

HB0270S01 compared with HB0270

~~deleted text~~ shows text that was in HB0270 but was deleted in HB0270S01.

inserted text shows text that was not in HB0270 but was inserted into HB0270S01.

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Representative Timothy D. Hawkes proposes the following substitute bill:

PROPERTY TAX VALUATION AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Timothy D. Hawkes

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions of the Property Tax Act related to valuation and appeals.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ clarifies and amends:
 - the burdens of proof for appeals involving certain real property for which there was a reduction in assessed value after the county assessor issued the valuation notice; and
 - the application of the automatic county review process for certain real property valuations or equalizations that exceed a threshold; and
- ▶ makes technical and conforming changes.

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Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

This bill provides retrospective operation.

Utah Code Sections Affected:

AMENDS:

59-2-109, as last amended by Laws of Utah 2019, Chapter 16

59-2-303.2, as enacted by Laws of Utah 2019, Chapter 16

59-2-1004, as last amended by Laws of Utah 2020, Chapter 86

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **59-2-109** is amended to read:

59-2-109. Burden of proof.

(1) As used in this section:

(a) "Final assessed value" means:

(i) for real property for which the taxpayer appealed the valuation or equalization to the county board of equalization in accordance with Section 59-2-1004, the value given to the real property by ~~[a] the~~ county board of equalization ~~[after the appeal]~~, including a value based on a stipulation of the parties;

(ii) for real property for which the taxpayer or a county assessor appealed the valuation or equalization to the commission in accordance with Section 59-2-1006, the value given to the real property by:

(A) the commission, if the commission has issued a decision in the appeal or the parties have entered a stipulation; or

(B) a county board of equalization, if the commission has not yet issued a decision in the appeal and the parties have not entered a stipulation; ~~{}~~ or ~~{}~~

(iii) for real property for which the taxpayer or a county assessor sought judicial review of the valuation or equalization in accordance with Section 59-1-602 or Title 63G, Chapter 4, Part 4, Judicial Review, the value given the real property by the commission ~~{}~~. ~~{}~~ or ~~{}~~

~~{~~ (iv) the value given to real property by stipulation between the taxpayer and the county

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~~assessor after the county auditor issues the valuation notice described in Section 59-2-919.1.~~

~~†~~ (b) "Inflation adjusted value" means the [value of the real property that is the subject of the appeal as calculated by the county assessor in accordance with Subsection 59-2-1004(2)(c)] same as that term is defined in Section 59-2-1004.

(c) "Qualified real property" means real property:

(i) that is assessed by a county assessor in accordance with Part 3, County Assessment;

(ii) for which:

~~††~~(A) the taxpayer or a county assessor appealed the valuation or equalization for the previous taxable year to the county board of equalization in accordance with Section 59-2-1004 or the commission in accordance with Section 59-2-1006;~~††~~

~~††~~(B) [as a result of] the appeal described in Subsection (1)(c)(ii)(A)[, a county board of equalization or the commission gave] resulted in a final assessed value that was lower than the assessed value; and~~††~~

~~——~~ ~~(A) the final assessed value for the previous taxable year was lower than the assessed value stated on the valuation notice described in Section 59-2-919.1 for the same taxable year; and~~

~~——~~ ~~[(C)](B)†~~

(C) the assessed value for the current taxable year is higher than the inflation adjusted value; and

(iii) that, [between] on or after January 1 of the previous taxable year and before January 1 of the current taxable year, has not [been improved or changed beyond the improvements in place on January 1 of the previous taxable year.] had a qualifying change.

(d) "Qualifying change" means one of the following changes to real property that occurs on or after January 1 of the previous taxable year and before January 1 of the current taxable year:

(i) a physical improvement if, solely as a result of the physical improvement, the fair market value of the physical improvement equals or exceeds the greater of 10% of fair market value of the real property or \$20,000;

(ii) a zoning change, if the fair market value of the real property increases solely as a result of the zoning change; or

(iii) a change in the legal description of the real property, if the fair market value of the

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real property increases solely as a result of the change in the legal description of the real property.

