SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 986

SPONSOR: Fiscal Resource Committee and Senator Rossin

SUBJECT: Property Taxes

DATE: March 18, 1999 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fournier	Wood	FR	Favorable/CS
2.				
3.				
4.				
5.				

I. Summary:

Currently, the Florida Constitution provides that counties, school districts, and municipalities shall be authorized by law to levy ad valorem taxes. Florida Statutes subject certain property to ad valorem taxation, unless otherwise expressly made exempt. The Florida Legislature granted the Department of Revenue the authority to prescribe reasonable rules and regulations for assessing and collecting taxes.

The Florida Legislature also statutorily granted the tax collector 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 by the date of the sale of a tax certificate. If the taxes are delinquent, the tax collector has the statutory authority to commence a sale of a tax certificate for the value of the taxes due on the property. A tax certificate sale occurs on or before June 1, or the 60th day after the date of delinquency, whichever is later. The sale is conducted by the tax collector through a public bidding process. A tax certificates earns a rate of interest as bid by the buyer not to exceed eighteen percent. Once a tax certificate is sold and issued, it is regarded as a lien superior to all other liens, although the legal title to the property remains with the property owner.

Any person may redeem the tax certificate before a tax deed is issued. A person who redeems a tax certificate is to pay the amount of the delinquent taxes, interest, costs, and other charges and omitted taxes, if any, to the tax collector. The holder of the tax certificate may not initiate contact with the property owner to demand payment of the tax certificate. If the tax certificate holder does initiate contact with the property owner, the holder may be barred from bidding at tax certificate sales and such contact may be actionable under the Florida Deceptive and Unfair Trade Practices Act as well as fraudulent.

This committee substitute limits the prohibition regarding no contact by the tax certificate holder with the property owner to two years from April 1 of the year of issuance of the tax certificate. After that two year period such contact is permissible. Accordingly, only contact during those two years could result in the tax certificate holder being barred from bidding at a tax certificate

sale, as well as possibly being sued under the Florida Deceptive and Unfair Trade Practices Act. It also provides that the date of issuance of a tax certificate is the date of the first day of the tax certificate sale as advertised under s. 197.432.

This committee substitute substantially amends s. 197.432, Florida Statutes, 1998 Supplement and 197.482, Florida Statutes.

II. Present Situation:

Florida Constitution and Statutory Implementation Regarding Ad ValoremTaxation

The Florida Constitution provides that counties, school districts, and municipalities shall be authorized by law to levy ad valorem taxes. Fla. Const. art. VII, § 9. Florida Statutes subject the following property to ad valorem taxation, unless otherwise expressly made exempt from such taxation: all real and personal property in this state; all personal property belonging to persons residing in this state; and all leasehold interests in property of the United States, of the state, or any political subdivision, municipality, agency, authority or other public body corporate of the state. Fla. Stat. §196.001. The Florida Legislature grants the Department of Revenue the authority to prescribe reasonable rules and regulations for assessing and collecting taxes, and such rules and regulations are to be followed by the property appraisers, tax collectors, clerks of the circuit court and value adjustment boards. Fla. Stat. §195.027(1); see Rule-Chapter 12D-13, F.A.C.

Tax Due Date and Sale of Tax Certificate

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 the date of delinquency, or to collect delinquent taxes by the date of the sale of tax certificates. All taxes are due and payable on November 1 of each year or as soon thereafter as the tax roll is received by the tax collector. On all taxes assessed on the county tax rolls and collected by the tax collector, a discount may be rendered for early payment, under certain circumstances, at a rate of 4 percent in the month of November or within thirty days of mailing the original tax notice, 3 percent in the month of December, 2 percent in the month of January, 1 percent in the month of February and zero percent in the following month of March. Fla. Stat. §197.162.

