

By: Janek

S.B. No. 447

A BILL TO BE ENTITLED

AN ACT

relating to the sale of tax receivables by a local government.

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

SECTION 1. Subtitle C, Title 8, Local Government Code, is amended by adding Chapter 274 to read as follows:

CHAPTER 274. SALE OF TAX RECEIVABLES

Sec. 274.001. DEFINITIONS. In this chapter:

(1) "Date of sale" means:

(A) for a sale made through competitive bidding, the date designated by the applicable local government for the submission of bids; and

(B) for a sale negotiated by a local government, the date the tax receivable sale and purchase agreement is signed.

(2) "Local government" means a county, municipality, school district, special purpose district or authority, or other political subdivision of this state.

(3) "Tax receivable" means a right to receive the revenue from:

(A) a delinquent ad valorem tax imposed by a local government on real property for a specific tax year or a specific tax account; and

(B) a delinquent assessment or other charge imposed by a local government that is secured by a lien on real property.

1 Sec. 274.002. AUTHORITY TO SELL TAX RECEIVABLES OR
2 UNDIVIDED INTEREST IN TAX RECEIVABLES. (a) At any time, a local
3 government may sell all or any part of its tax receivables,
4 including an undivided interest in all or any part of the
5 receivables.

6 (b) A sale by a local government of a tax receivable under
7 this chapter is a sale and not a borrowing by the local government.

8 (c) The local government shall determine the terms and
9 conditions of a sale of a tax receivable.

10 (d) The sale by a local government of a tax receivable is
11 governed exclusively by this chapter.

12 (e) The sale of a tax receivable under this chapter does
13 not:

14 (1) include the sale of a right to receive real
15 property associated with the tax receivable; or

16 (2) entitle the purchaser to foreclose on real
17 property associated with the tax receivable.

18 Sec. 274.003. AMOUNT OF TAX RECEIVABLE; INCLUDED COSTS.
19 The amount of a tax receivable sold under this chapter may include:

20 (1) the original amount of a delinquent ad valorem tax
21 plus the amounts of any penalty and interest that accrued on that
22 delinquent tax under Section 33.01, Tax Code, through the date of
23 sale that remain unpaid on the date of sale; and

24 (2) the original amount of a delinquent assessment or
25 other charge other than a delinquent ad valorem tax plus the amount
26 of any interest that accrued on that assessment or charge and
27 remains unpaid on the date of sale.

1 Sec. 274.004. INTEREST AND PENALTIES ON CERTAIN TAX
2 RECEIVABLES. After the date of sale of a delinquent ad valorem tax
3 receivable:

4 (1) interest and all penalties, as provided by Chapter
5 33, Tax Code, continue to accrue on the unpaid original amount of
6 the tax as if the tax receivable had not been sold; and

7 (2) in a suit to collect the delinquent tax, the local
8 government is entitled to recover the court costs and other
9 expenses specified by Section 33.48(a), Tax Code.

10 Sec. 274.005. ENFORCEMENT OF TAX RECEIVABLE. (a) The sale
11 of an ad valorem tax receivable under this chapter does not affect
12 an existing contract for the collection of delinquent taxes under
13 Section 6.30(c), Tax Code, between the local government or an
14 entity acting on behalf of the local government and an attorney.
15 Performance by the attorney under that contract includes the
16 collection of the delinquent ad valorem tax by suit filed on behalf
17 of the local government, by tax sale, or by other means, as if the
18 tax receivable had not been sold. Collection of a tax receivable
19 sold under this chapter and any related lien continues to be
20 enforceable by the selling local government in its own name as if
21 the tax receivable had not been sold.

22 (b) The local government may not:

23 (1) sell an ad valorem tax receivable to a person who
24 controls, is controlled by, or is under common control with a
25 private attorney under contract to collect the related delinquent
26 ad valorem tax entered into under Section 6.30(c), Tax Code; or

27 (2) after the date of sale of an ad valorem tax

1 receivable to a person, enter into a contract under Section
2 6.30(c), Tax Code, with an attorney who controls, is controlled by,
3 or is under common control with that person.

