STORAGE NAME: h0737b.rpp ****FINAL ACTION****
DATE: June 8, 1999 ****SEE FINAL ACTION STATUS SECTION****

HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
Real Property and Probate
FINAL ANALYSIS

BILL #: HB 737 (CS/SB 986, which has the identical provisions as HB 737, as amended in committee, passed and became Ch. 99-141, Laws of Florida)

RELATING TO: Property taxes

SPONSOR(S): Representative Greene

COMPANION BILL(S): SB 986 (s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) Real Property and Probate YEAS 8 NAYS 0
(2) Finance and Taxation YEAS 15 NAYS 0
(3)
(4)
(5)

I. FINAL ACTION STATUS:

On April 8, 1999, HB 737 was laid on the table and CS/SB 986 substituted and passed. CS/SB 986 was approved by the governor on April 29, 1999, and became Ch. 99-141, Laws of Florida.

II. SUMMARY:

A 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 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. The sale is conducted by the tax collector through a public bidding process. A tax certificate 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.*

Ch. 99-141, L.O.F., limits the blanket prohibition against 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.

Ch. 99-141, L.O.F., clarifies that the 7-year duration of a tax certificate begins on the date of the first day of the tax certificate sale as advertised pursuant to s. 197.432, F.S.

Ch. 99-141, L.O.F., does not appear to have a fiscal impact on state or local governments.

III. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Florida Constitution and statutory implementation regarding ad valorem taxation

The Florida Constitution provides that counties, school districts, and municipalities must 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.[1] Unless otherwise provided, the tax collector has statutory authority to commence the sale of tax certificates on those lands on which taxes are delinquent.[2] 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).[3]

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

1. delinquent taxes;

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[1] Section 197.333, F.S., provides that "all dates or time periods specified in this chapter relative to the collection of, or administrative procedures regarding, delinquent taxes shall be extended a like number of days."

[2] A tax collector may not sell a tax certificate where the certificate represents less than $100 in delinquent taxes and the property was granted a homestead exemption for the year in which the delinquency was assessed. Similarly, a certificate may not be sold for property owned by any governmental unit the property of which has become subject to taxation due to lease of the property to a nongovernmental lessee. *See* Fla. Stat. §197.432(4) and (8).

[3] Section 197.537(1), F.S., provides that when a deed in the chain of title contains restrictions and covenants running with the land, the restrictions and covenants survive and are enforceable after the issuance of a tax deed. Section 197.537(2), F.S., defines the usual restrictions and covenants to which this Section applies.

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.[4]

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.[5]

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.[6]

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

[4] Tax certificates sold prior to December 31, 1992, may not earn interest in excess of twelve percent for the first year, and eighteen percent per year for the life of the certificate. Tax certificates sold after December 31, 1992, but before October 1, 1975, may not earn in excess of twelve percent per year over the life of the certificate. Tax certificates sold after October 1, 1975, may not earn in excess of eighteen percent per year over the life of the certificate. Rule 12D-13.048(1), (2) and (3), F.A.C.

[5] Telephone conference, C. Hoke with Ken vanAssenderp, Esq. Young, vanAssenderp & Varnadoe, P.A., in Tallahassee, Fl (February 23, 1999).

[6] A tax certificate does not bear interest, or the mandatory 5 percent charge if applicable, under s. 197.472(2), F.S., during the first 60 days from the date of delinquency, unless otherwise provided in s. 197.172(2), F.S. Any tax certificate issued after January 1, 1977, which is void due to an error of the taxing authorities and is subsequently canceled or corrected is to earn interest at the rate of 8 percent per year or the rate of interest bid at the tax certificate sale, whichever is less. Fla. Stat. §197.432(10).

agent, pays to the tax collector the amount required to cancel and invalidate a tax certificate or portion thereof which is otherwise valid.[7] 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.[8]

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.[9], 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* "Comments", section V 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.[10]

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.[11] 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.

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[7] *But see* Rule 12D-13.053(1), F.A.C., which asserts that "any owner, agent or creditor of any person claiming property may redeem the property at any time before a tax deed is issued."

[8] This rule implements s. 197.432(6), F.S., which provides that when a tax certificate is redeemed, "the tax collector shall pay to the owner of the tax certificate the amount received by the tax collector less service charges."

[9] Section 501.204(1), F.S., of the Florida Deceptive and Unfair Trade Practices Act, provides: "unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful."

