

BILL ANALYSIS

Senate Research Center

S.B. 247
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Business & Commerce
7/11/2013
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Under current law, property owners may obtain a property tax loan whereby a lender pays the property owner's tax bill in exchange for the tax lien that the taxing authority placed on the property at the beginning of the year. This lien remains a priority lien after the taxing entity transfers it to the property tax lender.

Current law also provides that property tax lenders must obtain a license from the Office of Consumer Credit Commissioner (CCC) in order to operate in the state. In addition, the interest that a property tax lender may charge is capped at 18 percent. Other restrictions on the industry include limitations on who can obtain a property tax loan, a prescribed disclosure statement that must be provided to property owners, and limits on the type and amount of post-closing fees that property tax lenders can assess against property owners.

Despite these regulations, there is a growing sense of concern that some in the industry are taking advantage of property owners through the non-judicial foreclosure process and fraudulent advertisements, among other mechanisms. In addition, some fear that property tax lenders are threatening market stability by using property tax liens as a bundled investment mechanism.

S.B. 247 amends current law relating to the transfer of an ad valorem tax liens, and provides an administrative penalty.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to Finance Commission of Texas in SECTION 2 (Section 351.0023, Finance Code), SECTION 3 (Section 351.003, Finance Code), and SECTION 8 (Section 32.06, Tax Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 351.0021(c), Finance Code, to prohibit a property tax lender or any successor in interest from charging any fee, other than interest, after closing in connection with the transfer of a tax lien unless the fee is expressly authorized under this section, or any interest that is not expressly authorized under Section 32.06 (Transfer of Tax Lien), Tax Code.

SECTION 2. Amends Subchapter A, Chapter 351, Finance Code, by adding Sections 351.0022 and 351.0023, as follows:

Sec. 351.0022. WAIVER PROHIBITED. Prohibits a property owner from waiving or limiting a requirement imposed on a property tax lender by this chapter except as specifically permitted by this chapter or Chapter 32 (Tax Liens and Personal Liability), Tax Code.

Sec. 351.0023. SOLICITATION OF LOANS; NOTICE. (a) Sets forth the language and font size of a notice that a property tax lender who solicits property tax loans by mail, e-mail, or other print or electronic media is required to include on the first page of all solicitation materials.

(b) Sets forth the language of a notice that a property tax lender who solicits property tax loans by broadcast media, including a television or radio broadcast, is required to state in a broadcast.

(c) Prohibits a property tax lender from, in any manner, advertising or causing to be advertised a false, misleading, or deceptive statement or representation relating to a rate, term, or condition of a property tax loan.

(d) Requires a property tax lender who refers to a rate or charge in an advertisement to state the rate or charge fully and clearly. Requires the advertisement to include the annual percentage rate and specifically refer to the rate as an "annual percentage rate," if the rate or charge is a rate of finance charge. Requires that the advertisement state that the annual percentage rate may be increased after the contract is executed, if applicable. Prohibits the advertisement from referring to any other rate, except that a simple annual rate that is applied to the unpaid balance of a property tax loan is authorized to be stated in conjunction with, but not more conspicuously than, the annual percentage rate.

(e) Requires the advertisement, if an advertisement for a property tax loan includes the number of payments, period of repayment, amount of any payment, or amount of any finance charges, in addition to any applicable requirements of Subsection (d), to include:

(1) the terms of repayment, including the repayment obligations over the full term of the loan and any balloon payment;

(2) the annual percentage rate, and must refer to that rate as the annual percentage rate; and

(3) a statement that the lender may increase the annual percentage rate after the contract is executed, if applicable.

(f) Authorizes the Texas Finance Commission (finance commission) to adopt rules to implement and enforce this section.

(g) Authorizes the consumer credit commissioner (commissioner) to assess an administrative penalty under Subchapter F (Administrative Penalty; Restitution Order; Assurance of Voluntary Compliance), Chapter 14 (Consumer Credit Commissioner), against a property tax lender who violates this section, regardless of whether the violation is knowing or willful, notwithstanding Section 14.251 (Assessment of Penalty; Restitution Order).

