

CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

5/30/09
Date

Honorable David Dewhurst
President of the Senate


Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

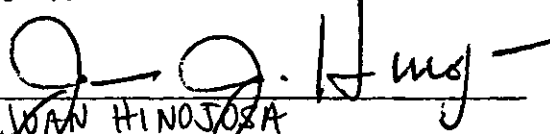
We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on HB 3612 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.



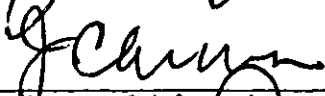
TOMMY WILLIAMS



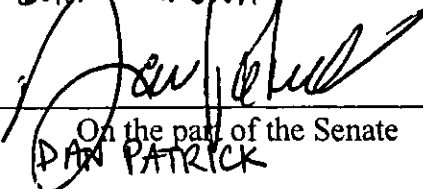
ROYCE WEST



JUAN HINOJOSA



JOHN CARONA



On the part of the Senate
DAN PATRICK




JOHN OTTO



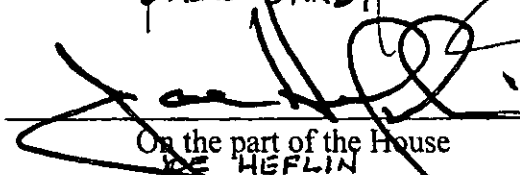
DAN GATTIS



CHENTE QUINTANILLA



DREW DARBY



On the part of the House
JEFF HEFLIN

Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

CONFERENCE COMMITTEE REPORT

3rd Printing

H.B. No. 3612

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the creation of a pilot program that allows taxpayer
3 appeals from certain appraisal review board determinations in
4 certain counties to be heard by the State Office of Administrative
5 Hearings.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

7 SECTION 1. Chapter 2003, Government Code, is amended by
8 adding Subchapter Z to read as follows:

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

11 Sec. 2003.901. PILOT PROGRAM. (a) Not later than January
12 1, 2010, the office shall develop a pilot program under which, as an
13 alternative to filing an appeal under Section 42.01, Tax Code, a
14 property owner may appeal to the office an appraisal review board
15 order determining a protest concerning the appraised or market
16 value of property brought under Section 41.41(a)(1) or (2), Tax
17 Code, if the appraised or market value, as applicable, of the
18 property that was the subject of the protest, as determined by the
19 board order, is more than \$1 million.

20 (b) The pilot program shall be developed and implemented in
21 conformance with the provisions of this subchapter.

22 (c) So as to expeditiously determine the appeals filed with
23 the office using resources available to the office, the office is
24 not required to determine more than 3,000 appeals filed under this

1 subchapter. The office may develop a formula to establish the
2 number of appeals that may be filed in each county included in the
3 pilot program based on the total number of lawsuits filed in a
4 county to which this subchapter applies as a percentage of the total
5 number of lawsuits filed in all of those counties.

6 Sec. 2003.902. COUNTIES INCLUDED. The pilot program shall
7 be implemented in Bexar, Cameron, El Paso, Harris, Tarrant, and
8 Travis Counties for a three-year period beginning with the ad
9 valorem tax year that begins January 1, 2010.

10 Sec. 2003.903. RULES. (a) The office has rulemaking
11 authority to implement this subchapter.

12 (b) The office has specific rulemaking authority to
13 implement those rules necessary to expeditiously determine appeals
14 to the office, based on the number of appeals filed and the
15 resources available to the office.

16 (c) The office may adopt rules that include the procedural
17 provisions of Chapter 41, Tax Code, applicable to a hearing before
18 an appraisal review board.

19 Sec. 2003.904. APPLICABILITY TO REAL AND PERSONAL PROPERTY.
20 The pilot program must be applicable to a determination of the
21 appraised or market value made by an appraisal review board in
22 connection with real or personal property, other than industrial
23 property or minerals.

24 Sec. 2003.905. EDUCATION AND TRAINING OF ADMINISTRATIVE LAW
25 JUDGES. (a) An administrative law judge assigned to hear an appeal
26 brought under this subchapter must have knowledge of:

27 (1) each of the appraisal methods a chief appraiser

1 may use to determine the appraised value or the market value of
2 property under Chapter 23, Tax Code; and

3 (2) the proper method for determining an appeal of a
4 protest, including a protest brought on the ground of unequal
5 appraisal.

6 (b) An administrative law judge is entitled to attend one or
7 more training and education courses under Sections 5.04 and 5.041,
8 Tax Code, to receive a copy of the materials used in a course, or
9 both, without charge.