(2) For an appeal involving the valuation of real property to the county board of equalization or the commission, the party carrying the burden of proof shall demonstrate:

(a) substantial error in:

(i) for an appeal not involving qualified real property:

(A) if Subsection (3) does not apply and the appeal is to the county board of equalization, the original assessed value;

(B) if Subsection (3) does not apply and the appeal is to the commission, the value given to the property by the county board of equalization; or

(C) if Subsection (3) applies, the original assessed value; or

(ii) for an appeal involving qualified real property, the inflation adjusted value; and

(b) a sound evidentiary basis upon which the county board of equalization or the commission could adopt a different valuation.

(3) (a) The party described in Subsection (3)(b) shall carry the burden of proof before a county board of equalization or the commission, in an action appealing the value of property:

(i) that is not qualified real property; and

(ii) for which a county assessor, a county board of equalization, or the commission asserts that the fair market value of the assessed property is greater than the original assessed value for that calendar year.

(b) For purposes of Subsection (3)(a), the following have the burden of proof:

(i) for property assessed under Part 3, County Assessment:

(A) the county assessor, if the county assessor is a party to the appeal that asserts that the fair market value of the assessed property is greater than the original assessed value for that calendar year; or

(B) the county board of equalization, if the county board of equalization is a party to the appeal that asserts that the fair market value of the assessed property is greater than the original assessed value for that calendar year; or

(ii) for property assessed under Part 2, Assessment of Property, the commission, if the commission is a party to the appeal that asserts that the fair market value of the assessed property is greater than the original assessed value for that calendar year.

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(c) For purposes of this Subsection (3) only, if a county assessor, county board of equalization, or the commission asserts that the fair market value of the assessed property is greater than the original assessed value for that calendar year:

- (i) the original assessed value shall lose the presumption of correctness;
- (ii) a preponderance of the evidence shall suffice to sustain the burden for all parties;

and

(iii) the county board of equalization or the commission shall be free to consider all evidence allowed by law in determining fair market value, including the original assessed value.

(4) (a) The party described in Subsection (4)(b) shall carry the burden of proof before a county board of equalization or the commission in an action appealing the value of qualified real property if at least one party presents evidence of or otherwise asserts a value other than inflation adjusted value.

(b) For purposes of Subsection (4)(a):

(i) the county assessor or the county board of equalization that is a party to the appeal has the burden of proof if the county assessor or county board of equalization presents evidence of or otherwise asserts a value that is greater than or equal to the inflation adjusted value; or

(ii) the taxpayer that is a party to the appeal has the burden of proof if the taxpayer presents evidence of or otherwise asserts a value that is less than the inflation adjusted value.

(c) The burdens of proof described in Subsection (4)(b) apply before a county board of equalization or the commission even if the previous year's valuation is:

(i) pending an appeal requested in accordance with Section 59-2-1006 or judicial review requested in accordance with Section 59-1-602 or Title 63G, Chapter 4, Part 4, Judicial Review; or

(ii) overturned by the commission as a result of an appeal requested in accordance with Section 59-2-1006 or by a court of competent jurisdiction as a result of judicial review requested in accordance with Section 59-1-602 or Title 63G, Chapter 4, Part 4, Judicial Review.

Section 2. Section **59-2-303.2** is amended to read:

59-2-303.2. Automatic review of assessed value of review property.

(1) As used in this section:

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(a) "Final assessed value" means:

(i) for a review property for which the taxpayer did not appeal the valuation or equalization in accordance with Section 59-2-1004, the assessed value as stated on the valuation notice described in Section 59-2-919.1;

(ii) for a review property for which the taxpayer appealed the valuation or equalization in accordance with Section 59-2-1004, the assessed value given to the review property by [a] the county board of equalization [after the appeal], including an assessed value based on a stipulation of the parties;

(iii) for real property for which the taxpayer or a county assessor appealed the valuation or equalization to the commission in accordance with Section 59-2-1006, the value given to the real property by:

(A) the commission, if the commission has issued a decision in the appeal or the parties have entered a stipulation; or

(B) a county board of equalization, if the commission has not yet issued a decision in the appeal and the parties have not entered a stipulation; or

(iv) for real property for which the taxpayer or a county assessor sought judicial review of the valuation or equalization in accordance with Section 59-1-602 or Title 63G, Chapter 4, Part 4, Judicial Review, the value given the real property by the commission.

