

BILL ANALYSIS

S.B. 447
By: Janek
Local Government Ways & Means
Committee Report (Unamended)

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. This legislation gives local governments the option to "monetize," (i.e., 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 percent of assessed taxes and ends up later receiving 94 percent, the district may have to cut the budget they have already set and approved, right before the school year begins.

If this proposed legislation passes, and a district chooses to monetize, the district could annually receive a lump-sum payment upfront, at the time it is preparing its budget. In return, the district would give the purchaser the funds from the delinquent tax receivables as the district receives those funds. This optional fiscal management tool creates a reliable budget stream and promotes certainty in the budgeting process, if used annually and 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 similar assets. This legislation does not affect or address collections of delinquent taxes and does not change the process or any protections for delinquent taxpayers. S.B. 447 also does nothing to affect the relationship of any taxing unit with the persons it hires to do delinquent tax collections work. The purchaser would not have any lien interest and would only be purchasing the cash flows that 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. Amends Subtitle C, Title 8, Local Government Code, by adding Chapter 274, as follows:

CHAPTER 274. SALE OF TAX RECEIVABLES

Sec. 274.001. DEFINITIONS. Defines "date of sale," "local government," and "tax receivable."

Sec. 274.002. AUTHORITY TO SELL TAX RECEIVABLES OR UNDIVIDED INTEREST IN TAX RECEIVABLES. Authorizes a local government, at any time, to sell all or any of its tax receivables, including an undivided interest in all or any part of the receivables and sets forth guidelines and procedures for sale of tax receivables.

Sec. 274.003. AMOUNT OF TAX RECEIVABLE; INCLUDED COSTS. Authorizes the amount of a tax receivable sold under this chapter to include certain amounts.

Sec. 274.004. INTEREST AND PENALTIES ON CERTAIN TAX RECEIVABLES. Provides that after the date of sale of a delinquent ad valorem tax receivable certain interest and penalties accrue according to Chapter 33 (Delinquency) and Section 33.48(a) (Recovery of Cost and Expenses), Tax Code.

Sec. 274.005. ENFORCEMENT OF TAX RECEIVABLE. (a) Provides that the sale of an ad valorem tax receivable under this chapter does not affect an existing contract for the collection of delinquent taxes under Section 6.30(c) (Attorneys Representing Tax Units), Tax Code, between the local government or an entity acting on behalf of the local government and an attorney. Provides that the performance by the attorney under that contract includes the collection of the delinquent ad valorem tax by suit filed on behalf of the local government, by tax sale, or by other means, as if the tax receivable had not been sold. Provides that collection of a tax receivable sold under this chapter and any related lien continues to be enforceable by the selling local government in its own name as if the tax receivable had not been sold.

(b) Prohibits a local government from taking certain actions regarding the sale of an ad valorem tax receivable.

(c) Provide that, in this section, control of a person includes the direct or indirect ownership of a majority of the voting power of that person.

Sec. 274.006. METHOD OF SALE. (a) Authorizes a sale of a tax receivable authorized by this chapter to be made through competitive bidding or a negotiated sale.

(b) Authorizes a local government, in determining whether and to whom to award a sale of a tax receivable, to take into account any factor the local government considers to be in the best interest of the local government, including the price at which the tax receivable is offered for sale and the terms and conditions of a tax receivable purchase and sale agreement.

(c) Authorizes the local government to enter into negotiations with one or more prospective purchasers to determine the terms and conditions under which a tax receivable is proposed to be sold.

Sec. 274.007. SALE THROUGH COMPETITIVE BIDDING. (a) Requires a local government that elects to sell all or part of its tax receivables through competitive bidding to publish a notice of its intention to sell the tax receivables through competitive bidding.

(b) and (c) Require the notice to include certain information.

(d) Requires the notice to be published once a week for two weeks in a newspaper of general circulation in the county in which the administrative offices of the local government are located no later than the 30th day before the date designated by the local government for the submission of bids.

(e) Authorizes the local government to reject any or all bids or to accept any combination of bids received in a sale conducted through competitive bidding.

