

## **BILL ANALYSIS**

S.B. 247  
By: Carona  
Business & Industry  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Under current law, property owners may obtain a property tax loan where a lender pays the property owner's tax bill in exchange for the tax lien that the taxing authority placed on the property. This lien remains a priority lien after the taxing entity transfers it to the property tax lender. Interested parties have expressed a growing concern that throughout the property tax loan industry property owners are being taken advantage of through the nonjudicial foreclosure process and fraudulent advertisements, among other mechanisms. In addition, the parties express fear that property tax lenders are threatening market stability by using property tax liens as a bundled investment mechanism. The goal of S.B. 247 is to address these concerns by amending the applicable laws relating to the transfer of property tax liens.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Finance Commission of Texas in SECTIONS 2, 3, and 8 of this bill.

### **ANALYSIS**

S.B. 247 amends the Finance Code to prohibit any successor in interest to a property tax lender from charging any fee, other than interest, after closing in connection with the transfer of a property tax lien unless the fee is expressly authorized or from charging any interest that is not expressly authorized under certain Tax Code provisions relating to the transfer of a tax lien.

S.B. 247 prohibits a property owner from waiving or limiting a requirement imposed on a property tax lender by the Property Tax Lender License Act and sets out the required content of a notice required to be included on the first page of all solicitation materials by a property tax lender who solicits property tax loans by mail, e-mail, or other print or electronic media. The bill prohibits a property tax lender from, in any manner, advertising or causing to be advertised a false, misleading, or deceptive statement or representation relating to a rate, term, or condition of a property tax loan. The bill requires a property tax lender who refers to a rate or charge in an advertisement to state the rate or charge fully and clearly and sets out the conditions of such an advertisement and an advertisement that includes the number of payments, period of repayment, amount of any payment, or amount of any finance charges. The bill authorizes the Finance Commission of Texas to adopt rules to implement these provisions and authorizes the consumer credit commissioner to assess an administrative penalty against a property tax lender who violates these provisions, regardless of whether the violation is knowing or wilful.

S.B. 247 prohibits a person from selling, transferring, assigning, or releasing rights related to a property tax loan to a person who is not a licensed under the Property Tax Lender License Act or who is exempt from those licensing requirements. The bill requires the finance commission to adopt rules to implement these provisions.

S.B. 247 exempts from the Property Tax Lender License Act an individual who is related to the property owner within the second degree of consanguinity or affinity, rather than an individual

who makes a property tax loan from the individual's own funds to a spouse, former spouse, or persons in the lineal line of consanguinity of the individual lending the money.

S.B. 247 amends the Tax Code, in a provision authorizing a property owner to authorize another person to pay the property taxes imposed by a taxing unit on the owner's real property by filing certain information with the collector for the taxing unit, to clarify that the required documentation and information be executed by the property owner, in addition to being filed. The bill revises statutory provisions authorizing a property tax lien to be transferred to the authorized person who pays the taxes on behalf of the property owner and prohibits a person who is 65 years of age or older from authorizing a transfer of a tax lien on real property on which the person is eligible to claim a \$10,000 residence homestead exemption for purposes of school district taxes.

S.B. 247 requires the finance commission by rule to prescribe the form and content of a request a lender with an existing recorded lien on the property must use to request a payoff statement and the transferee's response to the request, including the period within which the transferee must respond, and sets out provisions, procedures, and finance commission rulemaking relating to the request of a payoff statement.

S.B. 247 establishes that a contract between a transferee and a property owner that purports to authorize payment of taxes that are not delinquent or due at the time of the authorization, or that lacks the authorization to authorize another person to pay the taxes imposed on the real property, is void. The bill prohibits a property tax lien from being transferred to the person who pays the taxes on behalf of the property owner if the real property has been financed, wholly or partly, with a grant or below market rate loan provided by a governmental program or nonprofit organization and is subject to the covenants of the grant or loan or if the real property owner is encumbered by a municipality's lien against property with a dangerous structure. The bill authorizes the finance commission to adopt rules to implement this prohibition.

S.B. 247 redefines "transferee," as it applies to the transfer of a property tax lien, to mean a person who is licensed under the Property Tax Lender License Act, or is exempt from such licensing requirements, and who is authorized to pay the taxes of another or who is a successor in interest to a transferred tax lien. The bill removes from the manners under which the transferee of a tax lien is entitled to foreclose a lien the manner specified for the public sale of real property under a contract lien that confers a power of sale and foreclosure, after obtaining a court order for the foreclosure. The bill specifies that failure to comply with certain statutory provisions relating to required timely disclosures or notices about a transferred tax lien does not invalidate a transferred tax lien or a deed of trust. The bill specifies that a property owner cannot waive or limit any requirement imposed on a transferee, except as specifically provided by provisions relating to the transfer of a tax lien.

S.B. 247 removes certain recording and notice requirements of a contract entered into for the payment of taxes between a transferee and the property owner that is secured by a priority lien on the property. The bill establishes that such an agreement that attempts to create a lien for the payment of taxes that are not delinquent or due at the time the property owner executes the sworn document is void.

S.B. 247 repeals Section 32.06(c-1), Tax Code.

#### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2013.