



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |                             |   |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

#### B. EFFECT OF PROPOSED CHANGES:

Creates s. 197.432(16), F.S., authorizing any county to conduct any aspect of a sale of tax certificates for unpaid taxes by electronic means if the county finds that such a means is in the county's best interest.

##### Current Law

Section 197.432, F.S., provides a process by which a county tax collector conducts the sale of tax certificates for unpaid taxes and the effects thereof. The current provisions do not provide for the use of electronic means, nor do they appear to disallow the use of electronic means for any aspect of the sale of tax certificates for unpaid taxes.

According to the Department of Revenue (DOR), tax certificates are sold on the day, approximately at the time and place designated by the County Tax Collectors in the notice of sale according to DOR guidelines.

Some counties currently handle the bidding process manually (i.e., writing the successfully bid interest rate on the tax certificate), which allows an opportunity for the problems recently experienced by Miami-Dade County to occur. These problems are discussed in the Other Comments section of this analysis. When someone fails to pay their property taxes, a tax certificate is sold at a publicly noticed auction. The purchaser pays off the amount owed to the County and then holds the certificate which is worth the amount paid plus interest which accrues at a rate as bid by the purchaser. The better the chance of collecting the debt, the lower the interest rate associated with the tax certificate. The successful bidder is the one bidding the lowest interest rate.

#### C. SECTION DIRECTORY:

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

Section 2: Provides an effective date.

### II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: Not applicable.
2. Expenditures: Not applicable.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: Not applicable.
2. Expenditures: Not applicable.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill offers an alternative method by which citizens may access the sale of tax certificates. Those persons having an electronic capability available might benefit to a greater extent than those who do not.

D. FISCAL COMMENTS: Not applicable.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a city or county to expend funds or to take any action requiring the expenditure of funds.

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

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

2. Other: Not applicable.

B. RULE-MAKING AUTHORITY: Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

The Department of Revenue notes that a public auction is usually defined as a public, competitive sale of property to the highest bidder. In the case of tax certificates, the lowest bidder succeeds. The term "auction" ordinarily implies a sale made upon the acceptance of an oral bid. Thus, the term "public auction" needs to be removed from s. 197.432(4), F.S.

Other Comments

The Sponsor indicates that the purpose of this bill is to provide a wider and more equitable notification, by the use of electronic means, of the availability of the sales of tax certificates for unpaid taxes.

A representative of Miami-Dade County represented 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. The County supports automation of the process so as to prevent such problems in the future.

In a particular instance involving Miami-Dade County, where interest rates are hand recorded on the tax certificate at the time of the auction and represent the lowest interest rate bid, some employees would hand write the interest rate bid from the successful bidder on the tax certificate and then increase the

rate after payment is 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 employee altering the tax certificate would subsequently receive some compensation and the successful bidder then held a tax certificate worth considerably more than the amount of the successful bid.

The Department of Revenue (DOR) indicates, in their analysis dated 1/27/03, that 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. DOR notes that the bid process could be drastically limited in smaller or rural counties. Finally DOR recommends that the bill make sales by electronic means county optional enacted by county ordinance to include specific requirements that must be met in order to address issues of public access and system security.

The General Counsel of the Florida Tax Collectors, Inc., had several comments regarding the bill.<sup>1</sup>

1. The word "county" should be replaced with the term "Tax Collector" (except for Dade, Broward and Volusia, the county government has nothing to do with state duties of the Tax Collector such as collection of ad valorem taxes, including tax certificate sales pursuant to state law and Department of Revenue (DOR) rules; in Dade, Broward and Volusia, each County Commission is the substitute for the Tax Collector to do this DOR work).
2. There should be no option in any amendment to let County Commissions by ordinance provide for internet tax certificate sales because the procedure is uniform statewide under Rule 12D-13, F.A.C. (Tax Collectors Rules & Regulations), which should be amended to provide direction about use of the internet for tax certificate sales but only if Chapter 197 is so amended.
3. It is possible to provide that in each county political subdivision (which is not the county government) the Tax Collector (or the Dade, Broward, and Volusia County Commissions) may opt to provide for internet tax certificate sales, but only pursuant to uniform state law and rules.
4. The uniform state law and rules must provide for a host of technical, procedural and constitutional matters that attend whether tax certificate sales will be affected exclusively by internet, non-internet procedures, or a combination. Note: the Association has long been a pioneer in the use of technology, including its attendant benefits of reducing the temptation for fraud and other wrongdoing. But the application of technology must be in the context of DOR law and rules implemented locally.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

The Sponsor intends to offer an amendment addressing the concerns raised by the Department of Revenue. The amendment:

- provides for an open competitive bidding process;
- provides access to the electronic sale by computer terminals open to the public at a designated location;
- provides the tax collector with authority to receive electronic deposits and payments related to the tax certificate sale; and
- amends s. 197.432(4), F.S., to provide authority to conduct electronic sales.

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<sup>1</sup> Ken van Assenderp, Esq., Young, van Assenderp & Varnadoe, P.A. 2/28/03.