

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1383 Tax Deed Sales

SPONSOR(S): Government Accountability Committee; Ways & Means Committee; Latvala

TIED BILLS: IDEN./SIM. **BILLS:** CS/SB 1504

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	12 Y, 0 N	Rivera	Miller
2) Ways & Means Committee	17 Y, 0 N, As CS	Curry	Langston
3) Government Accountability Committee	18 Y, 0 N, As CS	Rivera	Williamson

SUMMARY ANALYSIS

Local ad valorem taxes are due on November 1 or as soon as the certified tax roll is received by the tax collector. Taxes become delinquent on April 1 of the following year or immediately upon the expiration of 60 days from the date the original tax notice was mailed, whichever is later. If ad valorem taxes are not paid by June 1 or the 60th day after the tax becomes delinquent, whichever is later, the tax collector advertises and sells tax certificates to pay the delinquency.

Two years after April 1 of the year in which the tax certificate was issued, and before the certificate expires, a certificateholder may apply for a tax deed with the tax collector. Certificateholders other than the county must pay all costs required by statute before the sale may occur, including the costs of any title search or abstract. The tax collector is responsible for notifying the clerk of the circuit court of the parties requiring notice of the pending tax deed sale. The costs to bring the property to sale are added to the opening bid on the property.

Once the tax deed sale is completed, any proceeds in excess of the opening bid are paid over to and distributed by the clerk, first to governmental entities and then to nongovernmental entities in priority. However, if the balance after the governmental liens have been paid is insufficient to cover the cost to notify possible claimants of the proceeds then the clerk may retain the entire balance as a service charge. Any unclaimed money is remitted to the state on behalf of persons entitled to notice of the tax deed sale.

The bill clarifies the responsibilities of the certificateholder applying for a tax deed, including specific costs to pay. The bill requires all tax collectors to contract with title companies or abstract companies to provide a property information report, and deletes references to title searches and abstracts. Fees for property information reports and updates will be added to the costs of sale. The bill revises certain provisions on notice, distribution of surplus funds, and makes editorial changes.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Property Taxation

Ad valorem taxes are levied annually by counties, school districts, municipalities, and, if authorized, special districts,¹ based on the value of real and tangible personal property as of January 1 of each year.² The state cannot levy ad valorem taxes on real or tangible personal property but has preempted all other forms of taxation except as provided by general law.³ All property must be assessed at a just value for ad valorem tax purposes, and the property appraiser determines an assessed value of property based on statutory factors including the present cash value of the property, its highest and best use assessment limitation or use classification affecting the just value of a property.⁴ A property's taxable base is the fair market value of locally assessed real estate, tangible personal property, and state assessed railroad property, less certain exclusions, differentials, exemptions, and credits.⁵

Tax Collection and Tax Certificate Sales

All taxes are due on November 1 of each year or as soon as the certified tax roll is received by the tax collector.⁶ Taxes become delinquent on April 1 of the following year or immediately upon the expiration of 60 days from the date the original tax notice was mailed, whichever is later.⁷ After receiving the tax roll, the tax collector publishes notice in the local newspaper stating the tax roll is open for collection and, within 20 working days of receipt of the tax roll, sends each taxpayer whose address is known a tax notice with the current taxes due and any delinquent taxes due.⁸

¹ Art. VII, s. 9, Fla. Const. Section 192.001(12), F.S., defines "real property" as land, buildings, fixtures, and all other improvements to land. The terms "land," "real estate," "realty," and "real property" may be used interchangeably. Section 192.001(11)(d), F.S., defines "tangible personal property" as all goods, chattels, and other articles of value, not including the vehicular items under art. VII, s. 1(b), Fla. Const. and elsewhere, capable of manual possession and whose chief value is intrinsic to the article itself.

² Office of Economic & Demographic Research, *2017 Florida Tax Handbook*, p.199, available at <http://edr.state.fl.us/content/revenues/reports/tax-handbook/taxhandbook2017.pdf> (accessed 1/21/18)(hereinafter 2017 Tax Handbook). Section 192.001(1)and(2), F.S., define Ad valorem, or property, tax as a tax based upon the assessed value of property as determined annually by:

1. The just or fair market value of an item or property;
2. The value of property as limited by art. VII of the State Constitution; or
3. The value of property in a classified use or at a fractional value if the property is assessed solely on the basis of character or use or at a specified percentage of its value under art. VII of the State Constitution.

