in order to ensure that citizens are able to access the information the appraisal district used to value their properties while allowing the appraisal districts to continue their relationships with multiple listing services. Any new law should maintain that the property owner or their agent may access the information, but it should also ensure that it can only be used as evidence for the purposes of appealing information contained in the appraisal notice.

Similarly, CADs should have access to all sales data in the county. This can only be accomplished by requiring mandatory sales price disclosure. The Legislature should require that prior to a property owner being able to file a deed with the county, they should disclose to the appraisal district the sales price in a uniform manner determined by the PTD or its successor. Any sales price disclosure legislation should be coupled with a constitutional amendment preventing the imposition of a transfer tax on real estate. As the PTD or its successor develops standards to distribute to CADs, it should include provisions that prevent appraisers from basing their appraisals solely on the purchase price of a piece of property.

Likewise, CADs need some way to ensure that business owners are accurately rendering BPP values. Audit power for CADs is probably not politically viable; however, there is a viable alternative. Changing the penalty provision in the Property Tax Code for failure to render business personal property to allow for back-assessment of under appraised property as if that under appraised value had been omitted errantly from the appraisal roll would provide additional enforcement mechanisms for CADs when BPP is inaccurately rendered for property tax purposes. There are already statutory provisions for back-assessment, penalty and interest

calculations for such omissions. These changes would largely self-correct the problem over time as such back-assessment occurs and is publicized in each county. Also, if taxing authorities were given the duty to report under appraised property to the CADs, each taxing entity would function as its own watchdog for uncovering under appraisal of this type of property. This change, although minor in the beginning, could have significant impact on the accurate rendering of business personal property.

Every CAD should have a taxpayer assistance officer (TAO) whose responsibility it is to help guide the taxpayer through the appeals process. This person would be available for all property owners to contact with concerns regarding the appraisal and appeals processes. The taxpayer assistance officer could present group seminars prior to the start of ARB hearings to help citizens become more comfortable with the process. Though the TAO would not act as a tax consultant, they could suggest the types of evidence that property owners should bring and present to the ARB. They can inform property owners about other remedies that they may pursue to resolve their conflicts beyond the ARB.

The Property Tax Division or its successor agency should study all appraisal districts and determine which ones would be best served by consolidating. The study would look at the resources available to the district, the current level of compliance with proper appraisal methods, regional links between counties that would facilitate consolidation and other factors that might make consolidation a good fit. After the study, the agency should work with the best candidates for consolidation in order to gauge the level of interest in consolidation and help consolidate the CADs efficiently.

The Legislature should remove the appointment of the ARB from the board of directors in each central appraisal district. ARB members should be appointed and paid by the Property Tax Division of the Comptroller's office or the new property tax entity. The appraisal review board should also meet in a separate facility from the CAD in order to remove themselves from any appearance of impartiality. While this will require additional costs, that cost will be worth it to ensure citizens that they are being treated fairly.

The PTD or its successor should appoint a regional ARB in the 10 largest metropolitan areas in Texas to hear appeals on commercial or other complex properties. Owners of these properties could go before these bodies—composed of private fee appraisers—to appeal their appraisals beyond the local ARB. This would give these owners one more opportunity to present their case to qualified individuals without incurring the expenses of district court. The appraisers on these bodies would receive a reasonable payment from the agency, which would then be reimbursed by the CAD in which the contested property was located.

The limits on what properties are eligible for binding arbitration should be adjusted to allow more property owners to use this method of dispute resolution. All residence homesteads should be eligible to pursue binding arbitration. Furthermore, the Legislature should increase the limit on all other properties to $5 million to allow more small business owners to avail themselves of this process.

In addition to expanding the limits on eligible properties, the Legislature should clarify the law regarding eligible arbitrators. Arbitrators should attend annual continuing education programs and have been continuously certified in whatever field in which they are currently certified for a

period of five years to ensure that arbitrators are experienced and able to determine the proper outcome of these cases. Arbitrators register with the state for two years. They should be removed from the registry if they do not notify the state that they wish to continue being registered before their registration expires.

CHARGE #5

Research the policies and procedures by which local tax appraisers value rent-restricted affordable housing properties and authorize legislatively established tax exemptions. Evaluate application and interpretation of existing statutes by local appraisal districts to affordable housing properties throughout the life cycle of developments. Make recommendations for statutory changes. (Joint Interim Charge with the House Committee on Urban Affairs)

BACKGROUND: Texas' largest source of safe quality affordable housing for low income working families and individuals, as well as senior citizens and persons with disabilities are provided by either tax credit, state issued private activity bond or a combination thereof, and are financed multifamily rental properties. Currently Texas has over 1800 such properties administered by the Texas Department of Housing and Community Affairs (TDHCA) and the Texas State Housing Corporation (TSAHC). These properties represent over 260,000 individual housing units worth over $3.4 billion dollars of combined investments by the state.

These multifamily properties are developed, owned and operated by a combination of providers including nonprofit, for profit, faith based and local housing authorities. While the operations and partnerships involve a number of programmatic allowances, provisions and conditions , all are administered under the broad guidelines of federal programs relative to affordable housing provisions of the Cranston Gonzalez National Affordable Housing Act (42 U.S.C.).

These properties, while financially underwritten by the government at the time of construction, reconstruction or rehabilitation as an affordable housing property, are operated and maintained throughout the life cycle of the financial underwriting (typically a 15 year period) without further subsidization. Due to federally imposed restrictions on rent levels, utility allowances and long term sustainability requirements, these properties are operated on a very sharply defined financial basis. Operated like any other commercially financed property, these units have associated obligations to lenders and mortgage holders in addition to the tenant services and other financial considerations that must be satisfied annually.

Unlike market rate or nonrestricted use/income properties, it is not permissible for owners/managers of low income multifamily properties to raise rents or impose new or higher utility or services costs to tenants. In consideration of these restrictions and as a result of the participation in the national affordable housing programs, these properties typically qualify for property tax exemptions at the local level either in part or full value of the development.

Without this annual exemption, it would be extremely difficult, if not impossible for the majority of these properties to meet the debt service and other financial obligations that are incurred. Forfeiture or foreclosure resulting from either inability to pay taxes or debt
service places state investments at risk as well as reduces the already insufficient quantities of affordable housing available for eligible citizens.

The Texas Constitution, Tax Code and Local Government Code all provide for property tax exemptions for affordable housing properties under the common criteria of providing for the public good. Each property must, as a condition of exemption, establish and maintain the elements necessary to qualify for continuation of the exemptions, whether partial or full value is used and are subject to penalties if it is determined that qualifying standards are not being maintained.

In recent years, as property taxes have assumed an ever larger role in the generation of state and local revenue, tax exempt status for affordable housing properties have become increasingly problematic and subject to challenge at the individual county appraiser level. This has led to numerous court challenges which not only further imperil the financial status of the affordable

housing provider but have resulted in the loss of an undetermined number of affordable housing units as a result of financial failures.

During the past three legislative sessions, numerous attempts have been made without success to address the growing problems faced by affordable housing providers regarding both the qualifications for and the appraisal practices utilized by the individual county appraisers. The increasing number of local denials, court challenges and most significantly the statewide implications of the loss of significant numbers of affordable housing properties due to tax appraisal and exemption issues has made this a subject a matter of great concern.

FINDINGS: The Urban Affairs and Local Government Ways and Means Committees held a joint hearing on this charge on August 20, 2008 and public testimony was heard from a number of affordable housing providers, lobby interests and the Bexar County Appraisal office.

- Affordable housing providers and interest groups testimony focused on the following:

► Inconsistency among the state's tax appraisers in the application of valuation methodology, eligibility criteria for exemptions, imposition of non applicable or arbitrary conditions and compliance standards and the increasing necessity to validate status on an annual basis.

► Impact of the federally imposed rent restrictions and utility allowance limitations that differentiate affordable housing properties from commercial market developments and the problems encountered by appraisers in determining appropriate valuations based on income and cost methodology.

► Lack of clearly defined legislation that establishes consistent guidelines for the property valuation procedures, tax exempt qualifications and qualification compliance measures that are uniformly applied and administered at the state level for affordable housing properties developed and maintained under state programs and policies.

- Testimony by the Bexar Appraiser's office, while presented to address the position and methodology utilized by at least one local appraiser, also provided evidence that would tend to lend credence to the concerns of affordable housing providers regarding consistency and standardization of methodology and qualifications. Testimony cited:

► Misleading testimony concerning the number of denials issued by the Bexar Appraiser in 2008. Reported as 23 total by the spokesperson, later information provided by the appraiser's office on request of Rep. Menendez revealed that at least 66 letters of denial had been sent to Bexar County affordable housing providers.

► Challenges by the appraiser of "4 or 5" properties for alleged failure to comply with a non-statutory condition or provision of "payment in lieu of taxes" as being grounds for denial of tax-exempt status. Challenged by the committee, the Bexar Appraiser spokesperson admitted that there was no statutory basis for this interpretation but rather a consideration made at the local level.

RECOMMENDATIONS: The joint committee adopted no specific recommendations beyond continued examination of the issue and possible further consideration during 81st session of the legislature.

ECOLABS

Review the statute regarding the valuation of land used as an ecological laboratory by public or private colleges or universities. (Tax Code, Section 23.51). Clarify what constitutes an ecological laboratory and set standards for qualifying an ecological laboratory for appraisal as open space land.

In 1977, the Texas Legislature passed House Bill 22, enacting a provision called an "ecological laboratory" that provided tax incentives to private landowners who agreed to host research on their properties. Ambassador Lyndon Olson, the author of HB 22, stated that the intent of the ecological laboratory amendment was "to help our institutions of higher education obtain access to private lands for research purposes. The special appraisals that were passed in that year to promote the preservation of open space were the perfect vehicle to give landowners the incentive to cooperate with our university researchers."[32]

The definition of an "ecological laboratory" currently is in Texas Tax Code Section 23.51(1):

> "'Qualified open-space land'" means land that is currently devoted principally to agricultural use to the degree of intensity generally accepted in the area and that has been devoted principally to agricultural use or to production of timber or forest products for five of the preceding seven years *or land that is used principally as an ecological laboratory by a public or private college or university.*" (emphasis added).

An ecological laboratory is a type of open-space land appraisal. If landowners apply for an ecological laboratory valuation with their local appraisal district, they are eligible to receive the same tax status as farms, ranches and wildlife land. The definition above is the only language regarding an ecological laboratory in the Tax Code, and no standards have been developed to establish guidelines for the implementation of this program.

According to testimony provided by Dr. Ed Theriot, Director of the Texas Natural Science Center at the University of Texas at Austin, the ecological laboratory program is the only tool universities have to gain access to private land for research purposes.[33] He noted that this program is vital since approximately 97% of land in Texas is privately owned. The program has had a very successful first 20 years and has provided a much greater knowledge of our state's ecology. Dr. Theriot further testified that the continuation of this program would be extremely beneficial to Texas universities. Hundreds of students will be assisted in earn advanced degrees, and professors will be more adequately situated to publish important research and educate their students.

In order for Texas to reap these educational benefits, the Legislature needs to develop standards and guidelines for ecological laboratories in the Tax Code to guarantee that research conducted is purposeful and productive, to give landowners the security of a fair process for their investment and to satisfy appraisal districts that an ecological laboratory designation is merited. Local appraisal districts, private landowners and universities will be able to operate more efficiently if they clearly know what is required in order for property to qualify as an ecological laboratory.

The only requirement in the Texas Tax Code is that the "land is used principally as an ecological laboratory by a public or private college or university." Therefore, the determination of whether the principal use of a property is research is left to the discretion of central appraisal districts. The Legislature has not given appraisal districts any guidance as to what a landowner must do to qualify his/her property for the ecological laboratory program. There has also not been any direction to coordinate development of the standards with the universities, who are the intended beneficiaries of the incentive. As a result, each appraisal district is setting separate standards--

many of which are directly in opposition to what the universities are trying to achieve.