4 (c) In this section, control of a person includes the direct
5 or indirect ownership of a majority of the voting power of that
6 person.

7 Sec. 274.006. METHOD OF SALE. (a) A sale of a tax
8 receivable authorized by this chapter may be made through:

9 (1) competitive bidding; or

10 (2) a negotiated sale.

11 (b) Notwithstanding any other law to the contrary, in
12 determining whether and to whom to award a sale of a tax receivable,
13 a local government may take into account any factor the local
14 government considers to be in the best interest of the local
15 government, including the price at which the tax receivable is
16 offered for sale and the terms and conditions of a tax receivable
17 purchase and sale agreement.

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

21 Sec. 274.007. SALE THROUGH COMPETITIVE BIDDING. (a) A
22 local government that elects to sell all or part of its tax
23 receivables through competitive bidding shall publish a notice of
24 its intention to sell the tax receivables through competitive
25 bidding.

26 (b) The notice must include:

27 (1) the terms and conditions of the sale;

1 (2) the criteria by which bids will be evaluated; and
2 (3) a description of any other information or
3 documents that the local government may require a bidder to
4 provide.

5 (c) The notice must:

6 (1) identify separately the tax receivables intended
7 to be sold; or

8 (2) state the approximate number and aggregate amount
9 of those tax receivables and that a copy of a list of those tax
10 receivables may be obtained from the local government on request.

11 (d) The notice shall be published once a week for two weeks
12 in a newspaper of general circulation in the county in which the
13 administrative offices of the local government are located not
14 later than the 30th day before the date designated by the local
15 government for the submission of bids.

16 (e) The local government may reject any or all bids or may
17 accept any combination of bids received in a sale conducted through
18 competitive bidding.

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

23 (b) The notice must:

24 (1) state that a request for statements of interest to
25 purchase tax receivables is available at the location specified in
26 the notice; and

27 (2) include any requirement by the local government

1 for a person seeking to purchase tax receivables to provide the
2 local government any information or documents.

3 (c) The notice must:

4 (1) identify separately the tax receivables intended
5 to be sold; or

6 (2) state the approximate number and aggregate amount
7 of those tax receivables and that a copy of a list of those tax
8 receivables may be obtained from the local government on request.

9 (d) The notice shall be published once a week for two weeks
10 in a newspaper of general circulation in the county in which the
11 administrative offices of the local government are located not
12 later than the 30th day before the date designated by the local
13 government for the receipt of statements of interest.

14 Sec. 274.009. PAYMENT OF TAX RECEIVABLE BEFORE SALE. A
15 local government may not proceed with the sale of a tax receivable
16 if the property owner pays the full amount of the tax receivable
17 associated with the property before the proposed date of sale of the
18 tax receivable.

19 Sec. 274.010. POSTPONEMENT OR CANCELLATION OF SALE
20 AUTHORIZED. (a) A local government may postpone or cancel any
21 proposed sale of a tax receivable for which notice has been
22 published.

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

27 Sec. 274.011. PURCHASE AND SALE AGREEMENTS. (a) A local

1 government may enter into a purchase and sale agreement with the
2 purchaser of a tax receivable sold under this chapter.

3 (b) A purchase and sale agreement may contain any term,
4 provision, condition, representation, or warranty consistent with
5 this chapter that, in the judgment of the local government, is
6 necessary or in the best interest of the local government.

7 (c) A purchase and sale agreement must specify:

8 (1) the purchase price of each tax receivable covered
9 by the agreement, which amount may:

10 (A) be more or less than the face amount of the
11 tax receivable; and

12 (B) include nonmonetary consideration;

13 (2) any other amounts that may be made available to the
14 local government on a contingent basis under the terms of the
15 agreement; and

16 (3) that the local government and the officers,
17 employees, agents, and attorneys of the local government are not
18 liable for damages for any failure to collect the tax receivable,
19 and that a failure to collect the tax receivable does not give rise
20 to a cause of action.

