

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

Prepared By: The Professional Staff of the Budget Subcommittee on Finance and Tax

BILL: CS/SB 478

INTRODUCER: Budget Subcommittee on Finance and Tax and Senator Thrasher

SUBJECT: Property Taxation

DATE: March 11, 2011 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	<b>Favorable</b>
2.	Babin	Diez-Arguelles	BFT	<b>Fav/CS</b>
3.			BC	
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

This bill revises, updates and consolidates provisions of chapter 197 of the Florida Statutes relating to tax collections, sales and liens. The bill tolls the statute of limitations relating to proceedings involving tax lien certificates or tax deeds to the period of intervening bankruptcy. The bill amends requirements for tax deed applications and the purchase of tax certificates to provide definitions and include interest, fees, and costs in the face value of the certificate. The bill provides for electronic notice, programs, sales, and fees. The bill also authorizes tax collectors to issue certificates of correction to the tax rolls for uncollectable personal property accounts. The bill consolidates provisions relating to the payment of deferred taxes.

This bill substantially amends chapter 197 of the Florida Statutes.

This bill creates the following sections of the Florida Statutes: 95.051(1)(h), 197.146, 197.2421, 197.2423, 197.332(2), 197.4725, and 197.603.

This bill repeals the following sections of the Florida Statutes: 197.202, 197.242, 197.304, 197.3041, 197.3042, 197.3043, 197.3044, 197.3045, 197.3046, 197.3047, 197.307, 197.3072, 197.3073, 197.3074, 197.3075, 197.3076, 197.3077, 197.3078, and 197.3079.

## II. Present Situation:

### Property Tax Assessments

Chapters 193-195, Florida Statutes, address property assessment procedures. Local property appraisers assess all real and tangible personal property located within the county. The assessment process begins by determining the property's just value; property appraisers are required to utilize the factors outlined in s. 193.011, F.S., to determine the property's just valuation as of January 1 of each year.

Article VII, s. 4, of the State Constitution, requires that all property be assessed at just value for ad valorem tax purposes. Just value has been interpreted by the courts to mean fair market value, or what a willing buyer would pay a willing seller for the property in an arm's length transaction.<sup>1</sup> The State Constitution provides exceptions to this requirement for agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for noncommercial recreational purposes, all of which may be assessed solely on the basis of their character or use. Additionally, tangible personal property that is held as inventory may be assessed at a specified percentage of its value or may be totally exempted.<sup>2</sup>

Article VII, of the State Constitution, also limits the amount by which assessed value may increase in a given year for certain classes of property, and permits a number of tax exemptions. These include exemptions for homesteads and charitable, religious, or literary properties, as well as tax limitations under the Save Our Homes provisions. After calculating the assessed value of the property, the appraiser subtracts the value of any applicable exemptions to determine the taxable value.

The property appraiser's assessment roll must be completed and submitted to the executive director of the Department of Revenue for approval by July 1 of each year, unless good cause is shown for extension.<sup>3</sup> As provided by ch. 195, F.S., the Department of Revenue has general supervision of the assessment and valuation of the property. Taxpayers receive a Notice of Proposed Property Taxes (TRIM notice) in August of each year. This notice provides the taxable value of the property and the millage rate<sup>4</sup> necessary to fund each taxing authority's proposed budget, based on the certified tax rolls submitted by the property appraiser.

Chapter 194, F.S., provides that taxpayers have the right to appeal the property appraiser's assessment at an informal conference with the property appraiser and by filing a petition to the Value Adjustment Board<sup>5</sup> (VAB) within 25 days after the TRIM notice is mailed, or to contest

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<sup>1</sup> See *Walter v. Shuler*, 176 So.2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So.2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So.2d 4 (Fla. 1973).

<sup>2</sup> Section 196.185, F.S.

<sup>3</sup> Section 193.1142, F.S.

<sup>4</sup> The millage rate is the rate at which the property is taxed and is set by county commissioners based on how much revenue is needed for operating expenses. See s. 200.069, F.S. See also Florida Department of Revenue website, *Local Government Property Tax Process*, available at <http://dor.myflorida.com/dor/property/taxpayers/pdf/ptoinfographic.pdf> (last visited on March 8, 2011).

<sup>5</sup> The Value Adjustment Board for each county consists of two elected governing members of the county, one of whom shall be elected chairperson and the other a member of the school board, as well as two citizen members: one, appointed by the

the assessment in circuit court. Following decisions by the VAB, the appraiser submits a revised certified tax roll to each taxing authority.

