

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 1860

SPONSOR: Senator Diaz de la Portilla

SUBJECT: Tax Certificates for Unpaid Taxes

DATE: April 14, 2003

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cooper</u>	<u>Yeatman</u>	<u>CP</u>	<u>Fav/1 amendment</u>
2.	<u>Fournier</u>	<u>Johansen</u>	<u>FT</u>	<u>Favorable</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

This bill authorizes counties to conduct the sale of tax certificates for unpaid taxes by electronic means.

This bill amends s. 197.432 of the Florida Statutes.

## II. Present Situation:

### Sale of Tax Certificates for Unpaid Taxes

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 197.432, F.S., provides a process by which a county tax collector conducts the sale of tax certificates for unpaid taxes. Rule 12D-13, F.A.C., specifies the rules for the county tax collectors. Neither the statutes nor the rules authorize or prohibit the sale of tax certificates by electronic means.

### **Recent Problems with the Sale of Tax Certificates**

A representative of Miami-Dade County reports that some county employees were indicted for tampering with tax certificates by changing the interest rates and receiving compensation for increasing the rates after the completion of the bidding process. Interest rates were hand recorded on the tax certificate at the time of the auction. Some employees hand wrote the interest rate bid from the successful bidder on the tax certificate and then increased the rate after payment was received from the successful bidder. For example, if the successful bid was at three percent (3%), the successful bidder would pay the amount owed to the county and then receive the tax certificate reflecting an interest rate of thirteen percent (13%). The employees altering the tax certificate subsequently received compensation for their actions, and the successful bidders then held a tax certificate worth considerably more than the amount of the successful bid.

### **III. Effect of Proposed Changes:**

**Section 1** creates s. 197.432(16), F.S., to authorize counties to conduct any aspect of a sale of tax certificates for unpaid taxes by electronic means.

**Section 2** provides that the act will take effect July 1, 2003.

### **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:**

Since the purpose of the tax certificate auction is to obtain the lowest possible interest rate for property-owners, it is important that any tax auction be structured to ensure that tax certificates on each parcel are offered independently. A representative of an institutional purchaser of tax certificates has expressed a concern that a simultaneous auction will not result in the lowest possible interest rate for every parcel.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The Department of Revenue offered the following observations on the bill:

- The bill “lacks guidance” with regard to how electronic sales can be accomplished and still maintain “open competitive bidding.” Having all aspects of the sale by electronic means would preclude many people from bidding. The concept of having a public sale or public auction is to provide open competitive bidding in a process common to all persons.
- If smaller or rural counties opted to use an “electronic means,” the bid process could be drastically limited in these jurisdictions.
- If counties opt to make sales of tax certificates by electronic means, they should insure that public access and system security is provided for.

The General Counsel of the Florida Tax Collectors, Inc., recommended that there should be uniform procedures (by statute, rule, or policy) for implementing the option to sell tax certificates electronically.

**VIII. Amendments:**

#1 by Comprehensive Planning:

This amendment requires that when county tax collectors conduct the sale of tax certificates for unpaid taxes by electronic means, such sale must comply with all procedures of ch. 197, F.S.; requires that the sale must be open to the public by way of computer terminals open to the public at a designated location; provides that the tax collector has the authority to receive electronic deposits and payments related to these sales; and prohibits electronic sales of tax certificates representing less than \$100 in delinquent taxes on homestead property.