(b) "Median property value change" means the midpoint of the property value changes for all real property that is:

(i) of the same class of real property as the review property; and

(ii) located within the same county and within the same market area as the review property.

(c) "Property value change" means the percentage change in the fair market value of real property [between] on or after January 1 of the previous year and before January 1 of the current year.

(d) "Qualifying change" means one of the following changes to real property that occurs on or after January 1 of the previous taxable year and before January 1 of the current taxable year:

(i) a physical improvement if, solely as a result of the physical improvement, the fair market value of the physical improvement equals or exceeds the greater of 10% of fair market

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value of the real property or \$20,000;

(ii) a zoning change, if the fair market value of the real property increases solely as a result of the zoning change; or

(iii) a change in the legal description of the real property, if the fair market value of the real property increases solely as a result of the change in the legal description of the real property.

~~[(d)]~~ (e) "Review property" means real property located in the county:

(i) that ~~[between]~~ on or after January 1 of the previous year and before January 1 of the current year has not ~~[been improved or changed beyond improvements in place on January 1 of the previous taxable year]~~ had a qualifying change; and

(ii) for which the county assessor did not conduct a detailed review of property characteristics during the current taxable year.

~~[(e)]~~ (f) "Threshold increase" means an increase in a review property's assessed value for the current taxable year compared to the final assessed value of the review property for the previous taxable year that is:

- (i) the median property value change plus 15%; and
- (ii) at least \$10,000.

(2) (a) Before completing and delivering the assessment book to the county auditor in accordance with Section 59-2-311, the county assessor shall review the assessment of a review property for which the assessed value for the current taxable year is equal to or exceeds the threshold increase.

(b) The county assessor shall retain a record of the properties for which the county assessor conducts a review in accordance with this section and the results of that review.

(3) (a) If the county assessor determines that the assessed value of the review property reflects the review property's fair market value, the county assessor ~~[shall]~~ may not adjust the review property's assessed value.

(b) If the county assessor determines that the assessed value of the review property does not reflect the review property's fair market value, the county assessor shall adjust the assessed value of the review property to reflect the fair market value.

(4) The review process described in this section does not supersede or otherwise affect a taxpayer's right to appeal or to seek judicial review of the valuation or equalization of a

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review property in accordance with:

- (a) this part;
- (b) Title 59, Chapter 1, Part 6, Judicial Review; or
- (c) Title 63G, Chapter 4, Part 4, Judicial Review.

Section 3. Section **59-2-1004** is amended to read:

59-2-1004. Appeal to county board of equalization -- Real property -- Time period for appeal -- Public hearing requirements -- Decision of board -- Extensions approved by commission -- Appeal to commission.

(1) As used in this section:

(a) "Final assessed value" means:

(i) for real property for which the taxpayer appealed the valuation or equalization to the county board of equalization in accordance with this section, the value given to the real property by ~~[a] the~~ county board of equalization ~~[after the appeal]~~, including a value based on a stipulation of the parties;

(ii) for real property for which the taxpayer or a county assessor appealed the valuation or equalization to the commission in accordance with Section 59-2-1006, the value given to the real property by:

(A) the commission, if the commission has issued a decision in the appeal or the parties have entered a stipulation; or

(B) a county board of equalization, if the commission has not yet issued a decision in the appeal and the parties have not entered a stipulation; ~~{}~~ or ~~{}~~

(iii) for real property for which the taxpayer or a county assessor sought judicial review of the valuation or equalization in accordance with Section 59-1-602 or Title 63G, Chapter 4, Part 4, Judicial Review, the value given the real property by the commission ~~{}~~. ~~{}~~ or ~~{}~~

~~{~~ (iv) the value given to real property by stipulation between the taxpayer and the county assessor after the county auditor issues the valuation notice described in Section 59-2-919.1.

~~}~~ (b) "Inflation adjusted value" means the value of the real property that is the subject of the appeal as calculated by ~~[the county assessor in accordance with Subsection (2)(c)]~~ changing the final assessed value for the previous taxable year for the real property by the median property value change.

(c) "Median property value change" means the midpoint of the property value changes

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for all real property that is:

- (i) of the same class of real property as the qualified real property; and
- (ii) located within the same county and within the same market area as the qualified

real property.