³ Art. VII, s. 1, Fla. Const. All ad valorem taxation must be at a uniform rate within each taxing unit, except the taxes on intangible personal property may be at different rates but may never exceed two mills on the dollar of assessed value; provided, as to any obligations secured by mortgage, deed of trust, or other lien on real estate wherever located, an intangible tax of not more than two mills on the dollar may be levied by law to be in lieu of all other intangible assessments on such obligations. Art. VII, s.2, Fla. Const.

⁴ Art. VII, s. 4, Fla. Const. and s. 193.011, F.S.

⁵ 2017 Tax Handbook, at 206. Exclusions are specific types of property constitutionally or statutorily removed from ad valorem taxation such as transportation vehicles, which are alternatively subject to a license tax. The Homestead exemption under art. VII, s. 6, Fla. Const., provides that every person who owns real estate with legal and equitable title and permanently resides, or has a dependent who permanently resides upon such real estate, is eligible for a \$25,000 homestead tax exemption applicable to all ad valorem tax levies including school district levies. An additional \$25,000 homestead exemption applies to homesteads that have an assessed value greater than \$50,000 and up to \$75,000, excluding school district levies.

⁶ Section 197.333, F.S.

⁷ Section 197.333, F.S. If the delinquency date for ad valorem taxes is later than April 1st of the year following the year in which taxes are assessed, all dates or time periods relative to the collection of, or administrative procedures regarding, delinquent taxes are extended a like number of days.

⁸ Section 197.322(2), F.S. If payment has not been received, the tax collector must send out an additional notice by April 30. Section 197.343, F.S.

If ad valorem taxes are not paid by June 1 or the 60th day after the tax becomes delinquent, whichever is later, the tax collector advertises and sells tax certificates to pay the delinquency.⁹ A tax certificate is a legal document that represents unpaid delinquent ad valorem taxes, non-ad valorem assessments, interest, and related costs and charges issued against a specific parcel of real property.¹⁰ Once sold, the tax certificate becomes a first lien on the property, superior to all other liens, except as provided by law,¹¹ but can be enforced only through the remedies provided under ch. 197, F.S.¹²

The tax certificate expires after seven years from the date the sale was advertised.¹³ If a tax deed has not been applied for, and no other administrative or legal proceeding, including a bankruptcy, has been initiated, the tax certificate is null and void and is canceled.¹⁴

Before a tax certificate is awarded¹⁵ to a buyer or struck to the county (an unsold tax certificate issued to the county¹⁶), the taxpayer may pay the delinquent taxes and all interest, costs, and charges to avoid issuance of the tax certificate.¹⁷ Otherwise, a tax certificate can be redeemed by paying the face value amount of the tax certificate plus all interest, costs, and charges to the tax collector any time before a tax deed is issued unless full payment for the tax deed is made to the clerk of the court.¹⁸ The tax collector pays the tax certificateholder the amount received to redeem the certificate less a redemption fee.¹⁹ If the certificateholder cannot be found for payment, the money is remitted to the state as unclaimed money.²⁰

Tax Deed Applications

Two years after April 1 of the year in which the tax certificate was issued, and before the certificate expires, a certificateholder may apply for a tax deed with the tax collector.²¹ The tax collector may charge a \$75 application fee and reimbursement of costs for use of an online application process if offered. If the total fee is more than \$75, the applicant must have the option to apply online.²²

A certificateholder, other than the county, must buy or redeem all other outstanding tax certificates plus interest, any omitted taxes²³ plus interest, any delinquent taxes plus interest, and any current taxes due

⁹ Sections 197.402(3) and 197.432(1), F.S. The tax collector must advertise the sale once a week for 3 weeks. A public sale is not authorized if a tax certificate is valued under \$250 and applies to property that has been granted a homestead exemption for the relevant tax year. *See* s. 197.432(4), F.S. Instead, the tax certificate is issued to the county at the maximum rate of interest allowed and cannot be sold or used for a tax deed application unless the tax certificate and accrued interest are valued at \$250 or more. *See* ss. 197.432(4), 197.4725 and 197.502(3), F.S.

