

By: Schwertner, et al.

S.B. No. 49

A BILL TO BE ENTITLED

1 AN ACT
2 relating to liability for interest if land appraised for ad valorem
3 tax purposes as agricultural or open-space land is sold or diverted
4 to a different use.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Sections 23.46(c) and (d), Tax Code, are amended
7 to read as follows:

8 (c) If land that has been designated for agricultural use in
9 any year is sold or diverted to a nonagricultural use, the total
10 amount of additional taxes for the three years preceding the year in
11 which the land is sold or diverted [~~plus interest at the rate~~
12 ~~provided for delinquent taxes~~] becomes due. Subject to Subsection
13 (f), a determination that the land has been diverted to a
14 nonagricultural use is made by the chief appraiser. For purposes of
15 this subsection, the chief appraiser may not consider any period
16 during which land is owned by the state in determining whether the
17 land has been diverted to a nonagricultural use. The chief
18 appraiser shall deliver a notice of the determination to the owner
19 of the land as soon as possible after making the determination and
20 shall include in the notice an explanation of the owner's right to
21 protest the determination. If the owner does not file a timely
22 protest or if the final determination of the protest is that the
23 additional taxes are due, the assessor for each taxing unit shall
24 prepare and deliver a bill for the additional taxes [~~plus interest~~]

1 as soon as practicable after the change of use occurs. If the
2 additional taxes are due because of a sale of the land, the assessor
3 for each taxing unit shall prepare and deliver the bill as soon as
4 practicable after the sale occurs. The taxes [~~and interest~~] are due
5 and become delinquent and incur penalties and interest as provided
6 by law for other delinquent ad valorem taxes imposed by the taxing
7 unit if not paid before the next February 1 that is at least 20 days
8 after the date the bill is delivered to the owner of the land.

9 (d) A tax lien attaches to the land on the date the sale or
10 change of use occurs to secure payment of the additional tax [~~and~~
11 ~~interest~~] imposed by Subsection (c) [~~of this section~~] and any
12 penalties and interest incurred if the tax becomes delinquent. The
13 lien exists in favor of all taxing units for which the additional
14 tax is imposed.

15 SECTION 2. Sections 23.47(c) and (d), Tax Code, are amended
16 to read as follows:

17 (c) A provision in an instrument pertaining to a loan
18 secured by a lien in favor of the lender on land appraised according
19 to this subchapter that requires the borrower to make a payment to
20 protect the lender from loss because of the imposition of
21 additional taxes [~~and interest~~] under Section 23.46 is void unless
22 the provision:

23 (1) requires the borrower to pay into an escrow
24 account established by the lender an amount equal to the additional
25 taxes [~~and interest~~] that would be due under Section 23.46 if a sale
26 or change of use occurred on January 1 of the year in which the loan
27 is granted or amended;

1 (2) requires the escrow account to bear interest to be
2 credited to the account monthly;

3 (3) permits the lender to apply money in the escrow
4 account to the payment of a bill for additional taxes [~~and interest~~]
5 under Section 23.46 before the loan is paid and requires the lender
6 to refund the balance remaining in the escrow account after the bill
7 is paid to the borrower; and

8 (4) requires the lender to refund the money in the
9 escrow account to the borrower on the payment of the loan.

10 (d) On the request of the borrower or the borrower's
11 representative, the assessor for each taxing unit shall compute the
12 additional taxes [~~and interest~~] that would be due that taxing unit
13 under Section 23.46 if a sale or change of use occurred on January 1
14 of the year in which the loan is granted or amended. The assessor
15 may charge a reasonable fee not to exceed the actual cost of making
16 the computation.

17 SECTION 3. Sections 23.55(a), (b), (e), (f), (m), and (n),
18 Tax Code, are amended to read as follows:

19 (a) If the use of land that has been appraised as provided by
20 this subchapter changes, an additional tax is imposed on the land
21 equal to the difference between the taxes imposed on the land for
22 each of the five years preceding the year in which the change of use
23 occurs that the land was appraised as provided by this subchapter
24 and the tax that would have been imposed had the land been taxed on
25 the basis of market value in each of those years [~~, plus interest at
26 an annual rate of seven percent calculated from the dates on which
27 the differences would have become due~~]. For purposes of this

1 subsection, the chief appraiser may not consider any period during
2 which land is owned by the state in determining whether a change in
3 the use of the land has occurred.

4 (b) A tax lien attaches to the land on the date the change of
5 use occurs to secure payment of the additional tax [~~and interest~~]
6 imposed by this section and any penalties and interest incurred if
7 the tax becomes delinquent. The lien exists in favor of all taxing
8 units for which the additional tax is imposed.

9 (e) Subject to Section 23.551, a determination that a change
10 in use of the land has occurred is made by the chief appraiser. The
11 chief appraiser shall deliver a notice of the determination to the
12 owner of the land as soon as possible after making the determination
13 and shall include in the notice an explanation of the owner's right
14 to protest the determination. If the owner does not file a timely
15 protest or if the final determination of the protest is that the
16 additional taxes are due, the assessor for each taxing unit shall
17 prepare and deliver a bill for the additional taxes [~~plus interest~~]
18 as soon as practicable. The taxes [~~and interest~~] are due and become
19 delinquent and incur penalties and interest as provided by law for
20 ad valorem taxes imposed by the taxing unit if not paid before the
21 next February 1 that is at least 20 days after the date the bill is
22 delivered to the owner of the land.