(d) "Property value change" means the percentage change in the fair market value of real property ~~between~~ on or after January 1 of the previous year and before January 1 of the current year.

(e) "Qualified real property" means real property:

(i) for which:

~~[(A)]~~ (A) the taxpayer or a county assessor appealed the valuation or equalization for the previous taxable year to the county board of equalization in accordance with this section or the commission in accordance with Section 59-2-1006; ~~[(B)]~~

~~[(B)]~~ (B) ~~[as a result of]~~ the appeal described in Subsection (1)(e)(i)(A), ~~[a county board of equalization or the commission gave]~~ resulted in a final assessed value that was lower than the assessed value; and ~~[(C)]~~

~~[(A)]~~ (A) the final assessed value for the previous taxable year was lower than the assessed value stated on the valuation notice described in Section 59-2-919.1 for the same taxable year; and

~~[(C)]~~ ~~(B)~~

(C) the assessed value for the current taxable year is higher than the inflation adjusted value; and

(ii) that, ~~between~~ on or after January 1 of the previous taxable year and before January 1 of the current taxable year, has not ~~[been improved or changed beyond the improvements in place on January 1 of the previous taxable year.]~~ had a qualifying change.

(f) "Qualifying change" means one of the following changes to real property that occurs on or after January 1 of the previous taxable year and before January 1 of the current taxable year:

(i) a physical improvement if, solely as a result of the physical improvement, the fair market value of the physical improvement equals or exceeds the greater of 10% of fair market value of the real property or \$20,000;

(ii) a zoning change, if the fair market value of the real property increases solely as a

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result of the zoning change; or

(iii) a change in the legal description of the real property, if the fair market value of the real property increases solely as a result of the change in the legal description of the real property.

(2) (a) A taxpayer dissatisfied with the valuation or the equalization of the taxpayer's real property may make an application to appeal by:

(i) filing the application with the county board of equalization within the time period described in Subsection (3); or

(ii) making an application by telephone or other electronic means within the time period described in Subsection (3) if the county legislative body passes a resolution under Subsection (8) authorizing a taxpayer to make an application by telephone or other electronic means.

(b) (i) The county board of equalization shall make a rule describing the contents of the application.

(ii) In addition to any information the county board of equalization requires, the application shall include information about:

(A) the burden of proof in an appeal involving qualified real property; and

(B) the process for the taxpayer to learn the inflation adjusted value of the qualified real property.

~~[(c) (i) The county assessor shall calculate inflation adjusted value by changing the final assessed value for the previous taxable year of the real property that is the subject of the appeal by the median property value change.]~~

~~[(ii)] (c) (i) (A) The county assessor shall notify the county board of equalization of a qualified real property's inflation adjusted value within 15 business days after the date on which the county assessor receives notice that a taxpayer filed an appeal with the county board of equalization.~~

(B) The county assessor shall notify the commission of a qualified real property's inflation adjusted value within 15 business days after the date on which the county assessor receives notice that a person dissatisfied with the decision of a county board of equalization files an appeal with the commission.

~~[(iii)] (ii) (A) A person may not appeal a county assessor's calculation of inflation~~

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adjusted value but may appeal the fair market value of a qualified real property.

(B) A person may appeal a determination of whether, on or after January 1 of the previous taxable year and before January 1 of the current taxable year, real property had a qualifying change.

(3) (a) Except as provided in Subsection (3)(b) and for purposes of Subsection (2), a taxpayer shall make an application to appeal the valuation or the equalization of the taxpayer's real property on or before the later of:

(i) September 15 of the current calendar year; or

(ii) the last day of a 45-day period beginning on the day on which the county auditor provides the notice under Section 59-2-919.1.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules providing for circumstances under which the county board of equalization is required to accept an application to appeal that is filed after the time period prescribed in Subsection (3)(a).

