

## **BILL ANALYSIS**

Senate Research Center  
78R17097 JD-F

C.S.H.B. 3419  
By: Davis, John (Lindsay)  
Intergovernmental Relations  
5/23/2003  
Committee Report (Substituted)

### **DIGEST AND PURPOSE**

Current law provides procedures for cities and counties to seize abandoned property for payment of delinquent taxes, penalties, and interest. Courts differ in their application of the provisions establishing the procedures for seizure. C.S.H.B. 3419 amends Chapter 33 of the Tax Code to include extensive notice provisions regarding the intention to seize abandoned property. It provides for more information for the tax assessor-collector to rely on in considering whether the property qualifies for a tax warrant rather than the traditional lawsuit or judicial foreclosure process. The bill also clarifies several inconsistent definitions.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 33.25, Tax Code, as follows:

Sec. 33.25. New heading: TAX SALE: NOTICE; METHOD; DISPOSITION OF PROCEEDS. (a) Removes an exception as provided by Subsection (c). Sets forth requirements for the posting of notice and the sale of property.

(b) Authorizes the commissioners court of a county having a population of three million or more by official action to authorize a peace officer or the collector for the county charged with selling property under this subchapter by public auction to enter into an agreement with a person who holds an auctioneer's license to advertise the auction sale of the property and to conduct the auction sale of the property. Authorizes the agreement to provide for on-line bidding and sale.

(c) Authorizes the commissioners court of a county that authorizes a peace officer or the collector for the county to enter into an agreement under Subsection (b) by official action to authorize the peace officer or collector to enter into an agreement with a service provider to advertise the auction and to conduct the auction sale of the property or to accept bids during the auction sale of the property under Subsection (b) using the Internet.

(d) Requires the terms of an agreement entered into under Subsection (b) or (c) to be approved in writing by the collector for each taxing unit entitled to receive proceeds from the sale of the property. Provides that an agreement entered into under Subsection (b) or (c) is presumed to be commercially reasonable, and prohibits the presumption from being rebutted by any person.

(e) Created from existing text. Provides that failure to send or receive a notice required, rather than provided, by this section does not affect the validity of the sale or

title to the seized property.

(f) Requires that the proceeds of a sale of property under this section be applied to certain costs and expenses.

(g) Requires the peace officer or licensed auctioneer conducting the sale to pay all proceeds from the sale to the collector designated in the tax warrant for distribution as required by Subsection (f).

(h) Created from existing text. Makes a conforming change.

SECTION 2. Amends Section 33.91, Tax Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Provides that after notice has been provided to a person, the person's real property, whether improved or unimproved, is subject to seizure by a municipality for the payment of delinquent ad valorem taxes, penalties, and interest the person owes on the property and the amount secured by a municipal health or safety lien on the property if certain conditions exist.

(c) Provides that for purposes of this section, a property is presumed to have been abandoned for at least one year if, during that period, the property has remained vacant and a lawful act of ownership of the property has not been exercised. Authorizes the tax collector of a municipality to rely on the affidavit of any competent person with personal knowledge of the facts in determining whether a property has been abandoned or vacant. Provides that for purposes of this subsection, property is considered vacant if there is an absence of any activity by the owner, a tenant, or a licensee related to residency, work, trade, business, leisure, or recreation, and "lawful act of ownership" includes 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 of the property.

SECTION 3. Amends Section 33.911, Tax Code, by amending Subsection (a) and adding Subsection (c), to make conforming changes.

SECTION 4. Amends Section 33.912, Tax Code, as follows:

Sec. 33.912. NOTICE. (a) Provides that a person is considered to have been provided the notice required by Sections 33.91 and 33.911 if by affidavit or otherwise the collector shows that the assessor or collector for the municipality or county mailed the person each bill for municipal or county taxes required to be sent the person by Section 31.01 at the appropriate times.

(b) Provides that, if notice under Subsection (a) is not provided, the notice required by Section 33.91 or 33.911 shall be given by the assessor or the collector for the municipality or county, as applicable, by:

(1) serving, in the manner provided by Rule 21a, Texas Rules of Civil Procedure, a true and correct copy of the application for a tax warrant filed under Section 33.92 to each person known, or constructively known through reasonable inquiry, to own or have an interest in the property;

(2) publishing in the English language a notice of the assessor's intent to seize the property in a newspaper published in the county in which the property is located if, after exercising reasonable diligence, the assessor or collector cannot determine ownership or the address of the known owners; or

(3) if required under Subsection (g), posting in the English language a notice of the assessor's intent to seize the property if, after exercising reasonable diligence, the assessor or collector cannot determine ownership or the address of the known owners.

(c) Requires a notice under Subsection (b)(1) to be provided at the time of filing the application for a tax warrant and to be supported by a certificate of service appearing on the application in the same manner and form as provided by Rule 21a, Texas Rules of Civil Procedure. Provides that the notice is sufficient if sent to the person's last known address.

(d) Requires a notice by publication or posting under Subsection (b) to substantially comply with this subsection. Requires the notice to be made in a certain manner.

(e) Provides that a description of the property under Subsection (d)(4) is sufficient if it is the same as the property description appearing on the current tax roll for the county or municipality.

(f) Authorizes a notice by publication or posting under Subsection (b) to relate to more than one property or to multiple owners of property.

(g) Authorizes a newspaper, for publishing a notice under Subsection (b)(2), to charge a rate that does not exceed the greater of two cents per word or an amount equal to the published word or line rate of that newspaper for the same class of advertising. Provides that if notice cannot be provided under Subsection (b)(1) and there is not a newspaper published in the county where the property is located, or a newspaper that will publish the notice for the rate authorized by this subsection, the assessor shall post the notice in writing in three public places in the county. Requires one of the posted notices to be at the door of the county courthouse. Requires proof of the posting to be made by affidavit of the person posting the notice or by the attorney for the assessor or collector.

(h) Provides that a person is considered to have been provided the notice under Section 33.91 or 33.911 in the manner provided by Subsection (b) if the application for the tax warrant under Section 33.92: contains the certificate of service as required by Subsection (b)(1); is accompanied by an affidavit on behalf of the applicable assessor or collector stating the fact of publication under Subsection (b)(2), with a copy of the published notice attached; or is accompanied by an affidavit of posting on behalf of the applicable assessor or collector under Subsection (g) stating the fact of posting and facts supporting the necessity of posting.

(i) Provides that a failure to provide, give, or receive a notice provided under this section does not affect the validity of a sale of the seized property or title to the property.

(j) Provides that the costs of publishing notice under this section are chargeable as costs and payable from the proceeds of the sale of the property.

SECTION 5. Amends Section 33.92, Tax Code, by amending Subsection (b) and adding Subsection (d), as follows:

(b) Authorizes the collector to show that the property has been abandoned or vacant for at least one year, as required by Section 33.91(a)(1)(C) or 33.911(a)(1)(C) by affidavit of any competent person with personal knowledge of the relevant facts.

(d) Entitles the collector, on request in the application, to recover attorney's fees in an amount equal to the compensation specified in the contract with the attorney for collection of the delinquent taxes, penalties, and interest on the property if: the taxing unit served by the collector contracts with an attorney under Section 6.30; the existence of the contract and the

amount of attorney's fees that equal the compensation specified in the contract are supported by the affidavit of the collector; and the delinquent tax sought to be recovered is not subject to an additional penalty under Section 33.07 or 33.08 at the time the application is filed.

SECTION 6. Amends Sections 33.93(a) and (c), Tax Code, as follows:

(a) Requires a tax warrant to direct the sheriff or a constable in the county and the collector for the municipality or the county to seize the property described in the warrant, subject to the right of redemption, for the payment of any attorney's fees included in the application as provided by Section 33.92(d).

(c) Requires the collector, on issuance of a tax warrant, to take possession of the property pending its sale by the officer charged with selling the property.

SECTION 7. Amends Section 33.94(a), Tax Code, to include in the list of people to whom the tax collector is required to deliver a notice regarding seized property each person to whom notice was provided under Section 33.912(a) and each person to whom notice was provided under Section 33.912(b)(1).

SECTION 8. Amends Section 34.01(a) and (r), Tax Code, as follows:

(a) Include references to real property seized under a tax warrant issued under Subchapter E, Chapter 33.

(r) Includes an exception as provided by this subsection. Authorizes the commissioners court of the county to designate an area in the county courthouse or another location in the county where sales under this section must take place and to record any designated area or other location in the real property records of the county. Makes conforming changes.

SECTION 9. Amends Sections 34.02(b) and (d)-(f), Tax Code, as follows:

(b) Requires the proceeds to be applied to:

- (1) the, rather than all, costs of advertising the tax sale;
- (2) any, rather than all, fees ordered by the judgment to be paid to an appointed attorney ad litem, rather than the officer conducting the sale;
- (3) the original court costs payable to the clerk of the court;
- (4) the fees and commissions payable to the officer conducting the sale;
- (5) the expenses incurred by a taxing unit in determining necessary parties and in procuring necessary legal descriptions of the property if those expenses were awarded to the taxing unit by the judgment under Section 33.48(a)(4);
- (6) the taxes, penalties, interest, and attorney's fees that are due under the judgment; and
- (7) any other amount awarded to a taxing unit under the judgment.

(d) Makes conforming changes.

(e) Deletes the text of Subsection (e), stating that if the sale is pursuant to seizure of personal property, the officer conducting the sale shall distribute any excess of proceeds as provided by law for excess proceeds in the case of execution. Redesignates Subsection (f), defining "taxes," as Subsection (e).

SECTION 10. Amends Section 34.04(c), Tax Code, to require the court at the hearing to order that the proceeds be paid according to certain priorities to each party that establishes its claim to the proceeds. Includes "each former owner of the property, as the interest of each may appear" as the fifth

and final item on the list.

SECTION 11. Amends Section 34.06(d), Tax Code, to require the purchasing taxing unit, after retaining the amount authorized by Subsection (c), to then pay all costs of the suit and the sale of the property in the same manner and in the same order of priority as provided by Sections 34.02(b)(1)-(5). Deletes text regarding the officer conducting the sale of the property and the clerk of the court in connection with the sale of the property.

SECTION 12. Amends Section 34.21, Tax Code, by adding Subsection (k), as follows:

(k) Prohibits the inclusion of dues and assessments for maintenance paid to a property owners' association within the definition of "costs" under Subsection (g) from being construed as a waiver of any immunity to which a taxing unit may be entitled from a suit or from liability for those dues or assessments, or authority for a taxing unit to make an expenditure of public funds in violation of Section 50, 51, or 52(a), Article III, or Section 3, Article XI, Texas Constitution.

SECTION 13. Effective date: upon passage or September 1, 2003.

SECTION 14. Makes application of the change in law made by Section 1 of this Act prospective.

SECTION 15. Makes application of the changes in law made by Sections 2, 3, 4, 5, 6, 7, and 8 of this Act prospective.

SECTION 16. Makes application of the change in law made by Section 9 of this Act prospective.

SECTION 17. Makes application of the changes in law made by Section 10 of this Act prospective.

SECTION 18. Makes application of the changes in law made by Section 11 of this Act prospective.