

BILL ANALYSIS

Senate Research Center

H.B. 2491
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Engrossed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

The current law under Section 32.06, Tax Code, allows real estate owners to pay for property taxes with loans. Concerns have been raised about certain ambiguities in the statutory language. The proposed changes provide a definition of costs, clarifies the terms for redemption of the property, and clarifies the requirements for notification to the mortgage lender.

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 1.07(b), Tax Code, to require, if a property owner files a written request with the appraisal district that notices be sent to a particular address, the official or agency to send the notice to the address stated in the request. Makes a nonsubstantive change.

SECTION 2. Amends Section 1.11(b), Tax Code, to require a request made under, rather than pursuant to, this section to be filed with the appraisal district to be effective. Provides that a request remains in effect until revoked by a written revocation filed with the appraisal district by the owner.

SECTION 3. Amends Section 22.28, Tax Code, by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) Requires the chief appraiser to certify to the assessor for each taxing unit participating in the appraisal district that imposes taxes on the property that the chief appraiser has imposed a penalty under this section. Deletes existing text authorizing the chief appraiser to retain a portion of a penalty collected under this section not to exceed 20 percent of the amount of the penalty, to cover the chief appraiser's costs of collecting the penalty. Requires the assessor to add the amount of the penalty to the original amount of tax imposed on the property and shall include that amount in the tax bill for that year. Provides that the penalty becomes part of the tax on the property and is secured by the tax lien that attaches to the property under Section 32.01. Deletes existing text requiring the chief appraiser to distribute the remainder of the penalty to each taxing unit participating in the appraisal district that imposes taxes on the property in proportion to the taxing unit's share of the total amount of taxes imposed on the property by all taxing units participating in the district.

(c) Requires a collector who collects a penalty imposed under Subsection (a) to remit to the appraisal district that employs the chief appraiser who imposed the penalty an amount equal to five percent of the penalty amount collected to help defray the costs of administering this chapter.

SECTION 4. Amends Section 25.25(d), Tax Code, to provide that payment of the late-correction penalty is secured by the lien that attaches to the property under Section 32.01 and is subject to enforced collection under Chapter 33.

SECTION 5. Amends Section 26.11(c), Tax Code, to make modifications to the list of items that the payment absolves. Makes a nonsubstantive change.

SECTION 6. Amends Section 31.073, Tax Code, to provide that a restriction or condition placed on a check in payment of taxes, penalties, or interest by the maker that limits the amount of taxes, penalties, or interest owed to an amount less than that stated in the tax bill or shown by the tax collector's records is void unless the restriction or condition is authorized by this code.

SECTION 7. Amends Section 31.08(a), Tax Code, to require, at the request of any person, a collector for a taxing unit to issue a certificate showing the amount of delinquent taxes, penalties, interest, and any known costs and expenses under Section 33.48 (Recovery of Costs and Expenses) due the unit on a property according to the unit's current tax records. Makes conforming and nonsubstantive changes.

SECTION 8. Amends Section 32.05, Tax Code, by amending Subsections (b) and (c) and adding Subsections (b-1), (d), and (e), as follows:

(b) Makes modification to the list of claims over which tax lien provided by this chapter takes priority, except as provided by Subsection (c)(1), rather than Subsection (c).

(b-1) Provides that the priority given to a tax lien by Subsection (b) prevails, regardless of whether the debt, lien, future interest, or other encumbrance existed before attachment of the tax lien.

(c) Provides that a tax lien provided by this chapter is inferior to certain claims, covenants, and easements.

(d) Provides that an action brought under Chapter 33 (Delinquency) for the enforced collection of a delinquent tax against certain entities that hold a lien for regular or special maintenance assessments, fees, dues, interest, fines, costs, attorney's fees, or other monetary charges against the property is not a necessary party to the action unless, at the time the action is commenced, notice of the lien in a liquidated amount is evidenced by a sworn instrument duly executed by an authorized person and recorded with the clerk of the county in which the property is located. Provides that a tax sale of the property extinguishes the lien held by said entities for all amounts that accrued before the date of sale under certain circumstances.

