

- SUBJECT:** Regulating and licensing property tax lenders
- COMMITTEE:** Financial Institutions — committee substitute recommended
- VOTE:** 6 ayes — Solomons, Flynn, Anchia, Anderson, McCall, Orr
0 nays
1 absent — Chavez
- WITNESSES:** For — Charles Brown, Hunter-Kelsey of Texas, LLC; Mary Belan Doggett, Phil Migicovsky, Texas Property Tax Lenders Association; Suzanne Frossard, Genesis Tax Loan Services, Inc. Genesis Tax Solutions, Inc.; Scott Wizig; David Burnett; Kevin Bales (*Registered, but did not testify*: Sam Feldman, Retax Funding LP; J. Moore McDonough, Hunter-Kelsey; Mark Morris, JPMorgan Chase Bank, N.A.; A.R. "Babe" Schwartz, Genesis Tax Loan Services, Inc. Genesis Tax Solutions, Inc.)

Against — None

On — Heather Amick, FIS Tax Service; Leslie Pettijohn, Consumer Credit Commissioner (*Registered, but did not testify*: Danny Payne, Texas Department of Savings & Mortgage Lending)
- BACKGROUND:** Chapters 342 and 346 of the Finance Code require a license for certain people making, transacting, or negotiating loans.

Finance Code, sec. 349.502 creates an offense for someone who engages in the lending business without holding a license under those chapters. An offense is a misdemeanor punishable by a fine up to \$1,000, and each loan made without a license constitutes a separate offense.
- DIGEST:** CSHB 2138 would create Finance Code, ch. 351 — the Property Tax Lender License Act — that would establish requirements, licensing procedures, and offenses for those who finance property tax loans.

Property tax loans. Any advance of money under the following circumstances would constitute a property tax loan:

- a transfer of lien under Tax Code, sec. 32.06;
- a transfer of a contract of a foreclosed lien under Tax Code, sec. 32.065;
- a transfer, with the property owner's written consent, of property taxes and related closing costs on behalf of the property owners; and
- a special lien secured against property transferred from a taxing unit to the property tax lender that could further be secured by the lien or security interest created by a deed of trust, security deed, or other security instrument.

Property tax lenders. A person would be considered a property tax lender, and thus be required to hold a license, if the person:

- made, negotiated, or executed a property tax loan; or
- directly or indirectly received compensation in connection with a property tax loan in excess of charges authorized under other law.

A person would not be considered a property tax lender if the person:

- was sponsored by or assisted a property tax lender;
- performed only clerical duties;
- was employed by a bank or savings and loan institution;
- was employed by a state or federal credit union or a subsidiary;
- used his or her own funds to make a property tax loan to a spouse, former spouse, or blood relative;
- used his or her own funds to make no more than five property tax loans in a 12-month period.

Application procedures. A property tax lender licensed under this section would not be required to obtain a mortgage broker's license required under Finance Code, ch. 156 or any other license required by another section of the code.

An application for a license would have to be made under oath and contain the location from which business would be conducted. On top of an annual license fee set by rule by the Finance Commission, an applicant would be required to submit an investigation fee of \$200 or less to the Office of Consumer Credit Commissioner (OCCC), which also could require the applicant to obtain a bond.

Within 60 days of filing of a completed application and upon the conclusion of an investigation, the commissioner would approve an application and issue a license upon finding that:

- the applicant's financial responsibility, experience, character, and general fitness were sufficient to command the confidence of the public and demonstrate an intention to lawfully and fairly operate the applicant's business; and
- the applicant's net assets available to operate the business exceeded \$25,000.

The commissioner would be required to notify an applicant who failed to meet these criteria. The applicant would have 30 days after notification to request an appeal hearing, which would have to be held within 60 days of the date of the request. If a license ultimately was denied, the commissioner would retain the investigation fee but would return the license fee.

Establishment requirements. A property tax lender would have to obtain and display a separate license for each office at which property tax loans were made, negotiated, serviced, held, or collected. Each office would have to maintain assets of at least \$25,000 that were readily available. A license would not be required for an office that was devoted to bookkeeping.

A property tax lender could make, negotiate, arrange, and collect property tax loans by mail from a licensed office. The bill also provides for procedures governing an office move or transfer of a license.

Changes in license status. For a licensed property tax lender, the annual fee, as set by rule by the Finance Commission, would be due December 1 for the following calendar year. A license would expire on the later of:

- December 31 of the last year for which an annual fee was paid; or
- 16 days after a written delinquency notice was given to the license holder.

A license holder could surrender the license by sending it to the commissioner along with a written notice.

The commissioner could suspend or revoke a license after notice and a hearing upon finding that:

- the license holder failed to pay a required fee;
- the license holder knowingly or without the exercise of due care violated statutes or rules governing property tax lenders; or
- a fact or condition existed that, had it been known when the original application was filed, would have justified denial of a license.

All evidence analyzed and the decision on the suspension or revocation of a license would be considered public record. For revocation of a license held by a corporation, the attorney general would be notified and would be required to file suit in Travis County district court for forfeiture of the license holder's charter. None of these conditions would affect any obligations between the property tax lender and a debtor.

A suspended license could be reinstated or a new license could be obtained if the conditions that justified suspension or revocation no longer existed.

Offenses. The bill would amend Finance Code sec. 349.502 to include violation of this section as an offense subject to a fine of up to \$1,000. Enforcement provisions under certain portions of the Tax Code and Finance Code also would apply to violations of this chapter.

Other provisions. The bill would not prohibit a property tax lender from receiving compensation from someone other than the property tax loan applicant upon closing of a property tax loan transaction. It also would not prevent affiliated business arrangements or loan origination services between a property tax lender and other professionals.

The bill would not affect application of Tax Code, secs. 32.06 and 32.065, and the Finance Commission would be authorized to adopt rules ensuring compliance between this chapter and those sections

The bill provides for notification of a taxing unit for the transfer of a tax lien.

Effective date. The bill would take effect September 1, 2007, and a person would be have to comply with licensure requirements by March 1, 2008.

**SUPPORTERS
SAY:**

CSHB 2138 would add a layer of protection to consumers engaged in property tax loans and provide oversight to the only type of loan instrument connected with a mortgage that currently is without any licensing and regulatory governance.

The practice of property-tax lien transfers has existed in Texas even before the Legislature first codified it into the Property Tax Code in 1979. A property owner contracts with a third party, which acquires the preexisting lien on the property. No statute specifically addresses the practice from a licensing and regulation standpoint, and this bill would fill a much-needed role by creating uniform industry standards and designating an agency, the OCCC, to oversee the industry.

The bill would protect consumers from fly-by-night lenders and give them and the state more recourse for illegal activity. It also would provide a welcome level of uniformity for law-abiding lenders who have been looking for a way to streamline their operations. Their endorsement of this bill and desire to be regulated reinforces this idea.

**OPPONENTS
SAY:**

No apparent opposition.

NOTES:

The committee substitute modified language in the bill as introduced and specified the applicability of the bill to other chapters covering enforcement.

SB 1521 by Wentworth and SB 1892 by Janek, the identical Senate companions to HB 2138, both have been referred to the Senate Business and Commerce Committee.

A related bill, HB 2137 by Paxton, which would add requirements and regulations to the tax lien lending industry, was reported favorably, as substituted, by the House Financial Institutions Committee on April 16.

According to the Legislative Budget Board, CSHB 2138 would be neutral in terms of its impact on general revenue-related funds. While OCCC would incur some administrative expenses to implement the bill, these costs would be offset by an increase in fee revenue.