

STORAGE NAME: h0271a.ca

DATE: December 8, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMUNITY AFFAIRS
ANALYSIS**

BILL #: HB 271

RELATING TO: Delinquent Property Tax/Advertising

SPONSOR(S): Representative Bitner

TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) COMMUNITY AFFAIRS (PRC) YEAS 5 NAYS 4
 - (2) FINANCE & TAXATION (FRC)
 - (3) GENERAL GOVERNMENT APPROPRIATIONS (FRC)
 - (4)
 - (5)
-

I. SUMMARY:

This bill reduces from three to once the number of times real property with delinquent taxes must be advertised before the tax certificate sale. The advertisement must occur at least 21 days prior to the tax certificate sale.

The bill does not have a fiscal impact on state government. The bill will reduce advertising costs incurred by tax collectors, which are passed on to persons purchasing tax certificates, and eventually to persons redeeming tax certificates or purchasing tax deeds.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|-----------------------------------------|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Background

Section 197.332, F.S., provides that the tax collector has the authority and obligation to collect all taxes, as listed on the county tax roll, by their delinquency date, April 1, (unless otherwise stated) or to collect delinquent taxes, interest, and costs, by sale of tax certificates on real property and by seizure and sale of personal property.

Section 193.023, F.S., requires the property appraiser to complete an assessment of the value of all property no later than July 1 of each year, unless the Department of Revenue grants an extension of time for good cause shown. Section 197.322, F.S., requires the property appraiser to deliver to the tax collector the certified assessment roll along with his or her warrant and recapitulation sheet. Within 20 working days after receipt of the certified ad valorem tax roll and the non-ad valorem assessment rolls, the tax collector is required to mail a tax notice to each taxpayer stating the amount of current taxes due from the taxpayer and, if applicable, the fact that back taxes remain unpaid and advising the taxpayer of the discounts allowed for early payment.

Section 197.333, F.S., provides that all taxes are due and payable on November 1 of each year or as soon thereafter as the certified tax roll is received by the tax collector. Taxes become delinquent on April 1 following the year in which they are assessed or immediately after 60 days have expired from the mailing of the original tax notice, whichever is later. If the delinquency date for ad valorem taxes is later than April 1 of the year following the year in which taxes are assessed, all dates or time periods relative to the collection of, or administrative procedures regarding, delinquent taxes are extended a like number of days.

Section 197.343, F.S., requires an additional tax notice to be mailed by April 10 to each taxpayer whose payment has not been received. The notice must include a description of the property and the following statement: "If the taxes for the (year) on your property are not paid, a tax certificate will be sold for these taxes, and your property may be sold at a future date. Contact the tax collector's office at once."

Advertisement and Sale of Tax Certificates

Subsection (3) of section 197.402, F.S., requires the tax collector, except as provided in section 197.432(4), F.S., on or before June 1 or the 60th day after the date of delinquency, whichever is later, to advertise once each week for 3 weeks and sell tax certificates on all real property with delinquent taxes. The tax collector makes a list of such properties in the same order in which the lands were assessed, specifying the amount due on each parcel, including interest at the rate of 18 percent per year from the date of delinquency to the date of sale; the cost of advertising; and the expense of sale. Pursuant to section 197.403, F.S., the newspaper publishing the notice of tax sale must send a copy of the paper containing each notice to the tax collector within 10 days after the last required publication.

Unless otherwise provided, section 197.432, F.S., authorizes the tax collector to commence the sale of tax certificates on those lands on which taxes are delinquent. Section 197.102(3), F.S., defines a "tax certificate" to mean:

a legal document, representing unpaid delinquent real property taxes, non-ad valorem assessments, including special assessments, interest, and related costs and charges, issued in accordance with this chapter against a specific parcel of real property and becoming a first lien thereon, superior to all other liens, except as provided by s. 197.573(2).

The Department of Revenue, by rule, requires that the face amount of the tax certificate is to include:

1. delinquent taxes;
2. interest on the taxes which has accrued between the date of delinquency and the date of sale calculated monthly at 18 percent per year; and
3. costs and other charges. (Rule 12D-13.045(3), F.A.C.)

The department's rules further provide that the sale of tax certificates is to begin on or before June 1, or the 60th day after the date of delinquency, whichever is later. (Rule 12D-13.045(1), F.A.C.) The sale is to continue from day to day or until all tax certificates are sold. If there are no bidders, then the tax certificates are to be issued to the county.

Tax certificates are to earn interest at the rate as bid by the buyer. The tax certificate is to be issued to the person who, in addition to satisfying the face amount of the tax certificate, also demands the lowest interest rate, not to exceed the statutory maximum. Section 197.172, F.S., provides that the maximum rate of interest on a tax certificate cannot exceed 18 percent per year for the life of the certificate. Accordingly, the tax collector begins the bidding at an interest rate of 18 percent. The tax collector accepts bids in even increments and in fractional increments of one-quarter percentage point. The competition fostered by the bidding process may pull the interest rate down as low as 0 percent or 1 percent.

