

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: SB 766

SPONSOR: Senator Horne

SUBJECT: Tax Certificate / Property Description (RAB)

DATE: March 31, 2000

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cooper</u>	<u>Yeatman</u>	<u>CA</u>	<u>Favorable</u>
2.	<u>Fournier</u>	<u>Wood</u>	<u>FR</u>	<u>Favorable</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill authorizes the tax collector to contract with a title company or an abstract company to provide a list of legal title holders and lienholders of record of property on which a tax deed application is made. This is a rule authorization bill (RAB) for the Department of Revenue (DOR).

This bill amends section 197.502 of the Florida Statutes.

II. Present Situation:

Title Searches and Sale of Property for Delinquent Taxes

Section 196.001, F.S., requires ad valorem taxation, unless expressly exempt, of all real and personal property in this state. Property is taxed as either real property, personal property, or intangible personal property.

Chapter 197, F.S., is the exclusive method for enforcing liens created through the sale of tax certificates for unpaid ad valorem taxes and special assessments. 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. Tax collectors have the authority and the obligation to collect all ad valorem taxes by the date of delinquency or to collect delinquent ad valorem taxes by sale of tax certificates on the real property. As defined in s. 197.102(3), F.S., a tax certificate is a legal document, representing unpaid delinquent real property taxes and related costs and charges, issued against a specific parcel of real property and becoming a first lien thereon, superior to all other liens.

Section 197.502, F.S., governs the process for obtaining tax deeds by holders of tax certificates for real property. Tax deeds are obtained by sale of the property on which tax certificates are

held. Generally, certificate holders may apply for a tax deed between two to seven years after the certificate was issued. To apply for the deed, certificate holders must pay to the tax collector all amounts required to redeem or purchase all other outstanding tax certificates, including omitted, delinquent and current taxes, and respective interest, applicable to the property.

Upon payment of required outstanding certificates, taxes, and interest, the tax collector must notify the clerk of court that the obligations have been satisfied and that the following persons be notified of the impending sale of the property:

- legal title holders of the property;
- any lienholders against the property;
- any mortgagees of the property;
- any vendee of a recorded contract for deed for the property or any vendee requesting to be notified;
- any other lienholder requesting to be notified;
- any person to whom the property was assessed on the tax roll for the year in which the property was last assessed; and
- any lienholder who has recorded a lien against a mobile home located on the property described in the tax certificate, under certain conditions.

To identify such persons, the tax collector must conduct a title search on the property. While DOR rules authorize tax collectors to contract with a title abstract company to conduct the title search, there does not appear to be sufficient authority for the department to adopt such a rule.

Ch. 99-379, L.O.F. and Agency Rules

In enacting ch. 99-379, L.O.F., the Legislature amended ch. 120, F.S., (the Administrative Procedures Act) to clarify an agency's authority to adopt rules. Subsection (1) of s. 120.536, F.S., as amended, provides that a grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. An agency may adopt only rules that implement or interpret the specific powers and duties granted by the enabling statute. No agency shall have authority to adopt a rule only because it is reasonably related to the purpose of the enabling legislation and is not arbitrary and capricious or is within the agency's class of powers and duties, nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent or policy. Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the same statute.

To ensure compliance with s. 120.536(1), F.S., s. 120.536(2)(b), F.S., required that each agency, by October 1, 1999 provide to the Administrative Procedures Committee a list of each rule or portion of a rule adopted by that agency prior to June 18, 1999 which exceeds the rulemaking authority permitted by s. 120.536, F.S. For those rules of which only a portion exceeds the rulemaking authority permitted by this section, the agency was also to identify the language of the rule which exceeds this authority. The Administrative Procedures Committee combined the lists and provided the cumulative listing to the President of the Senate and the Speaker of the House of Representatives. The Legislature must, at the 2000 Regular Session, consider whether specific legislation authorizing the identified rules, or portions thereof, should be enacted.

By January 1, 2001, each agency must initiate proceedings pursuant to s. 120.54, F.S., to repeal each rule, or portion thereof, identified as exceeding the rulemaking authority permitted by this section for which authorizing legislation does not exist. By February 1, 2001, the Administrative Procedures Committee must submit to the President of the Senate and the Speaker of the House of Representatives a report identifying those rules that an agency had previously identified as exceeding its rulemaking authority for which proceedings to repeal the rule have not been initiated. As of July 1, 2001, the Administrative Procedures Committee or any substantially affected person may petition an agency to repeal any rule, or portion thereof, because it exceeds the rulemaking authority permitted by this section. Not later than 30 days after the date of filing the petition if the agency is headed by an individual, or not later than 45 days if the agency is headed by a collegial body, the agency must initiate rulemaking proceedings to repeal the rule, or portion thereof, or deny the petition, giving a written statement of its reasons for the denial.

DOR identified, in its October 1, 1999 submission to the Administrative Procedures Committee, the portion of two rules which appears to exceed the rulemaking authority permitted by s. 120.536, F.S. The rules identified are Rules 12D-13.060 and .061, F.A.C., which authorize tax collectors to contract with a title company or an abstract company to provide a list of legal title holders and lienholders of record of property on which a tax deed application is made.

III. Effect of Proposed Changes:

Section 1 amends s. 197.502, F.S., to authorize the tax collector to contract with a title company or an abstract company to provide information concerning ownership, lienholders, mortgagees, and interested vendees of property described in a tax certificate. To qualify for contract, the title company or an abstract company must be authorized to do business in Florida and must do the research for a reasonable fee, as determined by the tax collector. The tax collector is authorized to advertise and accept bids for the contract.

The title company or abstract company must print the resulting ownership and encumbrance report on paper showing a letterhead of the person, firm, or company that does the search, and the report must be signed by the person who does the search or an officer of the firm. The tax collector is prohibited from accepting or paying for any title search or abstract if no financial responsibility is assumed for the search.

In order to establish uniform prices, the tax collector must ensure that the contract for reports include all requests for title searches or abstracts for a given period of time. Fees for these title searches or abstracts must be collected when the tax deed is applied for, and the fee amount must be added to the opening bid of the property sale.

Section 2 provides that the act will take effect July 1, 2000.

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:

Title or abstract companies would have explicit authority contract for title searches with county tax collectors.

C. Government Sector Impact:

This bill would provide explicit authority for tax collectors to contract title searches with a title company or an abstract company.

VI. Technical Deficiencies:

None.

VII. Related Issues:

DOR offers the following information:

Since at least 1985, tax collectors have been authorized by rule to contract with outside service providers to prepare ownership and encumbrance reports required by s 197.502(4), F.S., before a piece of property can be sold as the result of a tax deed. The tax collectors have routinely passed the charge for that service on to tax deed applicants.

Although subject to litigation which was ultimately resolved in favor of the Department, it has been determined that the above portions of the identified rules exceed the Department's authority under the new standards in Chapter 120. However, because tax collectors and tax deed applicants have relied on the current system for complying with the notification provisions in s. 197.502(4), F.S., for a significant period of time, the Department believes that legislation to replace the rules is justified. The legislation will not result in any new fees or taxes being imposed.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