Locally-elected governing boards prepare a tentative budget for operating expenses following certification of the tax rolls by the tax collector. The millage rate is then set based on the amount of revenue which needs to be raised in order to cover those expenses. The millage rate proposed by each taxing authority must be based on not less than 95 percent of the taxable value according to the certified tax rolls. The Department of Revenue is responsible for ensuring that millage rates are in compliance with the maximum millage rate requirements set forth by law as well as the constitutional millage caps. A public hearing on the proposed millage rate and tentative budget must be held within 65 to 80 days of the certification of the rolls, and a final budget and millage rate must be announced prior to end of said hearing.<sup>6</sup> The millage rate may be changed administratively without a public hearing if the aggregate change in value from the original certification of value is more than 1% for municipalities, counties, school boards, and water management districts, or more than 3% for other taxing authorities.

### **Tax Collections, Sales and Liens**

Chapter 197, Florida Statutes, governs tax collections, sales and liens. Pursuant to s.197.322, F.S., the tax collector will mail a tax notice to each taxpayer within 20 days of receipt of the certified ad valorem tax roll and the non-ad valorem assessment rolls, stating the amount due and advising the taxpayer of discounts provided for early payment.<sup>7</sup> This normally occurs around November 1. Taxes that are not paid by April 1 following the year in which they were assessed are considered delinquent.<sup>8</sup> On April 30, the tax collector sends an additional tax notice to each taxpayer whose payment has not been received notifying that taxpayer that a tax certificate on the property will be sold for delinquent taxes that are not paid in full.<sup>9</sup>

On or before June 1 or 60 days after the date of delinquency, tax collectors are required to hold tax certificate auctions to sell tax certificates on properties with delinquent taxes which “shall be struck off to the person who will pay the taxes, interest, cost and charges and will demand the lowest rate of interest under the maximum rate of interest.”<sup>10</sup> Tax certificates that are not sold are issued to the county at the maximum interest rate (18%). The sale of the tax certificate acts as first lien on the property that is superior to all other liens; but it does not convey any property rights to the investor.<sup>11</sup>

A property owner can redeem a tax certificate anytime before a tax deed is issued or the property is placed on the list of lands available for sale. The person redeeming or purchasing the tax

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governing body, who must own a homestead within the county and one, appointed by the school board, who must own a business that occupies commercial space located within the school district. *See* s. 194.015, F.S.

<sup>6</sup> Section 200.065, F.S.

<sup>7</sup> Section 197.322 (1), F.S. *See also* s. 197.222(1), F.S. Taxpayers who elect to prepay their taxes by installment shall make payments “based upon the estimated tax equal to the actual taxes levied upon the subject property in the prior year.”

<sup>8</sup> Section 197.333, F.S.

<sup>9</sup> Section 197.343, F.S.

<sup>10</sup> Section 197.432(5), F.S.

<sup>11</sup> Section 197.122, F.S., *see also* s. 197.432, F.S.

certificate is required to pay the investor or county “all taxes, interest, costs, charges, and [any] omitted taxes” and a \$6.25 fee to the tax collector.<sup>12</sup>

The tax certificate holder is entitled to apply for a tax deed on the property on or after April 1 of the second year following the sale of the certificate and before the expiration of seven years from issuance, by filing the certificate with the county tax collector and paying all other tax certificates held on the same property, any current taxes that are due, and certain additional fees and costs. The tax collector is authorized to collect a tax application fee of \$75 at the time of application for the tax deed.<sup>13</sup>

If the property is not sold at the public tax deed auction held by the clerk of the circuit court, then it will be placed on the List of Lands available for sale.<sup>14</sup> Property that is placed on the list of lands available for sale, and is not sold three years after the public auction escheats to county in which the property is located, free and clear of all liens.<sup>15</sup> A tax certificate that is not redeemed or for which a tax deed has not been applied for after a period of seven years is considered to be null and void.

### **Tax Deferrals**

Chapter 197, F.S., also provides certain instances in which a taxpayer can delay paying a portion of his or her combined taxes to a future date. Sections 197.252-197.3079, F.S., allow individual tax deferrals for taxpayers who are entitled to exemptions for homestead, recreational and commercial working waterfront, and affordable rental housing property. To qualify for a tax deferral, these classified property owners are required to file an annual tax deferral application with the county tax collector on or before January 31, following the year the property was assessed.