23 (f) The sanctions provided by Subsection (a) [~~of this~~
24 ~~section~~] do not apply if the change of use occurs as a result of:

- 25 (1) a sale for right-of-way;
26 (2) a condemnation;
27 (3) a transfer of the property to the state or a

1 political subdivision of the state to be used for a public purpose;
2 or

3 (4) a transfer of the property from the state, a
4 political subdivision of the state, or a nonprofit corporation
5 created by a municipality with a population of more than one million
6 under the Development Corporation Act (Subtitle C1, Title 12, Local
7 Government Code) to an individual or a business entity for purposes
8 of economic development if the comptroller determines that the
9 economic development is likely to generate for deposit in the
10 general revenue fund during the next two fiscal bienniums an amount
11 of taxes and other revenues that equals or exceeds 20 times the
12 amount of additional taxes [~~and interest~~] that would have been
13 imposed under Subsection (a) had the sanctions provided by that
14 subsection applied to the transfer.

15 (m) For purposes of determining whether a transfer of land
16 qualifies for the exemption from additional taxes provided by
17 Subsection (f)(4), on an application of the entity transferring or
18 proposing to transfer the land or of the individual or entity to
19 which the land is transferred or proposed to be transferred, the
20 comptroller shall determine the amount of taxes and other revenues
21 likely to be generated as a result of the economic development for
22 deposit in the general revenue fund during the next two fiscal
23 bienniums. If the comptroller determines that the amount of those
24 revenues is likely to equal or exceed 20 times the amount of
25 additional taxes [~~and interest~~] that would be imposed under
26 Subsection (a) if the sanctions provided by that subsection applied
27 to the transfer, the comptroller shall issue a letter to the

1 applicant stating the comptroller's determination and shall send a
2 copy of the letter by regular mail to the chief appraiser.

3 (n) Within one year of the conclusion of the two fiscal
4 bienniums for which the comptroller issued a letter as provided
5 under Subsection (m), the board of directors of the appraisal
6 district, by official board action, may direct the chief appraiser
7 to request the comptroller to determine if the amount of revenues
8 was equal to or exceeded 20 times the amount of taxes [~~and interest~~]
9 that would have been imposed under Subsection (a). The comptroller
10 shall issue a finding as to whether the amount of revenue met the
11 projected increases. The chief appraiser shall review the results
12 of the comptroller's finding and shall make a determination as to
13 whether sanctions under Subsection (a) should be imposed. If the
14 chief appraiser determines that the sanctions provided by
15 Subsection (a) shall be imposed, the sanctions shall be based on the
16 date of the transfer of the property under Subsection (f)(4).

17 SECTION 4. Sections 23.58(c) and (d), Tax Code, are amended
18 to read as follows:

19 (c) A provision in an instrument pertaining to a loan
20 secured by a lien in favor of the lender on land appraised according
21 to this subchapter that requires the borrower to make a payment to
22 protect the lender from loss because of the imposition of
23 additional taxes [~~and interest~~] under Section 23.55 is void unless
24 the provision:

25 (1) requires the borrower to pay into an escrow
26 account established by the lender an amount equal to the additional
27 taxes [~~and interest~~] that would be due under Section 23.55 if a

1 change of use occurred on January 1 of the year in which the loan is
2 granted or amended;

3 (2) requires the escrow account to bear interest to be
4 credited to the account monthly;

5 (3) permits the lender to apply money in the escrow
6 account to the payment of a bill for additional taxes [~~and interest~~]
7 under Section 23.55 before the loan is paid and requires the lender
8 to refund the balance remaining in the escrow account after the bill
9 is paid to the borrower; and

10 (4) requires the lender to refund the money in the
11 escrow account to the borrower on the payment of the loan.

12 (d) On the request of the borrower or the borrower's
13 representative, the assessor for each taxing unit shall compute the
14 additional taxes [~~and interest~~] that would be due that taxing unit
15 under Section 23.55 if a change of use occurred on January 1 of the
16 year in which the loan is granted or amended. The assessor may
17 charge a reasonable fee not to exceed the actual cost of making the
18 computation.

19 SECTION 5. Sections 23.46(c) and (d), Tax Code, as amended
20 by this Act, apply only to a sale or diversion to a nonagricultural
21 use of land appraised under Subchapter C, Chapter 23, Tax Code, that
22 occurs on or after the effective date of this Act.

23 SECTION 6. Sections 23.47(c) and (d), Tax Code, as amended
24 by this Act, apply only to a loan secured by a lien on land
25 designated for agricultural use that is contracted for on or after
26 the effective date of this Act.

27 SECTION 7. Sections 23.55(a), (b), (e), (f), (m), and (n),

1 Tax Code, as amended by this Act, apply only to a change of use of
2 land appraised under Subchapter D, Chapter 23, Tax Code, that
3 occurs on or after the effective date of this Act.

4 SECTION 8. Sections 23.58(c) and (d), Tax Code, as amended
5 by this Act, apply only to a loan secured by a lien on open-space
6 land that is contracted for on or after the effective date of this
7 Act.

8 SECTION 9. This Act takes effect December 1, 2017.