[10] As stated earlier in the text of this analysis, s. 197.472(2), F.S., provides that when a tax certificate is redeemed and the interest earned annually on the tax certificate is less than 5 percent of the face amount of the certificate, the 5 percent charge will be levied upon the certificate. Under this rule, the person redeeming the tax certificate is to pay the interest rate due on the certificate or the 5 percent charge, whichever is greater. A tax certificate does not bear interest during the first 60 days of delinquency, nor does the mandatory 5 percent charge levy during the first 60 days of delinquency. In addition, this rule does not apply to a tax certificate with an interest rate bid of zero percent. Rule 12D-13.053(2) and (3), F.A.C.

[11] Sections 197.482(1) and (2), F.S., provide that after seven years from the date of issuance, if the tax certificate holder does not apply for a tax deed, and no other administrative or legal proceeding is pending, the tax certificate is null and void, however, there are exceptions, e.g., this does not apply to tax certificates sold under Chapter 18296, Laws of Florida, 1937, also known as the Murphy Act. Rule 12D-13.059(1), F.A.C., further provides that tax certificates issued after July 1, 1973, and all tax warrants, are valid for seven years from the date of issuance.

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.

B. EFFECT OF PROPOSED CHANGES:

Ch. 99-141, L.O.F., modifies the current, though recent, prohibition against a tax certificate holder contacting the property owner for purposes of demanding payment of a tax certificate.[12] This act limits the blanket prohibition to a two year period. 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 from 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.

Ch. 99-141, L.O.F., further clarifies that the 7-year duration of a tax certificate begins on the date of the first day of the tax certificate sale as advertised pursuant to s. 197.432, F.S., and additionally corrects certain technical errors in existing law. See “Comments” section of this analysis.

C. APPLICATION OF PRINCIPLES:

1. <u>Less Government:</u>

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

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[12] 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 existing prohibition was created because certain banks, which bought 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. Telephone conversation, C. Hoke with John Everton, Director of Property Tax Administration Program, Department of Revenue, in Tallahassee (February 23, 1999) and telephone conversation with Ken vanAssenderp, Esq., Young, vanAssenderp & Varnadoe, P.A., in Tallahassee, Fl (February 23, 1999).

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

An agency or program is not eliminated or reduced.

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/a

(2) what is the cost of such responsibility at the new level/agency?

N/a

(3) how is the new agency accountable to the people governed?

N/a

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

   a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

      No.

   b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

      No.

5. Family Empowerment:

   a. If the bill purports to provide services to families or children:

      This act does not purport to provide services to families or children.

      (1) Who evaluates the family's needs?

          N/a

      (2) Who makes the decisions?

          N/a

      (3) Are private alternatives permitted?

          N/a

      (4) Are families required to participate in a program?

          N/a

      (5) Are families penalized for not participating in a program?

          N/a

   b. Does the bill directly affect the legal rights and obligations between family members?

      No.

   c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

      This act does not create or change a program providing services to families or children.

      (1) parents and guardians?

          N/a

      (2) service providers?

          N/a

(3) government employees/agencies?

N/a

D. STATUTE(S) AFFECTED:

Amends s. 197.432.

E. SECTION-BY-SECTION ANALYSIS:

See “Effect of Proposed Changes”.

IV. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS a WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

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

3. Effects on Competition, Private Enterprise and Employment Markets:

   No.

D. FISCAL COMMENTS:

   This act has no fiscal impact on state or local governments.[13]

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

A. APPLICABILITY OF THE MANDATES PROVISION:

   This act does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

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

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

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

VI. COMMENTS

Concerns regarding HB 737, as introduced:

Subsection (15) of s. 197.432, F.S., 1998 Supplement, is awkwardly 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

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[13] Telephone conversation, C. Hoke with Kama Monroe, Finance & Taxation Committee, House of Representatives, in Tallahassee (February 23, 1999) and telephone conversation with John Everton, Director of Property Tax Administration Program, Department of Revenue, in Tallahassee (February 23, 1999).

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.

VII. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 9, 1999, the Committee on Real Property and Probate adopted 3 amendments to HB 737: The first amendment, by Representative Greene, clarifies that the 7-year duration of a tax certificate begins on the date of the first day of the tax certificate sale as advertised pursuant to s. 197.432, F.S. The second and third amendments, by Representative Bilirakis, correct the inappropriate references to “holder of the tax certificate” in subsection (15), of s. 197.432, F.S. The need for these two amendments is discussed directly above in the “Comments” section of this analysis.

VIII. SIGNATURES:

COMMITTEE ON Real Property and Probate:

Prepared by:	Staff Director:
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AS REVISED BY THE COMMITTEE ON FINANCE AND TAXATION:

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