SECTION 3. Amends Section 351.003, Finance Code, as follows:

Sec. 351.003. SECONDARY MARKET TRANSACTIONS. (a) Creates an exception to this chapter under Section (b). Makes a nonsubstantive change.

(b) Prohibits a person from selling, transferring, assigning, or releasing rights to a property tax loan to a person who is not licensed under Section 351.051 (License Required) or exempt from the application of this chapter under Section 351.051(c) (relating to the entities and individuals to which this chapter does not apply).

(c) Requires the finance commission to adopt rules to implement this section.

SECTION 4. Amends Section 351.051(c), Finance Code, as follows:

(c) Provides that, except as provided by Section 351.003, this chapter does not apply to certain entities of an employee of certain entities, or to an individual who is related to the property owner within the second degree of consanguinity or affinity, as determined under Chapter 573 (Degrees of Relationship; Nepotism Prohibitions), Government Code.

Deletes existing text providing that this chapter does not apply to an individual who makes a property tax loan from the individual's own funds to a spouse, former spouse, or persons in the lineal line of consanguinity of the individual lending money.

SECTION 5. Amends Section 351.054(a), Finance Code, to require a transferee of a tax lien to include with the sworn document executed by the borrower and filed with the collector of a taxing unit under Section 32.06(a-1) (relating to a person being authorized to pay the taxes imposed by a taxing unit on the person's real property by filing certain documents and information with the collector), Tax Code, the information required by this section.

SECTION 6. Amends the heading to Section 32.06, Tax Code, to read as follows:

Sec. 32.06. PROPERTY TAX LOANS; TRANSFER OF TAX LIEN.

SECTION 7. Amends Section 32.06(a)(2), Tax Code, to redefine "transferee."

SECTION 8. Amends Section 32.06, Tax Code, by amending Subsections (a-1), (a-2), (a-3), (a-4), (b), (c), (d), (e-1), (f-4), (g), (h), (i), and (j) and adding Subsections (a-5), (a-6), (a-7), (a-8), (a-9), and (l), as follows:

(a-1) Authorizes a property owner, rather than a person, to authorize another person to pay the taxes imposed by a taxing unit on the owner's, rather than the person's, real property by executing and filing with the collector for the taxing unit:

(1) a sworn document stating:

(A) the authorization for payment of the taxes;

(B) the name and street address of the transferee authorized to pay the taxes of the property owner;

(C) a description of the property by street address, if applicable, and legal description; and

(D) notice has been given to the property owner that if the property owner is disabled, rather than age 65 or disabled, the property owner may be eligible for a tax deferral under Section 33.06 (Deferred Collection of Taxes on Residence Homestead of Elderly or Disabled Person); and

(2) the information required by Section 351.054 (Notice to Taxing Unit), Finance Code.

(a-2) Authorizes a tax lien to be transferred to the person who pays the taxes on behalf of the property owner under the authorization described by Subsection (a-1), except as provided by Subsection (a-8), for:

(1) taxes that are delinquent at the time of payment; or

(2) taxes that are due but not delinquent at the time of payment if the property is not subject to a recorded mortgage lien.

Deletes existing text authorizing a tax lien to be transferred to the person who pays the taxes on behalf of the property owner under the authorization for taxes that are not delinquent at the time of payment if a tax lien transfer authorized by the property owner has been executed and recorded for one or more prior years on the same property and the property owner has executed an authorization consenting to a transfer of the tax liens for both the taxes on the property that are not delinquent and taxes on the property that are delinquent in the manner provided by Subsection (a-1). Makes nonsubstantive changes.

(a-3) Prohibits a person who is 65 years of age or older from authorizing a transfer of a tax lien on real property on which the person is eligible to claim an exemption from taxation under Section 11.13(c) (relating to an exemption for adults 65 or older from taxation by a school district of \$10,000 of the appraised value of their homestead). Deletes existing text authorizing the collector's certification under Subsection (b) to be in one document if the property owner has executed an authorization under Subsection (a-2)(2)(B) consenting to a transfer of the tax liens for both the taxes on the property that are not delinquent and taxes on the property that are delinquent.

