

By: Puente

H.B. No. 2491

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the administration and collection of ad valorem taxes,
3 including the transfer of an ad valorem tax lien and a contract for
4 foreclosure of an ad valorem tax lien; amending, correcting, and
5 clarifying the Tax Code, Property Code, and Civil Practice and
6 Remedies Code.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

8 SECTION 1. Section 1.07(b), Tax Code, is amended to read as
9 follows:

10 (b) The official or agency shall address the notice to the
11 property owner, the person designated under Section 1.111(f) to
12 receive the notice for the property owner, if that section applies,
13 or, if appropriate, the property owner's agent at the agent's ~~his~~
14 address according to the most recent record in the possession of the
15 official or agency. However, if a property owner files a written
16 request with the appraisal district that notices be sent to a
17 particular address, the official or agency shall send the notice to
18 the address stated in the request.

19 SECTION 2. Section 1.11(b), Tax Code, is amended to read as
20 follows:

21 (b) To be effective, a [A] request made under ~~pursuant to~~
22 this section must be filed with the appraisal district. A request
23 remains in effect until revoked by a written revocation filed with
24 the appraisal district by the owner.

1 SECTION 3. Section 22.28, Tax Code, is amended by amending
2 Subsection (b) and adding Subsection (c) to read as follows:

3 (b) The chief appraiser shall certify to the assessor for
4 each taxing unit participating in the appraisal district that
5 imposes taxes on the property that the chief appraiser has imposed
6 ~~[may retain a portion of]~~ a penalty ~~[collected]~~ under this section
7 ~~[, not to exceed 20 percent of the amount of the penalty, to cover~~
8 ~~the chief appraiser's costs of collecting the penalty]~~. The
9 assessor ~~[chief appraiser]~~ shall add the amount of the penalty to
10 the original amount of tax imposed on the property and shall include
11 that amount in the tax bill for that year. The penalty becomes part
12 of the tax on the property and is secured by the tax lien that
13 attaches to the property under Section 32.01 ~~[distribute the~~
14 ~~remainder of the penalty to each taxing unit participating in the~~
15 ~~appraisal district that imposes taxes on the property in proportion~~
16 ~~to the taxing unit's share of the total amount of taxes imposed on~~
17 ~~the property by all taxing units participating in the district]~~.

18 (c) To help defray the costs of administering this chapter,
19 a collector who collects a penalty imposed under Subsection (a)
20 shall remit to the appraisal district that employs the chief
21 appraiser who imposed the penalty an amount equal to five percent of
22 the penalty amount collected.

23 SECTION 4. Section 25.25(d), Tax Code, is amended to read as
24 follows:

25 (d) At any time prior to the date the taxes become
26 delinquent, a property owner or the chief appraiser may file a
27 motion with the appraisal review board to change the appraisal roll

1 to correct an error that resulted in an incorrect appraised value
2 for the owner's property. However, the error may not be corrected
3 unless it resulted in an appraised value that exceeds by more than
4 one-third the correct appraised value. If the appraisal roll is
5 changed under this subsection, the property owner must pay to each
6 affected taxing unit a late-correction penalty equal to 10 percent
7 of the amount of taxes as calculated on the basis of the corrected
8 appraised value. Payment of the late-correction penalty is secured
9 by the lien that attaches to the property under Section 32.01 and is
10 subject to enforced collection under Chapter 33. The roll may not be
11 changed under this subsection if:

12 (1) the property was the subject of a protest brought
13 by the property owner under Chapter 41, a hearing on the protest was
14 conducted in which the property owner offered evidence or argument,
15 and the appraisal review board made a determination of the protest
16 on the merits; or

17 (2) the appraised value of the property was
18 established as a result of a written agreement between the property
19 owner or the owner's agent and the appraisal district.

20 SECTION 5. Section 26.11(c), Tax Code, is amended to read as
21 follows:

22 (c) If the amount of prorated taxes determined to be due as
23 provided by this section is tendered to the collector for the unit,
24 the collector ~~[he]~~ shall accept the tender. The payment absolves:

25 (1) the transferor of liability for taxes by the unit
26 on the property for the year of the transfer; and

27 (2) the taxing unit of liability for a refund in

1 connection with taxes on the property for the year of the transfer.

2 SECTION 6. Section 31.073, Tax Code, is amended to read as
3 follows:

4 Sec. 31.073. RESTRICTED OR CONDITIONAL PAYMENTS
5 PROHIBITED. A restriction or condition placed on a check in payment
6 of taxes, penalties, or interest by the maker that limits the amount
7 of taxes, penalties, or interest owed to an amount less than that
8 stated in the tax bill or shown by the tax collector's records is
9 void unless the restriction or condition is authorized by this
10 code.

11 SECTION 7. Section 31.08(a), Tax Code, is amended to read as
12 follows:

13 (a) At the request of any person, a collector for a taxing
14 unit shall issue a certificate showing the amount of delinquent
15 taxes, penalties, ~~and~~ interest, and any known costs and expenses
16 under Section 33.48 due the unit on a property according to the
17 unit's current tax records. If the collector collects taxes for
18 more than one taxing unit, the certificate must show the amount of
19 delinquent taxes, penalties, ~~and~~ interest, and any known costs
20 and expenses under Section 33.48 due on the property to each taxing
21 unit for which the collector collects the taxes. The collector
22 shall charge a fee not to exceed \$10 for each certificate issued.
23 The collector shall pay all fees collected under this section into
24 the treasury of the taxing unit that employs the collector ~~him~~.

