

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 797 Clerks of Court

SPONSOR(S): Finance & Tax Subcommittee; Civil Justice Subcommittee; Pilon

TIED BILLS: None **IDEN./SIM. BILLS:** CS/CS/SB 788

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	12 Y, 0 N, As CS	Ward	Bond
2) Finance & Tax Subcommittee	15 Y, 0 N, As CS	Wolfgang	Langston
3) Judiciary Committee	19 Y, 0 N	Ward	Havlicak

SUMMARY ANALYSIS

Tax certificates are sold to pay delinquent real property taxes. After two years of delinquent taxes, a certificateholder may request a sale of the property to satisfy the taxes, interest, costs of examining the title and advertising the sale. If the property sold is homestead, the minimum bid of a successful bidder must be at least one-half of the assessed value of the homestead property. Certain properties not sold at tax deed sale are added to a list of properties available for purchase from the county for taxes ("lands available for taxes").

The bill:

- Provides for certain tax certificates on homesteads to be purchased from the county;
- Provides that a tax certificate may be redeemed any time before the title is issued, if paid in full;
- Requires the tax certificate holder to pay the costs of resale if the tax deed sale is unsuccessful;
- Provides for certain unsold property to be placed on the list of "lands available for taxes;"
- Deletes the requirement that legal titleholders of contiguous property be notified when the county does not elect to purchase property on the list of "lands available for taxes;"
- Requires payment of the homestead assessment within 30 days of the tax deed sale;
- Provides for advertisement and scheduling of a second sale if the buyer fails to pay at the first sale; and
- Removes the requirement for unlimited recurring sales if the property is not sold.

The bill provides that the notice process required by the tax deed statute satisfies the notice requirement for unclaimed surplus funds resulting from a tax deed sale. Excess sale proceeds are presumed payable on the date the notice is mailed by the clerk that the funds are on hand to establish a beginning for the one year reporting date for holders of unclaimed property to the state. Lienholders will be paid by the clerk according to their record interests. The clerk may file an interpleader action in the event of any dispute.

Jurors and witnesses are currently paid by the clerk of the court either in cash or by warrant within 20 days after completion of service. The bill provides that jurors and witnesses can also be paid by check.

Currently, a party applying for a garnishment must deposit \$100 in the court registry for payment to the garnishee for payment of the attorney's fee of the garnishee. The bill provides that the attorney fee will be paid directly to the garnishee's attorney instead of through the court registry.

The bill makes other technical and grammatical changes to the statutes amended in the bill.

The bill does not appear to have a fiscal impact on the state or local governments.

The bill provides an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Clerks of the Circuit Courts - In General

The clerk of the court is a county constitutional officer.¹ The responsibilities of the clerk of the court may be divided between two officers, one serving as clerk of the court and one serving as clerk of the board of county commissioners, to serve the role of auditor, recorder, and custodian of all county funds. In the role of clerk of the court, the clerk is responsible for:

- case maintenance;
- records management;
- court preparation and attendance;
- processing the assignment, reopening, and reassignment of cases;
- processing of appeals;
- collection and distribution of fines, fees, service charges, and court costs;
- processing of bond forfeiture payments;
- payment of jurors and witnesses;
- payment of expenses for meals or lodging provided to jurors;
- data collection and reporting;
- processing of jurors; and
- determinations of indigent status.²

Tax Certificates and Sales for Taxes

Chapter 197, F.S., and rule 12D-13, F.A.C., govern the process used for the collection of unpaid taxes. The right to due process before the government takes property from a citizen is a constitutional right, and these statutes and rules help ensure that adequate procedures are in place to avoid infringing upon this right.³

A tax certificate is a legal document, issued by counties against a specific parcel of real property for unpaid delinquent real property taxes, non-ad valorem assessments, special assessments, interest, and related costs and charges.⁴ A tax certificate is a lien against the real property which can lead to public sale of the property. The tax collector can sell these tax certificates to individuals or entities that will pay the taxes, interest, costs, and charges and will demand the lowest rate of interest.⁵ This allows the local government to raise funds for current expenditures and provides the certificateholder with the right to collect the value of the certificate, which is secured by certain rights against the property.⁶

When a tax certificate is redeemed (paid by the property owner), the certificateholder will receive the amount of his or her investment (the tax certificate face amount) plus the interest accrued up to the date of redemption. A tax certificate can be redeemed any time before a tax deed is issued or the property is placed on the list of lands available for sale either by redeeming a tax certificate from the investor or by purchasing a county-held tax certificate. The person redeeming or purchasing the tax certificate is required to pay the face amount of the certificate, plus costs and charges and all interest due, which is either the interest rate due on the certificate or a 5 percent mandatory minimum interest,

¹ Art. V s. 16, FLA. CONST.