¹⁰ Section 197.102(1)(f), F.S.

¹¹ *Id.*

¹² Section 197.432(2), F.S. A tax certificate can be transferred to another at any time before it is redeemed or a tax deed is executed. Section 197.462(1), F.S.

¹³ Section 197.482, F.S.

¹⁴ *Id.* A deferred payment tax certificate is not subject to this provision.

¹⁵ "Awarded" means the time when the tax collector or a designee determines and announces verbally or through the closing of the bid process in a live or an electronic auction that a buyer has placed the winning bid on a tax certificate at a tax certificate sale. Section 197.102(1)(a), F.S.

¹⁶ Section 197.432(6), F.S.

¹⁷ Section 197.432(3), F.S.

¹⁸ Section 197.472(1), F.S. A portion of a certificate may be redeemed only if such portion can be ascertained by legal description and the portion to be redeemed is evidenced by a contract for sale or recorded deed. *See* Section 197.472(4), F.S.

¹⁹ Section 197.472(5), F.S.

²⁰ Section 197.473, F.S.

²¹ Section 197.502(1), F.S.

²² *Id.*

²³ "Omitted taxes" means those taxes which have not been extended on the tax roll against a parcel of property after the property has been placed upon the list of lands available for taxes pursuant to s. 197.502, F.S. Section 197.102, F.S.

on the property and, if applicable, pay the costs of resale.²⁴ If the certificateholder is the county, the application fee and reimbursement costs charged by the tax collector must be deposited with the tax collector but the county may not deposit any money for redemption or purchase of other tax certificates covering the property.²⁵ Certificateholders with more than one tax certificate may consolidate them into one application, but the tax collector is required to issue separate statements to the clerk of the circuit court to identify appropriate parties for notice requirements and the clerk must issue a separate tax deed for each listed parcel of real property.²⁶

After the certificateholder provides the required funds, the tax collector must send a signed statement to the clerk of the circuit court confirming receipt and directing the clerk to notify the following persons prior to the sale of the property, if their addresses are documented:

- Any legal titleholder of record;
- Any lienholder of record who has recorded a lien against the property described in the tax certificate;
- Any mortgagee of record;
- Any vendee of a recorded contract for deed or any vendee who has applied to receive notice pursuant to s. 197.344(1)(c), F.S.;
- Any other lienholder who has applied to the tax collector to receive notice;
- Any person to whom the property was assessed on the tax roll for the year in which the property was last assessed;
- Any lienholder of record who has recorded a lien against a mobile home located on the property described in the tax certificate if the lien is recorded with the clerk of the circuit court in the county where the mobile home is located; and
- Any legal titleholder of record of property that is contiguous²⁷ to the property described in the tax certificate, if the property described is submerged land or common elements of a subdivision and if the address of the titleholder of contiguous property appears on the record of conveyance of the property to the legal titleholder.²⁸

The tax collector may purchase a reasonable bond for errors and omissions made in preparing this statement,²⁹ and may contract with a title or abstract company to provide the minimum information to identify the persons requiring notice from the clerk.³⁰ If additional information is required, the tax collector must make a written request to the title or abstract company stating the additional requirements.³¹ The law does not specify what report the tax collector must obtain but does reference the requirements for a property information report and title search or abstract.³²

²⁴ Section 197.502(2), F.S. Failure to pay the costs of resale within 30 days after notice from the clerk will result in the clerk's entering the land on a list entitled "lands available for taxes."

²⁵ Section 197.502(3), F.S. The county must apply for a tax deed if the property has been most recently assessed at a value over \$5,000 by the property appraiser and may apply for a tax deed on property most recent assessment below \$5,000. The county must apply on or reasonably soon after two years after the April 1 of the year the tax certificate was issued.

²⁶ Section 197.502(9), F.S.

²⁷ "Contiguous" means touching, meeting, or joining at the surface or border, other than at a corner or a single point, and not separated by submerged lands. Submerged lands lying below the ordinary high-water mark, which are sovereignty lands, are not part of the upland contiguous property for purposes of notification. Section 197.502(4)(h), F.S.

²⁸ Sections 197.502(4)(a)-(h), F.S. If any legal titleholder is identified as the most recent taxpayer of the property covered by the tax certificate, the clerk is permitted to mail notice to the address on the latest tax assessment roll.

²⁹ Section 197.502(4), F.S. A search of the official records must be made by a direct and inverse search. "Direct" means the index in straight and continuous alphabetic order by grantor, and "inverse" means the index in straight and continuous alphabetic order by grantee.

³⁰ Section 197.502(5)(a), F.S. The contractual relationship must be consistent with rules adopted by the Department of Revenue.

³¹ Section 197.502(5)(a), F.S. The tax collector may advertise and accept bids from the title or abstract company, if deemed appropriate, and may select any title or abstract company authorized to do business in this state, regardless of its location, as long as the fee is reasonable and the minimum information is submitted.

³² Section 197.502(5)(a)-(b), F.S. The tax collector may not accept or pay for any title search or abstract if financial responsibility is not assumed for the search, but may set reasonable restrictions as to the liability or responsibility of the title or abstract company.

A property information report is any report that discloses documents or information about a parcel of real property appearing in:

- The Official Records in the possession of the clerk of the circuit court as county recorder;³³
- The records of a county tax collector pertaining to ad valorem real property taxes and special assessments imposed by a governmental authority; or
- The Secretary of State filing office or another governmental filing office pertaining to real or personal property.³⁴

A property information report may not include or imply, either directly or indirectly, any opinion, warranty, guarantee, insurance, or other similar assurance,³⁵ and liability for any errors or omissions in the report is limited to the contractual remedies available only to the party expressly identified as the recipient of the report not exceeding the amount paid for the report.³⁶ The report must contain the liability disclaimer worded in the statute.³⁷ Before a tax collector becomes liable for payment of a property information report, the report, whether in paper or electronic format, must include the letterhead of the person, firm, or company making the search and signature of the making the search or an officer of the firm.³⁸

A title search is the compiling of title information from official or public records.³⁹ An abstract is a summary of the record evidence of title.⁴⁰ An abstract must include a description of the property; the names of the grantors and grantees, mortgagors and mortgagees; the nature of the instrument, consideration, date, release of dower, number of witnesses, number of book and page of record; and such other information arranged in such order as the said board of commissioners may deem advisable.⁴¹

If a title search or abstract of title is produced, the fee paid for the title search or abstract must be collected from the certificateholder at the time the application is made, and the amount of the fee must be added to the opening bid of the tax deed sale.⁴² The tax collector may not accept or pay for any title search or abstract if financial responsibility is not assumed for the search.⁴³

In order to establish uniform prices for property information reports within the county, the tax collector must ensure that the contract for such reports includes all requests for title searches or abstracts for a given period of time.⁴⁴

Tax Deed Sale

The clerk of the circuit clerk must advertise⁴⁵ and administer a sale and receive fees pursuant to a statutory fee schedule.⁴⁶ The clerk of the circuit court must notify the persons listed in the tax collector's

³³ Pursuant to s. 28.222, F.S.

³⁴ Section 627.7843(1), F.S. Any person, including a Florida-licensed title insurer, title agent, or title agency, may issue a property information report.

³⁵ Section 627.7843(2), F.S. A property information report is not title insurance pursuant to s. 624.608, F.S.

³⁶ Section 627.7843(3), F.S.

³⁷ Section 627.7843(3), F.S. Under the tax deed application scheme, tax collectors may contract for higher maximum liability limits despite the statutory limitation on liability. Section 197.502(5)(a)2., F.S.

³⁸ Section 197.502(2)(a)1., F.S.

³⁹ Section 627.7711(4), F.S.

⁴⁰ *Adams v. Whittle*, 101 Fla. 705, 135 So.152 (Fla. 1931). The decision actually uses "epitome," as in a summary of a written work.

