

By: Janek S.B. No. 447
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COMMITTEE SUBSTITUTE FOR S.B. No. 447 By: Deuell

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.

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

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

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

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

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

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

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

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

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

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

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

(1) interest and all penalties, as provided by Chapter

33, Tax Code, continue to accrue on the unpaid original amount of the tax as if the tax receivable had not been sold; and

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

Sec. 274.005. ENFORCEMENT OF TAX RECEIVABLE. (a) 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), Tax Code, between the local government or an entity acting on behalf of the local government and an attorney. 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. 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) The local government may not:

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

(2) after the date of sale of an ad valorem tax receivable to a person, enter into a contract under Section 6.30(c), Tax Code, with an attorney who controls, is controlled by, or is under common control with that person.

(c) 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) A sale of a tax receivable authorized by this chapter may be made through:

(1) competitive bidding; or

(2) a negotiated sale.

(b) Notwithstanding any other law to the contrary, in determining whether and to whom to award a sale of a tax receivable, a local government may 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) The local government may 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) A local government that elects to sell all or part of its tax receivables through competitive bidding shall publish a notice of its intention to sell the tax receivables through competitive bidding.

(b) The notice must include:

(1) the terms and conditions of the sale;

(2) the criteria by which bids will be evaluated; and

(3) a description of any other information or documents that the local government may require a bidder to provide.

(c) The notice must:

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

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

(d) The notice shall 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 not later than the 30th day before the date designated by the local government for the submission of bids.

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

Sec. 274.008. SALE THROUGH NEGOTIATED SALE. (a) A local

government that elects to sell all or a part of its tax receivables through a negotiated sale shall publish a notice of its intention to sell tax receivables through a negotiated sale.

(b) The notice must:

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

(2) include any requirement by the local government for a person seeking to purchase tax receivables to provide the local government any information or documents.

(c) The notice must:

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

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

(d) The notice shall 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 not later than the 30th day before the date designated by the local government for the receipt of statements of interest.

Sec. 274.009. PAYMENT OF TAX RECEIVABLE BEFORE SALE. A local government may not proceed 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) A local government may postpone or cancel any proposed sale of a tax receivable for which notice has been published.

(b) 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) A local government may enter into a purchase and sale agreement with the purchaser of a tax receivable sold under this chapter.

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

(c) A purchase and sale agreement must specify:

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

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

(B) include nonmonetary consideration;

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

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

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

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

(2) sell to the purchaser subsequent tax receivables associated with the property on substantially the same terms as those on which the initial tax receivable was sold; and

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

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

(f) A purchase and sale agreement may not require a local government that under Section 31.035 or 31.036, Tax Code, permits individuals to perform services in lieu of paying taxes, or that under Section 31.037, 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. A local government that enters into such a contract may agree to repurchase any related ad valorem tax receivable.

(g) A purchase and sale agreement may not contain 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 or 33.065, Tax Code. The local government may agree to repurchase the related tax receivable if the individual defers or abates the suit.

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

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

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

(1) the amount provided by Section 274.003;
 (2) interest on any unpaid amounts of the tax receivable that accrues under Section 274.004 on and after the date of sale to the date of payment; and

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

(c) Any amount, other than an amount specified by Subsection (b), that may be collected by the local government under Chapter 33, Tax Code, or another law is not transferred or assigned by a tax receivable certificate. Any amount described by this subsection that is collected shall 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), Tax Code.

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

(e) Except as otherwise agreed to in a purchase and sale agreement under Section 274.011(d)(1) or (2), the holder of a tax receivable certificate holds the certificate without recourse, in contract, in tort, or otherwise, against the local government or the officers, employees, agents, or attorneys of the local government because of a failure to collect the related tax receivable.

(f) An assessor-collector who collects taxes for a local government other than a county, whether by contract or operation of law, may not be 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. 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) Each tax receivable certificate must contain a transfer and assignment by the local government of the tax receivables transferred to the purchaser and must state:

(1) the date of the sale;
 (2) the aggregate amount of the tax receivables transferred to the purchaser;
 (3) as separate items, the amounts included in each tax receivable specified in Section 274.003;

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

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

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

Sec. 274.014. LOST TAX RECEIVABLE CERTIFICATES. (a) On application to a 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, the local government may 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) The local government may require the person or applicant to post a bond of indemnity in favor of the local government.

Sec. 274.015. ENTITLEMENT TO PROCEEDS OF TAX SALE. (a) 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) From the proceeds of a sale of the property under Section 34.01, Tax Code, or of the resale of the property under Section 34.05, 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) A local government shall 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) A local government shall pay over to its attorney, including a private attorney retained under a contract entered into under Section 6.30(c), Tax Code, any money received to which the attorney is entitled by virtue of a contract or otherwise, including:

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

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

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

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

Sec. 274.018. PUBLIC INFORMATION. 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, Government Code.

Sec. 274.019. CALCULATION OF EFFECTIVE TAX RATE AND ROLLBACK TAX RATE. 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), Tax Code, may not include 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. The sale by a school district of an ad valorem tax receivable under this chapter does not affect:

(1) the allocation of state or federal funds to the

school district or the entitlement of the school district to state or federal funds under the Education Code; or

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

Sec. 274.021. MINIMUM PURCHASE PRICE FOR SCHOOL DISTRICT TAX RECEIVABLES. The sale by a school district of a tax receivable must meet the following minimum price criteria:

(1) for a tax receivable that has been delinquent for less than one year, the minimum purchase price must be equal to at least 95 percent of the principal owed;

(2) for a tax receivable that has been delinquent for one year or more, but less than two years, the minimum purchase price must be equal to at least 90 percent of the principal owed; and

(3) for a tax receivable that has been delinquent for two years or more, the minimum purchase price must be equal to at least 75 percent of the principal owed.

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

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

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

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

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

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