Landowners are also at a disadvantage when applying for this program. They currently are making applications to the appraisal districts for an ecological laboratory valuation, without being certain what documentation they should provide or how much research they should host on their property in order to qualify for the program. Standards are needed in the Tax Code to provide landowners with clear instructions on how to apply and to help appraisal districts correctly assess whether a property is eligible. Developing clear requirements for the ecological laboratory program will also ensure that landowners will continue to work with universities to allow access to private lands.

Universities must also be given clear direction as to what requirements must be fulfilled for research to be considered for an ecological laboratory. There should be a clear application process established with concrete requirements for approval of a project, for conduction of the research and for the reporting of findings/work. The development of project criteria will give validity to the work being conducted by universities and security to both landowners and appraisal districts.

Art Cory, former Travis County Chief Appraiser, provided testimony about another concern with the transfer of land appraised as an ecological laboratory to wildlife management. "The Tax Code is clear about agricultural (ag) land and how that valuation is determined. In order to get the ag benefit, that land has to be in ag for 5 of the preceding 7 years before it can get the tax benefit. When the wildlife management issue first came up in the Legislature and during the Texas Parks and Wildlife Department committee's work on the rules for the program, it was touted as revenue neutral. Land had to be in ag in the first place before you could move it to wildlife management. Ecological laboratories are mentioned in the Ag section of the Tax Code but there is no clear definition as to how it qualifies."[34]

During his testimony before the Committee on Local Government Ways and Means, Richard Scott indicated that he has twice applied for ecological laboratory designation for his 169 acres in Hays County. He has been denied both times. His land is currently appraised at market value, and his tax bill is approximately $12,000 - $15,000 a year. Although his application has not been approved, Mr. Scott has ecological laboratories ongoing on his property. Mr. Scott testified that the only incentive a landowner has to open his land to strangers and allow research to take place is the time saved for the possibility of later transferring the property to wildlife management.[35]

The Tax Code is also silent on these issues. It does not make it clear that any history is required for the ecological laboratory designation. Furthermore, it does not specify historic requirements in designation before transfer to wildlife management. Clear guidelines regarding the time that land must be appraised as ecological laboratory prior to transfer to wildlife management designation must also be established.

Recommendations

The Legislature should define what "devoted principally to ecological research" means by requiring a signed agreement between the participating institution and landowner that ecological research will take place and that other uses of the land will be subordinate to ecological research. A clear definition of "ecological research" will also be necessary in the Tax Code.

In order for a landowner to have property appraised on the basis of devotion to ecological research, the Tax Code should list forth requirements that chief appraisers shall receive from applying landowners. In order to qualify for the revaluation, a landowner must allow public or private university students and faculty members to conduct a certain number of experiments that further farming, ranching or wildlife management purposes. The landowner must agree that other uses of the land will be subordinate to ecological research. Land for a home on the property would not qualify for ecological laboratory. The comptroller should develop the form for an agreement or affidavit between a faculty member or administrator at the university and the landowner outlining the ecological research.

In order to encourage landowners to allow their property to be used as an ecolab, the Legislature should allow owners of property that has been used as an ecolab to apply for agricultural valuation under wildlife management after 2 years of ecolab usage. If there is no benefit to using the land as an ecolab compared to using it for wildlife management to gain this valuation, landowners will not assume the risks and restrictions that come with ecolabs and merely convert the land to wildlife management. This would have a chilling effect on ecological research across the state.

