

## **BILL ANALYSIS**

C.S.H.B. 3071  
By: Goodman  
Local Government Ways & Means  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Title 1 of the Tax Code governs the process by which the property tax is administered and enforced. It also governs interactions between property owners, appraisal districts and taxing units, and potentially involves appraisal review boards, the comptroller, tax agents, fee appraisers, and attorneys. The procedures and directives set out in Title 1 exist to ensure that each party's rights and responsibilities are clearly defined. Because school districts, cities, counties and other local taxing units rely so heavily on revenue from property taxes, it is imperative that the system operate at maximum efficiency. C.S.H.B. 3071 seeks to achieve such efficiency through a series of changes that remove ambiguity, clarify roles, provide consistency and, most importantly, ensure fairness to property owners who pay their taxes on time by strengthening provisions relating to enforcement.

### **RULEMAKING AUTHORITY**

This substitute does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTIONS 1 and 2. Amends Sections 1.07 and 1.11, Tax Code, in order to clarify that taxpayer address changes are administered exclusively by the appraisal district.

SECTION 3. Amends Sec. 22.28(b), and adds new Subsection (c), Tax Code, to provide that the tax collector rather than the chief appraiser is to collect the penalty imposed on a property owner who fails to timely file a required rendition report and that the collector shall remit 5% of the penalty to the appraisal district to defray the cost of administering Chapter 22, Tax Code. A positive fiscal impact results for the taxing units from the penalties collected by simply adding the penalties to the tax bills of the offending taxpayers.

SECTION 4. Amends Sec. 25.25(d), Tax Code, to provide for a lien securing any late-correction penalty and a remedy for enforced collection of the penalty. Provides a means for enforcement of payment of the penalty to the taxing units in the same manner that tax payments are enforced.

SECTION 5. Amends Sec. 26.11(c), Tax Code, to provide that estimated current year taxes on condemned property that are prorated and paid by the property owner are final and not subject to a refund to property owner if the tax ultimately imposed for year is less than the estimated amount. Likewise, under current law, the property owner is absolved of any liability for additional tax if the tax actually imposed exceeds the estimated amount on which the taxpayer's prorata payment was based.

SECTION 6. Amends Sec. 31.073, Tax Code, relating to restrictions or conditions placed on a check written to pay current property taxes, by expanding the scope of the section to include checks written in payment of delinquent taxes, penalties or interest.

SECTION 7. Amends Sec. 31.08(a), Tax Code, relating to tax certificates, to authorize a tax collector to disclose court costs and expenses in addition to any taxes on a tax certificate. This provision will assist taxing units in recovering certain litigation expenses by disclosing those expenses in tax certificates.

SECTION 8. Amends Sec. 32.05(b) and (c) and adds Subsections (b-1), (d) and (e), Tax Code, relating to tax liens, to provide that a tax lien takes priority over any right of remainder or other future interests in the property, in the same manner that a tax lien has priority over junior liens and other encumbrances. Also clarifies that while restrictive covenants survive a foreclosure of a tax lien on property subject to the covenants, the lien of a property owners' association for maintenance fees or assessments under those covenants is inferior to the tax lien. The amendment helps to ensure that taxes are covered and paid before any payment is made to private persons or entities with interests in the same property.

SECTION 9. Amends Subsections (a) and (d) of Sec. 33.011, Tax Code, relating to the waiver of penalties and interest on delinquent taxes, to provide that a taxing unit may waive penalties and interest for property acquired by a religious organization if the organization pays the taxes and request the waiver within one year following acquisition of the property, and the chief appraiser approves exemption of the property within one year of its acquisition.

(NOTE: *The amendment conforms the provisions of Sec. 33.011(d) to changes made in this section by the 77<sup>th</sup> Legislature. Without the amendment, a religious organization's waiver of penalties and interest is limited to one year's tax.*)

SECTION 10. Amends Sec. 33.02(a), relating to the payment of delinquent taxes in installments, to provide that any tax collector may enter into installment agreements, whether or not the tax collector collects the taxes of other taxing units. Current law only authorizes installment agreements made by tax collectors for taxing units that collect their own taxes. Installment agreements remain an effective tool in collecting taxes.

SECTION 11. Amends Sec. 33.22, Tax Code, by adding new Subsections (d) and (e) relating to the seizure of personal property for the payment of delinquent taxes, penalties and interest, to provide that a taxing unit is entitled to recover attorney's fees in a tax warrant proceeding, in the same manner that those fees may be recovered in a standard judicial foreclosure suit for delinquent taxes. Removes a cost of seizure as a deterrent to the tax collector from enforcing payment by seizure.