Pursuant to s. 197.333, F.S., taxes become delinquent on April 1 following the year in which they were assessed or 60 days after the mailing of the original tax notice, whichever is later. Unless otherwise provided, the tax collector has statutory authority to commence the sale of tax certificates on those lands on which taxes are delinquent. Fla. Stat. §197.432(1)(Rule 12D-13.045(1), F.A.C., implements s. 197.432(1), F.S., and also requires the tax collector to “sell tax certificates on all lands on which the 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. Fla. Stat. §197.432(1).

Tax certificates are to earn interest at the rate as bid by the buyer. Rule 12D-13.048(3), F.A.C. 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. Rule 12D-13.045(4), F.A.C. 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. Fla. Stat. §197.432(2). 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 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. Fla. Stat. §197.432(6). If the bid is canceled, the tax certificate is to be resold within 10 days after the cancellation. Fla. Stat. §197.432(7).

If a valid tax certificate is issued, it is regarded as a lien on the property superior to all other liens. See Fla. Stat. §197.432(2). 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

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. Fla. Stat. §197.472(1). The term "redemption" means that the legal titleholder to the property, or his or her agent, pays to the tax collector the amount required to cancel and invalidate a tax certificate or portion thereof which is otherwise valid. Rule 12D-13.051(1), F.A.C. 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. Rule 12D-13.051(3)(a), F.A.C.

During the redemption process, the property owner may contact the tax certificate holder at any time for purposes of redeeming the certificate. On the other hand, the holder of a tax certificate is statutorily prohibited from contacting the property owner for purposes of encouraging or demanding payment. In fact, if the tax certificate holder, or his or her agent, initiates contact with the property owner for purposes of encouraging or demanding payment of the certificate, the 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 and under the laws prohibiting fraud. Fla. Stat. §197.432(15).

More specifically, s. 197.432(15), F.S., provides that any unfair or deceptive contact by the tax certificate holder with the property owner is an unfair and deceptive trade practice as referenced in s. 501.204(1), F.S., regardless of whether the “holder of the tax certificate” [sic] redeems the tax certificate (see “Comments”, section V herein which addresses the inappropriate use of the reference “holder of tax certificate”). Such unlawful contact is actionable under ss. 501.2075-501.211, F.S., the Florida Deceptive and Unfair Trade Practices Act. Moreover, if “the holder of the tax certificate” [sic] later redeems the certificate in reliance on deceptive or unfair practice, then the contact is actionable under the laws prohibiting fraud (see “Related Issues”, section VII herein which addresses the inappropriate use of the reference “holder of tax certificate”). If a person properly redeems a tax certificate in accordance with s. 197.472, F.S., he or she is to pay all of the delinquent taxes, interest, costs, charges and omitted taxes, if any.

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. Rule 12D-13.060(3)(a)(1), F.A.C.

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. Rule 12D-13.060(4)(a) and (d), F.A.C. 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. Rule 12D-13.063(2), F.A.C. In addition to the amount of money paid to the tax collector at the time of the application, s. 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 more particularly described in Rule 12D-13.063(3), F.A.C.

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.

III. Effect of Proposed Changes:

CS/SB 986 modifies the current, though recent, prohibition against a tax certificate holder contacting the property owner for the purpose of demanding payment of a tax certificate. Subsections (14) and (15) of s. 197.432, F.S., governing such contact, were enacted into law in 1998 pursuant to SB 2222, Chapter 98-167, Laws of Florida. The committee substitute also corrects incorrect references to the "holder of the tax certificate" that were made in that bill.

This committee substitute limits the indefinite prohibition period to two years. During this two year period the property owner retains an absolute right to the property and is protected from harassment from tax certificate holders. This two year prohibition period coincides with the existing law which provides that the tax certificate holder may apply for a tax deed after two years have elapsed since April 1 of the year of issuance of the tax certificate. After this two year period, the tax certificate holder is entitled to contact the property owner for purposes of negotiation or payment of the certificate prior to a tax deed sale. Such contact may prevent the tax deed sale and any ensuing litigation to quiet title.

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.