25 SECTION 8. Section 32.05, Tax Code, is amended by amending
26 Subsections (b) and (c) and adding Subsections (b-1), (d), and (e)
27 to read as follows:

1 (b) Except as provided by Subsection (c)(1) [~~(c) of this~~
2 ~~section~~], a tax lien provided by this chapter takes priority over:

3 (1) the claim of any creditor of a person whose
4 property is encumbered by the lien;

5 (2) [~~and over~~] the claim of any holder of a lien on
6 property encumbered by the tax lien, including any lien held by a
7 property owners' association, homeowners' association, condominium
8 unit owners' association, or council of owners of a condominium
9 regime under a restrictive covenant, condominium declaration,
10 master deed, or other similar instrument that secures regular or
11 special maintenance assessments, fees, dues, interest, fines,
12 costs, attorney's fees, or other monetary charges against the
13 property; and

14 (3) any right of remainder, right or possibility of
15 reverter, or other future interest in, or encumbrance against, the
16 property, whether vested or contingent [~~not the debt or lien~~
17 ~~existed before attachment of the tax lien~~].

18 (b-1) The priority given to a tax lien by Subsection (b)
19 prevails, regardless of whether the debt, lien, future interest, or
20 other encumbrance existed before attachment of the tax lien.

21 (c) A tax lien provided by this chapter is inferior to [~~a~~
22 ~~claim~~]:

23 (1) a claim for any survivor's allowance, funeral
24 expenses, or expenses of the last illness of a decedent made against
25 the estate of a decedent as provided by law;

26 (2) except as provided by Subsection (b)(2), [~~under~~]
27 recorded restrictive covenant that runs [~~running~~] with the land

1 and was~~[, other than a restrictive covenant in favor of a property~~
2 ~~owners' association or homeowners' association]~~ recorded before
3 January 1 of the year the tax lien arose; or

4 (3) ~~[under]~~ a valid easement of record recorded before
5 January 1 of the year the tax lien arose.

6 (d) In an action brought under Chapter 33 for the enforced
7 collection of a delinquent tax against property, a property owners'
8 association, homeowners' association, condominium unit owners'
9 association, or council of owners of a condominium regime that
10 holds a lien for regular or special maintenance assessments, fees,
11 dues, interest, fines, costs, attorney's fees, or other monetary
12 charges against the property is not a necessary party to the action
13 unless, at the time the action is commenced, notice of the lien in a
14 liquidated amount is evidenced by a sworn instrument duly executed
15 by an authorized person and recorded with the clerk of the county in
16 which the property is located. A tax sale of the property
17 extinguishes the lien held by a property owners' association,
18 homeowners' association, condominium unit owners' association, or
19 council of owners of a condominium regime for all amounts that
20 accrued before the date of sale if:

21 (1) the holder of the lien is joined as a party to an
22 action brought under Chapter 33 by virtue of a notice of the lien on
23 record at the time the action is commenced; or

24 (2) the notice of lien is not of record at the time the
25 action is commenced, regardless of whether the holder of the lien is
26 made a party to the action.

27 (e) The existence of a recorded restrictive covenant,

1 declaration, or master deed that generally provides for the lien
2 held by a property owners' association, homeowners' association,
3 condominium unit owners' association, or council of owners of a
4 condominium regime does not, by itself, constitute actual or
5 constructive notice to a taxing unit of a lien under Subsection (d).

6 SECTION 9. Section 32.06, Tax Code, is amended to read as
7 follows:

8 Sec. 32.06. TRANSFER OF TAX LIEN. (a) In this section:

9 (1) "Mortgage servicer" has the meaning assigned by
10 Section 51.0001, Property Code.

11 (2) "Transferee" means a person authorized to pay the
12 taxes of another.

13 (a-1) A person may authorize another person to pay the
14 delinquent taxes imposed by a taxing unit on the person's real
15 property by filing with the collector for the unit a sworn document
16 stating:

17 (1) the authorization;

18 (2) the name and street address of the transferee[~~7~~
19 ~~naming the other person~~ authorized to pay the taxes of the property
20 owner; and

21 (3) a description of[~~7~~ and describing] the property by
22 street address, if applicable, and legal description.

23 (a-2) After a tax lien is transferred, taxes on the property
24 that become due in subsequent tax years may be transferred before
25 the delinquency date in the manner provided by Subsection (a-1).

26 (a-3) A tax lien may be transferred before the delinquency
27 date in the manner provided by Subsection (a-1) only if the real

1 property is not subject to a lien other than the tax lien.

2 (b) If a transferee [~~person~~] authorized to pay a property
3 owner's [~~another's~~] taxes pursuant to Subsection (a-1) [~~(a)~~] pays
4 the taxes and any penalties and interest imposed, the collector
5 shall issue a tax receipt to that transferee [~~the person paying the~~
6 ~~taxes~~]. In addition, the collector or a person designated by the
7 collector shall certify on the sworn document that payment of the
8 taxes and any penalties and interest on the described property and
9 collection costs has been made by the transferee on behalf of the
10 property owner [~~a person other than the person~~] liable for the taxes
11 when imposed and that the taxing unit's tax lien is transferred to
12 that transferee [~~the person paying the taxes~~]. The collector shall
13 attach to the sworn document the collector's seal of office or sign
14 the document before a notary public and deliver the sworn document,
15 a tax receipt, and the affidavit attesting to the transfer of the
16 tax lien to the transferee [~~person paying the taxes~~]. The sworn
17 document, tax receipt, and affidavit attesting to the transfer of
18 the tax lien may be combined into one document. The collector shall
19 conspicuously identify in the applicable taxpayer's account the
20 date of the transfer of a tax lien transferred under this section
21 [~~keep a record of all tax liens transferred as provided by this~~
22 ~~section~~].

