

SENATE BILL No. 98

By Committee on Assessment and Taxation

1-28

1 AN ACT concerning property taxation; relating to the state board of tax
2 appeals; judicial review, burden of proof in district court; appointments,
3 extending the time a board member may continue to serve after
4 member's term expires; **authorizing appointment by the governor of a**
5 **member pro tempore under certain conditions**; amending K.S.A. 74-
6 2426 and 74-2433 and repealing the existing sections.

7
8 *Be it enacted by the Legislature of the State of Kansas:*

9 Section 1. K.S.A. 74-2426 is hereby amended to read as follows: 74-
10 2426. (a) Orders of the state board of tax appeals on any appeal, in any
11 proceeding under the tax protest, tax grievance or tax exemption statutes
12 or in any other original proceeding before the board shall be rendered and
13 served in accordance with the provisions of the Kansas administrative
14 procedure act. Notwithstanding the provisions of K.S.A. 77-526(g), and
15 amendments thereto, a written summary decision shall be rendered by the
16 board and served within 14 days after the matter was fully submitted to the
17 board unless this period is waived or extended with the written consent of
18 all parties or for good cause shown. Any aggrieved party, within 14 days of
19 receiving the board's decision, may request a full and complete opinion be
20 issued by the board in which the board explains its decision. Except as
21 provided in subsection (c)(4), this full opinion shall be served by the board
22 within 90 days of being requested. If the board has not rendered a
23 summary decision or a full and complete opinion within the time periods
24 described in this subsection, and such period has not been waived by the
25 parties nor can the board show good cause for the delay, then the board
26 shall refund any filing fees paid by the taxpayer.

27 (b) Final orders of the board shall be subject to review pursuant to
28 subsection (c) except that the aggrieved party may first file a petition for
29 reconsideration of a full and complete opinion with the board in
30 accordance with the provisions of K.S.A. 77-529, and amendments
31 thereto.

32 (c) Any action of the board pursuant to this section is subject to
33 review in accordance with the Kansas judicial review act, except that:

34 (1) The parties to the action for judicial review shall be the same
35 parties as appeared before the board in the administrative proceedings
36 before the board. The board shall not be a party to any action for judicial

1 review of an action of the board.

2 (2) There is no right to review of any order issued by the board in a
3 no-fund warrant proceeding pursuant to K.S.A. 12-110a, 12-1662 et seq.,
4 19-2752a, 79-2938, 79-2939 and 79-2951, and amendments thereto, and
5 statutes of a similar character.

6 (3) In addition to the cost of the preparation of the transcript, the
7 appellant shall pay to the state board of tax appeals the other costs of
8 certifying the record to the reviewing court. Such payment shall be made
9 prior to the transmission of the agency record to the reviewing court.

10 (4) Appeal of an order of the board shall be to the court of appeals as
11 provided in subsection (c)(4)(A), unless a taxpayer who is a party to the
12 order requests review in district court pursuant to subsection (c)(4)(B).

13 (A) Any aggrieved party may file a petition for review of the board's
14 order in the court of appeals. For purposes of such an appeal, the board's
15 order shall become final only after the issuance of a full and complete
16 opinion pursuant to subsection (a).

17 (B) At the election of a taxpayer, any summary decision or full and
18 complete opinion of the board of tax appeals issued after June 30, 2014,
19 may be appealed by filing a petition for review in the district court. Any
20 appeal to the district court shall be a trial de novo. Notwithstanding K.S.A.
21 77-619, and amendments thereto, the trial de novo shall include an
22 evidentiary hearing at which issues of law and fact shall be determined
23 anew. *With regard to any matter properly submitted to the district court*
24 *relating to the determination of valuation of residential property or real*
25 *property used for commercial and industrial purposes for taxation*
26 *purposes or the determination of classification of property for assessment*
27 *purposes, the county appraiser shall have the duty to initiate the*
28 *production of evidence to demonstrate, by a preponderance of the*
29 *evidence, the validity and correctness of such determination. District court*
30 *review of orders issued by the board relating to the valuation or*
31 *assessment of property for ad valorem tax purposes or relating to the tax*
32 *protest shall be conducted by the court of the county in which the property*
33 *is located, or, if located in more than one county, the court of any county in*
34 *which any portion of the property is located.*

35 (C) If a taxpayer requests review of a summary decision or full and
36 complete opinion in district court pursuant to subsection (c)(4)(B), the
37 taxpayer shall provide notice to the board as well as the parties. Upon
38 receipt of the notice, the board's jurisdiction shall terminate,
39 notwithstanding any prior request for a full and complete opinion under
40 subsection (a), and the board shall not issue such opinion.

