HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 977 Sales of Tax Certificates
SPONSOR(S): Caruso
TIED BILLS: **IDEN./SIM. BILLS:** SB 1256

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Administration & Veterans Affairs Subcommittee	15 Y, 2 N	Darden	Miller
2) Ways & Means Committee			
3) State Affairs Committee			

SUMMARY ANALYSIS

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

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. Once sold, the tax certificate becomes a first lien on the property, superior to all other liens, except as provided by law, but can be enforced only through the remedies provided under ch. 197, F.S.

Tax certificates are issued to the person who will pay all taxes, interest, costs, and charges and demand the lowest rate of interest. The rate of interest is determined by an auction for the certificate where interested parties may bid at fractional rates of one-quarter of one percent. If no party makes a bid, the certificate is issued to the county at the maximum interest rate established by statute. The proceeds of the tax certificate are received by the county, while the tax collector receives a commission from each sale to a private party equal to five percent of the taxes and interest due.

The bill:
- Provides a declaration of public policy concerning the sale of tax certificates, stating that the design and implementation of the tax certificate process should provide the greatest opportunity for the delinquent property owner to redeem the certificate by ensuring the certificate is sold to a party that will demand the lowest rate of interest and that limitations of the purchase of certificates by volume or institutional buyers are against public policy;
- Removes the ability of the tax collector to require a deposit to bid on tax certificates;
- Provides that a tax certificate bidder who fails or refused to pay any bid is not entitled to bid in the future;
- Requires tax collectors to provide electronic notice that certificates are ready for issuance;
- Repeals provisions concerning the commission due to the tax collector when a tax certificate is sold; and
- Adds definitions for the terms “beneficial owner” and “legal entity.”

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Ad Valorem Taxation

Ad valorem tax or "property tax" is an annual tax levied by counties, municipalities, school districts, and some special districts.[1] The tax is based on the taxable value of property as of January 1 of each year.[2] The property appraiser annually determines the assessed or "just value"[3] of property within the taxing authority and then applies relevant exclusions, assessment limitations, and exemptions to determine the property's "taxable value."[4] The property appraiser then submits the certified assessment roll to the tax collector.[5] The tax collector sends out a tax notice to each taxpayer stating the amount of current taxes due within 20 business days after receiving the certified ad valorem tax roll.[6] All taxes are due and payable on November 1st of each year and become delinquent on the following April 1.[7]

The Florida Constitution requires all property to be assessed according to its just value, except as otherwise provided.[8] The just valuation standard generally requires the property appraiser to consider the highest and best use of property;[9] however, certain types of property may be valued based on current use (classified use assessments), which often result in lower assessments. Properties receiving classified use treatment in Florida include agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for non-commercial recreational purposes;[10] land used for conservation purposes;[11] historic properties when authorized by the county or municipality;[12] and certain working waterfront property.[13]

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.[14] Taxes become delinquent on the latter of April 1 of the following year or 60 days from the date the original tax notice was mailed.[15] 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.[16]

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[1] The Florida Constitution prohibits the state from levying ad valorem taxes. Art. VII, s. 1(a), Fla Const.
[2] Both real property and tangible personal property are subject to ad valorem tax. S. 192.001(12), F.S., defines "real property" as land, buildings, fixtures, and all other improvements to land. S. 192.001(11)(d), F.S., defines the term "tangible personal property" as all goods, chattels, and other articles of value capable of manual possession and whose chief value is intrinsic to the article itself.
[3] Property must be valued at "just value" for purposes of property taxation, unless the Florida Constitution provides otherwise. Art. VII, s. 4, Fla. Const. Just value has been interpreted by the courts to mean the fair market value that a willing buyer would pay a willing seller for the property in an arm's-length transaction. *See*; *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County,* 275 So. 2d 4 (Fla. 1973); *Walter v. Shuler,* 176 So. 2d 81 (Fla. 1965).
[4] *See* s. 192.001(2) and (16), F.S. The Florida Constitution limits the Legislature's authority to provide for property valuations at less than just value, unless expressly authorized. Art. VII, s. 4, Fla. Const.
[5] S. 197.322(1), F.S.
[6] S. 197.322(3), F.S.
[7] S. 197.333, F.S.
[8] *See* Art. VII, s. 4, Fla Const.
[9] S. 193.011(2), F.S.
[10] Art. VII, s. 4(a), Fla. Const.
[11] Art. VII, s. 4(b), Fla. Const.
[12] Art. VII, s. 4(e), Fla. Const.
[13] Art. VII, s. 4(j), Fla. Const.
[14] S. 197.333, F.S.
[15] S. 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.
[16] S. 197.322(2), F.S. If payment has not been received, the tax collector must send out an additional notice by April 30. S. 197.343, F.S.