Sec. 274.008. SALE THROUGH NEGOTIATED SALE. (a) Requires a local government that elects to sell all or part of its tax receivables through a negotiated sale to publish a notice of its intention to sell tax receivables through a negotiated sale.

(b) and (c) Require the notice to include certain information.

(d) Requires the notice to be published once a week for two weeks in a newspaper of general circulation in the county in which the administrative offices of the local government are located no later than the 30th day before the date designated by the local government for receipt of statements of interest.

Sec. 274.009. PAYMENT OF TAX RECEIVABLE BEFORE SALE. Prohibits a local government from proceeding with the 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.

Sec. 274.010. POSTPONEMENT OR CANCELLATION OF SALE AUTHORIZED.

(a) Authorizes a local government to postpone or cancel any proposed sale of a tax receivable for which notice has been published.

(b) Provides that a local government is not liable for damages as a result of the postponement or cancellation of a proposed sale of tax receivables and a cause of action does not arise from a postponement or cancellation of a proposed sale.

Sec. 274.011. PURCHASE AND SALE AGREEMENTS. (a) Authorizes a local government to enter into a purchase and sale agreement with the purchaser of a tax receivable sold under this chapter.

(b) Authorizes a purchase and sale agreement to contain certain information consistent with this chapter that, in the judgment of the local government, is necessary or in the best interest of the local government.

(c) Requires a purchase and sale agreement to specify certain information.

(d) Authorizes a purchase and sale agreement to require the local government to adhere to certain procedures.

(e) Prohibits a purchase and sale agreement from requiring the local government to prohibit a person from paying the person's taxes in installments under Section 31.031 (Installment Payments of Certain Homestead Taxes), 31.032 (Installment Payments of taxes on Property in Disaster Area), or 33.02 (Installment Payment of Delinquent Taxes), Tax Code.

(f) Prohibits a purchase and sale agreement from requiring a local government that under Section 31.035 (Performance of Service in Lieu of Payments of Taxes on Homestead of Elderly Person), or 31.036 (Performance of Service in Lieu of Payment of School Taxes on Homestead), Tax Code, permits individuals to perform services in lieu of paying taxes, or that under Section 31.037 (Performance of teaching Services by Employee in Lieu of Payment of School Taxes on Property of Business Entity), Tax Code, permits business entities to provide employees to perform services in lieu of paying taxes, to refrain from entering into a contract under those sections. Authorizes a local government that enters into such a contract to agree to repurchase any related ad valorem tax receivable.

(g) Prohibits a purchase and sale agreement from containing any provision that would interfere with the right of an individual to defer or abate a suit to collect a delinquent tax under Section 33.06 (Deferred Collection of taxes on Residence Homestead of Elderly or Disabled Person), or 33.065 (Deferred Collection of Taxes on Appreciating Residence Homestead), Tax Code. Authorizes a local government to agree to repurchase the related tax receivable if the individual defers or abates the suit.

(h) Prohibits a purchase and sale agreement from requiring the local government to demand of certain persons in its employ 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.

Sec. 274.012. TAX RECEIVABLE CERTIFICATES; ISSUANCE AND OPERATION; TRANSFERABILITY. (a) Requires a local government, on the sale by a local

government of a tax receivable, to issue to the purchaser a tax receivable certificate evidencing the sale and transfer of the tax receivable to the purchaser.

(b) Provides that a tax receivable certificate operates to transfer and assign the tax receivable only for certain amounts.

(c) Provides that any amount, other than an amount specified by Subsection (b), that may be collected by the local government under Chapter 33 (Delinquency), Tax Code, or another law is not transferred or assigned by a tax receivable certificate. Requires any amount described by this subsection that is collected to be retained by the local government for distribution in accordance with the applicable law or, if applicable, the terms of a contract entered into under Section 6.30(c) (Attorneys Representing Tax Units), Tax Code.

(d) Authorizes the holder of a tax receivable certificate to transfer the certificate to any other person.

(e) Provides that the holder of a tax receivable certificate, except as otherwise agreed to in a purchase and sale agreement under Section 274.011(d)(1) or (2) (Purchase and Sale Agreements), holds the certificate without recourse, in contract, in tort, or otherwise, against the local government or certain local government employees because of a failure to collect the related tax receivable.