41 (d) If review of an order of the state board of tax appeals to the court
42 of appeals relating to excise, income or estate taxes, is sought by a person
43 other than the director of taxation, such person shall give bond for costs at

1 the time the petition is filed. The bond shall be in the amount of 125% of
2 the amount of taxes assessed or a lesser amount approved by the court of
3 appeals and shall be conditioned on the petitioner's prosecution of the
4 review without delay and payment of all costs assessed against the
5 petitioner.

6 Sec. 2. K.S.A. 74-2433 is hereby amended to read as follows: 74-
7 2433. (a) There is hereby created a state board of tax appeals, referred to in
8 this act as the board. The board shall be composed of three members who
9 shall be appointed by the governor, subject to confirmation by the senate
10 as provided in K.S.A. 75-4315b, and amendments thereto. For members
11 appointed after June 30, 2014, one of such members shall have been
12 regularly admitted to practice law in the state of Kansas and for a period of
13 at least five years, have engaged in the active practice of law as a lawyer,
14 judge of a court of record or any other court in this state; one of such
15 members shall have engaged in active practice as a certified public
16 accountant for a period of at least five years and one such member shall be
17 a licensed certified general real property appraiser. In addition, the
18 governor shall also appoint a chief hearing officer, subject to confirmation
19 by the senate as provided in K.S.A. 75-4315b, and amendments thereto,
20 who, in addition to other duties prescribed by this act, shall serve as a
21 member pro tempore of the board. No successor shall be appointed for any
22 judge of the court of tax appeals appointed before July 1, 2014. Such
23 persons shall continue to serve as members on the board of tax appeals
24 until their terms expire. Except as provided by K.S.A. 46-2601, and
25 amendments thereto, no person appointed to the board, including the chief
26 hearing officer, shall exercise any power, duty or function as a member of
27 the board until confirmed by the senate. Not more than two members of
28 the board shall be of the same political party. Members of the board,
29 including the chief hearing officer, shall be residents of the state. Subject
30 to the provisions of K.S.A. 75-4315c, and amendments thereto, no more
31 than one member shall be appointed from any one of the congressional
32 districts of Kansas unless, after having exercised due diligence, the
33 governor is unable to find a qualified replacement within 90 days after any
34 vacancy on the board occurs. The members of the board, including the
35 chief hearing officer, shall be selected with special reference to training
36 and experience for duties imposed by this act and shall be individuals with
37 legal, tax, accounting or appraisal training and experience. State board of
38 tax appeals members shall be subject to the supreme court rules of judicial
39 conduct applicable to all judges of the district court. The board shall be
40 bound by the doctrine of stare decisis limited to published decisions of an
41 appellate court. Members of the board, including the chief hearing officer,
42 shall hold office for terms of four years. A member may continue to serve
43 for a period of ~~90~~ 180 days after the expiration of the member's term, or

1 until a successor has been appointed and confirmed, whichever is shorter.
2 Except as otherwise provided, such terms of office shall expire on January
3 15 of the last year of such term. If a vacancy occurs on the board, or in the
4 position for chief hearing officer, the governor shall appoint a successor to
5 fill the vacancy for the unexpired term. Nothing in this section shall be
6 construed to prohibit the governor from reappointing any member of the
7 board, including the chief hearing officer, for additional four-year terms.
8 The governor shall select one of its members to serve as chairperson. The
9 votes of two members shall be required for any final order to be issued by
10 the board. Meetings may be called by the chairperson and shall be called
11 on request of a majority of the members of the board and when otherwise
12 prescribed by statute.

