

SUBJECT: Recovering costs of environmental clean-up on foreclosed property

COMMITTEE: Urban Affairs — favorable, without amendment

VOTE: 7 ayes — Hill, Bailey, Burnam, Clark, Ehrhardt, Hodge, Shields

0 nays

1 present, not voting — Garcia

1 absent — Wohlgemuth

WITNESSES: For — Susan Horton, Texas Municipal League; Gary A. Slagel, City of Richardson

Against — None

BACKGROUND : When a taxing unit purchases property at an ad valorem tax foreclosure sale and subsequently resells the property, it must first pay all court costs and expenses associated with the sale and then distribute the remainder of the proceeds to all taxing units participating in the original sale to satisfy the taxes, penalties and interest due each. If the proceeds are insufficient to cover these amounts, each participant is entitled to a proportional share.

DIGEST: HB 2056 would allow a taxing unit that purchased a foreclosed property to recover from the resale proceeds any costs of environmental inspection and remediation. It could recover costs incurred to determine whether there was a release or threatened release of solid waste from the property and to take action to remove or remediate the release or threatened release. The taxing unit would be entitled to recover these costs regardless of whether the expenses were required by law or whether other taxing unit entitled to receive proceeds of the sale had consented to the expenses.

The bill would take immediate effect if finally approved by a two-thirds record vote of the membership in each house.

SUPPORTERS SAY: HB 2056 would encourage cities to clean up foreclosed properties with environmental problems, thus making them more marketable and returning them more quickly to the tax rolls.

It is only fair to allow the purchasing tax unit to recover the costs of environmental inspection and clean-up before distributing the proceeds of the resale among the other tax units. The cost of inspection and environmental cleanup should be passed on to subsequent purchasers of these properties rather than sticking taxpayers with these costs. Moreover, these costs should be shared by all taxing entities that stand to benefit when the property is revitalized.

Many of the properties to which this legislation would apply are unmarketable unless environmental contamination is remediated. Programs now in place all across Texas, however, show that once such properties are cleaned up, they can command an attractive price on the real estate market. Environmental inspection and remediation costs represent an investment that can be recouped many times over. Because the entity purchasing the property also seeks to recover delinquent taxes from the proceeds of the resale, it has a compelling incentive to keep these costs low for the benefit of all.

OPPONENTS SAY: It would be unfair to allow the purchasing tax unit to undertake expensive environmental inspection and clean-up that could reduce the delinquent tax recovery of other tax units without the consent of those other tax units. When the proceeds of resale were not enough to pay both environmental costs and delinquent taxes, the environmental costs would be paid in full, leaving a smaller amount to apportion among the other tax units.

NOTES: The companion bill, SB 974 by Carona, unanimously passed the Senate on April 10 on the Local and Consent Calendar and was reported favorably, without amendment, by the House Urban Affairs Committee on April 15, making it eligible to be considered in lieu of HB 2056.