

BILL ANALYSIS

Senate Research Center

S.B. 762
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

When a property owner owes property taxes, the law automatically imposes a lien on the property in the amount of the obligation. The owner of property subject to a lien may request that a third party lender (transferee) purchase the lien from the taxing authority, allowing the owner to establish a repayment program with that lender for the value of the taxes owed.

Currently, the authority to conduct tax lien transfers and the procedures for accomplishing such transfers are found in Chapter 32 (Tax Liens and Personal Liability), Tax Code. Chapter 351 (Property Tax Lenders), Finance Code, sets forth the licensing and regulatory statutes for tax lien transferees. The Finance Commission of Texas's rules interpreting the statutes can be found in Chapter 89 (Property Tax Lenders), Title 7 (Banking and Securities), Administrative Code.

Although the authorization to make a tax lien transfer has been in place since 1933, it has only been commonly used in the last fifteen years. In 2007, the legislature passed H.B. 2138 and S.B. 1520, which regulated and required licensing of property tax lien transferees and made substantive changes to the Tax Code in the areas of notice and procedure.

Since then, the consumer credit commissioner has conducted audits of licensed transferees and determined the need related to tax lien transfers for clarification of laws pertaining to fees, notices, and other procedural issues.

S.B. 762 amends current law relating to the transfer of ad valorem tax lien and provides for the imposition of an administrative penalty.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Finance Commission of Texas in SECTION 3 (Section 351.0021, Finance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 32.06, Tax Code, by amending Subsections (a-3), (d-1), (f-3), and (j) and adding Subsections (e-1) and (e-2), as follows:

(a-3) Authorizes the collector's certification under Subsection (b) (relating to requiring the collect to issue a tax receipt), if the property only has executed an authorization under Subsection (a-2)(2)(B) (relating to authorizing another person to pay the taxes imposed by a taxing unit on the person's real property) 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, to be in one document. Deletes existing text requiring the collector, if the property owner has executed an authorization under Subsection (a-2)(2)(B) consenting to a transfer of the tax liens for both taxes on the property that are not delinquent and taxes on the property that are delinquent, to certify in one document the transfer of the liens for all the taxes.

(d-1) Provides that a right of rescission described by 12 C.F.R. Section 226.23 applies to a transfer under this section of a tax lien on residential property owned and used by the

property owner for personal, family, or household purposes. Makes a nonsubstantive change.

(e-1) Prohibits a transferee of a tax lien from charging a fee for any expenses arising after closing, including collection costs, except for certain interest and fees.

(e-2) Authorizes that the contract between the property owner and the transferee provide for interest for default, in addition to the interest permitted under Subsection (e) (relating to prohibiting charging a greater rate of interest than 18 percent a year on advanced funds), if any part of the installment remains unpaid after the 10th day after the date the installment is due, including Sundays and holidays. Prohibits the additional interest, if the lien transferred is on residential property owned and used by the property owner for personal, family, or household purposes, from exceeding five cents for each \$1 of a scheduled installment.

(f-3) Authorizes a transferee to charge a reasonable fee for a payoff statement that is requested after an initial payoff statement is provided; however, provides that a transferee is not required to release payoff information pursuant to a notice under Subsection (f-1) unless the notice contains information prescribed by the Finance Commission of Texas (finance commission).

(j) Deletes existing text providing that, if a foreclosure suit results in foreclosure of the lien, the transferee is entitled to recover attorney's fees in an amount not to exceed 10 percent of the judgment.

SECTION 2. Amends Section 33.445(b), Tax Code, to provide that the transfer of a tax lien under this subsection does not require authorization by the property owner.

SECTION 3. Amends Subchapter A, Chapter 351, Finance Code, by adding Subsection 351.0021, as follows:

Sec. 351.0021. AUTHORIZED CHARGES. (a) Authorizes the contract between a property tax lender and a property owner to require the property owner to pay certain costs after closing.

(b) Requires a property tax lender, notwithstanding Subsection (a)(11) (relating to fees for copies of transaction documents requested by the property owner), to provide a property owner:

(1) one free copy of the transaction documents at closing; and

(2) an additional free copy of the transaction documents on the property owner's request following closing.

(c) Prohibits a property tax lender from charging:

(1) any fee, other than interest, after closing in connection with the transfer of a tax lien unless the fee is expressly authorized under this section; or

(2) any interest that is not expressly authorized under Section 32.06 (Transfer of Tax Lien), Tax Code.

(d) Requires that any amount charged by a property tax lender after closing, except for charges authorized under Subsections (a)(1) (relating to a reasonable fee for filing the release of a tax lien), (2) (relating to a reasonable fee for a payoff statement), (3) (relating to a reasonable fee for providing information regarding the current balance owed by the property owner), (9) (relating to a prepayment penalty, unless the lien transferred is on residential property owned and used by the property owner for personal, family, or household purposes) and (11), be for services performed by a person that is not an employee of the property tax lender.

(e) Authorizes the finance commission to adopt rules implementing and interpreting this section.

SECTION 4. Amends Section 351.006, Finance Code, as follows:

Sec. 351.006. ENFORCEMENT. (a) Creates this subsection from existing text. Makes no further changes.

(b) Authorizes the consumer credit commissioner, notwithstanding Section 14.251 (Assessment of Penalty; Restitution Order), to assess an administrative penalty under Subchapter F (Administrative Penalty; Restitution Order; Assurance of Voluntary Compliance), Chapter 14 (Consumer Credit Commissioner), against a person who violates Section 32.06(b-1) (relating to sending a copy of a sworn document to any mortgage servicer), Tax Code, regardless of whether the violation is knowing or wilful.

SECTION 5. Amends Section 351.051(a), Finance Code, as follows:

(a) Requires a person to hold a license issued under this chapter to:

(1) Makes no changes to this subdivision; or

(2) contract for, charge, or receive, directly or indirectly, in connection with a property tax loan subject to this chapter, a charge, including interest, compensation, consideration, or another expense, authorized under this chapter or Chapter 32 (Tax Liens and Personal Liability), Tax Code, rather than under this chapter that in the aggregate exceeds the charges authorized under other law.

SECTION 6. (a) Requires the finance commission to conduct a study regarding the fees, costs, interest, and other expenses charged to property owners by property tax lenders in conjunction with the transfer of property tax liens and the payoff of loans secured by property tax liens.

(b) Requires the finance commission, not later than June 1, 2012, to submit to the legislature a report containing the findings of the study conducted under Subsection (a) of this section and any recommendations for legislative changes.

SECTION 7. Provides that the changes in law made by this Act apply only to the transfer of an ad valorem tax lien that occurs on or after the effective date of this Act. Provides that a transfer of an ad valorem tax lien that occurs before the effective date of this Act is governed by the law in effect at the time the transfer occurred, and the former law is continued in effect for that purpose.

SECTION 8. Effective date: September 1, 2011.