23 (c) Except as otherwise provided by this section, the
24 transferee of a tax lien and any successor in interest is entitled
25 to foreclose the lien:

26 (1) in the manner provided by law for foreclosure of
27 tax liens; or

1 (2) in the manner specified in Section 51.002,
2 Property Code, and Section 32.065 of this code, if the property
3 owner and the transferee enter into a contract that is secured by a
4 lien on the property.

5 (d) To be enforceable, a tax lien transferred as provided by
6 this section must be recorded with the sworn statement and
7 affidavit attesting to the transfer of the tax lien as described in
8 Subsection (b) in the deed records of each county in which the
9 property encumbered by the lien is located.

10 (e) A transferee [~~person~~] holding a tax lien transferred as
11 provided by this section may not charge a greater rate of interest
12 than 18 percent a year on the funds advanced. Funds advanced are
13 limited to the taxes, penalties, interest, and collection costs
14 paid as shown on the tax receipt, expenses paid to record the lien,
15 plus reasonable closing costs [~~recording expenses paid to acquire~~
16 ~~and record the lien~~].

17 (f) The mortgage servicer [~~holder~~] of a preexisting lien on
18 property encumbered by a tax lien transferred as provided by
19 Subsection (b) [~~this section~~] is entitled, within six months after
20 the date on which the tax lien is recorded in all counties in which
21 the property is located, to obtain a release of the transferred tax
22 lien by paying [~~pay~~] the transferee [~~holder~~] of the tax lien the
23 amount owed under the contract between the property owner and the
24 transferee. A transferee may charge a reasonable fee for a payoff
25 statement that is requested after an initial payoff statement is
26 provided.

27 (g) At any time after the end of the six-month period

1 specified by Subsection (f) and before a notice of foreclosure of
2 the transferred tax lien is sent, the transferee of the tax lien or
3 the holder of the tax lien may require the property owner to provide
4 written authorization and pay a reasonable fee before providing
5 information regarding the current balance owed by the property
6 owner to the transferee or the holder of the tax lien.

7 (h) A mortgage servicer who pays a transferred tax lien
8 [paid for the lien, plus interest accrued at the rate provided by
9 Subsection (e) and recording expenses, and] becomes subrogated to
10 all rights in the lien.

11 (i) [~~(g)~~] A foreclosure of [suit to foreclose] a tax lien
12 transferred as provided by this section may not be instituted
13 within one year from the date on which the lien is recorded in all
14 counties in which the property is located, unless the contract
15 between the owner of the property and the transferee provides
16 otherwise.

17 (j) [~~(h)~~] After one year from the date on which a tax lien
18 transferred as provided by this section is recorded in all counties
19 in which the property is located, the transferee [~~holder~~] of the
20 lien may [~~file suit to~~] foreclose the lien in the manner provided by
21 Subsection (c) unless a contract between the holder of the lien and
22 the owner of the property encumbered by the lien provides
23 otherwise. If a foreclosure [~~the~~] suit results in foreclosure of
24 the lien, the transferee [~~person filing suit~~] is entitled to
25 recover attorney's fees in an amount not to exceed 10 percent of the
26 judgment. The proceeds of a sale following a judicial foreclosure
27 as provided by this subsection shall be applied first to the payment

1 of court costs, then to payment of the judgment, including accrued
2 interest, and then to the payment of any attorney's fees fixed in
3 the judgment. Any remaining proceeds shall be paid to other holders
4 of liens on the property in the order of their priority and then to
5 the person whose property was sold at the tax sale.

6 (k) Beginning on the date the foreclosure deed is recorded,
7 the [(i) — The] person whose property is sold as provided by
8 Subsection (c) [this section] or the mortgage servicer of [any
9 person holding] a prior recorded [first] lien against the property
10 is entitled[, within one year after the date the property is sold,]
11 to redeem the foreclosed property from the purchaser [at the tax
12 sale] by paying the [that] purchaser or successor 125 [the tax sale
13 purchase price, plus costs, and interest accrued on the judgment to
14 the date of redemption or 118] percent of the purchase price during
15 the first year of the redemption period or 150 percent of the
16 purchase price during the second year of the redemption period with
17 cash or cash equivalent funds. The right of redemption may be
18 exercised on or before the second anniversary of the date on which
19 the purchaser's deed is filed of record if the property sold was the
20 residence homestead of the owner, was land designated for
21 agricultural use, or was a mineral interest. For any other
22 property, the right of redemption must be exercised not later than
23 the 180th day after the date on which the purchaser's deed is filed
24 of record [amount of the judgment, whichever is less]. If a person
25 redeems the property as provided by this subsection, the purchaser
26 at the tax sale shall deliver a deed to the property to the person
27 redeeming the property. If the person who owned the property at the

1 time of foreclosure redeems the property, all liens existing on the
2 property at the time of the tax sale remain in effect to the extent
3 not paid from the sale proceeds.