(a-4) Requires the finance commission to:

(1) prescribe the form and content of an appropriate disclosure statement to be provided to a property owner before the execution of a tax lien transfer;

(2) adopt rules relating to the reasonableness of closing costs, fees, and other charges permitted under this section;

(3) by rule prescribe the form and content of the sworn document under Subsection (a-1) and the certified statement under Subsection (b); and

(4) by rule prescribe the form and content of a request a lender with an existing recorded lien on the property is required to use to request a payoff statement and the transferee's response to the request, including the period within which the transferee must respond.

(a-5) Requires the transferee to also describe the type and approximate cost range of each additional charge or fee that the property owner may incur in connection with the transfer at the time the transferee provides the disclosure statement required by Subsection (a-4)(1).

(a-6) Authorizes a lender described by Subsection (a-4)(4) to, notwithstanding Subsection (f-3), request a payoff statement before the tax loan becomes delinquent. Requires the finance commission by rule to require a transferee who receives a request for a payoff statement to deliver the requested payoff statement on the prescribed form within a period prescribed by finance commission rule. Requires that the prescribed period allow the transferee at least seven business days after the date the request is received to deliver the payoff statement. Authorizes the commissioner to assess an administrative penalty under Subchapter F, Chapter 14, Finance Code, against a transferee who wilfully fails to provide the payoff statement as prescribed by finance commission rule.

(a-7) Provides that a contract between a transferee and a property owner that purports to authorize payment of taxes that are not delinquent or due at the time of the authorization, or that lacks the authorization described by Subsection (a-1), is void.

(a-8) Prohibits a tax lien from being transferred to the person who pays the taxes on behalf of the property owner under the authorization described by Subsection (a-1) if the real property has been financed, wholly or partly, with a grant or below market rate loan provided by a governmental program or nonprofit organization and is subject to the covenants of the grant or loan, or is encumbered by a lien recorded under Subchapter A (Dangerous Structures), Chapter 214 (Municipal Regulation of Housing and Other Structures), Local Government Code.

(a-9) Authorizes the finance commission to adopt rules to implement Subsection (a-8).

(b) Requires the collector to issue a tax receipt to a transferee if that transferee authorized to pay a property owner's taxes under, rather than pursuant to, Subsection (a-1) pays the taxes and any penalties, interest, and collection costs imposed. Requires the collector or a person designated by the collector to certify that the taxes and any penalties, interest, and collection costs on the subject property have been paid by the

transferee on behalf of the property owner and that the taxing unit's tax lien is transferred to that transferee. Requires the collector to attach to the certified statement the collector's seal of office or sign the statement before a notary public and deliver a tax receipt and the certified statement, rather than the statement, attesting to the transfer of the tax lien to the transferee within 30 days. Authorizes the tax receipt and certified statement to be combined into one document.

(c) Entitles the transferee of a tax lien, except as otherwise provided by this section, to foreclose the lien in the manner provided by law for foreclosure of tax liens. Deletes existing text entitling the transferee of a tax lien and any successor in interest, except as otherwise provided by this section, to foreclose the lien in the manner specified in Section 51.002 (Sale of Real Property Under Contract Lien), Property Code, and Section 32.065 (Contract for Foreclosure of Tax Lien), after the transferee or a successor in interest obtains a court order for foreclosure under Rule 736 (Expedited Order Processing), Texas Rules of Civil Procedure, except as provided by Subsection (c-1) of this section, if the property owner and the transferee enter into a contract that is secured by a lien on the property. Makes nonsubstantive changes.

(d) Requires a transferee to record a tax lien transferred as provided by this section with the certified statement attesting to the transfer of the tax lien as described by Subsection (b) in the deed records of each county in which the property encumbered by the lien is located.

(e-1) Prohibits a transferee of a tax lien from charging a fee for any expenses arising after the closing of a loan secured by a tax lien transferred under this section, including collection costs, except for certain fees and interest.