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

**Section 1** creates paragraph (h) in s. 95.051(1), F.S., to toll the statute of limitations for proceedings related to tax lien certificates and any proceeding or process under chapter 197, F.S., by the period of an intervening bankruptcy.

**Section 2** amends s. 197.102(1) F.S., to provide the following definitions:

- “Awarded” means the time when the tax collector or a designee determines and announces verbally or through the closing of the bid process in an electronic auction that a buyer has placed the winning bid at a tax certificate sale.
- “Proxy bidding” means a method of bidding by which a bidder authorizes an agent, whether an individual or an electronic agent, to place bids on his or her behalf.

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<sup>12</sup> Section 197.472, F.S.

<sup>13</sup> Section 197.502, F.S.

<sup>14</sup> Section 197.542, F.S.; and *Tax Deed & Foreclosure Sales: Tax Deed Sales*, Walton, Florida Clerk of Courts website, available at [http://www.clerkofcourts.co.walton.fl.us/public\\_records/tax\\_deed\\_and\\_foreclosure\\_sale\\_information\\_area.html](http://www.clerkofcourts.co.walton.fl.us/public_records/tax_deed_and_foreclosure_sale_information_area.html) (last visited on March 8, 2011), which provides, “If the certificate holder is not the successful bidder, he/she is reimbursed all monies paid, plus interest earned from the monies received from the successful bidder.”

<sup>15</sup> Section 197.502(8), F.S.

- “Random number generator” means a computational device that generates a sequence of numbers that lack any pattern and is used to resolve a tie when multiple bidders have bid the same lowest amount. The generator assigns a number to each of the tied bidders and randomly determines which one is the winning bid.
- The bill revises the definitions of “tax certificate” and “tax notice” to include an electronic tax certificate and an electronic tax bill.

The bill clarifies that the definitions listed in subsection (2) of 197.102, F.S., shall apply when a local government uses the methods listed in s. 197.3632, F.S., to levy, collect, or enforce a non-ad valorem assessment.

**Section 3** amends s. 197.122, F.S., to clarify that an act of omission or commission on the part of the property appraiser, tax collector, board of county commissioners, clerk of circuit court, county comptroller; or their deputies or assistants; or by a newspaper that may publish the advertisement of a tax sale, does not defeat the payment of taxes.

The bill clarifies that tax payments also include the payment of interest, fees and any costs due. It clarifies that the sale or conveyance of real property that is being sold for nonpayment of taxes is not valid if the property is redeemed before the clerk of court receives full payment for a tax deed, including all recording fees and documentary stamps. This section also makes additional technical revisions.

**Section 4** amends s. 197.123, F.S., to clarify that the tax collector must notify the property appraiser if a taxpayer has filed an erroneous or incomplete personal property statement or has failed to disclose all of the property subject to taxation.

**Section 5** creates s. 197.146, F.S., to provide that a tax collector may issue a certificate of correction for the current tax roll or any prior tax rolls if the tax collector determines that a tangible personal property account is uncollectable. The tax collector must notify the property appraiser that the account is invalid, and the assessment may not be certified for a future tax roll.

This section states that an uncollectable account includes, but is not limited to, an account originally assessed but that cannot be found to seize and sell for the payment of taxes, and other personal property of the owner for which a tax warrant may be levied.

**Section 6** amends s. 197.162, F.S., to make technical corrections. It changes the title of the section to “Tax discount payment periods” and adds the specification that discounts will apply only to payments made before delinquency, and specifically includes the zero percent discount in the periods covered.

**Section 7** amends s. 197.172, F.S., to delete outdated language and to clarify that interest on tax certificates shall be calculated from the first day of the month, including interest on deferred payment tax certificates, which is currently calculated as provided in s. 197.262, F.S.

**Section 8** amends s. 197.182, F.S., making numbering and grammatical changes and shortening the time a demand for reimbursement can be made from 24 to 12 months because of a payment made in error for delinquent taxes. It creates a new subsection (5) to state that a request for

reimbursement on erroneous payments for taxes that have *not* become delinquent must be made within 18 months. It raises the minimum amount of an automatic refund for overpayment from \$5 to \$10 (a refund for less than \$10 may be requested by the taxpayer). The amount of a refund that does not have to be forwarded to the Department is increased from \$400 to \$2,500.