4 SECTION 10. Section 32.065, Tax Code, is amended by
5 amending Subsections (a), (b), (d), and (f) and adding Subsections
6 (b-1) and (g) to read as follows:

7 (a) Section 32.06 does not abridge the right of an owner of
8 real property to enter into a contract for the payment of taxes
9 ~~[with the holder of a lien on the property, including a transferee~~
10 ~~under Section 32.06 or this section, or affect a contract between~~
11 ~~the owner and holder of a lien for the payment of taxes on the~~
12 ~~property].~~

13 (b) Notwithstanding any agreement to the contrary, a [A]
14 contract entered into under Subsection (a) between a transferee and
15 the property owner under Section 32.06 that is secured by a priority
16 lien on the property shall [may] provide for a power of sale and
17 foreclosure under Chapter 51, Property Code, and:

18 (1) an event of default; ~~[and]~~
19 (2) notice of acceleration;
20 (3) recording of the contract in each county in which
21 the property is located;

22 (4) recording of the sworn document and affidavit
23 attesting to the transfer of the tax lien;

24 (5) requiring the transferee to serve foreclosure
25 notices on the property owner at the property owner's last known
26 address in the manner required by Sections 51.002(b), (d), and (e),
27 Property Code, or by a commercially reasonable delivery service

1 that maintains verifiable records of deliveries for at least five
2 years from the date of delivery; and

3 (6) requiring, at the time the foreclosure notices
4 required by Subdivision (5) are served on the property owner, the
5 transferee to serve a copy of the foreclosure notices in the same
6 manner on the mortgage servicer of any recorded real property lien
7 encumbering the property that includes on the first page, in
8 14-point boldfaced type or 14-point uppercase typewritten letters,
9 a statement that reads substantially as follows:

10 "PURSUANT TO TEXAS TAX CODE SECTION 32.06, THE
11 FORECLOSURE SALE REFERRED TO IN THIS DOCUMENT IS A
12 SUPERIOR TRANSFER TAX LIEN SUBJECT TO RIGHT OF
13 REDEMPTION UNDER CERTAIN CONDITIONS. THE FORECLOSURE
14 IS SCHEDULED TO OCCUR ON THE (DATE)."

15 (b-1) On an event of default and notice of acceleration, the
16 mortgage servicer of a recorded lien encumbering real property may
17 obtain a release of a transferred tax lien on the property by paying
18 the transferee of the tax lien or the holder of the tax lien the
19 amount owed by the property owner to that transferee or holder.

20 (d) Chapters 342 and 346, Finance Code, [~~and Section~~
21 ~~302.102, Finance Code,~~] do not apply to a transaction covered by
22 this section. The transferee of a tax lien under this section is
23 not required to obtain a license under Title 4, Finance Code.

24 (f) The first written communication by the transferee
25 [~~lender~~] to the transferee's [~~its~~] prospective borrower shall
26 disclose each type and the approximate amount [~~types~~] of possible
27 additional charges or fees that may be incurred by the borrower in

1 connection with the loan or contract under this section.

2 (g) An affidavit of the transferee executed after
3 foreclosure of a tax lien that recites compliance with the terms of
4 Section 32.06 and this section and is recorded in each county in
5 which the property is located:

6 (1) is prima facie evidence of compliance with Section
7 32.06 and this section; and

8 (2) may be relied on conclusively by a bona fide
9 purchaser for value without notice of any failure to comply.

10 SECTION 11. Sections 33.011(a) and (d), Tax Code, are
11 amended to read as follows:

12 (a) The governing body of a taxing unit:

13 (1) shall waive penalties and may provide for the
14 waiver of interest on a delinquent tax if an act or omission of an
15 officer, employee, or agent of the taxing unit or the appraisal
16 district in which the taxing unit participates caused or resulted
17 in the taxpayer's failure to pay the tax before delinquency and if
18 the tax is paid not later than the 21st day after the date the
19 taxpayer knows or should know of the delinquency; and

20 (2) may waive penalties and provide for the waiver of
21 interest on a delinquent tax if:

22 (A) the property for which the tax is owed is
23 acquired by a religious organization; and

24 (B) [~~that qualifies the property for exemption~~
25 ~~under Section 11.20]~~ before the first anniversary of the date the
26 religious organization acquires the property, the organization
27 pays the tax and qualifies the property for an exemption under

1 Section 11.20 as evidenced by the approval of the exemption by the
2 chief appraiser under Section 11.45.

3 (d) A request for a waiver of penalties and interest under
4 Subsection (a)(1), (b), or (h) [~~this section~~] must be made before
5 the 181st day after the delinquency date. A request for a waiver of
6 penalties and interest under Subsection (a)(2) must be made before
7 the first anniversary of the date the religious organization
8 acquires the property. To be valid, a waiver of penalties or
9 interest under this section must be requested in writing. If a
10 written request for a waiver is not timely made, the governing body
11 of a taxing unit may not waive any penalties or interest under this
12 section.

13 SECTION 12. Section 33.02(a), Tax Code, is amended to read
14 as follows:

15 (a) The collector for a taxing unit [~~that collects its own~~
16 ~~taxes~~] may enter an agreement with a person delinquent in the
17 payment of the tax for payment of the tax, penalties, and interest
18 in installments. The agreement must be in writing and may not
19 extend for a period of more than 36 months.

20 SECTION 13. Section 33.22, Tax Code, is amended by adding
21 Subsections (d) and (e) to read as follows:

22 (d) A collector is entitled to recover attorney's fees in an
23 amount equal to the compensation specified in the contract with the
24 attorney if:

25 (1) recovery of the attorney's fees is requested in the
26 application for the tax warrant;

27 (2) the taxing unit served by the collector contracts

1 with an attorney under Section 6.30;

2 (3) the existence of the contract and the amount of
3 attorney's fees that equals the compensation specified in the
4 contract are supported by the affidavit of the collector; and

5 (4) the tax sought to be recovered is not subject to
6 the additional penalty under Section 33.07 or 33.08 at the time the
7 application is filed.

8 (e) If a taxing unit is represented by an attorney who is
9 also an officer or employee of the taxing unit, the collector for
10 the taxing unit is entitled to recover attorney's fees in an amount
11 equal to 15 percent of the total amount of delinquent taxes,
12 penalties, and interest that the property owner owes the taxing
13 unit.

14 SECTION 14. Section 33.23(a), Tax Code, is amended to read
15 as follows:

16 (a) A tax warrant shall direct a peace officer in the county
17 and the collector to seize as much of the person's personal property
18 as may be reasonably necessary for the payment of all taxes,
19 penalties, ~~and~~ interest, and attorney's fees included in the
20 application and all costs of seizure and sale. The warrant shall
21 direct the person whose property is seized to disclose to the
22 officer executing the warrant the name and the address if known of
23 any other person having an interest in the property.

24 SECTION 15. Section 33.25, Tax Code, is amended by amending
25 Subsections (f) and (h) and adding Subsection (i) to read as
26 follows:

27 (f) The proceeds of a sale of property under this section

1 shall be applied to:

2 (1) any compensation owed to or any expense advanced
3 by the licensed auctioneer under an agreement entered into under
4 Subsection (b) or a service provider under an agreement entered
5 into under Subsection (c);

6 (2) all usual costs, expenses, and fees of the seizure
7 and sale, payable to the peace officer conducting the sale;

8 (3) all additional expenses incurred in advertising
9 the sale or in removing, storing, preserving, or safeguarding the
10 seized property pending its sale;

11 (4) all usual court costs payable to the clerk of the
12 court that issued the tax warrant; and

13 (5) taxes, penalties, ~~and~~ interest, and attorney's
14 fees included in the application for warrant.

15 (h) After a seizure of personal property defined by Sections
16 33.21(d)(2)-(5), the collector shall apply the seized property
17 toward the payment of the taxes, penalties, ~~and~~ interest, and
18 attorney's fees included in the application for warrant and all
19 costs of the seizure as required by Subsection (f).

20 (i) After a tax warrant is issued, the seizure or sale of the
21 property may be canceled and terminated at any time by the applicant
22 or an authorized agent or attorney of the applicant.

23 SECTION 16. Section 33.48, Tax Code, is amended by adding
24 Subsection (d) to read as follows:

25 (d) A collector who accepts a payment of the court costs and
26 other expenses described by this section shall disburse the amount
27 of the payment as follows:

1 (1) amounts owing under Subsections (a)(1), (2), (3),
2 and (6) are payable to the clerk of the court in which the suit is
3 pending; and

4 (2) expenses described by Subsection (a)(4) are
5 payable to the general fund of the taxing unit or to the person or
6 entity who advanced the expense.

7 SECTION 17. Section 33.51, Tax Code, is amended to read as
8 follows:

9 Sec. 33.51. WRIT OF POSSESSION. (a) If the court orders
10 the foreclosure of a tax lien and the sale of real property, the
11 judgment shall provide for the issuance by the clerk of said court
12 of a writ of possession to the purchaser at the sale or to the
13 purchaser's assigns no sooner than 20 days following the date on
14 which the purchaser's deed from the sheriff or constable is filed of
15 record.

16 (b) The officer charged with executing the writ shall place
17 the purchaser or the purchaser's assigns in possession of the
18 property described in the purchaser's deed without further order
19 from any court and in the manner provided by the writ, subject to
20 any notice to vacate that may be required to be given to a tenant
21 under Section 24.005(b), Property Code.

22 (c) The writ of possession shall order the officer executing
23 the writ to:

24 (1) post a written warning that is at least 8-1/2 by 11
25 inches on the exterior of the front door of the premises notifying
26 the occupant that the writ has been issued and that the writ will be
27 executed on or after a specific date and time stated in the warning

1 that is not sooner than the 10th day after the date the warning is
2 posted; and

3 (2) on execution of the writ:

4 (A) deliver possession of the premises to the
5 purchaser or the purchaser's assigns;

6 (B) instruct the occupants to immediately leave
7 the premises and, if the occupants fail or refuse to comply,
8 physically remove them from the premises;

9 (C) instruct the occupants to remove, or to allow
10 the purchaser or purchaser's assigns, representatives, or other
11 persons acting under the officer's supervision to remove, all
12 personal property from the premises; and

13 (D) place, or have an authorized person place,
14 the removed personal property outside the premises at a nearby
15 location, but not so as to block a public sidewalk, passageway, or
16 street and not while it is raining, sleeting, or snowing.

17 (d) The writ of possession shall authorize the officer, at
18 the officer's discretion, to engage the services of a bonded or
19 insured warehouseman to remove and store, subject to applicable
20 law, all or part of the personal property at no cost to the
21 purchaser, the purchaser's assigns, or the officer executing the
22 writ. The officer may not require the purchaser or the purchaser's
23 assigns to store the personal property.

