

BILL ANALYSIS

S.B. 1520
By: Wentworth
Financial Institutions
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Texas law has permitted property tax lien transfers, whereby an owner of real property consents to the payment of their real property taxes by a third party, to whom the taxing unit then transfers its preexisting lien on the property, prior to its codification into Property Code by the 66th Legislature. The 79th Legislature enacted H.B. 2491 to revise the law governing those transfers by limiting transfers on some current year taxes, by detailing the required elements of a contract to repay a tax lien, and by clarifying ambiguities in the statute regarding the definition of certain terms. However, S.B. 1587 was simultaneously enacted, which also provided for certain notification procedures to first lien mortgage holders in the event a transferred tax lien is foreclosed. Statutory change may be necessary to clarify the differences enacted by these two bills.

S.B. 1520 amends the Tax Code and Finance Code regarding certain aspects of ad valorem tax lien transfers and includes additional protections to consumers who authorize lien transfers for the payment of property taxes.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Finance Commission in SECTION 1 of this bill.

ANALYSIS

S.B. 1520 amends Section 32.06, Tax Code to state that a person may authorize another person to pay the taxes imposed by a taxing unit on the person's real property by filing with the collector for the unit a sworn document stating the authorization, the name and street address of the transferee authorized to pay the taxes of the property owner, a description of the property by street address, if applicable, and legal description, and notice has been given to the property owner that if they are age 65 or disabled, they may be eligible for a tax deferral under Section 33.06. S.B. 1520 clarifies that a tax lien may be transferred to the person who pays the taxes on behalf of the property owner under the authorization for taxes that are delinquent at the time of payment; or taxes that are not delinquent at the time of payment if the property is not subject to a recorded mortgage lien, a tax lien transfer authorized by the property owner has been executed and recorded for one or more prior years on the same property, and the property owner has executed an authorization consenting to a transfer of the tax liens for both the taxes on the property that are not delinquent and taxes on the property that are delinquent in the manner provided by Subsection (a-1). If the property owner has executed an authorization under Subsection (a-2)(2)(C) consenting to a transfer of the tax liens for both the taxes on the property that are not delinquent and taxes on the property that are delinquent, the collector shall certify in one document the transfer of the liens for all the taxes.

S.B. 1520 requires the Finance Commission to prescribe the form and content of an appropriate disclosure statement to be provided to a property owner before the execution of a tax lien transfer; and adopt rules relating to the reasonableness of closing costs, fees, and other charges permitted under this section.

S.B. 1520 allows if a transferee authorized to pay a property owner's taxes pursuant to Subsection (a-1) pays the taxes and any penalties and interest imposed, the collector shall issue a tax receipt to that transferee. In addition, the collector or a person designated by the collector shall certify that the taxes and any penalties and interest on the subject property and collection

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costs have been paid by the transferee on behalf of the property owner and that the taxing unit's tax lien is transferred to that transferee. The collector shall attach to the certified statement the collector's seal of office or sign the statement before a notary public and deliver a tax receipt and the statement attesting to the transfer of the tax lien to the transferee within 30 days. The tax receipt and statement may be combined into one document. The collector shall identify in a discrete field in the applicable property owner's account the date of the transfer of a tax lien transferred under this section. When a tax lien is released, the transferee shall file a release with the county clerk of each county in which the property encumbered by the lien is located for recordation by the clerk and send a copy to the collector. The transferee may charge the property owner a reasonable fee for filing the release.

S.B. 1520 requires that not later than the 10th business day after the date the certified statement is received by the transferee, the transferee shall send by certified mail a copy of the sworn document described by Subsection (a-1) to any mortgage servicer and to each holder of a first lien encumbering the property. The copy must be sent, as applicable, to the address shown on the most recent payment invoice, statement, or payment coupon provided by the mortgage servicer to the property owner, or the address of the holder of a recorded first lien as shown in the real property records.