If ad valorem taxes are not paid by the latter of June 1 or the 60th day after the tax becomes delinquent, the tax collector advertises and sells tax certificates to pay the delinquency.[17] 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.[18] Once sold, the tax certificate becomes a first lien on the property, superior to all other liens, except as provided by law, but can be enforced only through the remedies provided under ch. 197, F.S.

Once the tax has become delinquent, the tax collector must advertise notice of a tax certificate sale at least once a week for three weeks.[19] The tax sale continues until each certificate is sold to pay the taxes, interest, costs, and charges described in the certificate.[20] If all taxes due on a real property, as well as all interest, costs, and charges, are paid before a tax certificate is awarded to a buyer or struck to the county, a tax certificate is not issued, while payment after certificate has been award is paid by a redemption of the certificate.[21] Tax certificates of less than $250 in delinquent taxes on a homestead property may not be sold to the public, but must instead be issued to the county at the maximum rate of interest allowed.[22]

Tax certificates must be sold to the person who will pay the taxes, interest, costs, and charges and demand the lowest rate of interest.[23] Bids for certificates must be made in even increments and in fractional interest rate bids of one-quarter of one percent. If the certificate is not purchased, the certificate is issued to the county at the maximum rate of interest.

The tax collector may require a deposit from any person who wishes to bid on tax certificates.[24] A bidder who fails or refused to pay on any bid may be prohibited from bidding on future tax certificates at the discretion of the tax collector.

The tax collector must inform the bidder, by written or electronic notice, that the tax certificate is ready for issuance.[25] Payment on the certificate is due within 48 hours of the transmission of the notice and failure to pay in a timely manner many result in all or a portion of the deposit placed by the bidder being forfeited. The tax collector must receive full payment before the certificate may be issue.

The tax collector is responsible for maintaining the records of all tax certificates sold, include the date of the sale, the number of the certificate, the name of the owner as returned, a description of the property within the certificate, the name of the purchaser, the interest rate bid, and the amount for which sale was made.[26] The tax collector receives a commission on each tax certificate sold equal to five percent of the amount of delinquent taxes and interest.[27] This commission is included in the face value of the certificate, but may not be applied to certificates issued to the county until that certificate is later redeemed or purchased.

[17] Ss. 197.402(3) and 197.432(1), F.S.
[18] S. 197.102(1)(f), F.S.
[19] S. 197.402(3), F.S.
[20] S. 197.432(1), F.S.
[21] S. 197.432(3), F.S.
[22] S. 197.432(4), F.S.
[23] S. 197.432(6), F.S. S. 197.172(2), F.S. establishes 18 percent as the maximum rate of interest on a tax certificate.
[24] S. 197.432(7), F.S.
[25] *Id*.
[26] S. 197.432(9), F.S.
[27] S. 197.432(12), F.S.

Effect of Proposed Changes

The bill provides a declaration of public policy concerning tax certificates, stating that the intent of the tax certificate sale process is to provide the greatest opportunity for the delinquent property owner to redeem the certificate. The bill further states this intent is best achieved by ensuring the tax certificate is sold to a party that will demand the lowest rate of interest. The bill provides that limitations on the purchase of tax certificates by volume or institutional buyers improperly prioritize the economic interest of other investors and are against public policy.

The bill removes the ability of the tax collector to require a deposit to bid on tax certificates, while prohibiting bidders who fail or refuse to pay any bid from making bids on tax certificates in the future. The bill also requires tax collectors to provide electronic notice when certificates are ready for issuance.

The bill repeals provisions concerning the commission due to the tax collector when a tax certificate is sold.

The bill also adds definitions for the terms “beneficial owner” and “legal entity” and makes a conforming change to a cross-reference.

B. SECTION DIRECTORY:

Section 1: Amends s. 197.102, F.S. providing definitions.

Section 2: Creates s. 197.4315, F.S., providing legislative intent.

Section 3: Amends s. 197.432, F.S., concerning deposits for tax certificate bids and commission paid to the county tax collector.

Section 4: Amends s. 192.0105, F.S., conforming a cross-reference.

Section 5: Provides an effective date of July 1, 2022.

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. The bill does not appear to require counties or municipalities to spend funds or take any 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 neither requires nor authorizes administrative rulemaking by executive agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 1 of the bill adds definitions for the terms “beneficial owner” and “legal entity” to the definitions section of ch. 197, F.S., but neither of those terms are used elsewhere in the bill or in ch. 197, F.S. at present.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES