BILL ANALYSIS

C.S.H.B. 879
By: Madden
Local Government Ways & Means
Committee Report (Substituted)

BACKGROUND AND PURPOSE

This proposal gives school districts, cities, and other local taxing units an optional and useful financial tool to better manage their resources. Basically, it gives local governments the option to "monetize" – that is, sell delinquent property tax receivables and turn them into immediate revenue. Local officials would have the ability to sell these assets in order to accelerate revenue and create budgetary flexibility in these difficult financial times. For example, when school districts create their budgets in the early spring, they currently make an estimate of the percentage of tax collections they expect to receive. If the district expects, based on past experience, to collect 98% of their taxes and ends up later getting 94%, for example, the district may have to cut the budget they have already set and approved, right before school starts. If the proposed legislation passed, and a district chose to monetize, the district could annually receive a lump-sum payment upfront, at the time it is setting its budget. In return, the district would give the purchaser the funds from the delinquent tax receivables down the road when the district receives them. This optional fiscal management tool creates a reliable budget stream and promotes certainty in budgeting, if used annually, effectively matching current expenditures with current revenues. In addition, in the first year that a district monetized its receivables, the district could recover a sizable lump-sum for the back years of delinquent tax receivables. About 30 states have similar laws under which local taxing jurisdictions sell such assets. This proposal does not affect or address collections of delinquent taxes and does not change the process or any protections for delinquent taxpayers. It also does nothing to affect the relationship of any taxing unit with the persons they hire to do delinquent tax collections work. The purchaser would not have any lien interest and would only be purchasing the cash flows that the local government receives when the delinquent taxes are finally collected.

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. Adds Chapter 274, Local Government Code.

Section 274.001 defines "date of sale," "local government," and "tax receivable."

Section 274.002 allows a local government to sell all or any part of its tax receivables, provides that a sale of a tax receivable is a sale and not a borrowing, requires the local government to determine the terms and conditions of a sale, provides that a sale is governed exclusively by this chapter, and provides that the sale does not include the sale of a right to receive real property or entitle the purchaser to foreclose on real property.

Section 274.003 allows the amount of a tax receivable to include the original amount of a delinquent ad valorem tax plus the amounts of any penalty and interest that accrued on the delinquent tax under Section 33.01, Tax Code, through the date of sale that remain unpaid on the date of sale, and the original amount of a delinquent assessment or other charge other than a delinquent ad valorem tax plus the amount of any interest that accrued on that assessment or charge and remains unpaid on the date of sale.

Section 274.004 provides, after the date of sale of a receivable, for the continuation of the accrual of interest and penalties and for the local government to recover court costs and other expenses specified by Section 33.48(a), Tax Code, in suits to collect the delinquent tax.

Section 274.005 provides that a sale of a tax receivable does not affect an existing contract for the collection of delinquent taxes between the local government or an entity acting on behalf of the local government and an attorney. Provides that performance under that contract includes the collection of the tax by suit filed on behalf of the local government, by tax sale, or by other means, as if the receivable had not been sold. Provides that collection of a tax receivable and any related lien continues to be enforceable by the selling local government in its own name as if it had not been sold. Provides that the local government may not sell a tax receivable to a person who controls, is controlled by, or is under common control with a private attorney under contract to collect the related delinquent taxes and may not after the date of sale of the receivable enter into a contract with an attorney who controls, is controlled by, or is under common control with that person. Defines control of the person as including direct or indirect ownership of a majority of the voting power of that person.

Section 274.006 defines the method of sale to be made through competitive bidding or a negotiated sale. Allows the local government to take into account any factor the local government considers to be in the best interest of the local government, including the price and conditions of a tax receivable purchase and sale agreement. Allows negotiations to be entered into with one or more prospective purchasers.

Section 274.007 sets forth the requirements for the sale through competitive bidding and requires that a local government that elects to sell all or part of its tax receivable through competitive bidding to publish notice which must include the terms and conditions for the sale, the criteria, and a description of any other information that the local government may require a bidder to provide. Requires the notice to identify separately the tax receivable intended to be sold or state the approximate number and aggregate amount of those tax receivables and provide access to the list of receivables. The notice must be published in a newspaper of general circulation in the local county once a week for two weeks not later than the 30th day before the date designated for the submission of bids. Allows the local government to reject any or all bids or may accept any combination of bids received in a sale conducted through competitive bidding.

Section 274.008 sets forth requirements for the sale if conducted through negotiated sale. This section requires a local government that elects to sell all of part of its tax receivables through negotiated sale to publish notice of its intention to sell tax receivables through a negotiated sale. The notice must state that a request for statements of interest to purchase tax receivables is available at the location specified in the notice and include any requirements by the local government for a person seeking to purchase tax receivables to provide the local government any information or documents. The notice must identify separately the tax receivable intended to be sold or state the approximate number and aggregate amount of those tax receivables. The notice must be published once a week for two weeks in a newspaper of general circulation in the local county not later than the 30th day before the date designated by the local government for the receipt of statements of interest.

Section 274.009 prohibits a local government from proceeding with a sale of a tax receivable if the property owner pays the full amount of the tax receivable associated with the property before the proposed date of sale of the tax receivable.

Section 274.010 provides for the postponement or cancellation of sale authorized. Allows the local government to postpone or cancel any proposed sale of a tax receivable for which notice has been published and prevents a cause of action against the local government from a postponement or cancellation of a proposed sale.