Proponents of this bill contend that the existing prohibition was established because certain banks, which bought a a large number of tax certificates at a low interest rate, aggressively approached property owners threatening foreclosure which, however, could not occur during the first two years. As a result, the property owner would redeem the certificate and the bank would receive the 5 percent charge which is levied on the certificate, as opposed to its lower bid interest rate. Proponents further contend that this bill protects a property owner's homestead, in that, the property owner retains legal title and an absolute right to the property and may pay the delinquent taxes at any time during the two year period after the tax certificate is sold. Therefore, the tax certificate holder should not be entitled to demand redemption during this time period.

This committee substitute amends s. 197.482, F.S., to provide that the date of issuance of a tax certificate is the date of the first day of the tax certificate sale as advertised under s. 197.432.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill does allow the tax certificate holder to contact the property after two years from April 1 of the year of issuance of the tax certificate which may encourage the property owner to redeem the tax certificate prior to the filing of a tax deed application. This redemption may reduce tax deed applications and ensuing quiet title actions, thereby reducing litigation fees and costs.

C. Government Sector Impact:

This bill has no fiscal impact on state or local governments.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Subsection (15) of s. 197.432, F.S., 1998 Supplement, is inartfully worded and contains technical errors. For example, that subsection provides in pertinent part:

> Any holder of a tax certificate who initiates ... contact with the property owner ... encouraging or demanding payment may be barred by the tax collector from bidding at a tax certificate sale. Unfair or deceptive contact by the holder of a tax certificate to a property owner to obtain payment is an unfair and deceptive trade practice, as referenced

> in s. 501.204(1), regardless of whether the holder of the tax certificate redeems the tax certificate. (emphasis added).

What the above language may be trying to do, in part, is declare contact "encouraging or demanding payment" to be "unfair and deceptive contact" and therefore actionable under the Florida Deceptive and Unfair Trade Practices Act. However, a literal interpretation of this language would require the contact by the holder to be otherwise unfair or deceptive in order to be actionable. What "unfair or deceptive contact" is has not been defined.

Also, the current statutory language declares an unfair or deceptive contact an unfair and deceptive trade practice, "regardless of whether the holder of the tax certificate redeems the tax certificate". However, the "holder of the tax certificate" does not redeem the tax certificate (unless it's another holder, which is unusual); most often it's the owner of the property that redeems the certificate. However, there are many persons who may redeem a tax certificate, including the following: the legal titleholder of the property, or someone acting on behalf of the legal titleholder (Rule 12D-13.051(1), F.A.C.); any owner, agent or creditor of any person claiming property (Rule 12D-13.053(1), F.A.C.); "any person" (Fla. Stat. §197.472(1)); the owner of the land and his successors in interest; the holder of another certificate on the same land; an heir who has an undivided interest; a grantee under a quit claim deed executed while a tax foreclosure proceeding was pending; or shareholders who have an interest in corporate property and lienholders (52 Fla Jur 2d, Taxation §21:309). Footnote 1 to s. 197.432(15), 1998 Supplement, F.S., also notes that the reference to "holder of the tax certificate" is erroneous.

Subsection (15) further provides in pertinent part:

> If the holder of the tax certificate later redeems the certificate in reliance on the deceptive or unfair practice, the unfair or deceptive contact is actionable under application laws prohibiting fraud. (emphasis added).

Once again, the "holder of the tax certificate" does not redeem the tax certificate. In this context "holder of the tax certificate" should read "property owner" since the property owner is apparently the only person who has a cause of action under the Florida Unfair and Deceptive Trade Practices Act pursuant to wording of this subsection and thus actionable under the laws prohibiting fraud. This error is also noted in the statute itself, s. 197.432(15), F.S., 1998 Supplement, footnote 1, which states that the reference to the holder of the tax certificate is erroneous.

This committee substitute corrects the inaccurate references to "holder of the tax certificate" and substitutes "property owner".

VIII. Amendments:

None.