

- SUBJECT:** Prohibiting execution of deed to purchaser who owes delinquent taxes
- COMMITTEE:** Civil Practices — committee substitute recommended
- VOTE:** 6 ayes — Nixon, Gattis, Y. Davis, Hartnett, Rose, Woolley
0 nays
3 absent — Capelo, King, Krusee
- WITNESSES:** For — George Hammerlein, Harris County Tax Assessor-Collector’s Office;
Constable Ron Hickman
Against — None
- BACKGROUND:** Civil Practice and Remedies Code, chapter 34, and Tax Code, chapter 34, govern the sale of real property through writ-of-execution sales and tax foreclosure sales, respectively. A writ of execution is a formal process issued by a court evidencing a defendant’s debt and commanding an officer to take the defendant’s property in satisfaction of that debt. The property is sold at a public sale pursuant to a judicial execution.
- DIGEST:** CSHB 335 would prohibit a purchaser who was delinquent in paying ad valorem taxes from receiving property procured at a judicial execution or foreclosure sale. To receive such purchased property, a purchaser would have to present to the officer conducting the sale an unexpired written statement by the county tax assessor-collector verifying that the purchaser did not owe back ad valorem taxes to the county where the sale occurred or to any school district or municipality in the county. A person could not bid for another person on property in such a sale, and an officer could not execute a deed to anyone other than the purchaser.
- A deed issued in violation of these provisions would be voidable for one year from the date of sale. However, if the purchaser filed with the county clerk the appropriate documents, including an unexpired statement of no back taxes due, the purchaser’s compliance would be presumed.

For purposes of Tax Code, chapter 34, the bill would define “person” to exclude a taxing unit or a person acting on its behalf. On a written request sworn to and signed by any person, the county tax assessor-collector would have to issue a written statement of delinquent taxes owed by that person to the county or to any school district or municipality in that county. The assessor-collector would have to obtain this information from taxing units in the county. If a taxing unit did not respond to the assessor-collector’s request for information, the assessor-collector would have to indicate in the required statement that he or she could not certify the person’s tax status in regard to that taxing unit. The assessor-collector could charge a fee of up to \$10 for this fulfilling this request. A statement by the county as to back taxes would be valid for 90 days.

A person who knowingly violated these provisions would be guilty of a Class B misdemeanor, punishable by up to 180 days in jail and/or a maximum fine of \$2,000. In the event that other law conflicted with the relevant sections of the Civil Practice and Remedies Code and the Tax Code, these sections would control.

The bill would take effect September 1, 2003, and would apply to any public sale of real property held on or after October 1, 2003.

**SUPPORTERS
SAY:**

CSHB 335 would help return property to a tax-producing status by encouraging purchasers to pay their property taxes. From a public policy standpoint, it is better to prohibit delinquent taxpayers from buying property and assuming additional tax burdens when they are not paying the taxes they already owe, than to focus on selling property as quickly as possible regardless of the consequences. By establishing a simple process for becoming a certified buyer, CSHB 335 would enable school districts and municipalities to recover more of the taxes that they assess against real property.

Use of this certification process would help taxing entities receive money owed for back taxes. A purchaser must pay the bid price for the property at the time of the sale. If the purchaser later were found to owe back taxes and were not allowed to receive the property, the entity could keep the money paid for the property and could use it to pay the back taxes. The bill also would

reduce the number of people who buy property without paying their taxes, because they would risk losing the bid amount.

The bill would allow each county to decide the fee amount, up to \$10, that the county needed to cover the cost of creating the required records and to shift the burden of this cost to those buying property at public sales. Setting fees too high could deter people from buying property at such sales.

Because the buyer would not have to obtain certification of no taxes owed until after the public sale, it is unlikely that CSHB 335 would cause a flood of people going to courthouses to seek certifications. Buyers are aware of their tax liabilities, and they know before seeking certification whether or not they would qualify. The bill would create an incentive for purchasers to clear delinquent taxes.

CSHB 335 would deter bad actors. Several years ago, Harris County foreclosed on a house owned by an elderly lady who had failed to pay \$800 in dues to her homeowner's association. The buyer who bought the house at a public sale for a fraction of the house's worth owed more than \$150,000 in back taxes. Had this bill been law at the time of the sale, the buyer could not have bought the house, and any money he put down on the bid would have gone to paying his delinquent taxes.

**OPPONENTS
SAY:**

The public has an interest in moving property off the tax-delinquency rolls. CSHB 335 would make it more difficult for people to buy property at public sales, because they would have to seek certification to buy the property. If the winning bidder did not qualify to receive the property, the county would have to conduct another public sale, and this cycle could go on forever.

The process of becoming certified could be very slow. To verify tax status, a county would have to seek information from all places where the buyer listed property that the buyer owned. The county might have to request information from many entities, and some might have difficulty delivering this information in a timely manner. The property would remain in limbo, with no taxes being collected on it, while the buyer and the county waited for verification. The bill at least should specify deadlines for an entity to respond to a county's request.

Under current law, it normally takes about three weeks for a deed to clear. To maintain this turnaround, counties need to receive the information requested in a day or two. Any delay in receiving the information would translate into a delay in issuing the deed.

Requiring buyers to go through this certification process could cause a flood of people requesting that counties provide these certifications. Although buyers would not have to qualify before a public sale, many would want to do so to ensure that they could buy the property. This flood of requests would burden already overworked county workers and would increase the delay in issuing deeds.

A \$10 fee might not be enough for some counties, especially smaller ones, to cover the costs of compiling these reports. Rural counties tend to have fewer technological resources than metropolitan counties have, and they might need additional funds to locate the proper documents. The bill should allow each county to set a fee that would reflect its specific costs.

NOTES:

As filed, HB 335 would have required a statement certifying that a purchaser of property at a public sale owed no taxes to the county in which the sale occurred. The committee substitute would add that the purchaser could not owe taxes to school districts or municipalities in that county. The substitute also would require the certification of no back taxes owed to be presented after purchasing property at a public sale but before execution or delivery of the deed, rather than at the time of purchase.