⁴¹ Section 703.03, F.S. An abstract of tax sales relating to real estate must include number of the tax certificate, date of sale, the year for which taxes were unpaid, number and page of book where it was recorded, date of redemption or cancellation, date of the tax sales deed, number and page of book where recorded, and such other information and in such order as may be deemed advisable by the clerk. Section 703.04, F.S.

⁴² Section 197.502(5)(b), F.S.

⁴³ Section 197.502(5)(a)2., F.S. However, reasonable restrictions as to the liability or responsibility of the title or abstract company are acceptable.

⁴⁴ Section 197.502(5)(a)3., F.S.

statement of the tax deed application.⁴⁷ The notice must be mailed at least 20 days before the date of the sale. No notice is required if no addresses are listed in the tax collector's statement.⁴⁸ The clerk must certify the names and addresses of those persons notified and the date the notice was mailed or certify no address was listed on the tax collector's certification.⁴⁹ The failure of anyone to receive notice as provided by statute does not affect the validity of the tax deed issued pursuant to the notice.⁵⁰

The opening bid for county-held tax certificates against non-homestead property must include:

- All outstanding tax certificates against the property plus taxes for any omitted years;
- Delinquent taxes;
- Interest at the rate of 1.5 per month for the period running from the month after the date of application for the deed through the month of sale;⁵¹
- Costs incurred for the service of notice to the required parties by the clerk;⁵² and
- All costs and fees paid by the county.⁵³

The opening bid for individual tax certificates must include:

- The amount of money paid to the tax collector by the certificateholder at the time of application;
- The amount required to redeem the applicant's tax certificate and all other costs and fees paid by the applicant;
- All tax certificates that were sold subsequent to the filing of the tax deed application;
- Omitted taxes, if any exist;⁵⁴
- Interest at the rate of 1.5 per month for the period running from the month after the date of application for the deed through the month of sale; and
- Costs incurred for the service of notice to the required parties by the clerk.⁵⁵

Opening bids for any property assessed as homestead property on the latest tax roll must include one-half of the latest assessed value of the homestead in addition to the amounts for an opening bid on non-homestead property.⁵⁶

The property is sold at public auction by the clerk of the circuit court, or the clerk's deputy, during regular office hours and pursuant to the published notice.⁵⁷ The opening bid is the bid of the

⁴⁵ Upon the receipt of the tax deed application and payment of proper charges, the clerk must publish a form notice once each week for four consecutive weeks at weekly intervals in a newspaper selected as provided in s. 197.402, F.S., or as required if there is no available newspaper. No tax deed sale can be held until 30 days after the first publication of the notice. Section 197.512(1)-(2), F.S.

⁴⁶ Sections 197.502(5)(c) and 28.24(21)-(22), F.S. Currently, the clerk's fee is \$60.00 for processing an application for a tax deed sale (includes application, sale, issuance, and preparation of tax deed, and disbursement of proceeds of sale), other than excess proceeds and \$10 for distribution of the excess proceeds for the first \$100, or fraction thereof.

⁴⁷ Section 197.522(1)(a), F.S. Notice must be made by certified mail with return receipt requested or, if the notice is to be sent outside the continental United States, by registered mail. The notice must include the warning language listed in the statute.

⁴⁸ *Id.* The certificateholder may also request the clerk mail notice to names and addresses provided by the certificateholder. The charges are paid by the certificateholder and added to the amount required to redeem the land for sale. Section 197.532, F.S.

⁴⁹ Sections 197.522(1)(c) and (2)(b), F.S.

⁵⁰ Section 197.522(1)(c), F.S. In addition to the mailed notice, the sheriff of the county in which the legal titleholder resides must notify the legal titleholder of record of the property on which the tax certificate is outstanding at least 20 days prior to the date of sale. If the sheriff is unable to make service, he or she must post a copy of the notice in a conspicuous place at the legal titleholder's last known address. The inability of the sheriff to serve notice on the legal titleholder does not affect the validity of the tax deed issued pursuant to the notice. A legal titleholder of record who resides outside the state may be notified by mail as required. However, no posting of notice must be required if the property to be sold is classified for assessment purposes, according to use classifications established by the department, as nonagricultural acreage or vacant land. *See* Section 197.522(2)(a), F.S.

