

BILL ANALYSIS

C.S.H.B. 3419
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Local Government Ways and Means
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Currently abandoned property is subject to seizure for delinquent taxes, however courts differ in their application of the current statutes. Some of the language has been found to be vague and there is no notice provision for the truly abandoned properties where no owner is known to the taxing entities. In addition, this property is often worth less than the tax liability and therefore is sold for less than the total amount due. Accordingly, CSHB 3419 attempts to clarify the distribution of tax sale proceeds in cases where the entire liability is not satisfied, as well as clarifying the procedures for the conduct of tax sales.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

SECTION 1. 2, 3, 4, 5 and 6.

Under existing provisions of Section 33.91 *et seq.*, Tax Code, certain properties that are vacant and abandoned are subject to seizure and sale under a tax warrant. The bill clarifies that property with abandoned improvements thereon are subject to seizure. The amendments further detail the procedures in tax warrant proceedings, while at the same time adding additional forms of notice and due process. The bill also clarifies what the courts have found to be vague terms, such as "abandoned, unused and vacant."

The existing language provides for only one form of advance notice of seizure, and that is that the tax collector has mailed tax bills for each of the past few years. In those cases, notice is presumed. However, many of the abandoned properties are shown on the tax roll with no current address, an unknown owner, or both. Thus, a significant number of properties that are truly abandoned manage to escape the procedure for lack of any mechanism for notice. In the absence of a name or address and thus no history of tax bills having been sent, the bill contemplates a title search prior to application for tax warrant, coupled with a requirement that all persons with an interest in the property be served with a copy of the application for warrant in the manner provided by Rule 21a (*e.g.*, by certified mail). If the title search yields owners for whom no address is available, the bill authorizes publication of "notice of seizure" directed to those persons who cannot be found and to "unknown owners."

The bill also authorizes recovery of attorney's fees for those tax years not covered by the Section 33.07 additional penalty, and the bill clarifies that the actual sale of the property is conducted by a sheriff or constable, as opposed to the tax assessor.

SECTION 7

Under existing provisions of Section 34.01(a), Tax Code, property foreclosed for delinquent taxes is to be sold by the officer charged with selling the property. The amendment serves as a conforming measure regarding sales of property, whether following seizure or judicial foreclosure.

SECTION 8

Clarifies and specifies in more detail the application of tax sale proceeds under Section 34.02, Tax Code, and treats excess proceeds from sales of seized real property in the same manner as excess proceeds from

judicial foreclosure sales.

SECTION 9

Clarifies that under Section 34.04(c), Tax Code, the last priority of payment of excess sale proceeds is to the former owner of the property, rather than the person who acquired the property at the sale.

SECTION 10

Conforms the distribution of resale proceeds under Section 34.06(d) with the same provisions regarding proceeds from an original sheriff's/constable's sale.

SECTION 11

Under existing provisions of Section 34.21, Tax Code, apparent authority is given to taxing units, following the strike-off of property, to pay dues and assessments to property owners' associations as a form of "costs", and then upon reselling the property to subtract that expenditure before paying out to the other taxing units their taxes owed. The amendment clarifies that (1) the provisions under Section 34.21 do not constitute a waiver of sovereign immunity with regards to claims by property owners' association and (2) a taxing unit does not have the authority to expend public funds in a manner that is otherwise in violation of state constitutional restraints on expenditures of public funds.

SECTION 12

Effective date.

SECTIONS 13 through 16

Saving and transition provisions.

EFFECTIVE DATE

September 1, 2003

COMPARISON OF ORIGINAL TO SUBSTITUTE

The Committee Substitute is a legislative council draft of the original bill. It omits the emergency clause in Section 17.