HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 701 Unpaid Property Taxes
SPONSOR(S): Broxson
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Government Affairs Subcommittee	12 Y, 0 N	Miller	Miller
2) Finance & Tax Committee			
3) Local & Federal Affairs Committee			

SUMMARY ANALYSIS

Chapter 197, F.S., governs the process used for the collection of unpaid taxes. The right to due process before the government takes property from a citizen is a constitutionally-protected right, and these statutes help ensure that adequate procedures are in place to avoid infringing upon this right.

A tax certificate is a legal document, issued by counties against a specific parcel of real property for unpaid delinquent real property taxes, non-ad valorem assessments, special assessments, interest, and related costs and charges. The tax collector can sell tax certificates to individuals or entities that will pay the taxes, interest, costs, and charges, and will demand the lowest rate of interest.

If a certificate is not purchased, the certificate is struck to the county at the maximum rate of interest allowed by chapter 197, F.S. This means that the county retains the tax certificate and may not demand a rate of interest from the tax debtor that is lower than the statutory maximum, which is currently 18 percent per year.

The bill removes the requirement that counties demand the maximum 18 percent rate of annual interest for unpurchased tax certificates, and instead provides counties with discretion to set the rate of interest for unsold tax certificates up to the maximum 18 percent annual rate. This effectively allows counties to demand a lower interest rate for unsold tax certificates from the person or entity that owes the taxes.

The bill does not specify how, or by whom, the interest rate would be set and administered.

The bill would not impact the interest rate on tax certificates that are actually purchased from the county.

The bill does not appear to have a fiscal impact on the state or local government.

The effective date of the bill is July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Tax Certificates

Chapter 197, F.S., and Chapter 12D-13, F.A.C., govern the process used for the collection of unpaid property taxes. The right to due process before the government takes property from a citizen is a constitutionally-protected right, and these statutes and rules ensure adequate procedures are in place to avoid infringing upon this right.[1]

A tax certificate is a legal document, issued by counties against a specific parcel of real property for unpaid delinquent real property taxes, non-ad valorem assessments, special assessments, interest, and related costs and charges.[2] A tax certificate is a first lien against the real property superior to all other liens.[3] Failure to redeem a tax certificate may result in the public sale of the property and the issuance of a tax deed.[4]

Sale of Tax Certificates

The tax collector can sell tax certificates to individuals or entities that will pay the taxes, interest, costs, and charges, and will demand the lowest rate of interest.[5] This allows the local government to raise funds for current expenditures and provides the certificate holder with the right to collect the value of the certificate, which is secured by certain rights against the property.[6]

The tax collector must accept bids in even increments and in fractional interest rate bids of one-quarter of 1 percent only.[7] If multiple bidders offer the same lowest rate of interest, the tax collector is required to determine the method of selecting the bidder to whom the certificate will be awarded.[8] Acceptable methods include the bid received first or use of a random-number generator.[9]

If a certificate is not purchased, the certificate is struck to the county at the maximum rate of interest allowed by chapter 197, F.S.[10] When a county receives unpurchased tax certificates the county retains the certificates and may not demand a rate of interest from the tax debtor lower than the statutory maximum. Currently, the maximum rate of interest on a tax certificate is 18 percent per year.[11]

Proposed Changes

[1] *See*, e.g., *Rosado v. Vosilla*, 909 So.2d 505 (Fla. 5th DCA 2005), aff'd, 944 So.2d 289 (Fla. 2006); *Delta Property Management, Inc. v. Profile Investments, Inc*., 875 So.2d 443 (Fla. 2004).
[2] S. 197.102(1)(f), F.S.
[3] S. 197.122(1), F.S.
[4] Ss. 197.502 – 197.552, F.S.
[5] S. 197.432, F.S.
[6] *See* s. 197.432, F.S., and *Smith v. City of Arcadia*, 185 So.2d 762 (Fla. 2d DCA 1966)("Tax certificates are only a means of evidencing unpaid taxes and to enable the sale thereof for the purpose of realizing funds for current governmental expenditures.").
[7] S. 197.432(6), F.S.
[8] *Id.*
[9] S. 197.102(1)(e), F.S., defines "Random number generator" as a computational device that generates a sequence of numbers that lack any pattern and is used to resolve a tie when multiple bidders have bid the same lowest amount by assigning a number to each of the tied bidders and randomly determining which one of those numbers is the winner.
[10] S. 197.432(6), F.S.
[11] S. 197.172(2), F.S.

The bill revises the rate of interest for unpurchased tax certificates, authorizing a county to set the rate of interest up to the maximum rate. This will allow counties the flexibility to demand a lower interest rate for unpurchased tax certificates (less than 18 percent interest per year) from the person or entity that owes the taxes. The bill would not impact the interest rate on tax certificates that are actually purchased.

The bill does not specify how, or by whom, the interest rate would be set and administered. See DRAFTING ISSUES OR OTHER COMMENTS section of the bill analysis for details.

B. SECTION DIRECTORY:

Section 1: Amends s. 197.432, F.S., relating to the sale of tax certificates for unpaid taxes.

Section 2: Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not appear to have any impact on state revenues.

2. Expenditures:

   The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   As the bill does not require counties to reduce the interest rate for unsold tax certificates, the bill does not appear to have a direct impact on local government revenues.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill has an indeterminate positive fiscal impact on private sector expenditures because it allows counties to demand, from the person or entity that owes the taxes, less than the maximum 18 percent interest per year, on his or her property.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

According to the Department of Revenue, Rule 12D-13.045, F.A.C., Sale of Tax Certificates for Unpaid Taxes,; and Rule 12D-13.052, F.A.C., Redemption or Purchase of Tax Certificates Belonging to the County, will need to be amended. The Department appears to have sufficient rulemaking authority to amend these rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

<u>Other Comments</u>

The bill does not specify how, or by whom, the interest rate would be set and administered by each county.

According to the Department of Revenue, the bill does not specify any steps a county would use to administer the interest rate reduction or provide a deadline for when the rate would be adjusted. This could result in inconsistencies or administrative issues if the county reduces the rate during the tax certificate sale process. For example, if the county changes the rate during the tax certificate sale process, record keeping could become difficult and determining which rate applies to which certificate could be confusing.[12]

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[12] DOR 2015 Legislative Bill Analysis for HB 701, February 27, 2015.