24 (e) The writ of possession shall contain notice to the
25 officer that under Section 7.003, Civil Practice and Remedies Code,
26 the officer is not liable for damages resulting from the execution
27 of the writ if the officer executes the writ in good faith and with

1 reasonable diligence.

2 (f) The warehouseman's lien on stored property, the
3 officer's duties, and the occupants' rights of redemption as
4 provided by Section 24.0062, Property Code, are all applicable with
5 respect to any personal property that is removed under Subsection
6 (d).

7 (g) A sheriff or constable may use reasonable force in
8 executing a writ under this section.

9 (h) If a taxing unit is a purchaser and is entitled to a writ
10 of possession in the taxing unit's name:

11 (1) a bond may not be required of the taxing unit for
12 issuance or delivery of a writ of possession; and

13 (2) a fee or court cost may not be charged for issuance
14 or delivery of a writ of possession.

15 (i) In this section:

16 (1) "Premises" means all of the property described in
17 the purchaser's deed, including the buildings, dwellings, or other
18 structures located on the property.

19 (2) "Purchaser" includes a taxing unit to which
20 property is bid off under Section 34.01(j).

21 SECTION 18. Subchapter C, Chapter 33, Tax Code, is amended
22 by adding Section 33.57 to read as follows:

23 Sec. 33.57. ALTERNATIVE NOTICE OF TAX FORECLOSURE ON
24 CERTAIN PARCELS OF REAL PROPERTY. (a) In this section, "appraised
25 value" means the appraised value according to the most recent
26 appraisal roll approved by the appraisal review board.

27 (b) This section may be invoked and used by one or more

1 taxing units if there are delinquent taxes, penalties, interest,
2 and attorney's fees owing to a taxing unit on a parcel of real
3 property, and:

4 (1) the total amount of delinquent taxes, penalties,
5 interest, and attorney's fees owed exceeds the appraised value of
6 the parcel; or

7 (2) there are 10 or more years for which delinquent
8 taxes are owed on the parcel.

9 (c) One or more taxing units may file a single petition for
10 foreclosure under this section that includes multiple parcels of
11 property and multiple owners. Alternatively, separate petitions
12 may be filed and docketed separately for each parcel of property.
13 Another taxing unit with a tax claim against the same parcel may
14 intervene in an action for the purpose of establishing and
15 foreclosing its tax lien without further notice to a defendant. The
16 petition must be filed in the county in which the tax was imposed
17 and is sufficient if it is in substantially the form prescribed by
18 Section 33.43 and further alleges that:

19 (1) the amount owed in delinquent taxes, penalties,
20 interest, and attorney's fees exceeds the appraised value of the
21 parcel; or

22 (2) there are 10 or more years for which delinquent
23 taxes are owed on the parcel.

24 (d) Simultaneously with the filing of the petition under
25 this section, a taxing unit shall also file a motion with the court
26 seeking an order approving notice of the petition to each defendant
27 by certified mail in lieu of citation and, if the amount of

1 delinquent taxes, penalties, interest, and attorney's fees alleged
2 to be owed exceeds the appraised value of the parcel, waiving the
3 appointment of an attorney ad litem. The motion must be supported
4 by certified copies of tax records that show the tax years for which
5 delinquent taxes are owed, the amounts of delinquent taxes,
6 penalties, interest, and attorney's fees, and, if appropriate, the
7 appraised value of the parcel.

8 (e) The court shall approve a motion under Subsection (d) if
9 the documents in support of the motion show that:

10 (1) the amount of delinquent taxes, penalties,
11 interest, and attorney's fees that are owed exceeds the appraised
12 value of the parcel; or

13 (2) there are 10 or more years for which delinquent
14 taxes are owed on the parcel.

15 (f) Before filing a petition under this section, or as soon
16 afterwards as practicable, the taxing unit or its attorney shall
17 determine the address of each owner of a property interest in the
18 parcel for the purpose of providing notice of the pending petition.
19 If the title search, the taxing unit's tax records, and the
20 appraisal district records do not disclose an address of a person
21 with a property interest, consulting the following sources of
22 information is to be considered a reasonable effort by the taxing
23 unit or its attorney to determine the address of a person with a
24 property interest in the parcel subject to foreclosure:

25 (1) telephone directories, electronic or otherwise,
26 that cover:

27 (A) the area of any last known address for the

1 person; and

2 (B) the county in which the parcel is located;

3 (2) voter registration records in the county in which
4 the parcel is located; and

5 (3) where applicable, assumed name records maintained
6 by the county clerk of the county in which the parcel is located and
7 corporate records maintained by the secretary of state.

8 (g) Not later than the 45th day before the date on which a
9 hearing on the merits on a taxing unit's petition is scheduled, the
10 taxing unit or its attorney shall send a copy of the petition and a
11 notice by certified mail to each person whose address is determined
12 under Subsection (f), informing the person of the pending
13 foreclosure action and the scheduled hearing. A copy of each notice
14 shall be filed with the clerk of the court together with an
15 affidavit by the tax collector or by the taxing unit's attorney
16 attesting to the fact and date of mailing of the notice.