(4) (a) Except as provided in Subsection (4)(b), the taxpayer shall include in the application under Subsection (2)(a):

(i) the taxpayer's estimate of the fair market value of the property and any evidence that may indicate that the assessed valuation of the taxpayer's property is improperly equalized with the assessed valuation of comparable properties; and

(ii) a signed statement of the personal property located in a multi-tenant residential property, as that term is defined in Section 59-2-301.8 if the taxpayer:

(A) appeals the value of multi-tenant residential property assessed in accordance with Section 59-2-301.8; and

(B) intends to contest the value of the personal property located within the multi-tenant residential property.

(b) (i) For an appeal involving qualified real property:

(A) the county board of equalization shall presume that the fair market value of the qualified real property is equal to the inflation adjusted value; and

(B) except as provided in Subsection (4)(b)(ii), the taxpayer may provide the information described in Subsection (4)(a).

(ii) If the taxpayer seeks to prove that the fair market value of the qualified real

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property is below the inflation adjusted value, the taxpayer shall provide the information described in Subsection (4)(a).

(5) In reviewing evidence submitted to a county board of equalization by or on behalf of an owner or a county assessor, the county board of equalization shall consider and weigh:

(a) the accuracy, reliability, and comparability of the evidence presented by the owner or the county assessor;

(b) if submitted, the sales price of relevant property that was under contract for sale as of the lien date but sold after the lien date;

(c) if submitted, the sales offering price of property that was offered for sale as of the lien date but did not sell, including considering and weighing the amount of time for which, and manner in which, the property was offered for sale; and

(d) if submitted, other evidence that is relevant to determining the fair market value of the property.

(6) (a) The county board of equalization shall meet and hold public hearings as described in Section 59-2-1001.

(b) (i) For purposes of this Subsection (6)(b), "significant adjustment" means a proposed adjustment to the valuation of real property that:

(A) is to be made by a county board of equalization; and

(B) would result in a valuation that differs from the original assessed value by at least 20% and \$1,000,000.

(ii) When a county board of equalization is going to consider a significant adjustment, the county board of equalization shall:

(A) list the significant adjustment as a separate item on the agenda of the public hearing at which the county board of equalization is going to consider the significant adjustment; and

(B) for purposes of the agenda described in Subsection (6)(b)(ii)(A), provide a description of the property for which the county board of equalization is considering a significant adjustment.

(c) The county board of equalization shall make a decision on each appeal filed in accordance with this section within 60 days after the day on which the taxpayer makes an application.

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(d) The commission may approve the extension of a time period provided for in Subsection (6)(c) for a county board of equalization to make a decision on an appeal.

(e) Unless the commission approves the extension of a time period under Subsection (6)(d), if a county board of equalization fails to make a decision on an appeal within the time period described in Subsection (6)(c), the county legislative body shall:

(i) list the appeal, by property owner and parcel number, on the agenda for the next meeting the county legislative body holds after the expiration of the time period described in Subsection (6)(c); and

(ii) hear the appeal at the meeting described in Subsection (6)(e)(i).

(f) The decision of the county board of equalization shall contain:

(i) a determination of the valuation of the property based on fair market value; and

(ii) a conclusion that the fair market value is properly equalized with the assessed value of comparable properties.

(g) If no evidence is presented before the county board of equalization, the county board of equalization shall presume that the equalization issue has been met.

(h) (i) If the fair market value of the property that is the subject of the appeal deviates plus or minus 5% from the assessed value of comparable properties, the county board of equalization shall adjust the valuation of the appealed property to reflect a value equalized with the assessed value of comparable properties.

(ii) Subject to Sections 59-2-301.1, 59-2-301.2, 59-2-301.3, and 59-2-301.4, equalized value established under Subsection (6)(h)(i) shall be the assessed value for property tax purposes until the county assessor is able to evaluate and equalize the assessed value of all comparable properties to bring all comparable properties into conformity with full fair market value.

(7) If any taxpayer is dissatisfied with the decision of the county board of equalization, the taxpayer may file an appeal with the commission as described in Section 59-2-1006.

(8) A county legislative body may pass a resolution authorizing taxpayers owing taxes on property assessed by that county to file property tax appeals applications under this section by telephone or other electronic means.

Section 4. Effective date.

If approved by two-thirds of all the members elected to each house, this bill takes effect

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upon approval by the governor, or the day following the constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

Section ~~{4}~~5. **Retrospective operation.**

This bill has retrospective operation to January 1, 2021.