HOUSE
RESEARCH
ORGANIZATION bill analysis 5/20/2013

SB 247
Carona, et al.
(D. Miller)

SUBJECT: Revising provisions that govern property tax lending

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 7 ayes — Oliveira, Bohac, Orr, E. Rodriguez, Villalba, Walle, Workman

0 nays

SENATE VOTE: On final passage, March 12 — 31-0

WITNESSES: For — Thomas Bonura, Protect my Texas Property; Charles Brown, Hunter Kelsey of Texas LLC; Fred Brown, and Mary Doggett, Texas Property Tax Lienholders Association; John Fleming, Texas Mortgage Bankers Association; John Heasley, Texas Bankers Association; Laura Kane, Crockett National Bank; Jack Nelson, Propel Financial Services; Mark Ridley; Steve Scurlock, Independent Bankers Association of Texas; (*Registered, but did not testify:* James Collins; Daniel Gonzalez, Texas Association of Realtors; Janet Arnold, Sherry Houston, Sheryl Wright, Jill Squier, and Peter Squier, Protect My Texas Property; Donald Lee, Texas Conference of Urban Counties; Emily Rickers, Alliance for Texas Families; Doug Ruby, Texas Property Tax Lienholders Association; Jim Short, Harris County and Ft. Bend County; Chelsey Thomas, Texas Association of Realtors; Michael Vasquez, Texas Conference of Urban Counties; Chris Young, Linebarger Goggan Blair & Sampson, LLP)

Against — None

On — *(Registered, but did not testify:* Leslie Pettijohn, Office of the Consumer Credit Commissioner)

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.

Finance Code, ch. 351, known as the Property Tax Lender License Act, requires anyone engaged in property tax lending to be licensed by the Consumer Credit Commissioner and abide by rules adopted by the Finance Commission.

DIGEST:

SB 247 would revise and expand Finance Code, ch. 351 provisions governing property tax lenders and property tax lending. The Finance Commission would adopt rules to implement various provisions in the bill.

Restrictions on liens. The bill would prohibit tax lien transfers for those over 65 who were eligible to claim a homestead property tax exemption. Anyone who succeeded in holding the interest of a property tax lender would have to abide by rules that govern property tax lenders. A property owner could not waive or limit a requirement imposed on a property tax lender except as specifically permitted.

The bill would void any contract between a property tax lender and a property owner that claimed to authorize a payment of taxes that were not delinquent or due at the time of the agreement, or any contract without a properly executed agreement from the property owner. It also would delete language allowing a tax lien to be transferred for taxes that were not delinquent if a tax lien transfer consented to by the property owner was executed and recorded for one or more prior years on the property.

A tax lien could not be transferred to a property tax lender on behalf of property owner whose property was:

- financed, in whole or in part, with a grant or below market rate loan provided by a governmental program or nonprofit organization and was subject to the covenants of the grant or loan; or
- subject to a lien by a municipality that incurred expenses for securing, vacating, removing or demolishing a dangerous building.

Rights to a property tax loan could not be sold, transferred, assigned, or released to someone who was not licensed under the Finance Code.

Advertisements. A lender who solicited property tax loans by print or electronic media would have to include on the first page of all solicitation materials a prescribed notice indicating that a tax office may offer delinquent tax plans at a lesser cost. A similar notice would be required for television or radio broadcast advertisements. A property tax lender could not make a false, misleading, or deceptive statement with regard to a rate, term, or condition of a property tax loan.

A property tax lender who referred to a rate or charge in an advertisement would have to state the rate or charge fully and clearly. An advertisement would include the annual percentage rate for a finance charge. If a rate was subject to change, an advertisement would have to state as much. An advertisement could only refer to a simple annual rate that was applied to the unpaid balance of a property tax loan in conjunction with the annual percentage rate.

A lender who violated the law could be assessed an administrative penalty, regardless of whether the violation was intentional.

Other provisions. The bill would strike language allowing a property tax lender to foreclose for a tax lien after obtaining a court order under Rule 736, Texas Rules of Civil Procedure. Under the bill, a property tax lender could only foreclose a lien in the manner provided for such a foreclosure by law.

A lender with an existing recorded lien on a property could request a payoff statement before a tax loan became delinquent. A property tax lender would have at least seven days to deliver the payoff statement. The Finance Commission could assess a fine for a property tax lender who willfully failed to provide the payoff statement.

Effective date. This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

CSSB 247 would be a compromise bill that would enhance protections for property owners and increase honesty in business practices without placing undue burdens on property tax transfer businesses (property tax lenders), who have come to fill an important niche in the tax delinquency landscape.

The bill would add key restrictions and tighten and bolster statutory provisions governing property tax lenders. Significant measures would include:

- prohibiting property tax lending for seniors who had the option of deferring taxes and abating lawsuits filed to collect delinquent taxes under Tax Code, sec. 33.06;
- honesty in advertising regulations similar to those that apply to mortgage lenders clearly stating interest rates and distinguishing annual percentage rates;
- solicitation notice requirements for a statement informing property owners that installment plans may be available to them from their local tax assessor-collector;
- eliminating property tax lenders' ability to foreclose a tax lien through a non-judicial foreclosure process that involves getting a court order and selling the tax lien interest at a public auction;
- ensuring that anyone who purchased a loan from a property tax lender would be held to the same restrictions as the original lien holder;
- prohibiting property owners from signing contracts that waive rights guaranteed in statute; and
- specifically voiding contracts that did not adhere to provisions in the bill.

The bill wisely would avoid any measures that significantly increased the cost of doing business or prevented property tax lenders from providing services to property owners in need. Measures that significantly increased costs would be transferred to property owners. Proposed legislation that would include more extreme measures, such as allowing a local entity to bar a property tax lender from receiving a title from a taxing unit, would greatly hamper these businesses and force the growing number of people who make use of property tax lender services into collections, a negative outcome for all parties.

Property tax lenders 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 five to seven years. This avoids the hefty penalties that accrue on 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 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.

OPPONENTS SAY:

SB 247 would not go far enough in taking measures to allow local entities to curb tax transfers in areas where abusive property tax lending practices have taken hold.

Taxing units should have the ability to make their own decisions about what happens with their tax liens. Other legislation proposed during the 83rd session, HB 2687 by E. Rodriguez, would have provided the necessary statutory authorization to ensure the governing body of a taxing unit could prohibit the transfer of a tax lien without its consent. Under current law, tax liens are transferred without the taxing unit that held the lien authorizing or being aware of this transfer.

The Office of the Consumer Credit Commissioner estimated that there was an astounding 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, a blind spot the Legislature should take measures to correct.