

- SUBJECT:** Borrower's right to agricultural or open space appraisal
- COMMITTEE:** Financial Institutions — committee substitute recommended
- VOTE:** 8 ayes — Marchant, Carona, Elkins, Giddings, Grusendorf, Gutierrez, Patterson, Romo
- 0 nays
- 1 absent — Hudson
- WITNESSES:** For — Jerry F. McCarty
- Against — None
- On — Merrit Lewis Hopson, Texas Department of Insurance
- BACKGROUND:** The state allows certain property tax exemptions for land that is designated for agricultural or open-space use. Land may be designated as open-space land for tax purposes if it has been used principally for agriculture for five of the past seven years. An agricultural-use designation may be given land used exclusively for agricultural purposes for the past three years.
- When land designated as agricultural-use land is sold or diverted to nonagricultural use, three years of additional taxes, plus interest, must be paid. Five years of additional taxes, plus interest, becomes due when an open-space tax designation is changed. The additional tax is the difference between the agricultural-use tax and the tax that would have been levied without the designation.
- Title insurance companies are liable for additional taxes if an open-space or agricultural-use exemption changes and may require that additional taxes be paid at closing unless the additional tax liability is waived by the lender.
- DIGEST:** CSHB 947 would prohibit a lender (i.e., financial institution, insurance company or governmental agency other than a U.S. agency) from requiring borrowers to waive their right to an agricultural or open-space tax exemption as a condition of acquiring a loan.

If a lender required a borrower to make a payment to protect the lender from additional taxes due on agricultural-use or open-space land, the funds would have to be placed in an interest-bearing escrow account to cover any additional taxes due or to be returned to the borrower when the loan was paid.

Tax assessors would be required to compute the additional taxes and interest if requested by the borrower or the borrower's representative. The tax assessor could charge a reasonable fee for the computation.

CSHB 947 would take effect immediately if approved by two-thirds of the membership of each house.

**SUPPORTERS
SAY:**

The escrow account provided for by CSHB 947 would protect lenders and borrowers from additional taxes over the life of the loan and end a troublesome practice among some lenders. Some financial institutions, especially those that intend to sell a loan on the secondary market, require as a condition of the loan that a borrower waive the right to an agricultural use or open-space exemption. This requires the borrower to pay the additional taxes to the taxing entity, lose the exemption and start the process over to regain the tax exemption. This may take up to seven years.

The bill would assure that funds to cover any additional taxes are available, if needed, but would not require the tax exemption to be given up. It would prevent a farmer who refinances a farm from being forced to give up the agricultural exemption as a condition of receiving the loan.

The escrow account should earn interest because the money is set aside as collateral for the lender, and the borrower effectively loses the use of the funds for other investments. Furthermore, the escrow account could be active for as long as 30 years.

**OPPONENTS
SAY:**

This bill seems to be a fair way to assure that lenders are protected from unexpected additional taxes because of a change in property appraisal, but allowing the escrow account to earn interest would be setting a bad precedent. It is unusual for an escrow account to earn interest because mortgage companies are not depositories. Allowing the borrower to put the

money in escrow without interest would be a better solution than paying it to the tax-assessor.

NOTES: The original bill would have allowed only the borrower, and not the borrower's representative, to deal with the tax collector. The committee substitute made technical changes.