HOUSE RESEARCH ORGANIZATION bill analysis 5/8/2013

HB 2687
E. Rodriguez
(CSHB 2687 by Hilderbran)

SUBJECT: Allowing a taxing unit to prohibit transfer of an ad valorem tax lien

COMMITTEE: Ways and Means — committee substitute recommended

VOTE: 6 ayes — Hilderbran, Otto, Bohac, Eiland, Martinez Fischer, Strama

0 nays

3 absent — Button, N. Gonzalez, Ritter

WITNESSES: For — Mariannem Smith, Spring ISD; (*Registered, but did not testify:* Sylvia Firth Borunda, City of El Paso; Kippy Caraway, City of Houston; Bruce Elfant; Celeste Embrey, Texas Bankers Association; John Hrncir, City of Austin; Donald Lee, Texas Conference of Urban Counties; Thomas W. Lee; Kathy Reeves; Chris Young, Linebarger Goggan Blair & Sampson, LLP)

Against — Doug Ruby, Texas Property Tax Lienholders Association; (*Registered, but did not testify:* Allen Beinke, Texas Property Tax Lienholders Association; Cheryl Johnson, Galveston County Tax Office; Sheryl Swift, Galveston County Tax Office)

BACKGROUND: Under Tax Code, sec. 32.06, a person is allowed to authorize another person to pay property taxes imposed by a taxing unit on that person's behalf. A tax lien can be transferred to the person who pays the taxes on behalf of the property owner for:

- taxes that are delinquent at the time of payment; or
- taxes that are not delinquent at the time of payment if the property was not subject to a recorded mortgage lien, or a tax lien transfer consented to by the property owner was executed and recorded for one or more prior years on the property .

DIGEST: HB 2687 would allow the governing body of a taxing unit to prohibit the transfer of a tax lien to the person who paid taxes on behalf of the person.

The bill would require a taxing unit to send written notification to a county tax assessor-collector within 15 days of any action regarding a transfer of a tax lien to a person paying taxes on behalf of a property owner.

The bill would take effect January 1, 2014.

SUPPORTERS SAY:

HB 2687 would allow the governing body of a taxing unit to prohibit the transfer of a government (tax) lien without that body's consent. Under current law, tax liens are transferred without the taxing unit that held the lien authorizing or being aware of this transfer.

HB 2687 would be permissive in allowing local entities to prohibit tax lien transfers without adding any additional state restrictions on the industry. This would allow for the tailoring of prohibitions to areas where abusive property tax lending practices have taken hold but would not necessarily affect those areas where this is not the case.

Property tax lending businesses, which are a relatively new phenomenon in themselves, have proliferated in recent years. The Office of the Consumer Credit Commissioner estimated that there was an 87.8 percent increase in the total dollar value of loans made through property tax lending companies from 2008 to 2011. The vast majority of tax transfers, 85 percent, involved residential properties.

Property tax lenders enter into agreements with property owners to pay delinquent property taxes. Upon paying the delinquent taxes to a county assessor-collector, the property tax lender is provided with the lien. The trouble with this practice is that the transfer of the tax lien gives the private company the ability to foreclose on someone's home to collect the tax lien. As such, the private entity is essentially performing a government function (foreclosing to collect taxes owed) on behalf of the governmental entity. This all happens without the consent or the knowledge of the taxing unit.

Taxing units should have the ability to make their own decisions about what happens with their tax liens. HB 2687 would provide the necessary statutory authorization to ensure this was possible.

OPPONENTS SAY:

HB 2687 would allow a local entity to adopt a policy that would have the effect of devastating property tax transfer businesses. Allowing local entities to adopt blanket prohibitions would push tax transfer companies out of business to the benefit of property tax collections firms.

Property tax transfer businesses have emerged in response to a clearly defined demand in their respective communities for property tax payment assistance. These businesses present a needed alternative for families and individuals unable to pay their property taxes. For those who find themselves with delinquent taxes and no ability to pay, there are three options aside from going through a property tax lender: 1) borrow from friends or family; 2) put the dues on a credit card; or 3) enter into a payment plan with the county assessor-collector. For many homeowners, none of these are realistic options. Friends or family may have little to spare; credit cards charge high interest and credit may be limited; and many assessor-collectors ask for a 20 percent down payment and offer payment plans for only three years.

For many, a fourth option is preferable — enter into an agreement with a property tax lender and repay the dues over the course of five to seven years. This avoids the hefty penalties that accrue to late property tax payments and puts the owner in good standing with the taxing unit. The property tax lender assumes the tax lien and offers terms to the property owner that are much more flexible than those offered by the assessor-collector. In addition, interest rates charged by property tax lenders are regulated by the Officer of the Consumer Credit Commissioner and have declined in recent years due to increased competition.

Property tax lenders offer a good solution for individuals and families experiencing short-term financial difficulties. The growth of the industry is testament to the need for these property tax payment options. If property tax lenders were barred from receiving a title from a taxing unit, they would not have any collateral and would therefore be unable to enter into any agreements. In effect, they would be shut down.

If this were to happen, the growing number of people who make use of property tax lender services would be forced into collections, a negative outcome for all parties involved.

OTHER OPPONENTS SAY:

Allowing each taxing unit to decide whether to prohibit the transfer of property tax liens would create a confusing patchwork of policy. Properties are subject to multiple taxing jurisdictions — school district, municipality, county, hospital district, junior college, etc. — that could each have a different policy with regard to the transfer. An across-the-board approach that created consistency among taxing units would be preferable.