

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1609

Collection of Delinquent Property Taxes

**SPONSOR(S):** Goldstein

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 1272

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Local Government Council		DiVagno	Hamby
2) Finance & Tax Committee			
3) Fiscal Council			
4) _____			
5) _____			

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### SUMMARY ANALYSIS

Tax collectors have the authority to collect all taxes shown on the tax rolls by the date of delinquency. If taxes become delinquent, the tax collector may collect delinquent taxes, interests, and costs, by sale of tax certificates on real property and by seizure and sale of personal property. Costs include reasonable attorney fees and court costs in proceedings to recover delinquent taxes.

This bill allows tax collectors to contract with outside counsel to collect all delinquent personal property taxes. The outside counsels' fee is set at 33% of the total of the unpaid taxes, penalties, and costs. This fee is a collection fee, added in addition to the taxes, penalties, and costs. The bill provides for taxpayers to be informed of these new fees and compensation in their tax notices. The bill also contains an acceleration clause that adds any unpaid taxes attached to the property, to be included with the warrant for unpaid personal property taxes.

This bill would take effect July 1, 2006.

The potential fiscal impact is indeterminate.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Ensure Lower Taxes:** This bill creates a 33% collection fee, paid by taxpayers, on unpaid personal property taxes, penalties, and costs.

#### B. EFFECT OF PROPOSED CHANGES:

##### Current Situation:

Tax collectors have the authority to collect all taxes shown on the tax rolls by the date of delinquency. Taxes are due and payable on November 1<sup>st</sup> of each year, or as soon as the certified tax roll is received by the tax collector. Taxes become delinquent on April 1<sup>st</sup> of the following year in which they are assessed, or 60 days from the mailing of the original notice, whichever is later. If the delinquency date for ad valorem taxes is later than April 1<sup>st</sup> of the year following the assessment on which taxes are due, all dates or time period regarding the collection of, or administrative procedures regarding the collection of, delinquent taxes shall be extended a like number of days.<sup>1</sup> If taxes become delinquent, the tax collector may collect delinquent taxes, interests, and costs, by sale of tax certificates on real property and by seizure and sale of personal property. Costs include the publication of notices and reasonable attorney fees and court costs in proceedings to recover delinquent taxes.<sup>2</sup>

Before May 1<sup>st</sup> of each year following the assessment, the tax collector prepares a roll of all unpaid personal property taxes. Prior to April 30<sup>th</sup> of the next year, the tax collector shall prepare warrants against the delinquent taxpayers. The warrants allow for the levy upon, and seizure of, tangible personal property. Within 30 days after preparing the warrants, the tax collector files a petition in the circuit court for the county they serve in. The petition describes the levies and nonpayment of taxes, the issuance of warrants, proof of publication of notices, and the names and addresses of all taxpayers who failed to pay taxes. There is one petition naming multiple delinquent taxpayers. The petition prays for an order ratifying and confirming the warrants, and directing the tax collector to levy upon and seize the personal property of all delinquent tax payers to satisfy payment of unpaid taxes.<sup>3</sup>

Upon filing a petition with the court, the tax collector must request the earliest time for a hearing, and the clerk of court shall notify each delinquent taxpayer listed in the petition that a petition is filed and, if ratified, warrants will be issued and their property will be seized and sold to pay unpaid taxes, plus costs, interest, attorney's fees, and other charges.<sup>4</sup>

The tax collector is authorized to employ counsel to conduct such suits. They may agree upon counsel's compensation, which may come out of the general office expense fund and be included in their budget.<sup>5</sup> These fees are allowed to be collected from delinquent taxpayers by adding them to the unpaid taxes.

##### Effect of Bill:

This bill requires the original tax notice to inform the taxpayer that any delinquent tangible personal property tax, penalty, and interest may be referred to contract legal counsel for collection. Additionally, the notice must inform the taxpayer of the contract counsel's compensation, and that it and certain

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<sup>1</sup> Section 197.333, F.S.

<sup>2</sup> Section 197.332, F.S.

<sup>3</sup> Section 197.413(2), F.S.

<sup>4</sup> Sections 197.413(4), (5), F.S.

<sup>5</sup> Section 197.413(3), F.S.

other costs, including court and advertising costs, will be added to the amount owed on delinquent taxes.

The bill accelerates the collection of unpaid taxes by allowing any current taxes assessed against the property that are unpaid, but not yet delinquent, to be included in the warrant to collect delinquent tangible personal property taxes.

The bill changes the current lien against the property into a personal debt liability against the owner of the property. The owner becomes personally liable for any unpaid personal property taxes, penalties, and interest. This subjects the owner of property with delinquent personal property taxes to a civil action for debt collection. Under current law, the tax collector can seize and then sell the personal property for satisfaction of the taxes owed. This bill will hold the property owner personally liable as well, giving the tax collector, and anyone with an interest in the debt, which would include contract counsel, a separate collection tool aimed at other assets than just tangible personal property.<sup>6</sup>

The bill also expands the tax collectors ability to use legal counsel in collecting unpaid taxes. The bill specifies that the tax collector may retain in-house counsel or, may contract with outside counsel to collect by suit, or other means, all delinquent tangible personal property taxes, and any other unpaid taxes also included in the warrant, as provided in the acceleration clause. The bill provides contract counsel a statutory compensation of 33% of the total amount of delinquent taxes, penalties, and interests collected. To pay this cost, the bill authorizes a collector's fee of 33% of delinquent taxes, penalties, and interests to be added to all personal property taxes, penalties, and interest remaining unpaid upon referral to contract counsel. In a warrant or other cause of action for unpaid taxes in which a collection fees has not been imposed, the bill allows the tax collector to recover attorney's fees in the amount of 33% of the amount of taxes, penalty, and interest adjudged by the court.

#### C. SECTION DIRECTORY:

**Section 1:** Amends s. 197.333, F.S., forming sub-sections (1) and (2), to require additional information in tax notices regarding contract counsel and their compensation.

**Section 2:** Amends s. 197.413 to accelerate the collection of unpaid taxes, create a personal liability for unpaid taxes, and provide contract counsel with statutorily set collection fee.

**Section 3:** Provides an effective date of July 1, 2006.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

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

##### 1. Revenues:

None.

##### 2. Expenditures:

Operational Impact is to be determined by the Department of Revenue.<sup>7</sup>

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

See fiscal comments below.

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<sup>6</sup> E-mail from Glenna Hodge, Partner and Director of Governmental Affairs, Linebarger Goggan Blair & Sampson, LLP, March 21, 2006.

<sup>7</sup> Department of Revenue Bill Analysis, HB 1609.

2. Expenditures:

See fiscal comments below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill creates a 33% collection fee, set in statute.

D. FISCAL COMMENTS:

The bill provides a tax collector and legal counsel an additional method of collecting unpaid taxes and fees by turning unpaid taxes, penalties, and costs into a personal debt, rather than a lien on the property. By making this a personal debt, collection can be undertaken in a civil action.

The bill also authorizes the creation of a 33% collection fee on all delinquent personal property taxes, and other unpaid taxes added to a delinquent personal property tax warrant, which takes attorney's fees out the tax collectors and courts hands.

With an 18% interest rate per year from the date of delinquency and an additional 33% of the total of unpaid taxes, penalties, and costs, a taxpayer, within a year, can potentially be personally liable for an additional 50% of what was additionally owed.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments:

Opponents: The Florida Tax Collectors Association, Inc., opposes the bill. It is their position that tax collectors are already able to use legal counsel, the fees of which can already be added to the delinquent amounts. There is also concern with the changing of the lien on property into a personal debt and whether this is constitutional.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.