

SUBJECT: Revising procedure for seizure of abandoned, tax-delinquent property

COMMITTEE: Local Government Ways and Means — committee substitute recommended

VOTE: 5 ayes — Hill, Hegar, Laubenberg, Mowery, Quintanilla

0 nays

2 absent — McReynolds, Puente

WITNESSES: For — Jacqueline Lucci Smith, Harris County Tax Office

Against — None

BACKGROUND: Tax Code, Ch. 33, subch. E governs seizure of real property. Under sec. 33.91, a person's real property is subject to seizure by a municipality for payment of delinquent ad valorem taxes, penalties, interest on the property, and the amount secured by a municipal health or safety lien. Property can be seized only if the tax collector determines that the sum of outstanding taxes, penalties, interest, and liens exceed the anticipated proceeds of a tax sale of the property. Notice must be provided to the person and the property must have been abandoned, unused, and vacant for at least one year. Sec. 33.911 provides a county the same power if the property is located in the county, is not located in a municipality, and has been abandoned, unused, and vacant for at least one year.

Under sec. 33.912, a person is considered to have been notified of a possible seizure if the municipality or county mailed the person each tax bill owed for the duration of the delinquency. Sec. 33.92 allows a court to issue a tax warrant to seize the property if the local tax collector demonstrates that the property was subject to seizure. After a seizure, Sec. 33.94 requires that the collector try to find anyone, other than the person whose taxes are delinquent, who might have an interest in the property and deliver them information about the seizure.

Ch. 34, subch. A governs sales to pay for tax bills.

DIGEST:

CSHB 3419 would clarify the type of property that would be subject to seizure by a municipality or county if the property owner owed at least five years of taxes or fines on the property. A tax-delinquent property would be considered abandoned and subject to seizure if the property had remained vacant and unattended for at least one year. The bill would specify the types of activity, such residency or upkeep, without which the property would be considered abandoned. It would state that property was subject to seizure whether it had been improved or unimproved.

Property would be presumed abandoned for at least one year if it remained vacant and no lawful act of ownership had been exercised, including mowing or cutting grass or weeds, repairing or demolishing a structure or fence, removing debris, or other form of property upkeep or maintenance performed by or at the request of the owner. Property would be considered vacant if there was an absence of any activity by the owner or a tenant or licensee related to residency, work, trade, business, leisure, or recreation. The city tax collector could rely on the affidavit of any competent person with personal knowledge of whether a property was abandoned or vacant.

If an assessor or collector had not provided notice of a potential seizure by mailing the owner a bill for delinquent taxes, the official could provide notice by serving a copy of a court-issued tax warrant to each person known to have an interest in the property. If the official could not determine ownership of the property, the official could publish in English a notice of the potential seizure in a local paper, or post notice of the potential seizure at the county courthouse and two other public places.

Notice could be posted at a courthouse only if there was no newspaper published in the county where the property is located, or if that county's paper charged more than two cents a word or an amount higher than the typical rate for the same class of advertising. Any notice could be published or posted between 10 and 180 days before the application for the tax warrant was filed. The notice would have to describe the property and state that it would be sold at a public auction unless all delinquent taxes, penalties, and interest were paid.

An affidavit by the collector or assessor testifying that notification had been made could serve as proof of notification. An interested party's failure to

receive notice would not affect the validity of a sale of the seized property. CSHB 3419 would require a court to issue a tax warrant if a person with knowledge of the property testified by affidavit that it had been abandoned for at least one year.

The proceeds of a tax sale of seized property would be applied to costs in the following order of priority:

- the costs of advertising the sale;
- fees due an appointed attorney *ad litem*;
- court costs;
- fees payable to the officer conducting the sale;
- expenses incurred by a taxing unit for determining the necessary parties and procuring legal descriptions of the property;
- the taxes, penalties, interest, and attorney's fees due under the judgment; and
- any other amount awarded to the taxing unit under the judgment.

A taxing unit would not be able to spend public funds in an unconstitutional manner or waive immunity entitled to a taxing unit from liability for inclusion of dues to a property owners association.

The bill would not apply to a tax warrant filed before the bill's effective date. Distribution of proceeds from a tax sale after the bill's effective date would be governed by the bill.

The bill would take effect on September 1, 2003.

**SUPPORTERS
SAY:**

CSHB 3419 is needed to clarify current law governing the seizure of property upon which delinquent taxes are owed. Although the Texas Constitution allows property to be seized and sold if taxes are delinquent, Tax Code, Ch. 33 does not specify adequately the permissible options for notification. Although the owner of property that has been abandoned and neglected for many years often is impossible to find, current law does not specify methods for dealing with absentee and delinquent property owners. CSHB 3419 would address this vagueness which has led judges to resist authorizing a tax warrant or seizure even when legal notification has occurred.

Properties subject to seizure under ch. 33 often blight neighborhoods and provide havens for illicit activity. Although assessors and collectors receive calls from community members and law enforcement urgently requesting that abandoned property be seized and cleared or improved, collection officials cannot adequately respond to these requests. By clarifying how collectors could notify unknown property owners, CSHB 3419 would enable these officials to facilitate improvement in these neighborhoods.

CSHB 3419 would reasonably allow a collector to rely upon sworn affidavits of neighbors and others in asserting before a judge that a property has been abandoned. Collectors currently have a very difficult time proving anything about a property that is abandoned, a catch-22 that can paralyze these claims in court. The bill would enable a collector to escape this trap and demonstrate that a property had indeed been abandoned.

Property owners would be protected if CSHB 3419 was enacted, since Ch. 33 would continue to apply only to vacant or abandoned properties. It would apply only to owners who had been delinquent for several years, and an owner would retain the constitutional right of redemption after seizure.

**OPPONENTS
SAY:**

No apparent opposition.

NOTES:

The committee substitute differs from the bill as introduced by conforming it to Texas Legislative Council drafting style. It also removes a clause from the original calling for the suspension of the rules requiring reading of the bill on three separate days.