10 Sec. 2003.906. NOTICE OF APPEAL TO OFFICE. (a) To appeal
11 an appraisal review board order to the office under this
12 subchapter, a property owner must file with the chief appraiser of
13 the appraisal district not later than the 30th day after the date
14 the property owner receives notice of the order:

15 (1) a completed notice of appeal to the office in the
16 form prescribed by Section 2003.907; and

17 (2) a filing fee in the amount of \$300, made payable to
18 the office.

19 (b) As soon as practicable after receipt of a notice of
20 appeal, the chief appraiser for the appraisal district shall:

21 (1) indicate, where appropriate, those entries in the
22 records that are subject to the appeal;

23 (2) submit the notice of appeal and filing fee to the
24 office; and

25 (3) request the appointment of a qualified
26 administrative law judge to hear the appeal.

27 Sec. 2003.907. CONTENTS OF NOTICE OF APPEAL. The chief

1 administrative law judge by rule shall prescribe the form of a
2 notice of appeal under this subchapter. The form must require the
3 property owner to provide:

- 4 (1) a copy of the order of the appraisal review board;
5 (2) a brief statement that explains the basis for the
6 property owner's appeal of the order; and
7 (3) a statement of the property owner's opinion of the
8 appraised or market value, as applicable, of the property that is
9 the subject of the appeal.

10 Sec. 2003.908. NOTICE TO PROPERTY OWNERS. An appraisal
11 review board of an appraisal district established in a county
12 listed in Section 2003.902 of this code that delivers notice of
13 issuance of an order described by Section 2003.901 of this code
14 pertaining to property described by Section 2003.904 of this code
15 and a copy of the order to a property owner as required by Section
16 41.47, Tax Code, shall include with the notice and copy:

- 17 (1) a notice of the property owner's rights under this
18 subchapter; and
19 (2) a copy of the notice of appeal prescribed by
20 Section 2003.907.

21 Sec. 2003.909. DESIGNATION OF ADMINISTRATIVE LAW JUDGE.

22 (a) As soon as practicable after the office receives a notice of
23 appeal and the filing fee, the office shall designate an
24 administrative law judge to hear the appeal.

25 (b) As soon as practicable after the administrative law
26 judge is designated, the administrative law judge shall set the
27 date, time, and place of the hearing on the appeal.

1 (c) The hearing must be held in a building or facility that
2 is owned or partly or entirely leased by the office and located in
3 the county in which the applicable appraisal district is
4 established, except that if the office does not own or lease a
5 building or facility in the county, the hearing may be held in any
6 public or privately owned building or facility in that county,
7 preferably a building or facility in which the office regularly
8 conducts business. The hearing may not be held in a building or
9 facility that is owned, leased, or under the control of the
10 appraisal district.

11 Sec. 2003.910. SCOPE OF APPEAL; HEARING. (a) An appeal is
12 by trial de novo. The administrative law judge may not admit into
13 evidence the fact of previous action by the appraisal review board,
14 except as otherwise provided by this subchapter.

15 (b) Chapter 2001 and the Texas Rules of Evidence do not
16 apply to a hearing under this subchapter. Prehearing discovery is
17 limited to the exchange of documents the parties will rely on during
18 the hearing. Any expert witness testimony must be reduced to
19 writing and included in the exchange of documents.

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

25 (d) An administrative law judge may consider factors such as
26 the hearsay nature of testimony, the qualifications of witnesses,
27 and other restrictions on the admissibility of evidence under the

1 Texas Rules of Evidence in assessing the weight to be given to the
2 evidence admitted.

3 Sec. 2003.911. REPRESENTATION OF PARTIES. (a) A property
4 owner may be represented at the hearing by:

5 (1) the property owner;

6 (2) an attorney who is licensed in this state;

7 (3) a certified public accountant;

8 (4) a registered property tax consultant; or

9 (5) any other person who is not otherwise prohibited
10 from appearing in a hearing held by the office.

11 (b) The appraisal district may be represented by the chief
12 appraiser or a person designated by the chief appraiser.

13 (c) An authorized representative of a party may appear at
14 the hearing to offer evidence, argument, or both, in the same manner
15 as provided by Section 41.45, Tax Code.

16 Sec. 2003.912. DETERMINATION OF ADMINISTRATIVE LAW JUDGE.

17 (a) As soon as practicable, but not later than the 30th day after
18 the date the hearing is concluded, the administrative law judge
19 shall issue a determination and send a copy to the property owner
20 and the chief appraiser.

