

- SUBJECT:** Transferring property tax liens and imposing an administrative penalty
- COMMITTEE:** Ways and Means — committee substitute recommended
- VOTE:** 7 ayes — Hilderbran, Otto, Christian, Gonzalez, Lyne, Murphy, Villarreal
0 nays
4 absent — Elkins, Martinez Fischer, Ritter, Woolley
- SENATE VOTE:** On final passage, March 24 — 31-0
- WITNESSES:** (*On House companion bill, HB 1796:*)
For — Charles Brown, Mary Doggett, Texas Property Tax Lienholders Association; (*Registered, but did not testify:* Doug Ruby, Texas Property Tax Lienholders Association)

Against — John Heasley, Texas Bankers Association

On — Leslie Pettijohn, Office of the Consumer Credit Commissioner
- BACKGROUND:** Under Tax Code, ch. 32, property tax lien holders offer property owners loans to pay off their property taxes. In return, property owners pay fees and interest on the principal. The lien that local taxing entities had on the property for delinquent taxes is transferred to the property tax lien holder. These liens takes precedence over other liens, such as mortgages, as a taxing entity's tax lien would. The property tax lien holder may foreclose on the property to collect the lien under certain circumstances.
- DIGEST:** CSSB 762 would change the way property tax lien holders are regulated in Texas.
- Fees a property tax lien holder may charge.** Under CSSB 762, a property tax lien holder would not be allowed to charge a property owner a fee after closing, including collection costs, except for:
- interest expressly authorized by Tax Code, ch. 32;
 - fees for filing the release of the tax lien;

- fees for providing a tax lien payoff statement;
- a fee for providing information on the current balance owed by the property owner;
- a reasonable fee for filing the release of a tax lien;
- a reasonable fee for a lien payoff statement;
- reasonable and necessary attorney's fees, recording fees, and court costs for actions needed to perform a foreclosure;
- permissible attorney's fees for services performed after the property owner files a voluntary bankruptcy petition;
- a reasonable fee for title searches;
- a processing fee for insufficient funds;
- a fee for collateral protection insurance;
- a prepayment penalty, if the lien transferred was on a property other than one owned and used by the owner for personal, family, or household purposes;
- recording expenses for necessary modifications to liens necessary to preserve a borrower's ability to avoid a foreclosure proceeding; and
- fees for copies of documents requested by the property owner.

The bill would require a property tax lien holder to provide a property owner one free copy of the transaction documents at closing and an additional free copy of the transaction documents on the property owner's request following closing.

Limits on fees for real property used for personal, family or household use. A property tax lien holder would not be allowed to charge any fee, other than interest, after closing in connection with the transfer of a tax lien against property owned and used by the property owner for personal, family, or household purposes unless the fee was expressly authorized under the bill or any interest not expressly authorized under Tax Code, sec. 32.06.

Interest for default. A property tax lien holder would be allowed charge up to an additional 5 cents for each \$1 of an unpaid scheduled payment. This would be in addition to the up to 18 percent interest the lien holders currently may charge on principal under current law.

Removing the cap on attorney's fees. CSSB 762 would remove the existing cap on attorney's fees of 10 percent of the judgment when a property tax lien holder successfully forecloses on a property owner.

Under the bill, the property tax lien holder would be allowed recover attorney's fees fixed in the judgment ordering the foreclosure.

Enforcement. CSSB 762 would authorize the consumer credit commissioner to impose administrative penalties to enforce the fee rules and other regulations imposed by the bill. The commissioner also could impose administrative penalties on tax lien holders who did not notify of lien holders on the property of the lien transfer from a local taxing entity to the tax lien holder.

Tax assessor-collector recording duties. The bill would make changes responsibilities of tax assessor-collectors to record liens.

Effective date. The bill would take effect on September 1, 2011 and only would apply to the transfer of a property tax lien that occurs on or after that date.

SUPPORTERS
SAY:

CSSB 762 would provide needed consumer protection to an emerging but competitive market by specifying for which services property tax lien holders could charge fees to their customers. The bill would make clear to both property owners and tax lien holders what fees were allowed and when they could be levied. The bill also would grant the consumer credit commissioner the ability to create rules for these fees and enforce them through administrative penalties. The commissioner would create rules through the normal process of gauging market information, gathering testimony, and examining how other similar products were regulated.

CSSB 762 would establish a fee rubric similar to the fees that are allowed with mortgages, particularly second mortgages. This would bring property tax liens in line with the way other, similar financial products are regulated.

The bill would not allow excessive fees or interest rates. Property tax lien holders work in a competitive environment where competition has driven down interest rates and fees to a reasonable point. The free market prevents usury. The rates are higher than a mortgage, however, because of the higher risk. Tax lien holders grant loans to people who cannot pay their property taxes. This is an inherently risky group. Certain interest rates and fees are necessary to cover the risk of default. Under the bill, tax lien holders would be able to impose only reasonable fees. The

commissioner would, by rule and administrative penalties, help to ensure that only reasonable rates were charged .

The bill would address commercial property tax liens. The committee substitute would specify only a few fee limits that applied specifically to personal, family, or household purposes, including limits on pre-payment penalties. This would mean all other fee limitations imposed by the bill would apply to commercial property as well. The bill would not grant commercial properties the same protections it grants to residential properties because property tax loans for commercial properties tend to be much larger and tend to be taken out by businesses able to seek out and negotiate loans at acceptable terms and rates. The bill would provide additional protections to residential property owners because they may or may not have the kind of experience or negotiating ability required to determine appropriate rates, fees, and other terms on their own.

**OPPONENTS
SAY:**

CSSB 762 would not protect consumers adequately. Property tax lien holders already operate with a low-risk business model because their loans are secured via liens on the property. There is no business need beyond sheer profit for them to charge so many fees and such high interest.

The few limits the bill would impose would apply only to properties used for personal, family, or household purposes. The bill would not provide enough explicit protection to commercial or other properties from the high interest and excessive fees common in this industry.

NOTES:

The committee substitute differs from the Senate-passed version of the bill by removing certain references to personal, family, or household to specify the kind of property on which certain fees could be charged.

The House companion bill, HB 1796 by Paxton, was considered in a public hearing by the House Ways and Means Committee on April 4 and left pending.