HOUSE
RESEARCH
ORGANIZATION bill analysis 4/28/2005

HB 2491
Puente

SUBJECT: Revising redemption period for foreclosed property and tax lien transfers

COMMITTEE: Local Government Ways and Means — favorable, without amendment

VOTE: 7 ayes — Hill, Hamilton, Elkins, Laubenberg, Puente, Quintanilla, Uresti

0 nays

WITNESSES: For — Mary B. Doggett, Jerry Thompson, Liberty Capital Corporation; Phyllis Mueller, Tax Ease

Against — None

BACKGROUND: Tax Code, ch. 32, governs property tax liens and the transfer of these liens to other parties. On January 1 of each year, a tax lien attaches to a property to secure the payment of all taxes, penalties, and interest to the taxing unit having power to tax the property. Property owners may transfer tax liens to lenders who pay property taxes on the person's real property. Receipt for the payment of taxes is issued to the lienholder, who may not charge interest on a loan of more than 18 percent a year on taxes, penalties, interest, and recording expenses.

Under Tax Code, sec. 32.06(i), a person whose property is sold in a tax sale, or any person holding the first lien against the property, is entitled, within one year after the date the property is sold, to redeem the property from the purchaser by paying the purchase price, plus costs, and interest accrued on the judgment to the date of redemption or 118 percent of the amount of the judgment, whichever is less.

Tax Code, sec. 32.056, authorizes the owner of real property to enter into a contract for the payment of taxes with the holder of a lien on the property. A contract could provide for defaults or acceleration of payments and stipulate that a transferee of a tax lien is subrogated to and is entitled to exercise any right or remedy possessed by the transferring tax unit, including foreclosure or judicial sale.

DIGEST: HB 2491 would increase from one to two years the time in which a person who owns or holds a first lien on a certain property sold at a tax sale could redeem foreclosed property from the person who purchased the property at the tax sale. The property owner or lienholder would have to pay the purchaser the foreclosure sale purchase price plus costs, fees and interest of 18 percent per year to the date of redemption, or 125 percent of the purchase price during the first year of the redemption period or 150 percent of the purchase price during the second year of the redemption period, whichever was less. The right of redemption could be exercised on or before the second anniversary of the date on which the purchaser's deed was filed of record if the sold property was the owner's residence, land designated for agricultural use, or a mineral interest.

For any other property, the right of redemption would have to be exercised within 180 days of the date the purchaser's deed was filed of record. If the foreclosed property were purchased from the property owner who entered into the lien, any lien would remain in effect to the extent it was not paid from proceeds of the foreclosure sale.

The bill would amend Tax Code, sec. 32.06, to allow loans on personal as well as real property and to add closing costs to expenses for which a lender could charge an interest rate of no more than 18 percent. Tax Code, sec. 32.065, would specify that a contract could provide for closing costs and fees, funding incident to an escrow agreement, interest on money advanced of up to 18 percent, and nonjudicial foreclosure sale.

The bill would take effect September 1, 2005 and would apply to the transfer of tax liens occurring on or after that date.

SUPPORTERS SAY:

HB 2491 would expand the rights of property owners and lienholders in tax foreclosure sales by increasing the right of redemption period from one to two years. This would bring the right of redemption in these situations more in line with statutes governing foreclosures by taxing units.

The bill would also clarify certain provisions in these sections of the Tax Code to better reflect the practices of lienholders involved in loans for property taxes.

OPPONENTS SAY:

The bill would expand the authority of lenders to include personal as well as real property. This is beyond the scope of this section of the Tax Code, which was designed to govern real property transactions, primarily property sold at tax auctions. The protections in the statute would not provide sufficient support for transactions involving personal property.

NOTES: The companion bill, SB 1505 by Armbrister, has been referred to the Senate Intergovernmental Relations Committee.