21 (d) A purchase and sale agreement may require the local
22 government to:

23 (1) repurchase a tax receivable, or to substitute
24 another tax receivable of equivalent value, under conditions that
25 may be specified in the agreement;

26 (2) sell to the purchaser subsequent tax receivables
27 associated with the property on substantially the same terms as

1 those on which the initial tax receivable was sold; and

2 (3) use its customary and reasonable efforts to
3 enforce the collection of the tax receivable, as if the tax
4 receivable had not been sold.

5 (e) A purchase and sale agreement may not require the local
6 government to prohibit a person from paying the person's taxes in
7 installments under Section 31.031, 31.032, or 33.02, Tax Code.

8 (f) A purchase and sale agreement may not require a local
9 government that under Section 31.035 or 31.036, Tax Code, permits
10 individuals to perform services in lieu of paying taxes, or that
11 under Section 31.037, Tax Code, permits business entities to
12 provide employees to perform services in lieu of paying taxes, to
13 refrain from entering into a contract under those sections. A local
14 government that enters into such a contract may agree to repurchase
15 any related ad valorem tax receivable.

16 (g) A purchase and sale agreement may not contain any
17 provision that would interfere with the right of an individual to
18 defer or abate a suit to collect a delinquent tax under Section
19 33.06 or 33.065, Tax Code. The local government may agree to
20 repurchase the related tax receivable if the individual defers or
21 abates the suit.

22 (h) A purchase and sale agreement may not require the local
23 government to demand of its officers, employees, agents, or
24 attorneys a standard of performance of their statutory or
25 contractual duties in the collection of a tax receivable that is
26 different from the customary and reasonable standard of performance
27 required of those persons.

1 Sec. 274.012. TAX RECEIVABLE CERTIFICATES; ISSUANCE AND
2 OPERATION; TRANSFERABILITY. (a) On the sale by a local government
3 of a tax receivable, the local government shall issue to the
4 purchaser a tax receivable certificate evidencing the sale and
5 transfer of the tax receivable to the purchaser.

6 (b) A tax receivable certificate operates to transfer and
7 assign the tax receivable only for:

8 (1) the amount provided by Section 274.003;

9 (2) interest on any unpaid amounts of the tax
10 receivable that accrues under Section 274.004 on and after the date
11 of sale to the date of payment; and

12 (3) the amounts of any penalty and interest on the
13 unpaid original amount of an ad valorem tax receivable that accrues
14 under Section 33.01, Tax Code, on and after the date of the sale to
15 the date of payment.

16 (c) Any amount, other than an amount specified by Subsection
17 (b), that may be collected by the local government under Chapter 33,
18 Tax Code, or another law is not transferred or assigned by a tax
19 receivable certificate. Any amount described by this subsection
20 that is collected shall be retained by the local government for
21 distribution in accordance with the applicable law or, if
22 applicable, the terms of a contract entered into under Section
23 6.30(c), Tax Code.

24 (d) The holder of a tax receivable certificate may transfer
25 the certificate to any other person.

26 (e) Except as otherwise agreed to in a purchase and sale
27 agreement under Section 274.011(d)(1) or (2), the holder of a tax

1 receivable certificate holds the certificate without recourse, in
2 contract, in tort, or otherwise, against the local government or
3 the officers, employees, agents, or attorneys of the local
4 government because of a failure to collect the related tax
5 receivable.

6 Sec. 274.013. CONTENTS OF TAX RECEIVABLE CERTIFICATE. (a)
7 Each tax receivable certificate must contain a transfer and
8 assignment by the local government of the tax receivables
9 transferred to the purchaser and must state:

10 (1) the date of the sale;

11 (2) the aggregate amount of the tax receivables
12 transferred to the purchaser;

13 (3) as separate items, the amounts included in each
14 tax receivable specified in Section 274.003;

15 (4) the rate of interest that accrues on the unpaid
16 amount of the tax receivables; and

17 (5) a description of the real property associated with
18 each tax receivable, by block and lot or by other means sufficient
19 to identify and locate the property.