(e) Provides that the existence of a recorded restrictive covenant, declaration, or master deed that generally provides for the lien held by a property owners' association, homeowners' association, condominium unit owners' association, or council of owners of a condominium regime does not, by itself, constitute actual or constructive notice to a taxing unit of a lien under Subsection (d).

SECTION 9. Amends Section 32.06, Tax Code, as follows:

(a) Defines "mortgage servicer" and "transferee."

(a-1) Redesignated from existing Subsection (a). Authorizes a person to authorize another person to pay the delinquent taxes imposed by a taxing unit on the person's real property by filing with the collector for the unit a sworn document stating certain information.

(a-2) Authorizes, after a tax lien is transferred, taxes on the property that become due in subsequent tax years to be transferred before the delinquency date in the manner provided by Subsection (a-1).

(a-3) Authorizes a tax lien to be transferred before the delinquency date in the manner provided by Subsection (a-1) only if the real property is not subject to a lien other than the tax lien.

(b) Requires the collector to issue a tax receipt to the transferee, rather than the person paying the taxes, if the transferee, rather than person, authorized to pay a property owner's, rather than another's, taxes pursuant to Subsection (a-1) pays the taxes and any

penalties and interest imposed. Requires the collector or a person designated by the collector to certify on the sworn document that payment of the taxes and any penalties and interest on the described property and collection costs has been made by the transferee on behalf of the property owner liable for the taxes when imposed and that the taxing unit's tax lien is transferred to that transferee. Requires the collector to attach to the sworn document the collector's seal of office or sign the document before a notary public and deliver the sworn document, a tax receipt, and the affidavit attesting to the transfer of the tax lien to the transferee. Authorizes the sworn document, tax receipt, and affidavit attesting to the transfer of the tax lien to be combined into one document. Requires the collector to conspicuously identify in the applicable taxpayer's account the date of the transfer of a tax lien transferred under this section, rather than keep a record of all tax liens transferred as provided by this section. Makes conforming changes.

(c) Makes modifications to the list of manners in which the transferee of a tax lien and any successor in interest is entitled to foreclose the lien.

(d) Requires a tax lien transferred as provided by this section, in order to be enforceable, to be recorded with the sworn statement and affidavit attesting to the transfer of the tax lien as described in Subsection (b) in the deed records of each county in which the property encumbered by the lien is located.

(e) Prohibits a transferee, rather than a person, holding a tax lien transferred as provided by this section from charging a greater rate of interest than 18 percent a year on the funds advanced. Provides that funds advanced are limited to the taxes, penalties, interest, and collection costs paid as shown on the tax receipt, expenses paid to record the lien, plus reasonable closing costs. Deletes existing text referring to recording expenses paid to acquire and record the lien.

(f) Entitles the mortgage servicer, rather than holder, of a preexisting lien on property encumbered by a tax lien transferred as provided by Subsection (b), rather than this section, within six months after the date on which the tax lien is recorded in all counties in which the property is located, to obtain a release of the transferred tax lien by paying the transferee [holder] of the tax lien the amount owed under the contract between the property owner and the transferee. Authorizes a transferee to charge a reasonable fee for a payoff statement that is requested after an initial payoff statement is provided.

(g) Authorizes at any time after the end of the six-month period specified by Subsection (f) and before a notice of foreclosure of the transferred tax lien is sent, the transferee of the tax lien or the holder of the tax lien to require the property owner to provide written authorization and pay a reasonable fee before providing information regarding the current balance owed by the property owner to the transferee or the holder of the tax lien.

(h) Provides that mortgage servicer who pays a transferred tax lien becomes subrogated to all rights in the lien.

(i) Redesignated from existing Subsection (g). Prohibits a foreclosure of, rather than a suit to foreclose, a tax lien transferred as provided by this section from being instituted within one year from the date on which the lien is recorded in all counties in which the property is located, unless the contract between the owner of the property and the transferee provides otherwise.

(j) Redesignated from existing Subsection (h). Makes conforming changes.