⁵¹ Section 197.542(1), F.S.

⁵² Section 197.542(1), F.S. A clerk may conduct electronic tax deed sales in lieu of public outcry. *See* s. 197.542, F.S.

⁵³ Section 197.502(6)(a), F.S.

⁵⁴ Section 197.502(6)(b), F.S.

⁵⁵ Section 197.542(1), F.S. A clerk may conduct electronic tax deed sales in lieu of public outcry. *See* s. 197.542, F.S.

⁵⁶ Section 197.502(6)(c), F.S.

⁵⁷ Section 197.542(1), F.S.

certificateholder.⁵⁸ If there are no higher bids, the property is sold to the certificateholder who must pay the clerk any amounts included in the minimum bid not already paid, including, but not limited to, documentary stamp taxes, recording fees, and, if the property is homestead property, the moneys to cover the one-half value of the homestead within 30 days after the sale.⁵⁹ If the certificateholder fails to make full payment when due, the clerk enters the land on a list entitled "lands available for taxes."⁶⁰

The property must be struck off and sold to the highest bidder who must post with the clerk a nonrefundable deposit of 5 percent of the bid or \$200, whichever is greater, at the time of the sale, to be applied to the sale price at the time of full payment.⁶¹ If the sale is canceled for any reason or the buyer fails to make full payment within the time required, the clerk must re-advertise the sale within 30 days after the buyer's nonpayment or, if canceled, within 30 days after the clerk receives the costs of resale.⁶² Any person, firm, corporation, or county that is the grantee of any tax deed is entitled to the immediate possession of the lands described in the deed.⁶³

Tax Sale Proceeds Distribution

If the property is not purchased by the certificateholder, the clerk must reimburse the certificateholder all of the sums paid, including the amount required to redeem the certificate or certificates together with any and all subsequent unpaid taxes plus the costs and expenses of the application for deed, with interest.⁶⁴ The clerk distributes the proceeds of sale in the same manner as money received for the redemption of tax certificates owned by the county.⁶⁵

Any proceeds exceeding the certificateholder's statutory bid must be paid over to and disbursed by the clerk.⁶⁶ If the property purchased is homestead property and the statutory bid included the required homestead deposit,⁶⁷ that amount must be treated as excess and distributed in the same manner.⁶⁸

The clerk must distribute the excess proceeds to governmental units to pay any lien of record held by the governmental unit against the property.⁶⁹ If there is a balance after all governmental units are paid in full, the clerk retains the excess proceeds for the benefit of persons who were entitled to notice of the tax deed sale as identified by the tax collector, including any legal titleholder of record of property contiguous to tax deed property that is submerged land or common elements of a subdivision.⁷⁰ The clerk must notify these persons by mail that the funds are being held for their benefit.⁷¹ If the money is not claimed the clerk may report the money as unclaimed and remit it to the state.⁷² The clerk may take

⁵⁸ Section 197.542(1), F.S.

⁵⁹ *Id.* Upon payment, a tax deed must be issued and recorded by the clerk. Under s. 197.573, F.S., the usual restrictions and covenants limiting the use of property; the type, character and location of building; covenants against nuisances and what the former parties deemed to be undesirable conditions, in, upon, and about the property; and other similar restrictions and covenants; survive the tax deed sale. *See* s. 197.573, F.S.

⁶⁰ Section 197.542(1), F.S.

⁶¹ Section 197.542(2), F.S.

⁶² Section 197.542(3), F.S.

⁶³ Section 197.562, F.S. If a demand for possession is refused, the purchaser may apply to the circuit court for a writ of assistance upon five days' notice directed to the person refusing to deliver possession. Upon service of the responsive pleadings, if any, the matter must proceed as in chancery cases. If the court finds for the applicant, an order must be issued by the court directing the sheriff to put the grantee in possession of the lands.

⁶⁴ Section 197.582(1), F.S. Interest is 1.5 percent per month on the total of such sums for the period running from the month after the date of application for the deed through the month of sale.

⁶⁵ Section 197.582(1), F.S.

⁶⁶ Section 197.582(2), F.S.