20 (b) A tax receivable certificate may evidence the transfer
21 of more than one tax receivable relating to more than one property.

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

1 person entitled to the original certificate.

2 (b) The local government may require the person or applicant
3 to post a bond of indemnity in favor of the local government.

4 Sec. 274.015. ENTITLEMENT TO PROCEEDS OF TAX SALE. (a)
5 This section applies to real property associated with a tax
6 receivable sold under this chapter if the property is sold in
7 compliance with an order of sale following a suit for foreclosure of
8 a local government's lien on the property, regardless of whether
9 the suit to foreclose the lien is brought by the local government
10 that sold the tax receivable or by another local government.

11 (b) From the proceeds of a sale of the property under
12 Section 34.01, Tax Code, or of the resale of the property under
13 Section 34.05, Tax Code, the holder of the applicable tax
14 receivable certificate is entitled to receive an amount equal to
15 the amount the local government that sold the tax receivable
16 certificate would otherwise be entitled to receive and retain for
17 its benefit.

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

24 (b) A local government shall pay over to its attorney,
25 including a private attorney retained under a contract entered into
26 under Section 6.30(c), Tax Code, any money received to which the
27 attorney is entitled by virtue of a contract or otherwise,

1 including:

2 (1) attorney's fees and any other amount collected for
3 the benefit of the attorney; and

4 (2) any costs of court and expenses advanced by the
5 attorney.

6 Sec. 274.017. AFFIDAVITS OF PUBLICATION. (a) Each local
7 government that sells a tax receivable under this chapter shall
8 obtain and preserve affidavits of the publication of all
9 advertisements and notices required by this chapter to be
10 published.

11 (b) An affidavit of publication is presumptive proof of the
12 related publication in any court of this state.

13 Sec. 274.018. PUBLIC INFORMATION. Information collected,
14 assembled, or maintained in connection with the sale of a tax
15 receivable of a local government and in connection with the
16 issuance of a tax receivable certificate under this chapter is
17 public information that is available to the public under Chapter
18 552, Government Code.

19 Sec. 274.019. CALCULATION OF EFFECTIVE TAX RATE AND
20 ROLLBACK RATE. The officer or employee designated to calculate the
21 effective tax rate and the rollback rate of a local government under
22 Section 26.04(c), Tax Code, may not include the amount of any
23 proceeds received by the local government from the sale of a tax
24 receivable under this chapter in making those calculations.

25 Sec. 274.020. EFFECT OF SALE BY SCHOOL DISTRICT OF TAX
26 RECEIVABLE. The sale by a school district of an ad valorem tax
27 receivable under this chapter does not affect:

1 (1) the allocation of state or federal funds to the
2 school district or the entitlement of the school district to state
3 or federal funds under the Education Code; or

4 (2) the taxable value of property in the district for
5 the purposes of the allocation of or entitlement to those funds.

6 SECTION 2. Section 1.04(6), Tax Code, is amended to read as
7 follows:

8 (6) "Intangible personal property" means a claim,
9 interest (other than an interest in tangible property), right, or
10 other thing that has value but cannot be seen, felt, weighed,
11 measured, or otherwise perceived by the senses, although its
12 existence may be evidenced by a document. The term [It] includes:

13 (A) a stock, bond, note or account receivable,
14 franchise, license or permit, demand or time deposit, certificate
15 of deposit, share account, share certificate account, share deposit
16 account, insurance policy, annuity, pension, cause of action,
17 contract, and goodwill; and

18 (B) a tax receivable under Chapter 274, Local
19 Government Code, or a tax receivable certificate issued under that
20 chapter.

21 SECTION 3. This Act takes effect immediately if it receives
22 a vote of two-thirds of all the members elected to each house, as
23 provided by Section 39, Article III, Texas Constitution. If this
24 Act does not receive the vote necessary for immediate effect, this
25 Act takes effect September 1, 2005.