It states that a tax collector may send notice of denial of a refund electronically or by postal mail, and clarifies that electronic transmission may only be used with the express consent of the property owner and if such electronic notice is returned as undeliverable, a second notice must be sent. However, for purposes of this section, the original electronic transmission constitutes the official mailing. The procedure for apportioning payment among taxing authorities is reworded.

**Section 9** amends s. 197.222, F.S., to make grammatical changes and remove the requirement that the application be made on forms supplied by the department. A section is added that requires the tax collector to send a quarterly statement with the discount rates to those participating in the prepayment installment plan schedule as provided by the Department.

**Section 10** amends s. 197.2301, F.S., which provides a procedure for voluntary payment of taxes when the tax roll cannot be certified for collection of taxes before January 1 of the current tax year. When a tax roll cannot be certified in time to allow payment of taxes before January 1, current law requires notice to be published in both a county newspaper of general circulation and published at the courthouse door. The bill removes the requirement of publishing the notice at the courthouse. The bill also makes grammatical changes and provides that if there is an underpayment or overpayment of tax of less than \$10, the tax collector is not required to send an additional bill or automatically make a refund. The current law provision is that an underpayment or overpayment of less than \$5 does not require an additional billing or automatic payment of refund.

**Section 11** creates s. 197.2421, F.S., to combine all property tax deferral provisions into one subsection. The authorized property tax deferral programs are: homestead tax deferral, recreational and commercial working waterfront deferral, and affordable rental housing deferral.

**Section 12** creates s. 197.2423, F.S., providing a consolidated application procedure for applying for tax deferral, as well as procedures for tax collectors to approve or deny property tax deferral applications. The bill establishes March 31 as the filing date for all applications for deferral. Current law provides that tax collectors will consider applications within 30 days. The bill extends the time period to 45 days. The bill also deletes the requirement that deferral applications be signed under oath. Lastly, current law provides situations in which a taxpayer can defer paying taxes. Currently, if the total amount of deferred taxes exceeds 85% of the property value or if the primary mortgage exceeds 70% of the property value, deferral is not permitted. This bill changes the property value used to determine eligibility from the “assessed” value to the “just” value of the property involved.

**Section 13** renumbers section 197.253, F.S., as section 197.2425, F.S., and amends procedures to appeal the denial of an application for a tax deferral. The filing date is changed from 20 days after receiving the deferral disapproval notice from the tax collector to 30 days after the tax collector mails the deferral disapproval notice.

**Section 14** amends s. 197.243, F.S., by removing “Act” from the title.

**Section 15** amends s. 197.252(1), F.S., to remove language stating that the amount of tax and non-ad valorem assessments that may be deferred is limited to the amount that could be covered if a tax certificate was sold. The bill deletes the January 31 application deadline for homestead tax deferral, conforming this section to the March 31 application date established for all deferral applications in new s. 197.2423, F.S., created by section 12 of the bill. This section clarifies that interest on any tax certificates may also be deferred. It also deletes language in subsections (3) and (5) which is inserted in new ss. 197.2421 and 197.2423, F.S., which are created by sections 11 and 12 of the bill.

It amends subsection (2) to clearly state the eligibility requirements for the approval of a homestead tax deferral application.

It amends subsection (3) to require the property appraiser to notify the tax collector of a change in ownership or that the homestead exemption has been denied on property that has been granted a tax deferral.

It removes subsection (4) which provides that the interest accruing on deferred tax is one-half of 1 percent plus the average yield to maturity of the long term fixed income portion of the Florida Retirement System and may not exceed 7 percent.

**Section 16** renumbers s. 197.303, F.S., as s. 197.2524, F.S., and includes procedures for the tax deferral of affordable rental housing property.

**Section 17** renumbers s. 197.3071, F.S., as s. 197.2526, F.S., to provide specifically for tax deferral eligibility of affordable rental housing property.

**Section 18** amends s. 197.254, F.S. Currently, after a tax collector receives a certified tax roll, the tax collector is required to mail a tax notice to taxpayers stating how much tax is due. Under current law, s. 197.254 requires that the tax collector print information on the back of the envelope, notifying the taxpayer of the right to deferral. The bill removes the language requiring the notice of the right to deferral to be printed on the back of the notice envelope specified in s. 197.322(3), F.S., and removes the specification of the form of the notice, but keeps the requirement that taxpayers be notified.

**Section 19** amends s. 197.262, F.S., removing the requirement for the tax collector to notify the local governing body of taxes that are deferred, and changes the limit on the amount of interest on tax certificates from 9.5 percent to 7 percent.

**Section 20** amends s. 197.263, F.S., moving language from subsection (2) and placing it in subsection (1). The language provides that if there is a change in ownership to a surviving spouse and the spouse is eligible to maintain the tax deferral, the spouse may continue the deferral. Although current law allows surviving spouses to continue claiming tax deferral, the current provision only applies to homestead deferral. However, under the new language of the bill, the surviving spouse deferral would extend to homestead, working waterfront, and affordable housing deferrals.

Language in subsection (2) which requires all deferred taxes to be due and payable when there is a change in ownership is removed and subsequent subsections are renumbered.

Subsection (3) requires the tax collector to notify the owner when the total amount of the deferral exceeds 85 percent of the just value, rather than the assessed value, to state that such portion of the taxes become due and payable within 30 days after the notice is sent.

**Section 21** amends s. 197.272, F.S., and requires that any payment less than the total amount due must be made in full-year increments.

**Section 22** amends s. 197.282, F.S., concerning the distribution of payments on deferred taxes. Current law requires that when a tax collector receives payments for deferred taxes or interest, the tax collector is required to distribute the payment in accordance with normal procedures for distributions, but the statute only specifies payments for taxes or interest. The bill amends the statute to add payments for assessments. This section also removes some specificity in the recordkeeping requirement that the tax collector provide a description of the property and the amount of taxes or interest collected for such property. However, the statute will still require that the tax collector maintain a record of the payment.

**Section 23** amends s. 197.292, F.S., with minor wording and numbering changes.

**Section 24** amends s. 197.301, F.S., by including “non-ad valorem assessments” in the total amount due and penalty amount calculated pursuant to the uniform method of collection prescribed in s. 197.3632, F.S.

**Section 25** amends s. 197.312, F.S., by making minor wording and numbering changes.

**Section 26** amends s. 197.322, F.S., by making minor wording and numbering changes, allowing the tax collector to send tax notices electronically, and specifying procedures for electronic delivery.

**Section 27** amends s. 197.332(1), F.S., allowing tax collectors to perform their duties through electronic means and to contract with third parties for services to carry out their duties, but specifies that the use of third party contracted services does not diminish the ultimate responsibility of the tax collectors to perform their duties pursuant to law. The bill specifies that when the tax collector enters into contracts with these vendors, the tax collector is exercising his or her power to contract. The bill allows the tax collector to include the costs of contracted serves in proceedings to recover taxes, interests, and costs.

The bill creates s. 197.332(2), F.S., which will allow the tax collector to establish one or more branch offices by acquiring title to real property, or by lease agreement; to hire staff and equip the branch offices to conduct state business, or county business if authorized by resolution of the county governing body pursuant to section 1(k), Art. VIII, State Constitution.



The bill requires the department to rely on the tax collector's determination that the branch office is necessary and shall base its approval of the tax collector's budget in accordance with the procedures of s. 195.087(2), F.S.

**Section 28** amends s. 197.343, F.S., providing that tax collectors may send additional tax notices electronically with express consent of the property owner, and stating specific procedures for electronic transmission. The requirement that the tax collector send a duplicate tax notice to a condominium or mobile-home owner's homeowner association, when required, is removed.

**Section 29** amends s. 197.344, F.S., making minor wording changes and removing all references to the mailing of notices and replaces the word "mail" with the word "send." The bill provides that notices may be sent electronically or by postal mail, specifying procedures for electronic delivery.

**Section 30** amends s. 197.3635, F.S., removing subsection (2) that requires the form to have a clear partition between ad valorem taxes and non-ad valorem assessments. It removes the size requirements of the partition and makes minor wording and numbering changes.

**Section 31** amends s. 197.373, F.S., to make minor wording changes and change the 15 day notice requirement to 45 days for partial payment of taxes.

**Section 32** amends s. 197.402, F.S. Current law requires that on or before the later of June 1 or 60 days after the date of delinquency, the tax collector shall advertise tax certificate sales in a newspaper. In addition to making minor wording changes, the bill adds language that provides that if the deadline falls on a Saturday, Sunday, or legal holiday, it is extended to the next working day.

The bill also specifies that for certificate sales that commence on or before June 1, all certificates shall be effective as of the first day of the sale and interest shall be paid on the certificate to include the month of June.