When a tax certificate is redeemed and the amount of interest earned annually on the certificate is less than 5 percent of the face amount of the certificate, then the 5 percent charge will be levied upon the certificate. Accordingly, the person redeeming the tax certificate must pay the interest rate due upon the certificate or the 5 percent charge, whichever is greater.

The tax collector requires immediate payment of a reasonable deposit from anyone who bids for a tax certificate. If a person refuses to pay the deposit, then he or she is not entitled to bid until a new deposit is paid to the tax collector for 100 percent of the amount of estimated purchases. When a tax certificate is ready for issuance, the tax collector must

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give notice to the successful bidder(s) stating that the certificate is ready, and that payment must be made within 48 hours from the mailing of the notice or the deposit will be forfeited and the bid canceled. If the bid is canceled, the tax certificate is to be resold within 10 days after the cancellation.

If a valid tax certificate is issued, it is regarded as a lien on the property superior to all other liens. The purpose of the certificate is to evidence the lien. The tax certificate holder does not have estate, legal or equitable interest in the land; instead, the legal title remains vested in the property owner. (52 Fla Jur 2d, Taxation §21:275.)

Redemption of Tax Certificates

Pursuant to section 197.472, F.S., any person may redeem a tax certificate at any time after the tax certificate is issued and before a tax deed is issued or the land is placed on the list indicating that it is available for sale. The person redeeming the tax certificate must pay all the delinquent taxes, interest, costs, charges, and omitted taxes, if any. When a tax certificate is redeemed, in whole or in part, the tax collector determines the identity of the certificate holders entitled to the proceeds of the redemption and distributes the monies accordingly.

The holder of a tax certificate may not initiate contact with the property owner for purposes of encouraging or demanding payment until 2 years have elapsed since April 1 of the year of the issuance of the tax certificate. If a tax certificate holder contacts a property owner within the two year period, to encourage or demand payment, that certificate holder may be barred by the tax collector from bidding at a tax certificate sale, and such contact may be actionable under the Florida Deceptive and Unfair Trade Practices Act as well as applicable laws regarding fraud.

Tax Deeds

Section 197.502, F.S., provides that if the tax certificate is not redeemed, the certificate holder may, at any time after 2 years from April 1 of the year of issuance of the tax certificate and prior to 7 years from the date of issuance, file the tax certificate and an application for a tax deed with the tax collector of the county where the land is located. This application is to serve as notice to the tax collector that the applicant desires the lands.

Any certificate holder, other than the county, who makes an application for a tax deed must pay the tax collector, at the time of the application: all amounts required for redemption or purchase of all other outstanding tax certificates, plus interest; any omitted taxes, plus interest; any delinquent taxes, plus interest and current taxes, if due. Upon completion of the tax deed application, the tax collector has an abstract or title search and a certification Form DR-513 prepared. Upon completion of certification, the tax collector delivers the deed application and certification to the Clerk of the Circuit Court and requests that a public auction be held on the deed to the property. After meeting specified public notice requirements and providing notice to the owner of the property (s. 197.522, F.S.), the Clerk holds a public auction to sell the deed to the property at the highest price possible in order to protect the land owner. In addition to the amount of money paid to the tax collector at the time of the application, section 197.502(6)(b), F.S., provides that the certificate holder includes in his opening bid for the tax deed the amount required to redeem all outstanding tax certificates, delinquent taxes and other specified costs and fees.

Section 197.482, F.S., provides that a tax certificate is null and void 7 years from the date it is issued if a tax deed has not been applied for on the property covered by the certificate.

C. EFFECT OF PROPOSED CHANGES:

This bill reduces from three to once the number of times real property with delinquent taxes must be advertised before the tax certificate sale. The advertisement must occur at least 21 days prior to the tax certificate sale. The bill reduces advertising expenses for tax certificate sales while reducing the number of times the public is notified of the sale of tax certificates.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Subsection (3) of section 197.402, F.S., is amended to reduce from three to once the number of times real property with delinquent taxes must be advertised before the tax certificate sale. The subsection is further amended to require the advertisement to occur at least 21 days prior to the tax certificate sale.

Section 2. Section 197.403, F.S., is amended to clarify that there is only one advertisement of the sale of tax certificates.

Section 3. An effective date of January 1, 2001, is provided.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill has no effect on state revenues.

2. Expenditures:

This bill does not require or affect the expenditure of state revenues.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

To the extent the bill reduces advertising costs associated with tax certificate sales, revenues received by the tax collector from purchases of tax certificates will be reduced by the reduction in advertising costs for each parcel for which a tax certificate is purchased.

2. Expenditures:

The bill will decrease expenditures by tax collectors for advertising tax certificate sales.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The reduction in advertising costs resulting from this bill will be reflected in the prices paid by individuals purchasing tax certificates, which will be reflected in the costs to redeem tax certificates or to purchase tax deeds.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to expend funds or take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

The Lee County Tax Collector supports HB 271 and states his office paid out over \$475,000 last year in advertising fees for the tax certificate sale. He indicates his office was unable to recover a substantial portion of these funds due to the large number of certificates struck off to the County with no payment of taxes or costs.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

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VII. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

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Thomas L. Hamby

Joan Highsmith-Smith