

BILL ANALYSIS

S.B. 1620
By: Wentworth
Ways & Means
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Currently, the Finance Commission of Texas (commission) is not authorized to investigate or audit property tax lenders, nor to prescribe the filing document necessary when a property tax lender pays property taxes for another person.

As proposed, S.B. 1620 authorizes the commission to examine the place of business of property tax lenders and access records in order to investigate compliance with laws and regulations of Texas, require an audit of the property tax lender's net assets, and prescribe the filing document necessary when a property tax lender pays property taxes for another person.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Finance Commission of Texas in SECTION 3 (Section 32.06, Tax Code) of this bill.

ANALYSIS

SECTION 1. Amends Section 351.004, Finance Code, as added by Chapter 1220 (H.B. 2138), Acts of the 80th Legislature, Regular Session, 2007, as follows:

Sec. 351.004. **AFFILIATED BUSINESS ARRANGEMENTS.** Authorizes a property tax lender to conduct business under this chapter in an office, office suite, room, or place of business in which any other business is conducted or in combination with any other business unless the consumer credit commissioner (commissioner) determines after a hearing that the conduct of the other business in that office, office suite, room, or place of business has concealed an evasion of this chapter, and orders the lender in writing to desist from the conduct of the other business in that office, office suite, room, or place of business. Deletes existing text prohibiting this chapter from being construed to prevent affiliated or controlled business arrangements or loan origination services by or between a property tax lender and other professionals.

SECTION 2. Amends Subchapter A, Chapter 351, Finance Code, as added by Chapter 1220 (H.B. 2138), Acts of the 80th Legislature, Regular Session, 2007, by adding Sections 351.008 through 351.011, as follows:

Sec. 351.008. **EXAMINATION OF LENDERS; ACCESS TO RECORDS.** (a) Requires the commissioner or the commissioner's representative, at the times the commissioner or the representative considers necessary, to:

- (1) examine each place of business of each property tax lender; and
- (2) investigate the lender's transactions, including loans, and records, including books, accounts, papers, and correspondence, to the extent the transactions and records pertain to the business regulated under this chapter and Sections 32.06 (Transfer of Tax Lien) and 32.065 (Contract for Foreclosure of Tax Lien), Tax Code.

(b) Requires the property tax lender to give the commissioner or the commissioner's representative free access to the lender's office, place of business, files, safes, and vaults, and allow the commissioner or the representative to make a copy of an item that may be investigated under Subsection (a)(2).

(c) Authorizes the commissioner or the commissioner's representative, during an examination, to administer oaths and examine any person under oath on any subject pertinent to a matter that the commissioner or the representative is authorized or required to consider, investigate, or secure information about under this chapter or Section 32.06 or 32.065, Tax Code.

(d) Provides that information obtained under this section is confidential.

(e) Provides that a property tax lender's violation of Subsection (b) is a ground for the suspension or revocation of the lender's license.

Sec. 351.009. GENERAL INVESTIGATION. (a) Authorizes the commissioner or the commissioner's representative, to discover a violation of this chapter or Section 32.06 or 32.065, Tax Code, or to obtain information required under this chapter or Section 32.06 or 32.065, Tax Code, to investigate the records, including books, accounts, papers, and correspondence, of a person, including a property tax lender, who the commissioner or the representative has reasonable cause to believe is violating this chapter or Section 32.06 or 32.065, Tax Code, regardless of whether the person claims to not be subject to this chapter or Section 32.06 or 32.065, Tax Code.

(b) Provides that for the purposes of this section, a person who advertises, solicits, or otherwise represents that the person is willing to make a property tax loan is presumed to be engaged in the business described by Section 351.051 (License Required).

Sec. 351.010. REFUSAL TO ALLOW EXAMINATION OR INSPECTION. Provides that a property tax lender who fails or refuses to permit an examination or investigation authorized by this subchapter violates this chapter. Provides that the failure or refusal is grounds for the suspension or revocation of the lender's license.

Sec. 351.011. VERIFICATION OF NET ASSETS. Authorizes the commissioner, if the commissioner questions the amount of a property tax lender's net assets, to require certification by an independent certified public accountant that the accountant has reviewed the property tax lender's books, other records, and transactions during the reporting year, the books and other records are maintained using generally accepted accounting principles, and the property tax lender meets the net assets requirement of Section 351.153 (Minimum Assets for License).

SECTION 3. Amends Section 32.06(a-4), Tax Code, to require the Finance Commission of Texas by rule to prescribe the form and content of the sworn document under Subsection (a-1) (relating to another person being authorized to pay certain taxes by filing a sworn document) and the certified statement under Subsection (b) (relating to the collector being required to issue a tax receipt). Makes a nonsubstantive change.

SECTION 4. Effective date: September 1, 2009.

EFFECTIVE DATE

September 1, 2009