**Section 33** amends s. 197.403, F.S. After a newspaper publishes advertisements concerning tax certificate sales, current law requires the publisher to sign an affidavit to the tax collector on a form prescribed by the department. The bill makes minor wording changes and removes the requirement for the affidavit to be in the form prescribed by the department.

**Section 34** amends s. 197.413, F.S. Current law requires that when a petition for sale of tangible personal property for payment of taxes is made, the clerk of court is required to provide notice to the delinquent taxpayer. The bill makes minor wording changes, and permits the tax collector and clerk of court to agree that the tax collector can provide required notices to delinquent taxpayers.

Current law permits tax collectors to collect a \$2 fee from each delinquent taxpayer when the taxpayer pays the taxes. Additionally, the tax collector may collect \$8 for each tax warrant issued. The bill changes the fee from \$2 to \$10. It also deletes the \$8 fee that the tax collector is entitled to for each warrant issued.

**Section 35** amends s. 197.414, F.S. Current law requires that the tax collector keep a record of all warrants and levies made under Chapter 197, F.S., on a form prescribed by the department. The bill removes the requirement that the record be kept in a form prescribed by the department, and permits the warrant register to be kept in paper or electronic form.

**Section 36** amends s. 197.4155, F.S. Current law permits tax collectors to implement programs to allow delinquent personal property taxes to be paid in installments. If a tax collector implements a program, current law requires that the program be made available to each taxpayer that owes over \$1,000 of delinquent personal property taxes. The bill makes minor wording changes and removes the limitation that the installment program be available to delinquent taxpayers whose delinquent personal property taxes exceed \$1,000.

**Section 37** amends s. 197.416, F.S., making minor wording changes and removing redundant language forbidding an action in any court after the 7-year limitation period.

**Section 38** amends s. 197.417, F.S., amending the minimum time period that the tax collector is required to advertise the time and place for the sale of personal property after seizure from 15 to 7 days. It reduces the number of notices to be posted from three to two and removes the courthouse location as one of the required public places to post notice. It authorizes one notice to be posted on the Internet, and requires a description and photograph of the property be available for a sale conducted electronically. It removes the immediate payment requirement.

**Section 39** amends s. 197.432, F.S., which provides the requirements for tax collectors that sell tax certificates for unpaid taxes. The bill makes minor wording changes and reorganizes the substantive provisions of the statute. Substantively, the bill:

- Provides that bidders can use “proxy bidding.” Proxy bidding is a newly-defined term added in Section 2 of the bill (amending s. 197.102, F.S.).
- States that the tax collector may not issue a tax certificate if the real property taxes are paid before a certificate is awarded, and provides that after a certificate is awarded, the delinquent taxes, interest, costs, and charges are paid by redeeming the tax certificate.
- Increases the amount below which a tax certificate is automatically struck to the county, rather than sold at public auction, from \$100 to \$250
- Provides that any tax certificate that has not been sold on property for which a tax deed application is pending shall be struck to the county.
- Permits the use of a random number generator to determine the winning bidder amongst multiple tax certificate bidders that bid the same winning amount. “Random Number Generator” is newly-defined by Section 2 of the bill (amending s. 197.102, F.S.).
- Authorizes tax collectors discretion as to whether they should require a deposit before allowing persons to bid on tax certificates (currently the statute mandates deposits);

- Authorizes electronic notice of when certificates are ready;
- Provides that any refund for a payment requested by the tax collector in error must be refunded 15 business days after the payment;
- Requires that upon cancellation of a bid, the tax collector must reoffer the certificate for sale if the tax certificate sale is not adjourned; if the sale has been adjourned, the tax collector must offer the certificate at a subsequent sale;
- Permits the official record of awarded tax certificates to be maintained electronically.

Current subsections (12), (13) and (16) are deleted and replaced in other sections of the bill. Subsection (12) provided that all tax certificates issued to the county for lands located in the county shall be held by the county tax collector. Subsection (13) provided that all delinquent real property taxes may be paid after the delinquency date but prior to the certificate sale by paying all costs, charges and interest. Subsection (16) provided for the conduct of tax certificate sales by electronic means.

Subsection (12) of the bill provides that the tax collector is entitled to a five percent commission included in the face value of the certificate for certificates that are not struck to the county, and that the tax collector cannot receive any commission for certificates struck to the county until the certificate is redeemed or purchased by an individual. If a tax deed is issued to the county, the tax collector cannot receive any commission until the property is sold and conveyed by the county.