(k) Redesignated from existing Subsection (i). Entitles, beginning on the date the foreclosure deed is recorded, the person whose property is sold as provided by Subsection (c), rather than this section, or the mortgage servicer of, rather than any person holding, a prior recorded, rather than first, lien against the property to redeem the foreclosed property from the purchaser by paying the purchaser or successor 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 with cash or cash equivalent funds. Authorizes the right of redemption to be exercised on or before the

second anniversary of the date on which the purchaser's deed is filed of record if the property sold was the residence homestead of the owner, was land designated for agricultural use, or was a mineral interest. Requires the right of redemption to be exercised not later than the 180th day after the date on which the purchaser's deed is filed of record for any other property. Deletes existing text referring to a tax sale.

SECTION 10. Amends Section 32.065, Tax Code, by amending Subsections (a), (b), (d), and (f) and adding Subsections (b-1) and (g), as follows:

(a) Deletes existing text pertaining to certain contracts between an owner of real property with the holder of a lien on the property.

(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 make certain provisions notwithstanding any agreement to the contrary.

(b-1) Authorizes, on an event of default and notice of acceleration, the mortgage servicer of a recorded lien encumbering real property to obtain a release of a transferred tax lien on the property by paying the transferee of the tax lien or the holder of the tax lien the amount owed by the property owner to that transferee or holder.

(d) Deletes existing text referring to Section 302.102 (Prohibition on Prepayment Penalty), Finance Code.

(f) Requires the first written communication by the transferee, rather than lender, to the transferee's prospective borrower to disclose each type and the approximate amount of possible additional charges or fees that may be incurred by the borrower in connection with the loan or contract under this section. Makes conforming changes.

(g) Provides that an affidavit of the transferee executed after foreclosure of a tax lien that recites compliance with the terms of Section 32.06 and this section and is recorded in each county in which the property is located is prima facie evidence of compliance with Section 32.06 and this section and may be relied on conclusively by a bona fide purchaser for value without notice of any failure to comply.

SECTION 11. Amends Sections 33.011(a) and (d), Tax Code, as follows:

(a) Makes modifications to list of reasons for which a governing body of a taxing unit is authorized to waive penalties and provide for the waiver of interest on a delinquent tax.

(d) Requires a request for a waiver of penalties and interest under Subsection (a)(1), (b), or (h), rather than this section, to be made before the 181st day after the delinquency date. Requires a request for a waiver of penalties and interest under Subsection (a)(2) to be made before the first anniversary of the date the religious organization acquires the property. Requires a waiver of penalties or interest under this section to be requested in writing to be valid. Prohibits the governing body of a taxing unit from waiving any penalties or interest under this section if a written request for a waiver is not timely made.

SECTION 12. Amends Section 33.02(a), Tax Code, to delete existing text referring to a taxing unit that collects its own taxes.

SECTION 13. Amends Section 33.22, Tax Code, by adding Subsections (d) and (e), as follows:

(d) Entitles a collector to recover attorney's fees in an amount equal to the compensation specified in the contract with the attorney under certain conditions.

(e) Entitles the collector for a taxing unit to recover attorney's fees in an amount equal to 15 percent of the total amount of delinquent taxes, penalties, and interest that the property owner owes the taxing unit if the taxing unit is represented by an attorney who is also an officer or employee of the taxing unit.

SECTION 14. Amends Section 33.23(a), Tax Code, to include attorney's fees amongst the costs to be covered by a tax warrant.

SECTION 15. Amends Section 33.25, Tax Code, by amending Subsections (f) and (h) and adding Subsection (i), as follows:

- (a) Includes that the proceeds of a sale of property under this section are required to be applied to attorney's fees.
- (h) Makes a conforming change.
- (i) Authorizes the seizure or sale of the property to be canceled and terminated at any time by the applicant or an authorized agent or attorney of the applicant after a tax warrant is issued.

SECTION 16. Amends Section 33.48, Tax Code, by adding Subsection (d) to require a collector who accepts a payment of the court costs and other expenses described by this section to disburse the amount of the payment in a certain manner.