(f) Prohibits an assessor-collector who collects taxes for a local government other than a county, whether by contract or operation of law, from being required to perform any additional duty or function relating to the sale of tax receivables by the local government unless, by contract entered into with the local government, the assessor-collector agrees to perform that function or duty. Provides that this subsection does not apply to an assessor-collector who is an employee of the local government.

Sec. 274.013. CONTENTS OF TAX RECEIVABLE CERTIFICATE. (a) Requires each tax receivable certificate to contain a transfer and assignment by the local government of the tax receivable transferred to the purchaser and requires it to state certain information.

(b) Authorizes a tax receivable certificate to evidence the transfer of more than one tax receivable relating to more than one property.

Sec. 274.014. LOST TAX RECEIVABLE CERTIFICATES. (a) Authorizes a local government, on application to the local government accompanied by proof sufficient to show that a tax receivable certificate issued on behalf of the local government under this chapter is lost, to issue a duplicate original certificate to the person entitled to the original certificate or to the applicant as authorized by the person entitled to the original certificate.

(b) Authorizes the local government to require the person or applicant to post a bond of indemnity in favor of the local government.

Sec. 274.015. ENTITLEMENTS TO PROCEEDS OF TAX SALE. (a) Provides that this section applies to real property associated with a tax receivable sold under this chapter 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, regardless of whether the suit to foreclose the lien is brought by the local government that sold the tax receivable or by another local government.

(b) Provides that from the proceeds of a sale of the property under Section 34.01 (Sale of Property), Tax Code, or of the resale of the property under Section 34.05 (Resale by Tax Unit), Tax Code, the holder of the applicable tax receivable certificate is entitled to receive an amount equal to the amount the local government that sold the tax receivable certificate would otherwise be entitled to receive and retain for its benefit.

Sec. 274.016. DUTY OF LOCAL GOVERNMENT TO PAY OVER CERTAIN MONEY. (a) Requires a local government to promptly pay over to the holder of a tax receivable certificate, or to the person designated in writing by the holder, any money received by the local government in connection with the tax receivable evidenced by the tax receivable certificate.

(b) Requires a local government to pay over to its attorney, including a private attorney retained under a contract entered into under Section 6.30(c) (Attorneys Representing Tax Units), Tax Code, any money received to which the attorney is entitled by virtue of a contract or otherwise, including certain court costs and attorney's fees.

Sec. 274.017. AFFIDAVITS OF PUBLICATION. (a) Requires each local government that sells a tax receivable under this chapter to obtain and preserve affidavits of the publication of all advertisements and notices required by this chapter to be published.

(b) Provides that an affidavit of publication is presumptive proof of the related publication in any court of this state.

Sec. 274.018. PUBLIC INFORMATION. Provides that information collected, assembled, or maintained in connection with the sale of a tax receivable of a local government and in connection with the issuance of a tax receivable certificate under this chapter is public information that is available to the public under Chapter 552 (Public Information), Government Code.

Sec. 274.019. CALCULATION OF EFFECTIVE TAX RATE AND ROLLBACK TAX RATE. Prohibits the officer or employee designated to calculate the effective tax rate and the rollback tax rate of a local government under Section 26.04(c) (Submission to Rollback to Governing Body; Effective and Rollback Tax Rates), Tax Code, from including the amount of any proceeds received by the local government from the sale of a tax receivable under this chapter in making those calculations.

Sec. 274.020. EFFECT OF SALE BY SCHOOL DISTRICT OF TAX RECEIVABLE. Provides that the sale by a school district of an ad valorem tax receivable under this chapter does not affect certain financial agreements.

Sec. 274.021. MINIMUM PURCHASE PRICE FOR SCHOOL DISTRICT TAX RECEIVABLES. Requires the sale by a school district of a tax receivable to meet certain minimum price criteria.

SECTION 2. Amends Section 1.04(6), Tax code, to redefine "intangible personal property."

SECTION 3. Effective date: upon passage or September 1, 2005.

EFFECTIVE DATE

Upon passage or September 1, 2005.