⁶⁷ The homestead deposit is an amount equal to at least one-half of the assessed value of the homestead. Section 197.502(6)(c), F.S.

⁶⁸ Section 197.582(2), F.S.

⁶⁹ Section 197.582(2), F.S. Any tax certificates not incorporated in the tax deed application and omitted taxes, if any, are included. If the excess is not sufficient to pay all of such liens in full, the excess must be paid to each governmental unit pro rata.

⁷⁰ Sections 197.502(4)(h) and 197.582(2), F.S.

⁷¹ Section 197.582(2), F.S.

⁷² Sections 197.582(2) and 717.117(4), F.S.

money from the excess proceeds to cover any service charges, at the rate prescribed under the clerk's fee schedule,⁷³ and the costs of mailing notice.⁷⁴ Excess proceeds are held and disbursed in the same manner as unclaimed redemption moneys.⁷⁵ This may result in unclaimed proceeds being sent to the state under chapter 717, F.S., relating to disposition of unclaimed property. Such proceeds, net of refunds, are distributed to the State School Trust Fund.⁷⁶ If excess proceeds are not sufficient to cover the service charges and mailing costs, the clerk must receive the total amount of excess proceeds as a service charge.⁷⁷

If unresolved claims against the property exist on the date the property is purchased, the clerk must ensure that the excess funds are paid according to the priorities of the claims.⁷⁸ Junior lienholders cannot be paid if a higher priority lienholder has not made a claim.⁷⁹ The clerk may initiate an interpleader action against the lienholders to resolve any potential conflicts in claim and seek reasonable fees and costs.⁸⁰

Effect of Proposed Changes

The bill requires the certificateholder applying for a tax deed to pay the costs to bring the property to sale, including property information searches and mailing costs. The bill also adds language requiring the tax collector to cancel a tax deed application if the certificate holder fails to pay the costs to bring the property to sale within 30 days after notice from the clerk's office and provides for taxes and costs associated with a cancelled tax deed to earn interest at the bid rate for the certificate on which the application was based.

The bill requires each tax collector to contract with a title company or an abstract company to provide a property information report, defined in s. 627.7843(1), F.S., and replaces references to title searches and abstracts with reference to a property information report only. The bill requires the costs of the report and any updates to be collected from the certificateholder at the time of the tax deed application. The bill requires the clerk to record a notice of tax deed application in the official records upon receiving the tax deed application from the tax collector. The bill requires the address on file with the Department of State for financial institution lienholders and mortgagees to be used for notice. The recording of the clerk constitutes notice of pendency of a tax deed application with respect to the property, remains effective for one year after the recording date, and is deemed to provide notice to any person who acquires an interest in the described property after the date of recording without any requirement that the clerk give additional notice. The notice is released automatically upon the sale or, if the property is redeemed, notice is released upon payment of the required clerk's fees. The notice must have the same information required for the notice that must be published by a newspaper or posted publicly. The costs of the notice must be paid by the certificateholder at the time of the application for a tax deed and included in the opening bid for the property in the tax deed sale.

The bill renumbers 197.502(5)(c), F.S., to 197.502(5)(d) and adds statutory references for the advertisement and administration of a tax deed sale.

The bill provides that sending the notice of the application for tax deed as required under ss. 197.512 and 197.522, F.S., to the persons entitled to receive notice under s. 197.502(4), F.S., is deemed conclusively sufficient adequate notice of the application and sale at public auction.

⁷³ See s. 28.24(10), F.S.

⁷⁴ Sections 197.582(2) and 197.473, F.S.

⁷⁵ Sections 197.582(2) and 197.473, F.S.

⁷⁶ Section 717.123, F.S.

⁷⁷ Section 197.582(2), F.S.

⁷⁸ Section 197.582(3), F.S.

⁷⁹ *Id.*

⁸⁰ Section 197.582(3), F.S.

The bill adds current taxes to the list of costs required to be added to the opening bid for the tax deed on both county-held and individually purchased tax certificates, and adds “additional fees or costs incurred by the clerk” to the opening bid for individually purchased certificates.

The bill provides that the clerk may rely on the addresses submitted by the tax collector and is not required to seek additional information to verify addresses for persons entitled to receive notice of the tax deed sale under s. 197.502(4), F.S.