17 (h) In addition to the notice required by Subsection (g),
18 the taxing unit shall provide notice by publication and by posting
19 to all persons with a property interest in the parcel subject to
20 foreclosure. The notice shall be published in the English language
21 once a week for two weeks in a newspaper that is published in the
22 county in which the parcel is located and that has been in general
23 circulation for at least one year immediately before the date of the
24 first publication, with the first publication to be not less than
25 the 45th day before the date on which the taxing unit's petition is
26 scheduled to be heard. When returned and filed in the trial court,
27 an affidavit of the editor or publisher of the newspaper attesting

1 to the date of publication, together with a printed copy of the
2 notice as published, is sufficient proof of publication under this
3 subsection. If a newspaper is not published in the county in which
4 the parcel is located, publication in an otherwise qualifying
5 newspaper published in an adjoining county is sufficient. The
6 maximum fee for publishing the citation shall be the lowest
7 published word or line rate of that newspaper for classified
8 advertising. The notice by posting shall be in the English language
9 and given by posting a copy of the notice at the courthouse door of
10 the county in which the foreclosure is pending not less than the
11 45th day before the date on which the taxing unit's petition is
12 scheduled to be heard. Proof of the posting of the notice shall be
13 made by affidavit of the attorney for the taxing unit, or of the
14 person posting it. If the publication of the notice cannot be had
15 for the maximum fee established in this subsection, and that fact is
16 supported by the affidavit of the attorney for the taxing unit, the
17 notice by posting under this subsection is sufficient.

18 (i) The notice required by Subsections (g) and (h) must
19 include:

20 (1) a statement that foreclosure proceedings have been
21 commenced and the date the petition was filed;

22 (2) a legal description, tax account number, and, if
23 known, a street address for the parcel in which the addressee owns a
24 property interest;

25 (3) the name of the person to whom the notice is
26 addressed and the name of each other person who, according to the
27 title search, has an interest in the parcel in which the addressee

1 owns a property interest;

2 (4) the date, time, and place of the scheduled hearing
3 on the petition;

4 (5) a statement that the recipient of the notice may
5 lose whatever property interest the recipient owns in the parcel as
6 a result of the hearing and any subsequent tax sale;

7 (6) a statement explaining how a person may contest
8 the taxing unit's petition as provided by Subsection (j) and that a
9 person's interest in the parcel may be preserved by paying all
10 delinquent taxes, penalties, interest, attorney's fees, and court
11 costs before the date of the scheduled hearing on the petition;

12 (7) the name, address, and telephone number of the
13 taxing unit and the taxing unit's attorney of record; and

14 (8) the name of each other taxing unit that imposes
15 taxes on the parcel, together with a notice that any taxing unit may
16 intervene without further notice and set up its claims for
17 delinquent taxes.

18 (j) A person claiming a property interest in a parcel
19 subject to foreclosure may contest a taxing unit's petition by
20 filing with the clerk of the court a written response to the
21 petition not later than the seventh day before the date scheduled
22 for hearing on the petition and specifying in the response any
23 affirmative defense of the person. A copy of the response must be
24 served on the taxing unit's attorney of record in the manner
25 required by Rule 21a, Texas Rules of Civil Procedure. The taxing
26 unit is entitled on request to a continuance of the hearing if a
27 written response filed to a notice of the hearing contains an

1 affirmative defense or requests affirmative relief against the
2 taxing unit.

3 (k) Before entry of a judgment under this section, a taxing
4 unit may remove a parcel erroneously included in the petition and
5 may take a voluntary nonsuit as to one or more parcels of property
6 without prejudicing its action against the remaining parcels.

7 (l) If before the hearing on a taxing unit's petition the
8 taxing unit discovers a deficiency in the provision of notice under
9 this section, the taxing unit shall take reasonable steps in good
10 faith to correct the deficiency before the hearing. A notice
11 provided by Subsections (g)-(i) is in lieu of citation issued and
12 served under Rule 117a, Texas Rules of Civil Procedure. Regardless
13 of the manner in which notice under this section is given, an
14 attorney ad litem may not be appointed for a person with an interest
15 in a parcel with delinquent taxes, penalties, interest, and
16 attorney's fees against the parcel in an amount that exceeds the
17 parcel's appraised value. To the extent of any additional conflict
18 between this section and the Texas Rules of Civil Procedure, this
19 section controls. Except as otherwise provided by this section, a
20 suit brought under this section is governed generally by the Texas
21 Rules of Civil Procedure and by Subchapters C and D of this chapter.

22 (m) A judgment in favor of a taxing unit under this section
23 must be only for foreclosure of the tax lien against the parcel.
24 The judgment may not include a personal judgment against any
25 person.

26 (n) A person is considered to have been provided sufficient
27 notice of foreclosure and opportunity to be heard for purposes of a

1 proceeding under this section if the taxing unit follows the
2 procedures required by this section for notice by certified mail or
3 by publication and posting or if one or more of the following apply:

4 (1) the person had constructive notice of the hearing
5 on the merits by acquiring an interest in the parcel after the date
6 of the filing of the taxing unit's petition;

7 (2) the person appeared at the hearing on the taxing
8 unit's petition or filed a responsive pleading or other
9 communication with the clerk of the court before the date of the
10 hearing; or

11 (3) before the hearing on the taxing unit's petition,
12 the person had actual notice of the hearing.