ENDNOTES

[1] Cory, Art. Texas House of Representatives. Committee on Local Government Ways & Means Hearing, 23 April 2008. Austin: House Audio/Video, 2008.
[2] Franklin, Mary Beth. "Retiree Tax Heaven (and Hell)." *Kiplinger Personal Finance*, Aug. 2008.
[3] "Building Texas: The Tax and Budget Primer." Center for Public Policy Priorities, May 2008.
[4] Kasner, Kyle. Texas House of Representatives. Committee on Local Government Ways & Means Hearing, 7 May 2008. Austin: House Audio/Video, 2008.
[5] Sec. 321.002, Tax Code.
[6] Kasner, Kyle. Texas House of Representatives. Committee on Local Government Ways & Means Hearing, 7 May 2008. Austin: House Audio/Video, 2008.
[7] Corrigan, Robin. "Presentation to the House Committee on Local Government Ways & Means," Comptroller of Public Accounts. 7 May 2008.
[8] Corrigan, Robin. Texas House of Representatives. Committee on Local Government Ways & Means Hearing, 7 May 2008. Austin: House Audio/Video, 2008.
[9] Section 26.05(d), Tax Code.
[10] Section 26.06(a), Tax Code.
[11] *2008 Truth-in-Taxation: A Guide for Setting Tax Rates for Taxing Units Other Than School Districts*, Texas Comptroller of Public Accounts, Appendix 2. Additionally, a county's effective tax rate is the sum of all the property taxes it is authorized to levy, adding an additional step. School districts have 23 steps; see *2008 Truth-in-Taxation: A Guide for Setting School District Tax Rates*, Texas Comptroller of Public Accounts.
[12] "Additional Sales Tax Rate," *ibid.*, Appendix 4.
[13] Since Charge #4B is substantially similar to Charge #3, this section is more appropriate for its consideration.
[14] If the county tax assessor-collector is not appointed to the board, then that person serves as a non-voting member of the board of directors.
[15] Sections 6.05(d) and 6.15, Tax Code.
[16] Charge #4 will delve into how this system should be changed.
[17] House Committee on Local Government Ways & Means, "Interim Report to the 80th Legislature." Texas House of Representatives (2007).
[18] Counties still have the option to form a consolidated CAD through an interlocal agreement.
[19] Hilliard, Donna. Texas House of Representatives. Committee on Local Government Ways & Means Hearing, 23 April 2008. Austin: House Audio/Video, 2008.
[20] Texas Attorney General Opinion Nos. GA-0590 and GA-0631, respectively.
[21] Sec. 6.01, Tax Code.
[22] Robinson, Jim, "Overview of the Texas Property Tax Appraisal System." (2008): 6.
[23] *Handbook of Texas Online*, State Property Tax Board, http://www.tshaonline.org/handbook/online/articles/SS/mdsqf.html (accessed July 22, 2008).
[24] "Self-Examination Report," Board of Tax Professional Examiners. Texas Sunset Advisory Commission, August, 2007.
[25] "About the Board of Tax Professional Examiners," Board of Tax Professional Examiners. 17 July 2008. <http://www.txbtpe.state.tx.us/about.php>.
[26] "Self-Examination Report," Board of Tax Professional Examiners. Texas Sunset Advisory Commission, August, 2007.
[27] See Charges #4D and #4E for more information on theses studies.
[28] Because of the complexities and variance between types of industrial properties, these kinds of properties are not considering when determining the accuracy of the district within the margin of error.
[29] Mitchell, Foy. Texas House of Representatives. Committee on Local Government Ways & Means Hearing, 16 April 2008. Austin: House Audio/Video, 2008.
[30] Though the plain language of the law reads "may be awarded attorneys fees," the court system has determined that it is mandatory to award those fees upon request. See *Aaron Rents, Inc. v. Travis Central Appraisal Dist.*, (App. 3 Dist. 2006) 212 S.W.3d 665.
[31] For limits on award amounts, see Sec. 42.29, Tax Code.
[32] Ambassador Lyndon Lowell Olson, Jr., *Letter to Local Government Ways & Means Committee Members*, (Austin, TX, April 29, 2008).

[33] Theriot, Ed. Texas House of Representatives. Committee on Local Government Ways & Means Hearing, 30 April 2008. Austin: House Audio/Video, 2008.
[34] Cory, Art. Texas House of Representatives. Committee on Local Government Ways & Means Hearing, 30 April 2008. Austin: House Audio/Video, 2008.
[35] Scott, Richard. Texas House of Representatives. Committee on Local Government Ways & Means Hearing, 30 April 2008. Austin: House Audio/Video, 2008.