

SUBJECT: Requiring recording of state agency liens

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 7 ayes — Brimer, Corte, J. Davis, Elkins, George, Solomons, Woolley
0 nays
2 absent — Dukes, Giddings

WITNESSES: For — John Rothermel, Texas Land Title Association and Stewart Title Guarantee Co.
Against — None

BACKGROUND: Many state agencies have the statutory right to take a lien on real property if the property owner does not comply with a law the agency is charged with enforcing.

Property Code, chapters 11 and 12 establish rules for recording instruments that affect real property, such as conveyances, mortgages, judgments, and liens.

Transportation Code, chapter 313 allows cities to make certain improvements to roads if they comply with certain rules. A city may assess up to nine-tenths of the cost of such improvements against the abutting landowners. The statute treats the assessment as a lien on the abutting property.

DIGEST: CSHB 1050 would require liens on real property created by statute in favor of a governmental entity to be recorded in a county in which the property was located, unless the statute creating the lien stated that filing was not required or unless the lien was imposed for failure to pay property taxes or penalties or interest associated with those taxes. The notice of the lien would have to contain a description of the property. Exceptions would include:

- ! liens under Natural Resources Code, sec. 89.083 on equipment left on the site of an abandoned oil or gas well that the operator failed to plug, and
- ! tax liens imposed by the state under Tax Code, chapter 113, which allows liens for failure to pay franchise taxes, cigarette excise taxes, hotel occupancy taxes, occupational taxes, and inheritance taxes, and other state taxes.

CSHB 1050 would give priority to a lien under Transportation Code, chapter 313, over all other liens except those for nonpayment of property taxes. The notice that the city provided before improving a road would have to include the name of any subdivision that abutted the road and would have to list the blocks affected by the improvement.

This bill would take effect September 1, 2001, and would apply to all liens, regardless of whether they arose before, on, or after that date. Liens that arose before that date would have to be recorded by December 31, 2002. The requirement that the notice of a lien describe the property would apply only to notices filed on or after the effective date. The provisions regarding liens for assessments imposed for road improvements would apply only to liens that arose on or after the effective date, and the changes to notice requirements for those improvements and assessments would apply only to notices provided on or after the effective date.

**SUPPORTERS
SAY:**

Although many statutes create liens in favor of the state, most of those laws do not require that the liens be recorded. As a result, the state may impose obligations on land that a potential buyer cannot find through a title search, and the buyer may take the land subject to the lien. This situation is unfair for the buyer. Also, unrecorded liens are of little use to the state in collecting debts owed it. Since the lien does not inhibit the sale of the land, the landowner has no incentive to pay off the lien.

The bill's exceptions, on the other hand, would ensure that a lien would not have to be recorded if doing so would put an unnecessary burden on the state. For instance, liens on an abandoned well operator's equipment, such as well casings, are the sort that a potential buyer would anticipate if the buyer inspected the land and discovered an unplugged nonproducing well. Also, most purchasers would not object to the Railroad Commission seizing the

equipment and using it to pay to plug the abandoned well. Similarly, tax liens can be located in the tax records, so they do not need to be recorded.

OPPONENTS
SAY:

CSHB 1050 would result in unnecessary paperwork and administrative minutiae for state agencies and local governments that wish to put liens on real property and that now would have to file notices of lien for all of their existing liens since the bill would apply retroactively. If an agency is not interested enough in the lien to record it so that it affects the transferability of the land, the Legislature should not force the agency to do so.

NOTES:

The committee substitute added exceptions to the bill's requirements for property tax liens, state tax liens, and liens on equipment at abandoned oil or gas wells.