Section 274.011 provides for purchase and sale agreements by a local government with the purchaser of a tax receivable and states that a purchase and sale agreement may contain any term, provision, condition, representation or warranty consistent with this chapter that the local government judges is necessary or in the best interest of the local government. Requires that a purchase and sale agreement must specify the purchase price of each tax receivable in which the amount may be more or less than the face amount of the tax receivable and which may include nonmonetary consideration, and must specify any other amounts that may be made available to the local government on a contingent basis under the terms of the agreement. Provides that failure to collect a tax receivable does not create a cause of action or liability for damages. Provides that the purchase agreement may require the local government to repurchase a tax receivable or to substitute another tax receivable of equivalent value, sell to the purchaser subsequent tax receivables associated with the property on substantially the same terms as those on which the initial tax receivable was sold, and use its customary and reasonable efforts to enforce the collection of the tax receivable as if the tax receivable had not been sold. Prohibits the agreement from requiring local governments to prohibit installment agreements, performance of services in lieu of paying taxes. Prohibits the agreement from interfering with the right of an individual to defer or abate a suit to collect a delinquent tax. Allows the local government to agree to repurchase the related tax receivable if the individual defers or abates the suite. Prohibits the agreement from requiring the local government to demand of its officers, employees, agents, or attorneys a standard of performance of their statutory or contractual duties in the collection of a tax receivable that is different from the customary and reasonable standard of performance required of those persons.

Section 274.012 provides for certificates, issuance and operations, and transferability. Requires that, upon the sale of a tax receivable, the local government shall issue to the purchaser a tax receivable certificate evidencing the sale and transfer of that receivable to the purchaser. The certificate operates to transfer and assign the receivable for the amount provided by Section 274.003, interest on any unpaid amounts on and after the date of sale to the date of payment, and amounts of any penalty and interest on the unpaid original amount of a receivable that accrues on or after the date of the sale to the date of payment. Prohibits transfer of any other amount from being transferred or assigned by a tax receivable certificate, and requires those other amounts to be retained and distributed in accordance with applicable law or if applicable the terms of a contract entered into under Section 6.30(c), Tax Code. Allows for transferability of the certificate by the holder. Provides the holder of a tax receivable certificate holds the certificate without recourse against the local government or officers, employees, agents, or attorneys of the local government because of a failure to collect the related tax receivable.

Section 274.013 provides the required contents of a tax receivable certificate, including the transfer and assignment of the receivables; the date of the sale; the aggregate amount of the tax receivable transferred; as separate items, the amounts included in each tax receivable specified in Section 274.003; the rate of interest that accrues on the unpaid amounts of the tax receivable; and a description of the real property by block and lot or other means. Allows the certificate to evidence the transfer of more than one tax receivable relating to more than one property.

Section 274.014 provides for replacement of tax receivable certificates. States that upon sufficient proof a tax receivable is lost, the local government may issue a replacement tax receivable certificate and may require the applicant or other person to post a bond of indemnity in favor of the local government.

Section 274.015 provides for entitlement to proceeds of tax sale. It applies to real property associated with a tax receivable if the property is sold in compliance with an order of sale following a suit for foreclosure of a local government's lien on the property, whether the suit is brought by the local government that sold the tax receivable or by another local government. The holder of the certificate is entitled to receive an amount equal to the amount the local government that sold the tax receivable certificate would be otherwise entitled to receive and retain.

Section 274.016 requires a local government to pay promptly the holder, or holder's designee of the tax receivable certificate, any money received by the local government in connection with the tax receivable evidenced by the tax receivable certificate. Requires the local government to pay to its attorney any money received to which the attorney is entitled by virtue of a contract or otherwise, including attorney's fees and other amount collected for the benefit of the attorney and any cost of court or expenses advanced by the attorney.

Section 274.017 requires each local government that sells a tax receivable to obtain and preserve affidavits of the publication and mailing of all advertisements and notices required by the chapter. The affidavit of publication and mailing is presumptive proof in a court of law

Section 274.018 provides that any information in connection with the sale or issuance of a tax receivable certificate is public information under Chapter 552, Government Code

Section 274.019 provides that the officer or employee designated to calculate the effective tax rate and the rollback rate of a local government may not include the amount of any proceeds received by the local government from the sale of a tax receivables in making those tax rate calculations.

Section 274.020 provides that the sale of a tax receivable by a school district does not affect the allocation of state or federal funds to the school district or the district's entitlement to state or federal funds under the Education Code or the taxable value of property in the district for the purposes of the allocation of or entitlement to those funds.

SECTION 2: Amends Section 1.04(6), Tax Code, to include a tax receivable under Chapter 274, Local Government Code, in the definition of "intangible personal property."

SECTION 3: Effective date: immediate effect.

EFFECTIVE DATE

This act has immediate effect if it receives a vote of two-thirds of all members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this act takes effect September 1, 2004.

COMPARISON OF ORIGINAL TO SUBSTITUTE

Section 1 - The substitute adds new language to the original bill that provides that the bill does not create any new duty on a county assessor-collector or anyone else who may have a contractual or statutory obligation.

The substitute also differs from the original by adding language that ensures a minimum purchase price of receivables sold by a school district.

Section 2 - No change.

Section 3 - No change.