The bill requires the clerk to send notice to the persons entitled to the surplus proceeds from a tax deed sale to the addresses provided by the tax collector. The bill removes the rate limitation on the service charges charged by the clerk. The bill provides a suggested form for the clerk to use to notify claimants. Service charges and mailing costs are taken out of the surplus. If the surplus is not enough to cover the service charges and mailing costs, the clerk receives the total surplus after certifying the deficiency.

The bill adds provisions regarding claims of surplus proceeds. Claimants have 120 days from the date of the notice to file a claim for the surplus proceeds. The bill adds a claim form that can be used or authorizes a form that is substantially similar to be submitted. The bill provides the claims may be submitted by mail, commercial delivery service, in person, or by fax or e-mail. If submitted by mail, the postmark date is the date of filing the claim. Otherwise, the date of delivery or receipt is recognized as the date of filing. Claims not filed by the close of business on the 120th day are barred and constitute a waiver of interest in the excess proceeds, unless they are claims by the property owner.

The bill adds a review period of 90 days during which the clerk may file an interpleader action to determine the proper disbursement of the proceeds or pay the surplus according to the clerk’s own determination of priority based on the submitted claims. The clerk must recover from the surplus funds the fees and costs to determine if an interpleader action is necessary. No declaratory action may be filed until after the claim and review periods have expired.

The bill requires holders of governmental liens, other than federal government liens and ad valorem tax liens, to file a request for disbursement of surplus funds within 120 days from the mailing of the notice. The clerk or comptroller must disburse funds to governmental units holding any lien of record against the property, including any tax certificate not incorporated in the tax deed application and any omitted tax, before non-governmental claimants. The tax deed recipient may directly pay off the liens to governmental units then file a timely claim with proof of payment and receive the same amount of funds, in the same priority, as the original lienholder.

The bill provides for the conclusive presumption that the legal titleholder of record of the tax-deeded property, defined in s. 197.502(4)(a), F.S., is entitled to any unclaimed surplus funds. If the legal titleholder of record does not claim the surplus proceeds the clerk must process the surplus proceeds as unclaimed money in the manner provided in ch. 717, F.S., regardless of whether the legal titleholder is a resident of the state or not.

The bill states that its provisions apply to tax deed applications filed with the tax collector pursuant to s. 197.502, F.S., on or after October 1, 2018.

B. SECTION DIRECTORY:

Section 1. Amends s. 197.502, F.S., relating to application for obtaining tax deed by holder of tax sale certificate; fees

Section 2. Amends s. 197.522, F.S., relating to notice to owner when application for tax deed is made.

Section 3. Amends s. 197.582, F.S., relating to disbursement of proceeds of sale.

Section 4. Provides applicability to tax deed applications filed on or after October 1, 2018.

Section 5. Provides the act will take effect on July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither provides authority nor requires rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 6, 2018, the Ways & Means Committee adopted a strike-all amendment and approved the bill as a committee substitute. The amendment makes technical changes and allows for tax collectors to contract with title companies and abstract companies for the preparation of property information reports,

removes the definition of "title company." The amendment adds language providing that the tax collector may cancel a tax deed application if the certificateholder fails to pay the costs required to bring the property to sale within 30 days after notice from clerk and provides for taxes and costs associated with a cancelled tax deed to earn interest at the bid rate for the certificate on which the application was based. The amendment removes language indemnifying the clerk for liability for notice addresses that may be incorrect. The amendment also clarifies that this bill specifically applies to tax deed applications filed on or after October 1, 2018, with the tax collector pursuant to 197.502, F.S. The amendment also removed negative revenue impacts to the state by returning to current law regarding disposition of unclaimed property.

On February 26, 2018, the Government Accountability Committee adopted two amendments and approved the bill as a committee substitute. The first amendment revised the notice requirements for financial institutions or mortgagees who have designated an address with the Department of State. The second amendment allowed the Clerk of the Circuit Court to recover from the surplus funds of the tax deed sale the fees and costs to determine if an interpleader action is necessary.

This analysis is drawn to the committee substitute as approved by the Government Accountability Committee.