LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

March 9, 2011

TO: Honorable John Carona, Chair, Senate Committee on Business & Commerce

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: **SB762** by Carona (Relating to the transfer of an ad valorem tax lien; providing for the imposition of an administrative penalty.), **Committee Report 1st House, Substituted**

No fiscal implication to the State is anticipated.

The bill would amend Chapter 32 of the Tax Code, regarding property taxation, tax liens and personal liability, to provide that the federal regulation of right of rescission described by 12 C.F.R. Section 226.23, applies to a transfer of a tax lien on residential property owned and used by the property owner for personal, family, or household purposes.

The bill would prohibit the charging of closing fees for these types of transfers, including a prohibition on collection costs, except for certain specified fees. Allowed fees would include the currently allowed 18 percent interest a year on advanced funds; filing fees for the release of the tax lien; fee for providing a payoff statement; fee for providing currently owed balance information; and those fees proposed to be authorized to be included in a contract between a property tax lender and a property owner that a property owner is required to pay for after closing. For defaults when any part of an installment remains unpaid 10 days after the due date (including Sundays and holidays), a contract between the property owner and the transferee (property tax lender) could provide for additional interest of 5 cents for each $1 of a scheduled installment. The bill would strike the current limit on attorney's fees that a transferee is entitled to recover which is 10 percent of the judgment for foreclosure suits that result in foreclosure of the lien.

The bill would amend Chapter 351 of the Finance Code, regarding property tax lenders, to add new Section 351.0021 which delineates the authorized charges to be included in a contract between a property tax lender and a property owner. Unless a fee is expressly authorized, a property tax lender would be prohibited from charging any fee, other than interest, after closing for a tax lien transfer of property used for personal, family, or household purposes. The bill would provide that except for certain charges, including fees for copies, any amount charged by a property tax lender after closing must be for services performed by a person that is not an employee of the property tax lender. The Finance Commission would be authorized to adopt rules.

The bill would amend Section 351.006 of the Finance Code, to authorize the Finance Commissioner to assess an administrative penalty regardless of whether the violation is knowing or willful against a person who violates Section 32.06(b-1) of the Tax Code, which currently requires that by the 10th business day of receipt a transferee send by certified mail a copy of the sworn document describing the tax lien transfer to any mortgage servicer and to each holder of a recorded first lien.

The bill would make procedural changes in the treatment of tax lien transfers, related fees, defaults and charges. These proposals would not change taxable values, tax rates or any other variable affecting property tax revenues and, consequently, would not create a fiscal impact to the state or units of local government.

Costs and fees associated with the implementation of the bill for the Office of the Consumer Credit Commissioner are not considered in this analysis because fiscal impacts for this agency would be realized outside of the Treasury due to this agency being Self-Directed and Semi-Independent.

This bill would take effect September 1, 2011.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 304 Comptroller of Public Accounts, 466 Office of Consumer Credit Commissioner
LBB Staff: JOB, AG, SD, SJS