² Section 28.35(3)(a), F.S.

³ See, e.g., *Rosado v. Vosilla*, 909 So. 2d 505 (Fla. 5th DCA 2005), *aff'd*, 944 So.2d 289 (Fla. 2006); *Delta Property Management, Inc. v. Profile Investments, Inc.*, 875 So.2d 443 (Fla. 2004).

⁴ Section 197.102(1)(f), F.S.

⁵ Section 197.432, F.S.

⁶ See s. 197.432, F.S., and *Smith v. City of Arcadia*, 185 So.2d 762 (Fla. 2d DCA 1966) (“Tax certificates are only a means of evidencing unpaid taxes and to enable the sale thereof for the purpose of realizing funds for current governmental expenditures.”).

whichever is greater.⁷ The tax collector then pays the certificate owner the amount received by the tax collector, less the redemption fee.⁸

A tax certificate having a value of less than \$250 in delinquent taxes on property that has been granted a homestead exemption for the year in which the delinquent taxes were assessed may not be sold at public auction.⁹ Instead, the tax collector must issue the tax certificate to the county at the maximum rate of interest allowed. The county may not sell the county-held tax certificate for these tax certificates that are valued under \$250, nor can the county apply for a tax deed.¹⁰

After 2 years have passed since the year the tax certificate is issued as of April 1, and provided that the certificate is not cancelled, the certificateholder may file the certificate and an application for a tax deed with the tax collector of the county where the property described in the certificate is located.¹¹ A certificateholder can apply to obtain a tax deed by paying the tax collector all amounts required for redemption or purchase of all other outstanding tax certificates, and interest, omitted taxes plus interest, delinquent taxes plus interest, and current taxes due.¹² Upon completion of the tax deed application, the tax collector delivers the tax deed application to the clerk and requests that a tax deed sale be held.¹³

When property is sold by the clerk of court at a public auction, the certificateholder has the right to bid. If the property is homestead property, in addition to inclusion of delinquent taxes in the bid, the certificateholder must include in the minimum bid an amount equal to one-half of the assessed value of the homestead property.¹⁴ The high bidder must post a nonrefundable deposit of 5 percent of the bid or \$200, whichever is greater, to be applied to the sale price at the time of full payment.¹⁵ If full payment of the final bid is not made when due, the clerk cancels all bids, immediately readvertises the sale to be held within 30 days, and pays all costs of the sale from the deposit.¹⁶ Any remaining funds must be applied toward the opening bid.¹⁷

If no one bids at a public sale on a county-held certificate, the clerk must enter the land on a list of "lands available for taxes" and must immediately notify the county commission and all other certificateholders that the property is available.¹⁸ During the first 90 days after the property is listed, the county may purchase the land for the bid. If the county does not, the county must notify each legal titleholder of the property contiguous to the property available for taxes during the 90-day period.

If the property is purchased by someone other than the certificateholder and in a higher amount than the statutory bid, the excess is paid over and disbursed by the clerk in priority order to lienholders and the former property owner as set out in s. 197.582(2), F.S.¹⁹ The clerk must notify by mail all persons having an interest in any balance of undisbursed funds.²⁰

If there are no higher bids at the public sale, the property is sold to the certificate holder.²¹ If the sale is canceled or the buyer fails to make full payment, the clerk "shall immediately re-advertise and hold the sale within 30 days."²² Department of Revenue rules²³ currently require re-publication for re-sale of

⁷ Section 197.472, F.S.

⁸ *Id.*

⁹ Section 197.432(4), F.S.

¹⁰ Sections 197.432(4), 197.4725, and 197.502(3), F.S.