S.B. 1520 states that, except as otherwise provided by this section, the transferee of a tax lien and any successor in interest is entitled to foreclose the lien in the manner provided by law for foreclosure of tax liens, or in the manner specified in Section 51.002, Property Code, and Section 32.065, after the transferee or a successor in interest obtains a court order for foreclosure under Rule 736, Texas Rules of Civil Procedure, except as provided by Subsection (c-1) of this section, if the property owner and the transferee enter into a contract that is secured by a lien on the property. If a transferee seeks to foreclose a tax lien on the property under Subsection (c)(2): the application for the foreclosure must be served on and name as parties the owner of the property and the holder of any recorded preexisting first lien on the property and must allege that the lien is an ad valorem tax lien instead of a lien created under Section 50, Article XVI, Texas Constitution, state that the applicant does not seek a court order required by Section 50, Article XVI, Texas Constitution, state that the transferee has provided notice to cure the default, notice of intent to accelerate, and notice of acceleration of the maturity of the debt to the property owner and each holder of a recorded first lien on the property in the manner required for notice to a debtor under Section 51.002, Property Code, and confirm that the property owner has not requested a deferral of taxes authorized by Section 33.06; and the holder of a recorded preexisting lien must be provided at least 60 days' notice before the date of the proposed foreclosure.

S.B. 1520 requires a transferee record a tax lien transferred as provided by this section with the statement attesting to the transfer of the tax lien as described by Subsection (b) in the deed records of each county in which the property encumbered by the lien is located. A right of rescission described by 12 C.F.R. Section 226.23 applies to a tax lien transfer under this section.

S.B. 1520 states that the holder of a loan secured by a transferred tax lien that is delinquent for 90 consecutive days must send a notice of the delinquency by certified mail on or before the 120th day of delinquency or, if the 120th day is not a business day, on the next business day after the 120th day of delinquency, to any holder of a recorded preexisting lien on the property. The holder or mortgage servicer of a recorded preexisting lien on property encumbered by a tax lien transferred as provided by Subsection (b) is entitled, within six months after the date on which the notice is sent, to obtain a release of the transferred tax lien by paying the transferee of the tax lien the amount owed under the contract between the property owner and the transferee.

If an obligation secured by a preexisting first lien on the property is delinquent for at least 90 consecutive days and the obligation has been referred to a collection specialist, S.B. 1520 allows the mortgage servicer or the holder of the first lien to send a notice of the delinquency to the transferee of a tax lien. The mortgage servicer or the first lien holder is entitled, within six months after the date on which that notice is sent, to obtain a release of the transferred tax lien by paying the transferee of the tax lien the amount owed under the contract between the property owner and the transferee. The Finance Commission by rule shall prescribe the form and content of the notice under this subsection. The rights granted by Subsections (f) and (f-1) do not affect a right of redemption in a foreclosure proceeding described by Subsection (k) or (k-1).

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Notwithstanding any contractual agreement with the property owner, the transferee of a tax lien must provide the payoff information required by this section to the greatest extent permitted by 15 U.S.C. Section 6802 and 12 C.F.R. Part 216. The payoff statement must meet the requirements of a payoff statement defined by Section 12.017, Property Code. A transferee may charge a reasonable fee for a payoff statement that is requested after an initial payoff statement is provided. Failure to comply with Subsection (b-1), (f), or (f-1) does not invalidate a tax lien under this chapter, a contract lien, or a deed of trust.

A foreclosure of a tax lien transferred as provided by this section may not be instituted within one year from the date on which the lien is recorded in all counties in which the property is located, unless the contract between the owner of the property and the transferee provides otherwise. Beginning on the date the foreclosure deed is recorded, the person whose property is sold as provided by Subsection (c) or the mortgage servicer of a prior recorded lien against the property is entitled to redeem the foreclosed property from the purchaser or the purchaser's successor by paying the purchaser or successor: 125 percent of the purchase price during the first year of the redemption period or 150 percent of the purchase price during the second year of the redemption period with cash or cash equivalent funds; and the amount reasonably spent by the purchaser in connection with the property as costs within the meaning of Section 34.21(g) and the legal judgment rate of return on that amount.

S.B. 1520 allows the right of redemption provided by Subsection (k) to be exercised on or before the second anniversary of the date on which the purchaser's deed is filed of record if the property sold was the residence homestead of the owner, was land designated for agricultural use, or was a mineral interest. For any other property, the right of redemption must be exercised not later than the 180th day after the date on which the purchaser's deed is filed of record. If a person redeems the property as provided by Subsection (k) and this subsection, the purchaser at the tax sale or the purchaser's successor shall deliver a deed without warranty to the property to the person redeeming the property. If the person who owned the property at the time of foreclosure redeems the property, all liens existing on the property at the time of the tax sale remain in effect to the extent not paid from the sale proceeds.

S.B. 1520 amends Subsections (b), (c), and (d), Section 32.065, Tax Code. Notwithstanding any agreement to the contrary, a contract entered into under Subsection (a) between a transferee and the property owner under Section 32.06 that is secured by a priority lien on the property shall provide for a power of sale and foreclosure in the manner provided by Section 32.06(c)(2) and an event of default, notice of acceleration, recording of the deed of trust or other instrument securing the contract entered into under Subsection (a) in each county in which the property is located, recording of the sworn document and affidavit attesting to the transfer of the tax lien, requiring the transferee to serve foreclosure notices on the property owner at the property owner's last known address in the manner provided by Section 32.06(c)(2) or by a commercially reasonable delivery service that maintains verifiable records of deliveries for at least five years from the date of delivery, and requiring, at the time the foreclosure notices required by Subdivision (5) are served on the property owner, the transferee to serve a copy of the notice of sale in the same manner on the mortgage servicer or the holder of all recorded real property liens encumbering the property that includes on the first page, in 14-point boldfaced type or 14-point uppercase typewritten letters, a statement that reads substantially as follows: "PURSUANT TO TEXAS TAX CODE SECTION 32.06, THE FORECLOSURE SALE REFERRED TO IN THIS DOCUMENT IS A SUPERIOR TRANSFER TAX LIEN SUBJECT TO RIGHT OF REDEMPTION UNDER CERTAIN CONDITIONS. THE FORECLOSURE IS SCHEDULED TO OCCUR ON THE (DATE)." Notwithstanding any other provision of this code, a transferee of a tax lien or the transferee's assignee is subrogated to and is entitled to exercise any right or remedy possessed by the transferring taxing unit, including or related to foreclosure or judicial sale, but is prohibited from exercising a remedy of foreclosure or judicial sale where the transferring taxing unit would be prohibited from foreclosure or judicial sale.

S.B. 1520 states that Chapters 342 and 346, Finance Code, and the provisions of Chapter 343, Finance Code, other than Sections 343.203 and 343.205, do not apply to a transaction covered by this section. The transferee of a tax lien under this section is not required to obtain a license under Title 4, Finance Code. S.B. 1520 repeals Subsection (g), Section 32.065, Tax Code.

S.B. 1520 applies only to the transfer of an ad valorem tax lien that occurs on or after the effective date of this Act. A transfer of an ad valorem tax lien that occurs before the effective

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date of this Act is covered by the law in effect at the time the transfer occurred, and the former law is continued in effect for that purpose. The change in law made by this Act to Sections 32.06 and 32.065, Tax Code, applies to all foreclosures under those sections that occur on or after the effective date of this Act, other than a foreclosure under a transferred ad valorem tax lien that was transferred before the effective date of this Act pursuant to a contract that provided for specific foreclosure procedures under the law in effect at the time the contract was executed. A foreclosure under a transferred ad valorem tax lien that was transferred before the effective date of this Act pursuant to a contract that provided for specific foreclosure procedures under the law in effect at the time the contract was executed is governed by the law in effect at the time the contract was executed, and the former law is continued in effect for that purpose.

EFFECTIVE DATE

September 1, 2007.