21 (b) The determination:

22 (1) must include a determination of the appraised or
23 market value, as applicable, of the property that is the subject of
24 the appeal;

25 (2) must contain a brief analysis of the
26 administrative law judge's rationale for and set out the key
27 findings in support of the determination but is not required to

1 contain a detailed discussion of the evidence admitted or the
2 contentions of the parties;

3 (3) may include any remedy or relief a court may order
4 under Chapter 42, Tax Code, in an appeal relating to the appraised
5 or market value of property, other than an award of attorney's fees
6 under Section 42.29, Tax Code; and

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

10 (c) If the administrative law judge determines that the
11 appraised or market value, as applicable, of the property that is
12 the subject of the appeal is nearer to the property owner's opinion
13 of the appraised or market value, as applicable, of the property as
14 stated in the request for the hearing submitted by the property
15 owner than the value determined by the appraisal review board:

16 (1) the office, on receipt of a copy of the
17 determination, shall refund the property owner's filing fee;

18 (2) the appraisal district, on receipt of a copy of the
19 determination, shall pay the costs of the appeal as specified in the
20 determination; and

21 (3) the chief appraiser shall correct the appraised or
22 market value, as applicable, of the property as shown in the
23 appraisal roll to reflect the administrative law judge's
24 determination.

25 (d) If the administrative law judge determines that the
26 appraised or market value, as applicable, of the property that is
27 the subject of the appeal is not nearer to the property owner's

1 opinion of the appraised or market value, as applicable, of the
2 property as stated in the property owner's request for a hearing
3 than the value determined by the appraisal review board:

4 (1) the office, on receipt of a copy of the
5 determination, shall retain the property owner's filing fee;

6 (2) the chief appraiser shall correct the appraised or
7 market value, as applicable, of the property as shown in the
8 appraisal roll to reflect the administrative law judge's
9 determination if the value as determined by the administrative law
10 judge is less than the value as determined by the appraisal review
11 board; and

12 (3) the property owner shall pay the difference
13 between the costs of the appeal as specified in the determination
14 and the property owner's filing fee.

15 (e) Notwithstanding Subsection (a), the office by rule may
16 implement a process under which:

17 (1) the administrative law judge issues a proposal for
18 determination to the parties;

19 (2) the parties are given a reasonable period in which
20 to make written objections to the proposal; and

21 (3) the administrative law judge is authorized to take
22 into account those written objections before issuing a final
23 determination.

24 Sec. 2003.913. PAYMENT OF TAXES PENDING APPEAL. (a) The
25 pendency of an appeal to the office does not affect the delinquency
26 date for the taxes on the property subject to the appeal. A
27 property owner who appeals an appraisal review board order to the

1 office shall pay taxes on the property subject to the appeal in an
2 amount equal to the amount of taxes due on the portion of the
3 taxable value of the property that is not in dispute. If the final
4 determination of the appeal decreases the property owner's tax
5 liability to an amount less than the amount of taxes paid, each
6 taxing unit shall refund to the property owner the difference
7 between the amount of taxes paid and the amount of taxes for which
8 the property owner is liable.

9 (b) A property owner may not appeal to the office if the
10 taxes on the property subject to the appeal are delinquent. An
11 administrative law judge who determines that the taxes on the
12 property subject to an appeal are delinquent shall dismiss the
13 pending appeal with prejudice. If an appeal is dismissed under
14 this subsection, the office shall retain the property owner's
15 filing fee.

16 Sec. 2003.914. EFFECT ON RIGHT TO JUDICIAL APPEAL. An
17 appeal to the office under this subchapter is an election of
18 remedies and an alternative to bringing an appeal under Section
19 42.01, Tax Code.

20 Sec. 2003.915. REPORT TO LEGISLATURE. Not later than
21 January 1, 2013, the office and the chief appraisers of the
22 appraisal districts established in the counties in which the pilot
23 program is implemented shall submit a report to the legislature
24 that includes:

25 (1) the number of appeals for property in each
26 appraisal district;

27 (2) the number of appeals that were settled before

1 being heard by an administrative law judge;

2 (3) the number of appeals brought on the ground of
3 excessive appraisal;

4 (4) the number of appeals brought on the ground of
5 unequal appraisal;

6 (5) the number of judicial appeals of an
7 administrative law judge's determination for each appraisal
8 district; and

9 (6) any recommendations for future legislative action
10 that the office or the chief appraisers consider appropriate.

11 Sec. 2003.916. EXPIRATION. This subchapter expires January
12 1, 2013.

13 SECTION 2. This Act applies only to an ad valorem tax year
14 that begins on or after the effective date of this Act.

15 SECTION 3. This Act takes effect January 1, 2010.

House Bill 3612
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SECTION 1. Chapter 2003, Government Code, is amended by adding Subchapter Z.

