

BILL ANALYSIS

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S.B. 247
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Under current law, property owners may obtain a property tax loan whereby a lender pays the property owner's tax bill in exchange for the tax lien that the taxing authority placed on the property at the beginning of the year. This lien remains a priority lien after the taxing entity transfers it to the property tax lender.

Current law also provides that property tax lenders must obtain a license from the Office of Consumer Credit Commissioner (CCC) in order to operate in the state. In addition, the interest that a property tax lender may charge is capped at 18 percent. Other restrictions on the industry include limitations on who can obtain a property tax loan, a prescribed disclosure statement that must be provided to property owners, and limits on the type and amount of post-closing fees that property tax lenders can assess against property owners.

Despite these regulations, there is a growing sense of concern that some in the industry are taking advantage of property owners through the non-judicial foreclosure process. In addition, some fear that property tax lenders are threatening market stability by using property tax liens as a bundled investment mechanism.

S.B. 247 addresses both of these concerns by amending Chapter 32 (Tax Liens and Personal Liability), Tax Code, and Chapter 351 (Property Tax Lenders), Finance Code, to remove the non-judicial foreclosure authority that property tax lenders currently utilize and to forbid the sale, transfer, assignment, or release of rights associated with a property tax lien to a person who is not licensed by CCC. With this change, property tax lenders will have to use the regular judicial foreclosure process in order to foreclose on a property.

As proposed, S.B. 247 amends current law relating to the transfer of an ad valorem tax lien.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 351.003, Finance Code, as follows:

Sec. 351.003. SECONDARY MARKET TRANSACTIONS. (a) Creates an exception to this chapter under Subsection (b). Makes a nonsubstantive change.

(b) Prohibits a property tax lender from selling, transferring, assigning, or releasing rights related to a property tax loan to a person who is not licensed under this chapter.

SECTION 2. Amends Section 32.06(c), Tax Code, as follows:

(c) Entitles the transferee of a tax lien and any successor in interest licensed under Chapter 351 (Property Tax Lenders), Finance Code, to foreclose the lien in the manner provided by law for foreclosure of tax liens, except as otherwise provided by this section.

Deletes existing Subdivision (1) designation and existing Subdivision (2) entitling the transferee of a tax lien and any successor in interest to foreclose the lien in the manner specified in Section 51.002 (Sale of Real Property Under Contract Lien), Property Code, and Section 32.065 (Contract For Foreclosure of Tax Lien), after the transferee or a successor in interest obtains a court order for foreclosure under Rule 736 (Expedited Order Proceeding), Texas Rules of Civil Procedure, except as provided by Subsection (c-1) (relating to the requirements of a transferee seeking to foreclose a tax lien on a property) of this section, if the property owner and the transferee enter into a contract that is secured by a lien on the property.

SECTION 3. Amends Section 32.065(b), Tax Code, as follows:

(b) Requires a contract entered into under Subsection (a) between a transferee and the property owner under Section 32.06 (Transfer of Tax Lien) that is secured by a priority lien on the property, notwithstanding any agreement to the contrary, to provide for foreclosure in the manner provided by Section 32.06(c), rather than provide for a power of sale and foreclosure in the manner provided by in Section 32.06(c)(2) (relating to the right of an owner of real property to enter into a contract for the payment of taxes), and certain actions and notices. Makes a conforming change.

SECTION 4. Repealer: Section 32.06(c-1) (relating to a transferee seeking to foreclose a tax lien on a property), Tax Code.

SECTION 5. Effective date: upon passage or September 1, 2013.