**Section 40** amends s. 197.4325, F.S., making minor wording changes and changing references to “check” to “payment.” Subsection (1)(b), requiring the tax collector to retain a copy of the cancelled tax receipt and dishonored check, is deleted. The bill substantially shortens the tax collector’s requirements upon receiving a dishonored payment in subsection (2) and the bill grants the tax collectors discretion as to whether a reasonable effort at collecting unpaid amounts for a tax certificate.

**Section 41** amends s. 197.442, F.S., making minor wording changes throughout subsection (2).

**Section 42** amends s. 197.443, F.S., making minor wording changes. It provides that tax certificate corrections or cancellations that have been ordered by a court or that do not result from changes made in the assessed value on a tax roll certified to the tax collector are required to be made by the tax collector with no order from the department. It allows the certificate to be amended as a result of payments received due to an intervening bankruptcy or receivership.

**Section 43** amends s. 197.462, F.S., making minor wording changes. It removes the requirement that the tax collector endorse a tax certificate in subsection (2).

**Section 44** amends s. 197.472, F.S., making minor word changes and clarifying that in order to redeem a certificate that is in the tax deed application status, the redeeming party must pay the face amount plus all interest, costs, and charges. The bill also deletes current subsection (5) and clarifies the procedural requirements for a tax collector to issue a redemption receipt and

certificate. The bill specifies that provisions of subsection (4) do not apply to collections relating to fee timeshare real property.

**Section 45** creates s. 197.4725, F.S., providing a separate section for the purchase of *county-held* tax certificates at any time after a certificate is issued and before a tax deed application is made. The redemption procedures in this section essentially mirror those provided in s. 197.472, F.S. It provides that the interest earned shall be calculated at 1.5 percent per month, or a fraction thereof.

**Section 46** amends s. 197.473, F.S., providing that unclaimed redemption moneys are considered unclaimed as defined in s. 717.113, F.S., and must be remitted to the state instead of the board of county commissioners. It removes the provision that all claims for the unclaimed redemption moneys are barred after two years.

**Section 47** amends s. 197.482, F.S., making minor wording changes. It removes obsolete references to the Act of the 1973 legislature and provisions pertaining to the Murphy Act.

**Section 48** amends s. 197.492, F.S., which requires the tax collector to provide a report to the board of county commissioners separately showing the discounts, errors, double assessments, and insolvencies for which a credit is to be given. The bill makes minor wording changes throughout, and clarifies that the credit is given for discounts, errors, double assessments, and insolvencies **relating to tax collections**. It allows the report to be submitted in electronic format, and removes the provision requiring the board to review and investigate the tax collector's report. It deletes language that the board shall charge the tax collector, if he or she has taken credit as an insolvent item, any personal property tax due by a solvent taxpayer.

**Section 49** amends s. 197.502, F.S., providing clarifying changes and authorizing the reimbursement of any fee for an electronic tax deed application service and removes the requirement for affixation of the tax collector's seal. The bill deletes language in this section stating that the application may be made on the entire parcel of property or any part thereof capable of being readily separated. The bill further deletes the requirement that a statement declaring that all outstanding certificates have been paid be affixed with the tax collector's seal.

**Section 50** amends s. 197.542, F.S., making minor wording changes. It removes archaic language regarding the sale at public outcry, and requires all delinquent tax amounts accrued after filing an application to be included in the minimum bid for a sale at public auction. It changes the highest bidder deposit from \$200 dollars to the greater of 5 percent of bid or \$200. It requires that the sale process be repeated until the property is sold and the clerk receives full payment, or until the clerk does not receive any bids other than that of the certificate holder.

**Section 51** amends s. 197.582, F.S., making minor wording changes and providing that the clerk should include payment of tax certificates not incorporated in the tax deed application and any omitted taxes, in the distribution of the excess proceeds.

**Section 52** amends s. 197.602, F.S., to specify the expenses that are required to be reimbursed when a party successfully challenges a tax deed and directs the court to determine the amount of reimbursement.

**Section 53** amends s. 192.0105, F.S., making minor wording and numbering changes and removing the requirement to send notice by first class mail. The bill adds language to provide that property owners are held to know that property taxes are due and payable annually and that they have a duty to ascertain the amount of current and delinquent taxes that are due from the applicable officials.