SECTION 12. Amends Sec. 33.23(a), Tax Code, relating to the seizure of personal property for the payment of delinquent taxes, penalties and interest, to conform the provisions of this section with the amendment to Section 33.22 under SECTION 13.

SECTION 13. Amends Sec. 33.25(f) and (h), Tax Code, and adds new Subsection (i) relating to the seizure of personal property for the payment of delinquent taxes, penalties and interest, to prescribe the order for distributing the proceeds from a sale of personal property.

SECTION 14. Amends Sec. 33.48 by adding new subsection (d), Tax Code, to clarify that tax collector may accept payments of court costs in delinquent tax suits and to provide the manner of disbursing those costs.

SECTION 15. Amends Sec. 33.51, Tax Code, relating to the right of a tax sale purchaser to obtain a writ of possession from the clerk of the court that ordered the tax foreclosure, to establish procedures for serving and executing the writ. (NOTE: *The amendment follows the procedures by which writs are executed out of the Justice Courts in forcible entry and detainer proceedings.*)

SECTION 16. Adds new Sec. 33.57, Tax Code, which provides for alternative notice of tax foreclosure on certain distressed real properties. Current law requires the appointment of an attorney ad litem to represent defendants in delinquent tax cases whose addresses are unknown and cannot be located for personal service of citation. This new provision dispenses with the need for a court appointed attorney if there is no real equity in the property worth preserving for the absentee owners (i.e., where the taxes exceed the property's value) or if there are 10 or more years for which delinquent taxes are owed on the property. The amendment will enable the taxing units to save on time and money in foreclosing on seriously distressed properties.

SECTION 17. Amends Section 12.002(e), Property Code, to provide that a taxing unit that acquires real property for public use through eminent domain proceedings, or voluntary sale, is

not required to attach an original tax certificate to a plat or replat of a subdivision of real property for purposes of filing for record, the plat or replat.

SECTION 18. Amends Chapter 21, Property Code, by adding new Sec. 21.0211 relating to eminent domain proceedings, to provide for payment of taxes owing on condemned property before a person may withdraw from the court's registry any award paid by the government for the property condemned. Enhanced tax collections should result.

SECTION 19. Amends Section 17.091(a), Tex. Civ. Prac. & Rem. Code, the long-arm statute applicable to delinquent tax suits, by expanding the scope of those persons subject to constructive service on the Secretary of State. The amendment provides that other lienholders on the delinquent property, in addition to nonresident owners, may be served with process through the Texas Secretary of State.

SECTIONS 20 through 32. Saving and transition provisions.

SECTION 33. Effective date: September 1, 2005

### **EFFECTIVE DATE**

September 1, 2005

### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

C.S.H.B. 3071 amends Section 3 of the bill by providing that the collector shall remit 5% of the penalty to the appraisal district to defray the cost of administering Chapter 22, Tax Code.

C.S.H.B. 3071 strikes Sections 8, 12, 20, 21, and 23 of the bill, as well as any saving and transition provisions associated with those sections; and renumbers accordingly.

C.S.H.B. 3071 amends Section 9 of the bill to clarify that a tax sale of property extinguishes liens held by a property owners' association, homeowners' association, condominium unit owners' association, or council of owners of a condominium regime for all amounts accruing prior to the date of sale.

C.S.H.B. 3071 amends Section 10 of the bill by striking the amendment to Section 33.011(b), and by adding Sections 33.011(b) and (h) to the application of Section 33.011(d).

C.S.H.B. 3071 amends Section 13 of the bill by adding new Subsection (e) which authorizes a collector for a taxing unit that is an officer or employee of the taxing unit to recover attorney's fees of 15 percent of the taxes, penalty and interest in a tax warrant proceeding.

C.S.H.B. 3071 amends Section 15 of the bill by striking new Subsection 33.25(i) and renumbering accordingly.

C.S.H.B. 3071 amends Section 16 of the bill by striking the amendment to Section 33.48(a)(5).

C.S.H.B. 3071 amends Section 18 of the bill by adding language that ensures that the taxing unit or its attorney perform extensive due diligence to ascertain and provide notice to property owners prior to tax foreclosure of the property.

C.S.H.B. 3071 amends Section 19 of the bill by clarifying the effect of new Section 21.0211 in the case of a whole taking and further provides a definition for "case of a whole taking."

C.S.H.B. 3071 amends the bill by adding new language amending Section 12.002(e), Property Code.

C.S.H.B. 3071 79(R)