SECTION 17. Amends Section 33.51, Tax Code, as follows:

- (a) Creates this subsection from existing text.
- (b) Requires the officer charged with executing the writ to place the purchaser or the purchaser's assigns in possession of the property described in the purchaser's deed without further order from any court and in the manner provided by the writ, subject to any notice to vacate that may be required to be given to a tenant under Section 24.005(b) (pertaining to notice to vacate prior to eviction suit), Property Code.
- (c) Requires the writ of possession (writ) to give certain orders the officer executing the writ.
- (d) Requires the writ to authorize the officer, at the officer's discretion, to engage the services of a bonded or insured warehouseman to remove and store, subject to applicable law, all or part of the personal property at no cost to the purchaser, the purchaser's assigns, or the officer executing the writ. Prohibits the officer from requiring the purchaser or the purchaser's assigns to store the personal property.
- (e) Requires the writ to contain notice to the officer that the officer is not liable for damages resulting from the execution of the writ if the officer executes the writ in good faith and with reasonable diligence.
- (f) Provides that the warehouseman's lien on stored property, the officer's duties, and the occupants' rights of redemption as provided by Section 24.0062, Property Code, are all applicable with respect to any personal property that is removed under Subsection (d).
- (g) Authorizes a sheriff or constable to use reasonable force in executing a writ under this section.
- (h) Sets forth certain provisions if a taxing unit is a purchaser and is entitled to a writ of possession in the taxing unit's name.
- (i) Defines "premises" and "purchaser."

SECTION 18. Amends Subchapter C, Chapter 33, Tax Code, by adding Section 33.57, as follows:

Sec. 33.57. ALTERNATIVE NOTICE OF TAX FORECLOSURE ON CERTAIN PARCELS OF REAL PROPERTY. (a) Defines "appraised value."

- (b) Authorizes this section to be invoked and used by one or more taxing units under certain circumstances.
- (c) Authorizes one or more taxing units to file a single petition for foreclosure under this section that includes multiple parcels of property and multiple owners. Authorizes separate petitions to be filed and docketed separately for each parcel of property. Authorizes another taxing unit with a tax claim against the same parcel to intervene in an action for the purpose of establishing and foreclosing its tax lien without further notice to a defendant. Authorizes the petition to be filed in the county in which the tax was imposed and is sufficient if it is in substantially the form prescribed by Section 33.43 (Petition) and makes certain allegations.
- (d) Requires a taxing unit, simultaneously with the filing of the petition under this section, to also file a motion with the court seeking an order approving notice of the petition to each defendant by certified mail in lieu of citation and, if the amount of delinquent taxes, penalties, interest, and attorney's fees alleged to be owed exceeds the appraised value of the parcel, waiving the appointment of an attorney ad litem. Requires the motion to be supported by certified copies of tax records that show the tax years for which delinquent taxes are owed, the amounts of delinquent taxes, penalties, interest, and attorney's fees, and, if appropriate, the appraised value of the parcel.
- (e) Requires the court to approve a motion under Subsection (d) if the documents in support of the motion show certain facts.
- (f) Requires the taxing unit or its attorney to determine the address of each owner of a property interest in the parcel for the purpose of providing notice of the pending petition before filing a petition under this section, or as soon afterwards as practicable. Provides that if the title search, the taxing unit's tax records, and the appraisal district records do not disclose an address of a person with a property interest, consulting the certain sources of information is to be considered a reasonable effort by the taxing unit or its attorney to determine the address of a person with a property interest in the parcel subject to foreclosure.
- (g) Requires the taxing unit or its attorney to send a copy of the petition and a notice by certified mail to each person whose address is determined under Subsection (f), informing the person of the pending foreclosure action and the scheduled hearing, not later than the 45th day before the date on which a hearing on the merits on a taxing unit's petition is scheduled. Requires a copy of each notice to be filed with the clerk of the court together with an affidavit by the tax collector or by the taxing unit's attorney attesting to the fact and date of mailing of the notice.
- (h) Requires the taxing unit to provide notice by publication and by posting to all persons with a property interest in the parcel subject to foreclosure. Sets forth certain requirements for the publication and posting.
- (i) Sets forth certain items which must be included in the notice required by Subsections (g) and (h).
- (j) Authorizes a person claiming a property interest in a parcel subject to foreclosure to contest a taxing unit's petition by filing with the clerk of the court a written response to the petition not later than the seventh day before the date scheduled for hearing on the petition and specifying in the response any affirmative defense of the person. Requires a copy of the response to be served on the taxing unit's attorney of record in a certain manner. Entitles the taxing unit on request to a continuance of the hearing if a written response filed to a notice of the hearing contains an affirmative defense or requests affirmative relief against the taxing unit.