13 SECTION 19. Section 12.002(e), Property Code, is amended to
14 read as follows:

15 (e) A person may not file for record or have recorded in the
16 county clerk's office a plat or replat of a subdivision of real
17 property unless the plat or replat has attached to it an original
18 tax certificate from each taxing unit with jurisdiction of the real
19 property indicating that no delinquent ad valorem taxes are owed on
20 the real property. This subsection does not apply if:

21 (1) more than one person acquired the real property
22 from a decedent under a will or by inheritance and those persons
23 owning an undivided interest in the property obtained approval to
24 subdivide the property to provide each person with a divided
25 interest and a separate title to the property; or

26 (2) a taxing unit acquired the real property for
27 public use through eminent domain proceedings or voluntary sale.

1 SECTION 20. Subchapter B, Chapter 21, Property Code, is
2 amended by adding Section 21.0211 to read as follows:

3 Sec. 21.0211. PAYMENT OF AD VALOREM TAXES. (a) A court may
4 not authorize withdrawal of any money deposited under Section
5 21.021 unless the petitioner for the money files with the court:

6 (1) a tax certificate issued under Section 31.08, Tax
7 Code, by the tax collector for each taxing unit that imposes ad
8 valorem taxes on the condemned property showing that there are no
9 delinquent taxes, penalties, interest, or costs owing on the
10 condemned property or on any larger tract of which the condemned
11 property forms a part; and

12 (2) in the case of a whole taking that occurs after the
13 date the ad valorem tax bill for taxes imposed by a taxing unit on
14 the property is sent, a tax receipt issued under Section 31.075, Tax
15 Code, by the tax collector of the taxing unit that imposes ad
16 valorem taxes showing that the taxes on the condemned property for
17 the current tax year, prorated under Section 26.11, Tax Code, have
18 been paid.

19 (b) For purposes of Subsection (a)(2), a "case of a whole
20 taking" means a case in which the location, size, and boundaries of
21 the property assessed for ad valorem taxes are identical to that of
22 the condemned property.

23 SECTION 21. Section 17.091(a), Civil Practice and Remedies
24 Code, is amended to read as follows:

25 (a) In a suit to collect delinquent property taxes by the
26 state or a subdivision of the state in which a person who is a
27 defendant is a nonresident, the secretary of state is an agent for

1 service of process on that defendant if the defendant owns, has, or
2 claims an interest in or a lien against property in this state that
3 is the subject of the suit.

4 SECTION 22. Section 31.073, Tax Code, as amended by this
5 Act, applies only to payments of taxes, penalties, or interest that
6 are made on or after the effective date of this Act.

7 SECTION 23. Section 32.05, Tax Code, as amended by this Act,
8 applies to any lien, regardless of the date on which it arose, and
9 to any cause of action pending on the effective date of this Act or
10 brought after that date.

11 SECTION 24. Section 33.011, Tax Code, as amended by this
12 Act, applies only to a request for a waiver of penalty or interest
13 made on or after the effective date of this Act. A request for a
14 waiver made before the effective date of this Act is governed by the
15 law as it existed immediately before the effective date of this Act,
16 and the former law is continued in effect for that purpose.

17 SECTION 25. Section 33.02, Tax Code, as amended by this Act,
18 applies to an installment agreement entered before, on, or after
19 the effective date of this Act.

20 SECTION 26. Section 33.22, Tax Code, as amended by this Act,
21 applies only to a tax warrant proceeding pending on the effective
22 date of this Act or brought after that date.

23 SECTION 27. Section 33.23, Tax Code, as amended by this Act,
24 applies only to a tax warrant issued on or after the effective date
25 of this Act. A tax warrant issued before the effective date of this
26 Act is governed by the law as it existed immediately before the
27 effective date of this Act, and the former law is continued in

1 effect for that purpose.

2 SECTION 28. Section 33.25, Tax Code, as amended by this Act,
3 applies only to a tax warrant proceeding in which the application
4 for tax warrant was filed on or after the effective date of this
5 Act. A tax warrant proceeding commenced by application before the
6 effective date of this Act is governed by the law as it existed
7 immediately before the effective date of this Act, and the former
8 law is continued in effect for that purpose.

9 SECTION 29. Section 33.48, Tax Code, as amended by this Act,
10 applies only to a cause of action pending on the effective date of
11 this Act or brought after that date.

12 SECTION 30. Section 33.51, Tax Code, as amended by this Act,
13 applies to a writ of possession that is based on a judgment entered
14 before, on, or after the effective date of this Act.

15 SECTION 31. Section 33.57, Tax Code, as added by this Act,
16 applies only to a cause of action pending on the effective date of
17 this Act or brought after the effective date of this Act.

18 SECTION 32. Section 12.002(e), Property Code, as amended by
19 this Act, applies only to a plat or replat of a subdivision that is
20 filed for recordation on or after the effective date of this Act. A
21 plat or replat of a subdivision that was filed for recordation
22 before the effective date of this Act is governed by the law in
23 effect immediately before the effective date of this Act, and the
24 former law is continued in effect for that purpose.

25 SECTION 33. Section 21.0211, Property Code, as added by
26 this Act, applies only to an eminent domain proceeding that is
27 commenced on or after the effective date of this Act. An eminent

1 domain proceeding commenced before the effective date of this Act
2 is governed by the law as it existed immediately before the
3 effective date of this Act, and the former law is continued in
4 effect for that purpose.

5 SECTION 34. Section 17.091, Civil Practice and Remedies
6 Code, as amended by this Act, applies only to a cause of action
7 pending on the effective date of this Act or brought after the
8 effective date of this Act.

9 SECTION 35. This Act takes effect September 1, 2005.