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

Sec. 2003.901. Requires that not later than January 1, 2010, the State Office of Administrative Hearings shall develop a pilot program under which, as an alternative to filing an appeal under Section 42.01, Tax Code, a property owner may appeal to the office an appraisal review board order determining a protest concerning the appraised or market value of property brought under Section 41.41(a)(1) or (2), Tax Code, if the appraised or market value, as applicable, of the property that was the subject of the protest, as determined by the board order, is more than \$1 million. Requires that the pilot program shall be developed and implemented in conformance with the provisions of this subchapter.

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

No equivalent provision.

Sec. 2003.903. Applicability to Real and Personal

SENATE VERSION

SECTION 1. Same as House version.

Same as House version.

Sec. 2003.901. Same as House version except adds a provision establishing that the State Office of Administrative Hearings is not required to determine more than 3,000 appeals filed under this subchapter. Authorizes the office to develop a formula to establish the number of appeals that may be filed in each county included in the pilot program based on the total number of lawsuits filed in a county to which this subchapter applies as a percentage of the total number of lawsuits filed in all of those counties.

Sec. 2003.902. Same as House version.

Sec. 2003.903. RULES. Sets forth the State Office of Administrative Hearings' rulemaking authority to implement this subchapter.

Secs. 2003.904-2003.910. Same as House version.

CONFERENCE

SECTION 1. Same as House version.

SUBCHAPTER Z. Same as House version.

Sec. 2003.901. Same as Senate version.

Sec. 2003.902. Same as House version except removes Dallas County as an implementation site for the pilot program.

Sec. 2003.903. Same as Senate version.

Sec. 2003.904-2003.910. Same as House version.

House Bill 3612
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

Property.

Sec. 2003.904. Education and Training of Administrative Law Judges.

Sec. 2003.905. Notice of Appeal to Office.

Sec. 2003.906. Contents of Notice of Appeal.

Sec. 2003.907. Notice to Property Owners.

Sec. 2003.908. Designation of Administrative Law Judge.

Sec. 2003.909. Scope of Appeal; Hearing.

Sec. 2003.910. REPRESENTATION OF PARTIES. Provides that a property owner may be represented at the hearing by the property owner, an attorney who is licensed in this state, a certified public accountant, a registered property tax consultant, or any other person who is not otherwise prohibited from appearing in a hearing held by the office. Provides that the appraisal district may be represented by the chief appraiser or a person designated by the chief appraiser.

Sec. 2003.911. Determination of Administrative Law Judge.

(a)

(b) Establishes that the issued determination must include a determination of the appraised or market value, as applicable, of the property that is the subject of the appeal, contain a brief analysis of the administrative law judge's rationale for and set out the key findings in

Sec. 2003.911. Same as House version except adds subsection (c) to specify that an authorized representative of a party may appear at the hearing to offer evidence, argument, or both, in the same manner as provided by Section 41.45, Tax Code.

Sec. 2003.912. Same as House version.

(a) Same as House version.

(b) Same as House version except stipulates that the determination may include any remedy or relief a court may order under Chapter 42, Tax Code, *except for the award of attorney's fees under Sec. 42.29, Tax Code*, in an appeal relating to the appraised or market value of

Sec. 2003.911. Same as Senate version.

Sec. 2003.912. Same as House version..

(a) Same as House version.

(b) Substantially the same as Senate version.

House Bill 3612
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

support of the determination but is not required to contain a detailed discussion of the evidence admitted or the contentions of the parties, may include any remedy or relief a court may order under Chapter 42, Tax Code, in an appeal relating to the appraised or market value of property, and shall specify whether the appraisal district or the property owner is required to pay the costs of the hearing and the amount of those costs.

property.

(c)-(e)

(c)-(e) Same as House version.

(c)-(e) Same as House version.

Sec. 2003.912. Payment of Taxes Pending Appeal.

Sec. 2003.913. Same as House version.

Sec. 2003.913. Same as House version.

Sec. 2003.913. JUDICIAL APPEAL.

Authorizes a final order of an administrative law judge determining an appeal brought under this subchapter to be appealed to a district court in the manner provided by Chapter 42, Tax Code. Prohibits a chief appraiser from bringing an appeal unless the board of directors of the appraisal district votes to allow the appeal. Provides that to the extent that they can be made applicable, the provisions of Chapter 42, Tax Code, also apply to an appeal of a final order of an administrative law judge determining an appeal brought under this subchapter.

No equivalent provision.

Same as Senate version.