(k) Authorizes a taxing unit to remove a parcel erroneously included in the petition and to take a voluntary nonsuit as to one or more parcels of property without prejudicing its action against the remaining parcels before entry of a judgment under this section.

(l) Requires the taxing unit to take reasonable steps in good faith to correct the deficiency before the hearing, if before the hearing on a taxing unit's petition the taxing unit discovers a deficiency in the provision of notice under this section. Provides that a notice provided by Subsections (g)-(i) is in lieu of citation issued and served under Rule 117a, Texas Rules of Civil Procedure. Prohibits an attorney ad litem from being appointed for a person with an interest in a parcel with delinquent taxes, penalties, interest, and attorney's fees against the parcel in an amount that exceeds the parcel's appraised value regardless of the manner in which notice under this section is given. Provides that to the extent of any additional conflict between this section and the Texas Rules of Civil Procedure, this section controls. Provides that except as otherwise provided by this section, a suit brought under this section is governed generally by the Texas Rules of Civil Procedure and by Subchapters C and D of this chapter.

(m) Requires a judgment in favor of a taxing unit under this section to be only for foreclosure of the tax lien against the parcel. Prohibits the judgment from including a personal judgment against any person.

(n) Provides that a person is considered to have been provided sufficient notice of foreclosure and opportunity to be heard for purposes of a proceeding under this section if certain conditions are met.

SECTION 19. Amends Section 12.002(e), Property Code, to include that this subsection does not apply if a taxing unit acquired the real property for public use through eminent domain proceedings or voluntary sale.

SECTION 20. Amends Subchapter B, Chapter 21, Property Code, by adding Section 21.0211, as follows:

Sec. 21.0211. PAYMENT OF AD VALOREM TAXES. (a) Prohibits a court from authorizing withdrawal of any money deposited under Section 21.021 unless the petitioner for the money makes certain filings with the court.

(b) Defines "case of a whole taking."

SECTION 21. Amends Section 17.091(a), Civil Practice and Remedies Code, is amended to include that in certain suits, the secretary of state is an agent for service of process on the defendant if the defendant claims a lien against property.

SECTION 22. Makes application of Section 31.073, Tax Code, as amended by this Act, prospective.

SECTION 23. Provides that Section 32.05, Tax Code, as amended by this Act, applies to any lien, regardless of the date on which it arose, and to any cause of action pending on the effective date of this Act or brought after that date.

SECTION 24. Makes application of Section 33.011, Tax Code, as amended by this Act, prospective.

SECTION 25. Makes application of Section 33.02, Tax Code, as amended by this Act, prospective.

SECTION 26. Makes application of Section 33.22, Tax Code, as amended by this Act, prospective.

SECTION 27. Makes application of Section 33.23, Tax Code, as amended by this Act, prospective.

SECTION 28. Makes application of Section 33.25, Tax Code, as amended by this Act, prospective.

SECTION 29. Makes application of Section 33.48, Tax Code, as amended by this Act, prospective.

SECTION 30. Makes application of Section 33.51, Tax Code, as amended by this Act, prospective.

SECTION 31. Makes application of Section 33.57, Tax Code, as added by this Act, prospective.

SECTION 32. Makes application of Section 12.002(e), Property Code, as amended by this Act, prospective.

SECTION 33. Makes application of Section 21.0211, Property Code, as added by this Act, prospective.

SECTION 34. Makes application of Section 17.091, Civil Practice and Remedies Code, as amended by this Act, prospective

SECTION 35. Effective date: September 1, 2005