(f-4) Provides that failure to comply with Subsection (b-1) (relating to sending a sworn document by the transferee to a mortgage servicer), (f) (relating to the holder of a delinquent loan sending notice to any holder of a preexisting lien on the property), or (f-1) (relating to the mortgage servicer or lienholder being entitled to obtain a release of the tax lien) does not invalidate a tax lien transferred under this section or a deed of trust. Deletes existing text providing that failure to comply with Subsection (b-1), (f), or (f-1) does not invalidate a tax lien under this chapter, a contract lien, or a deed of trust.

(g) Authorizes the transferee of the tax lien, at any time after the end of the six-month period specified by Subsection (f) and before a notice of foreclosure of the transferred tax lien is sent, to require the property owner to provide written authorization and pay a reasonable fee before providing information regarding the current balance owed by the property owner to the transferee. Deletes existing text authorizing the transferee of the tax lien or the holder of the tax lien, at any time after the end of the six-month period specified by Subsection (f) and before a notice of foreclosure of the transferred tax lien is sent, to require the property owner to provide written authorization and pay a reasonable fee before providing information regarding the current balance owed by the holder of the tax lien.

(h) Provides that a mortgage servicer who pays a property tax loan secured by a tax lien transferred under this section becomes subrogated to all rights in the lien. Deletes existing text providing that a mortgage servicer who pays a transferred tax lien becomes subrogated to all rights in the lien.

(i) Prohibits a judicial foreclosure of a tax lien transferred under, rather than as provided by, this section from being instituted within one year from the date on which the lien is recorded in all counties in which the property is located, unless the contract between the owner of the property and the transferee provides otherwise. Deletes existing text providing for an exception to the prohibition against the transfer of a foreclosure of a tax lien transferred as provided by this section from being instituted within one year from the date on which the lien is recorded in all counties in which the property is located, unless the contract between the owner of the property and the transferee provides otherwise, under Section 33.445 (Joinder of Tax Lien Transferee).

(j) Authorizes the transferee of the lien to foreclose the lien in the manner provided by Subsection (c) unless the contract between the transferee, rather than the holder of the lien, and the owner of the property encumbered by the lien provides otherwise after one year from the date on which a tax lien transferred under, rather than as provided by, this section is recorded in all counties in which the property is located. Makes a nonsubstantive change.

(l) Prohibits a property owner from waiving or limiting any requirement imposed on a transferee by this section, except as specifically provided by this section.

SECTION 9. Amend Section 32.065, Tax Code, by amending Subsection (b) and adding Subsection (i), as follows:

(b) Requires that a contract entered into under Subsection (a) between a transferee and the property owner under Section 32.06 (Transfer of Tax Lien) that is secured by a priority lien on the property, notwithstanding any agreement to the contrary, to provide for foreclosure in the manner provided by Section 32.06(c), rather than provide for a power of sale and foreclosure in the manner provided by in Section 32.06(c)(2) (relating to the right of an owner of real property to enter into a contract for the payment of taxes), and:

(1) an event of default;

(2) notice of acceleration; and

(3) recording of the deed of trust or other instrument securing the contract entered into under Subsection (a) in each county in which the property is located.

Deletes existing Subdivision (4) relating to recording of the sworn document and affidavit attesting to the transfer of the tax lien;

Deletes existing Subdivision (5) requiring the transferee to serve foreclosure notices on the property owner at the property owner's last known address in the manner provided by Section 32.06(c)(2) (relating to the right of an owner of real property to enter into a contract for the payment of taxes) or by a commercially reasonable delivery service that maintains verifiable records of deliveries for at least five years from the date of delivery; and

Deletes existing Subdivision (6) relating to setting forth the language and font to be used in a notice of sale required to be served by the transferee on the mortgage servicer or the holder of all recorded real property, at the time the foreclosure notices required by Subdivision (5) are served on the property owner.

(i) Provides that an agreement under this section that attempts to create a lien for the payment of taxes that are not delinquent or due at the time the property owner executes the sworn document under Section 32.06(a-1) is void.

SECTION 10. Repealer: Section 32.06(c-1) (relating to a transferee seeking to foreclose a tax lien on a property), Tax Code.

SECTION 11. Makes application of this Act prospective.

SECTION 12. Effective date: upon passage or September 1, 2013.