¹¹ Section 197.502(1), F.S.

¹² Section 197.502(2), F.S.

¹³ Rule 12D-13.060, F.A.C.

¹⁴ Section 197.542(1), F.S.

¹⁵ Section 197.542(2), F.S.

¹⁶ Section 197.542(1) and (2), F.S.

¹⁷ *Id.*

¹⁸ Section 197.502(7), F.S.

¹⁹ Section 197.582, F.S.

²⁰ *Id.*

²¹ *Id.*

²² Section 197.542(3), F.S.

²³ 12D-13.063, F.A.C.

homestead property when no one bids on the property; and statutes require re-publication and re-sale of a property if the sale is canceled. Neither provision establishes a responsible party for costs of re-sale nor sets a payment deadline.

Proposed Changes

The bill:

- Provides that tax certificates on homesteads under \$250 that are issued to the county may be purchased from the county once they reach \$250 in taxes and interest;
- Provides that a tax certificate may be redeemed any time before the tax deed is issued unless full payment for the tax deed has been made, including documentary stamps and recording fees;
- Deletes language specifying that a person may redeem a tax certificate at any time before the property is placed on the list of lands available for public sale;
- Requires the certificateholder to pay the costs of resale within 30 days of notice from the clerk, or the certificate is cancelled by entering the land on the list of "lands available for taxes;"
- Removes a requirement to notify all other persons holding tax certificates against a property in the event:
 - There are no bidders at a tax deed sale,
 - Costs for a subsequent sale are not paid within 30 days of the sale, and
 - The clerk enters the land on the list of "lands available for taxes;"
- Deletes the requirement that legal titleholders of contiguous property be notified when the county does not elect to purchase property on the list of "lands available for taxes."
- Provides that holders of certificates on unsold homestead property must pay one half the value of the homestead within 30 days of the sale or the property is entered on the list of "lands available for taxes;"
- Provides that if the sale is canceled or the buyer fails to make full payment within the time required, the clerk must readvertise the sale within 30 days of the buyer's nonpayment or, if canceled, within 30 days after the clerk receives the re-sale costs, with sale to be held within 30 days of readvertising;
- Provides that in a subsequent sale at which there are no bidders, where the certificate holder fails to pay the amount due within 30 days, the property will be placed on list of "lands available for taxes;" and
- Removes the requirement for unlimited recurring sales if the property is not sold.

Current Situation

Surplus Funds from Tax Deed Sales

Proceeds from tax deed sales are distributed by the clerk according to statute.²⁴ If there are excess proceeds, the clerk holds the funds for the benefit of parties who held an interest in the property, such as a mortgage or lienholder and the former owner.²⁵

Currently, clerks are required to provide notice to former titleholders and lienholders for surplus funds twice - once pursuant to the tax-deed statutes and again as unclaimed property.²⁶ In addition, the date from which the one year period for reporting as required by the unclaimed property statute is unclear with respect to surplus proceeds from tax deed sales.²⁷

Proposed Change

²⁴ Section 197.582(2), F.S.

²⁵ *Id.* Parties with an interest in the real property are given notice pursuant to s. 197.502(4), F.S.

²⁶ Section 717.117(1), F.S.

²⁷ Section 717.117(3), F.S.

The bill amends s. 197.582, F.S., to streamline the process by allowing the notice process required by the tax deed statutes to also satisfy the notice requirement for unclaimed funds.²⁸ It also provides that excess sale proceeds are presumed payable on the date the notice is mailed by the clerk that the funds are on hand under s. 197.582, F.S. This establishes a beginning for the one year reporting date for holders of unclaimed property to the state.²⁹

The bill further establishes distribution in accordance with lienholders' record priorities and provides for the filing of an interpleader with assessment of fees in the event of a dispute.

Current Situation

Juror and Witness Fees

Jurors may be compensated for their service in certain instances.³⁰ Juries may also receive meals and lodging.³¹ Witnesses testifying in a court case may also be paid for their services.³² The clerks are responsible for disbursing payments to jurors and witnesses, and may do so by cash or warrant.³³

Proposed Change

The bill provides that jurors and witnesses can also be paid by check.