13 (b) Any member appointed to the state board of tax appeals and the
14 chief hearing officer may be removed by the governor for cause, after
15 public hearing conducted in accordance with the provisions of the Kansas
16 administrative procedure act.

17 (c) The state board of tax appeals shall appoint, subject to approval
18 by the governor, an executive director of the board, to serve at the pleasure
19 of the board. The executive director shall: (1) Be in the unclassified
20 service under the Kansas civil service act; (2) devote full time to the
21 executive director's assigned duties; (3) receive such compensation as
22 determined by the board, subject to the limitations of appropriations
23 thereof; and (4) have familiarity with the tax appeals process sufficient to
24 fulfill the duties of the office of executive director. The executive director
25 shall perform such other duties as directed by the board.

26 (d) Appeals decided by the state board of tax appeals shall be made
27 available to the public and shall be published by the board on the board's
28 website within 30 days after the decision has been rendered. The board
29 shall also publish a monthly report that includes all appeals decided that
30 month as well as all appeals which have not yet been decided and are
31 beyond the time limitations as set forth in K.S.A. 74-2426, and
32 amendments thereto. Such report shall be made available to the public and
33 transmitted by the board to the members of the Kansas legislature.

34 (e) After appointment, members of the state board of tax appeals that
35 are not otherwise a state certified general real property appraiser shall
36 complete the following course requirements: (1) A tested appraisal course
37 of not less than 30 clock hours of instruction consisting of the
38 fundamentals of real property appraisal with an emphasis on the cost and
39 sales approaches to value; (2) a tested appraisal course of not less than 30
40 clock hours of instruction consisting of the fundamentals of real property
41 appraisal with an emphasis on the income approach to value; (3) a tested
42 appraisal course of not less than 30 clock hours of instruction with an
43 emphasis on mass appraisal; (4) an appraisal course with an emphasis on

1 Kansas property tax laws; (5) an appraisal course on the techniques and
2 procedures for the valuation of state assessed properties with an emphasis
3 on unit valuation; and (6) a tested appraisal course on the techniques and
4 procedures for the valuation of land devoted to agricultural use pursuant to
5 K.S.A. 79-1476, and amendments thereto. Any member appointed to the
6 board who is a certified real property appraiser shall only be required to
7 take such educational courses as are required to maintain the appraisal
8 license. The executive director shall adopt rules and regulations
9 prescribing a timetable for the completion of the course requirements and
10 prescribing continued education requirements for members of the board.

11 (f) The state board of tax appeals shall have no capacity or power to
12 sue or be sued.

13 (g) It is the intent of the legislature that proceedings in front of the
14 board of tax appeals be conducted in a fair and impartial manner and that
15 all taxpayers are entitled to a neutral interpretation of the tax laws of the
16 state of Kansas. The provisions of the tax laws of this state shall be applied
17 impartially to both taxpayers and taxing districts in cases before the board.
18 Valuation appeals before the board shall be decided upon a determination
19 of the fair market value of the fee simple of the property. Nothing in this
20 section shall prohibit a property owner, during a property valuation appeal
21 before the board, from raising arguments regarding classification. Cases
22 before the board shall not be decided upon arguments concerning the
23 shifting of the tax burden or upon any revenue loss or gain which may be
24 experienced by the taxing district.

25 ***(h) Notwithstanding any provisions of subsection (a) to the***
26 ***contrary, the governor may appoint a former member in good standing***
27 ***of the board of tax appeals to serve as a member pro tempore of the***
28 ***board for a period not to exceed one year when, after having exercised***
29 ***due diligence, more than one vacancy on the board exists. Such member***
30 ***pro tempore may exercise any power, duty or function as is necessary to***
31 ***serve as a member of the board. Such member pro tempore shall serve at***
32 ***the pleasure of the governor and receive compensation for each day of***
33 ***actual attendance or work as a member based on a proration of the***
34 ***annual salary provided in K.S.A. 74-2434, and amendments thereto. The***
35 ***provisions of this subsection shall expire on June 30, 2023.***

36 Sec. 3. K.S.A. 74-2426 and 74-2433 are hereby repealed.

37 Sec. 4. This act shall take effect and be in force from and after its
38 publication in the statute book.