

BILL ANALYSIS

C.S.S.B. 762
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Ways & Means
Committee Report (Substituted)

BACKGROUND AND PURPOSE

When a property owner owes property taxes, the law 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, or 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.

It has been noted that although the authorization to make a tax lien transfer has been in place since the 1930s, it has only been commonly used within the last 15 years. Recent legislation 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 Office of 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. C.S.S.B. 762 seeks to amend current law relating to the transfer of a property tax lien and provides for the imposition of a related administrative penalty.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Finance Commission of Texas in SECTION 3 of this bill.

ANALYSIS

C.S.S.B 762 amends the Tax Code, with regard to the transfer of a property tax lien and a tax collector's certification following such a transfer that the taxes and any penalties and interest on the subject property and collection 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, to authorize such certification to be in one document, if a 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, rather than to require the collector to certify in one document the transfer of the liens for all of the taxes.

C.S.S.B 762 prohibits a transferee of a tax lien from charging a fee for any expenses arising after closing, including collection costs, except for the following: interest expressly authorized under provisions of law relating to the transfer of a tax lien; the fees for filing the release of the tax lien; the fee for providing a payoff statement; the fee for providing information regarding the current balance owed by the property owner; and the fees expressly authorized under the bill's provisions relating to authorized charges. The bill authorizes the contract between the property owner and the transferee to provide for interest for default, in addition to interest charged by a transferee on the funds advanced, if any part of the installment remains unpaid after the 10th day after the date the installment is due, including Sundays and holidays. The bill caps the additional interest at five cents for each \$1 of a scheduled installment.

C.S.S.B 762 exempts a transferee from being required to release payoff information following notice of a delinquency of an obligation secured by a preexisting first lien on property of at least

90 consecutive days that is referred to a collection specialist unless the notice contains the information prescribed by the Finance Commission of Texas. The bill removes a provision entitling a transferee to recover attorney's fees in an amount not to exceed 10 percent of the judgment if a foreclosure suit results in foreclosure of the lien. The bill establishes that, as it relates to the joinder of a tax lien transferee, the transfer of such a tax lien does not require authorization by the property owner.

C.S.S.B 762 amends the Finance Code to authorize the contract between a property tax lender and a property owner to require the property owner to pay the following costs after closing: a reasonable fee for filing the release of a tax lien as it relates to a tax lien transfer; a reasonable fee for a payoff statement in a tax lien transfer; a reasonable fee for providing information regarding the current balance owed by the property owner as it relates to a tax lien transfer; reasonable and necessary attorney's fees, recording fees, and court costs for actions that are legally required to perform a foreclosure, including fees required to be paid to an official and fees for an attorney ad litem; attorney's fees and court costs for services performed after the property owner files a voluntary bankruptcy petition, to the extent permitted by the United States Bankruptcy Code; a reasonable fee for title examination and preparation of an abstract of title by an attorney, a title company, or a property search company authorized to do business in Texas; a processing fee for insufficient funds; a fee for collateral protection insurance; a prepayment penalty, if the lien transferred is on a property other than one owned and used by the owner for personal, family, or household purposes; recording expenses incurred in connection with a modification necessary to preserve a borrower's ability to avoid a foreclosure proceeding; and fees for copies of transaction documents requested by the property owner.

C.S.S.B 762 requires a property tax lender to provide a property owner one free copy of the transaction documents at closing and an additional free copy of the transaction documents on the property owner's request following closing. The bill prohibits a property tax lender from charging any fee, other than interest, after closing in connection with the transfer of a tax lien against property owned and used by the property owner for personal, family, or household purposes, unless the fee is expressly authorized under certain provisions of the bill, or any interest that is not expressly authorized under Tax Code provisions relating to the transfer of a tax lien. The bill requires any amount charged by a property tax lender after closing to be for services performed by a person that is not an employee of the property tax lender, with certain exceptions. The bill authorizes the finance commission to adopt rules implementing and interpreting certain of the bill's provisions relating to authorized charges.

C.S.S.B 762 authorizes the consumer credit commissioner to assess an administrative penalty against a person who violates a Tax Code provision requiring a transferee to send by a certain date by certified mail to any mortgage servicer and to each holder of a recorded first lien encumbering the property a copy of the sworn document authorizing a person to authorize another person to pay the property taxes on the person's real property, regardless of whether the violation is knowing or wilful.

C.S.S.B 762 requires a person to hold a property tax lender license to contract for, charge, or receive, directly or indirectly, in connection with a property tax loan, a charge authorized under Tax Code provisions relating to tax liens and personal liability, in addition to a charge authorized under the Property Tax Lender License Act. The bill removes a provision making the license requirement for a charge authorized under the Property Tax Lender License Act applicable to a charge that in the aggregate exceeds charges authorized under other law.

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.S.B. 762 omits a provision included in the original specifying that the property tax lien transfer to which the right of rescission applies is a transfer of a tax lien on residential property owned and used by the property owner for personal, family, or household purposes.

C.S.S.B. 762 contains a provision not included in the original authorizing a tax collector's certification following a tax lien transfer that certain 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 to be in one document, if a 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.

C.S.S.B. 762 differs from the original in a provision prohibiting a transferee of a tax lien from charging a fee for any expenses arising after closing, including collection costs, except for certain fees and interest specified by the bill's provisions, by omitting language included in the original specifying the tax lien is a tax lien on residential property owned and used by the property owner for personal, family, or household purposes.

C.S.S.B. 762 contains a provision not included in the original establishing that, as it relates to the joinder of a tax lien transferee, the transfer of such a tax lien does not require authorization by the property owner.

C.S.S.B. 762 differs from the original by adding to the costs the contract between a property tax lender and a property owner is authorized to require the property owner to pay after closing a prepayment penalty, if the lien transferred is on a property other than one owned and used by the owner for personal, family, or household purposes and recording expenses incurred in connection with a modification necessary to preserve a borrower's ability to avoid a foreclosure proceeding. The substitute contains a procedural provision not included in the original and differs from the original in nonsubstantive ways reflective of certain bill drafting conventions.