

**SENATE BILL No. 309**

By Committee on Assessment and Taxation

1-23

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

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

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

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

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

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

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

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

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

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

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

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

40 (d) If review of an order of the state board of tax appeals to the court  
41 of appeals relating to excise, income or estate taxes, is sought by a person  
42 other than the director of taxation, such person shall give bond for costs at  
43 the time the petition is filed. The bond shall be in the amount of 125% of

1 the amount of taxes assessed or a lesser amount approved by the court of  
2 appeals and shall be conditioned on the petitioner's prosecution of the  
3 review without delay and payment of all costs assessed against the  
4 petitioner.

5 *{Sec. 2. K.S.A. 74-2433 is hereby amended to read as follows: 74-  
6 2433. (a) There is hereby created a state board of tax appeals, referred to  
7 in this act as the board. The board shall be composed of three members  
8 who shall be appointed by the governor, subject to confirmation by the  
9 senate as provided in K.S.A. 75-4315b, and amendments thereto. For  
10 members appointed after June 30, 2014, one of such members shall have  
11 been regularly admitted to practice law in the state of Kansas and for a  
12 period of at least five years, have engaged in the active practice of law as  
13 a lawyer, judge of a court of record or any other court in this state; one  
14 of such members shall have engaged in active practice as a certified  
15 public accountant for a period of at least five years and one such  
16 member shall be a licensed certified general real property appraiser. In  
17 addition, the governor shall also appoint a chief hearing officer, subject  
18 to confirmation by the senate as provided in K.S.A. 75-4315b, and  
19 amendments thereto, who, in addition to other duties prescribed by this  
20 act, shall serve as a member pro tempore of the board. No successor  
21 shall be appointed for any judge of the court of tax appeals appointed  
22 before July 1, 2014. Such persons shall continue to serve as members on  
23 the board of tax appeals until their terms expire. Except as provided by  
24 K.S.A. 46-2601, and amendments thereto, no person appointed to the  
25 board, including the chief hearing officer, shall exercise any power, duty  
26 or function as a member of the board until confirmed by the senate. Not  
27 more than two members of the board shall be of the same political party.  
28 Members of the board, including the chief hearing officer, shall be  
29 residents of the state. Subject to the provisions of K.S.A. 75-4315c, and  
30 amendments thereto, no more than one member shall be appointed from  
31 any one of the congressional districts of Kansas unless, after having  
32 exercised due diligence, the governor is unable to find a qualified  
33 replacement within 90 days after any vacancy on the board occurs. The  
34 members of the board, including the chief hearing officer, shall be  
35 selected with special reference to training and experience for duties  
36 imposed by this act and shall be individuals with legal, tax, accounting  
37 or appraisal training and experience. State board of tax appeals  
38 members shall be subject to the supreme court rules of judicial conduct  
39 applicable to all judges of the district court. The board shall be bound by  
40 the doctrine of stare decisis limited to published decisions of an appellate  
41 court. Members of the board, including the chief hearing officer, shall  
42 hold office for terms of four years. A member may continue to serve for  
43 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*  
2 *shorter. Except as otherwise provided, such terms of office shall expire*  
3 *on January 15 of the last year of such term. If a vacancy occurs on the*  
4 *board, or in the position for chief hearing officer, the governor shall*  
5 *appoint a successor to fill the vacancy for the unexpired term. Nothing*  
6 *in this section shall be construed to prohibit the governor from*  
7 *reappointing any member of the board, including the chief hearing*  
8 *officer, for additional four-year terms. The governor shall select one of*  
9 *its members to serve as chairperson. The votes of two members shall be*  
10 *required for any final order to be issued by the board. Meetings may be*  
11 *called by the chairperson and shall be called on request of a majority of*  
12 *the members of the board and when otherwise 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*  
16 *Kansas 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*  
19 *pleasure of the board. The executive director shall: (1) Be in the*  
20 *unclassified service under the Kansas civil service act; (2) devote full*  
21 *time to the executive director's assigned duties; (3) receive such*  
22 *compensation as determined by the board, subject to the limitations of*  
23 *appropriations thereof; and (4) have familiarity with the tax appeals*  
24 *process sufficient to fulfill the duties of the office of executive director.*  
25 *The executive director shall perform such other duties as directed by the*  
26 *board.*

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

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

1 *(3) a tested appraisal course of not less than 30 clock hours of*  
2 *instruction with an emphasis on mass appraisal; (4) an appraisal course*  
3 *with an emphasis on Kansas property tax laws; (5) an appraisal course*  
4 *on the techniques and procedures for the valuation of state assessed*  
5 *properties with an emphasis on unit valuation; and (6) a tested appraisal*  
6 *course on the techniques and procedures for the valuation of land*  
7 *devoted to agricultural use pursuant to K.S.A. 79-1476, and amendments*  
8 *thereto. Any member appointed to the board who is a certified real*  
9 *property appraiser shall only be required to take such educational*  
10 *courses as are required to maintain the appraisal license. The executive*  
11 *director shall adopt rules and regulations prescribing a timetable for the*  
12 *completion of the course requirements and prescribing continued*  
13 *education requirements for members of the board.*

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

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

28 ~~Sec. 2. {3.}~~ K.S.A. 74-2426 ~~is {and 74-2433 are}~~ hereby repealed.

29 ~~Sec. 3. {4.}~~ This act shall take effect and be in force from and after its  
30 publication in the ~~statute book~~ *{Kansas register}*.