Current Situation

Garnishment

"Garnishment is a type of summary remedy historically available to a creditor whereby a person's property, money, or credits in the possession of, under the control of, or owing by a third person known as the garnishee are applied to payment of the debtor's obligation to the creditor by proper statutory process against the debtor and the garnishee."³⁴ "Garnishment consists of notifying a third party to retain something that the third party has belonging to the defendant, to make disclosure to the court concerning it, and to dispose of it as the court directs."³⁵ Garnishment is governed by ch. 77, F.S.

Currently, a party applying for a garnishment must deposit \$100 in the court registry for payment to the garnishee on demand at any time after the service of the writ for payment of the attorney fee of the garnishee in obtaining representation in response to the writ.

Proposed Change

The bill amends s. 77.28, F.S., to eliminate the attorney fee payment from being processed through the court system and directs the party to pay the garnishee's attorney directly.

The bill provides an effective date of July 1, 2014.

B. SECTION DIRECTORY:

²⁸ Section 197.522(4), F.S.

²⁹ Section 717.117(3), F.S.

³⁰ Section 40.24, F.S., provides that jurors who are not regularly employed or who do not continue to receive regular wages while serving as a juror are entitled to receive \$15 per day for the first 3 days of service and \$30 for each day thereafter. Section 40.24(3)(a) and (b), F.S.

³¹ Section 40.26, F.S.

³² Section 40.32(1), F.S.

³³ Section 40.32(3), F.S.

³⁴ 13 Fla. Jur 2d Creditors' Rights § 59.

³⁵ *Id.*

Section 1 amends s. 40.32, F.S., relating to clerks to disburse money; payments to jurors and witnesses.

Section 2 amends s. 77.27, F.S., relating to no appeal until fees are paid.

Section 3 amends s. 77.28, F.S., relating to garnishment; attorney's fees costs; expenses; deposit required.

Section 4 amends s. 197.432, F.S., relating to sale of tax certificates for unpaid taxes.

Section 5 amends s. 197.472, F.S., relating to redemption of tax certificates.

Section 6 amends s. 197.502, F.S., relating to application for obtaining tax deed by holder of tax sale certificate, fees.

Section 7 amends s. 197.542, F.S., relating to tax deed sale at public auction.

Section 8 amends s. 197.582, F.S., relating to disbursement of proceeds of tax deed sale.

Section 9 provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill has an indeterminate impact on local government revenues because it makes it easier for local governments to place properties on "lands available for taxes" rather than readvertising them for sale at public auction.

2. Expenditures:

Local governments will likely have to spend less money on readvertising property for sale and it removes the court system from processing garnishments under s. 77.28, F.S.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Unknown.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 12, 2014, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Removed a provision that the Department of Highway Safety and Motor Vehicles must suspend the vehicle registration of a person who has failed to pay costs and fines to the Clerk of Court under a payment plan;
- Removed a provision that all other persons holding tax certificates must be notified in the event that a tax deed sale is unsuccessful;
- Removed a provision that in the event of an uncompleted tax deed sale, contiguous property owners be notified within 90 days of the property being placed on the list of "lands available for taxes;"
- Removed a provision which prevents counties from applying for tax deeds on certain county-owned tax certificates; and
- Added a provision that a county may not apply for a tax deed on a county-held certificate whose value is less than \$250 where the underlying property is homestead. .

On April 1, 2014, the Finance and Tax Subcommittee adopted a strike-all amendment and an amendment to that amendment. The amendments were reported favorably as a committee substitute. The amendments made the following changes:

- Revises language in the bill relating to the selling of tax certificates on homesteads when the homestead owes \$250 or more.
- Deletes the portion of the bill that would have prohibited counties from applying for a tax deed on a certificate held by the county where the value of certificates is less than \$250 and the homestead exemption was claimed for that year.
- Increases from 15 to 30 the following time periods:
 - The time for the certificateholder to pay the costs of resale
 - The time for the certificateholder to pay one-half the homestead value
- Specified that a person applying for a writ of garnishment must pay the attorney fee upon issuance of the writ, rather than prior to issuance.

This analysis is drafted to reflect the committee substitute as passed by the Finance and Tax Subcommittee.