It also states that taxpayers do not have a right to discounts for early partial payments as defined in s. 197.374, F.S., and clarifies that the taxpayer has the right to redeem the tax certificates any time before full payment for a tax deed is made to the clerk and that certificate holder is not permitted to contact the taxpayer for 2 years after April 1 of the year the certificate is issued.

**Sections 54 - 55** replace cross references to s. 197.253, F.S., with s. 197.2425, F.S., to incorporate the amendments in section 13 of the bill.

**Section 56** changes the cross reference to s. 197.432(10), F.S., to s. 197.432(11), F.S, to incorporate the amendments in section 39 of the bill.

**Section 57** creates section 197.603, F.S., which declares a legislative findings and intent that the Legislature has a strong interest in ensuring due process and public confidence in the collection of property taxes. The tax collectors shall be supervised by the Department of Revenue pursuant to s. 195.002(1), F.S. The new section also states that the Legislature intends that property tax collection be free from influence or appearance of influence of the local governments who levy property taxes and receive property tax payments.

**Section 58** repeals sections 197.202, 197.242, 197.304, 197.3041, 197.3042, 197.3043, 197.3044, 197.3045, 197.3046, 197.3047, 197.307, 197.3072, 197.3073, 197.3074, 197.3075, 197.3076, 197.3077, 197.3078, 197.3079, of the Florida Statutes.

**Section 59** provides an effective date of July 1, 2011.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

This bill increases the overpayment amount that may be retained by a tax collector absent a request from the taxpayer, from \$5 to \$10, and changes the highest bidder deposit for tax deed sales from \$200 to the greater of 5% of the bid or \$200.

On March 3, 2011, the Revenue Estimating Conference estimated that this bill's impact was indeterminate and could have a positive or negative impact on local government revenues due to the existence of both indeterminate positive revenue impacts and indeterminate negative revenue impacts.

**B. Private Sector Impact:**

Indeterminate at this time.

**C. Government Sector Impact:**

This bill is expected to reduce the tax collectors' mailing costs, and could provide other efficiencies by allowing greater flexibility and use of technology.

The implementation of this bill may require rule changes by the Department of Revenue.<sup>16</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The Department of Revenue made the following comments regarding the bill as filed:

- The provision for the 30 day time frame from *receipt* of notice relating to the appeal of a denied tax deferral in section 13 of the bill, conflicts with s. 194.011(3)(d), F.S., (this section is not amended in the bill), which provides for 30 days from *mailing* of the notice. Section 194.011(3)(d), F.S., discusses the denial of a property tax exemption.
- The language providing that tax collectors shall be supervised by the department in the legislative intent section of the bill (section 57) is unclear, since the bill does not provide additional detail in the form of amendments to other sections of law.
- The department also recommended the following technical amendments:
  - Strike comma and insert "and" on page 39, line 1111 of the bill.
  - Insert "of" between "Art. VIII" and "the" on page 41, line 1189 of the bill.<sup>17</sup>

The first and third comments have been addressed in the committee substitute.

<sup>16</sup> Department of Revenue, *SB 478 Agency Analysis*, at 23-24 (Feb. 3, 2011) (on file with the Senate Committee on Community Affairs).

<sup>17</sup> *Id.* at 23-25.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Budget Subcommittee on Finance and Tax on March 11, 2011:

This Committee Substitute includes 10 amendments adopted by the Subcommittee. The amendments:

- clarified that the provision that tolls the statute of limitation for proceedings involving processes pursuant to ch. 197 also tolls the statute for tax certificate purposes;
- cured a current statutory conflict by clarifying that the time to protest the denial of a deferral application begins after the mailing of the notice, not the receipt of the notice;
- clarified that the changes relating to payment of deferral tax certificates require the payments be in full-year increments;
- clarified that when a tax collector contracts with third-party vendors for services, the tax collector is exercising his or her contractual power;
- relating to additional tax notices sent after taxes become delinquent, removes the statement that the second notice will be sent by postal mail, conforming this provision to similar provisions throughout the bill;
- retained unintentionally stricken language regarding a tax collector continuing efforts to collect uncollected taxes;
- included s. 197.374, in order to amend a statutory reference;
- removed a suggested statutory change to the time frame in which a tax collector must automatically issue a refund of a tax overpayment; and
- made corrections to typographical errors.

**B. Amendments:**

None.