Sec. 2003.914. EFFECT ON RIGHT TO JUDICIAL APPEAL. Specifies that an appeal to the office under this subchapter does not prevent the property owner from seeking judicial review of the order of the appraisal review board. Establishes that the period in which a

Sec. 2003.914. EFFECT ON RIGHT TO JUDICIAL APPEAL. Clarifies that an appeal to the office under this subchapter is an election of remedies and an alternative to bringing an appeal under Section 42.01, Tax Code.

Sec. 2003.914. Same as Senate version.

House Bill 3612
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

petition for review must be filed under Section 42.21, Tax Code, is tolled beginning on the date the notice of appeal under this subchapter is filed and ending on the date the administrative law judge issues the judge's determination.

Sec. 2003.915. Report to Legislature.
Sec. 2003.916. Expiration.

SECTION 2. Saving provision.

SECTION 3. Effective date.

SENATE VERSION

Secs. 2003.915-2003.916. Same as House version.

SECTION 2. Same as House version.

SECTION 3. Same as House version.

CONFERENCE

Sec. 2003.915-2003.916. Same as House version.

SECTION 2. Same as House version.

SECTION 3. Same as House version.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 30, 2009

**TO: Honorable David Dewhurst , Lieutenant Governor, Senate
Honorable Joe Straus, Speaker of the House, House of Representatives**

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB3612 by Otto (Relating to the creation of a pilot program that allows taxpayer appeals from certain appraisal review board determinations in certain counties to be heard by the State Office of Administrative Hearings.), Conference Committee Report

Because it is unknown whether the results of the pilot program would result in higher or lower appraised values statewide than under current law, there could be an indeterminate fiscal impact to the state.

The bill would add new Subchapter Z to Chapter 2003 of the Government Code, regarding the State Office of Administrative Hearings (SOAH).

The new subchapter would establish a pilot program allowing property owners to appeal appraisal review board (ARB) determinations for certain real or personal properties to SOAH.

The pilot program would be implemented in Bexar, El Paso, Harris, Tarrant, and Travis counties for a three-year period beginning January 1, 2010, and would be limited to 3,000 appeals. Owners of real or personal properties appraised at more than \$1 million could protest to SOAH determinations of ARBs resulting from protests of appraised and market value or unequal appraisal. Mineral and industrial property would be excluded. A SOAH determination would preclude a district court appeal. SOAH would have rulemaking authority to implement the pilot program.

The bill would require relevant education and training for SOAH administrative law judges and would set out notice and procedural requirements. SOAH and chief appraisers for counties included in the pilot program would submit a report at the end of the pilot program to the Legislature including recommendations for future action.

Currently, the only recourse for owners of property appraised at more than \$1 million who are dissatisfied with ARB determinations is to file suit in district court. The pilot program would allow these property owners, with the exception of industrial or minerals property owners, to protest ARB determinations to SOAH. According to the Comptroller of Public Accounts, the fiscal impact of this bill to the state and units of local government resulting from the pilot program cannot be determined because the success rate of property owners appealing to SOAH cannot be predicted.

SOAH estimates, based on the projected need to hire five additional experienced Administrative Law Judges and three additional support staff, the cost of the additional work would be \$884,742 for the first year and \$836,761 per year thereafter. These costs would be reimbursable to SOAH through retention of the filing fee when the appellant loses and by billing and collecting its costs from the losing party. Accordingly, the cost to SOAH for performing the work would not have a net fiscal impact on general revenue.

The bill would take effect January 1, 2010.

Local Government Impact

Because it is unknown whether the results of the pilot program would result in higher or lower appraised values than under current law, there could be an indeterminate fiscal impact to units of local government.

Source Agencies: 360 State Office of Administrative Hearings, 304 Comptroller of Public Accounts

LBB Staff: JOB, DB, SD, SJS, MN

Certification of Compliance with Rule 13, Section 6(b), House Rules of Procedure

Rule 13, Section 6(b), House Rules of Procedure, requires that a copy of a conference committee report signed by a majority of each committee of the conference must be furnished to each member of the committee in person or if unable to deliver in person by placing a copy in the member's newspaper mailbox at least one hour before the report is furnished to each member of the house under Section 10(a) of this rule. The paper copies of the report submitted to the chief clerk under Section 10(b) of this rule must contain a certificate that the requirement of this subsection has been satisfied, and that certificate must be attached to the printed copy of the report furnished to each member under Section 10(d) of this rule. Failure to comply with this subsection is not a sustainable point of order under this rule.

I certify that a copy of the conference committee report on H. B. 3612 was furnished to each member of the conference committee in compliance with Rule 13, Section 6(b), House Rules of Procedure, before submission of the paper copies of the report to the chief clerk under Section 10(b), Rule 13, House Rules of Procedure.

John Otto
(name)

5/30/09
(date)