Bill Analysis

Stephen Estelle _Legislative Service Commission_

H.B. 261

127th General Assembly
(As Introduced)

Reps. Bolon and Peterson

BILL SUMMARY

- Extends the authority to conduct delinquent property tax certificate sales to county treasurers of counties with a population of less than 200,000.
- Prohibits the sale of certificates relating to property owned by members of the National Guard or a reserve component of the armed forces called to active duty, their spouses, or their dependent parents.
- Makes various procedural, clarifying, and technical changes to the law governing delinquent property tax certificates.

CONTENT AND OPERATION

Tax certificate sales: apply to all counties

(R.C. 5721.30(L) and 5721.31(A))

Current law authorizes county treasurers of counties with a population of at least 200,000 to sell delinquent real estate tax "certificates," which represent a legal claim on delinquent taxes owed on real estate. This authority enables taxing authorities to recover unpaid taxes before the ordinary tax foreclosure proceedings are concluded. The lien for the taxes is essentially transferred to private persons, who then may initiate foreclosure proceedings or request the county treasurer to initiate proceedings on the certificate owner's behalf.

The bill extends this authority to treasurers of all counties.

Property exempt from tax certificate sales

(R.C. 5721.31(B))

Tax certificate sales may occur only after the treasurer has received from the county auditor a copy of the delinquent land list, which the auditor prepares in

August of each year. From this list, the county treasurer may select properties for which a certificate is to be sold. Current law forbids the treasurer from selecting properties if a delinquent tax contract (i.e., a payment plan) is in effect or if all taxes, penalties, interest, and other charges have been paid.

The bill adds three more classes of property for which tax certificates may not be sold:

- Property owned by a member of the National Guard or Armed Forces Reserves, by the member's spouse, owned jointly by the spouse or a dependent parent, or owned by a member's dependent parent if the member who died during or as a result of active duty, so long as there is a tax payment extension agreement in effect under existing law;

- Property that has unpaid taxes as a result of being omitted from a prior tax list, so long as a tax payment contract is in effect;

- Property protected by the automatic stay under federal bankruptcy law.

In addition, the bill requires the treasurer to remove from the list of selected properties any property to which any of the foregoing exceptions applies.

<u>Advertisement of sale</u>

(R.C. 5721.31(C))

Under current law, a tax certificate may be sold in a public auction or in a private sale. When the sale is by public auction, the treasurer must publish notice of the sale by placing an advertisement in a newspaper once a week for two consecutive weeks. The advertisement must include the date, time, and place of the auction; descriptions of the properties; and the names of the property owners of record.

The bill modifies and adds required advertisement information. The bill requires the inclusion of the tax certificate purchase prices or, if the tax certificates are sold in blocks, the price of each block. The bill also requires only an "abbreviated legal description" of each property.

<u>Public auction sales</u>

(R.C. 5721.32)

When tax certificates are sold at public auction, bidders bid on the rate of interest that will accrue while the certificate is pending. The interest rate may not exceed 18% simple interest annually. The bill changes or clarifies several aspects of the law governing certificates sold at public auction, as explained below.

Ties or contested bids

The bill specifies that, in the event of a bidding tie, or if a person contests the lowest bid, the treasurer must decide which person is the winning bidder, and the decision is not appealable.

Interest period

Currently, interest accrues from the date the certificate is sold in the case of a public auction, or the date the certificate is delivered to the purchaser in the case of a private sale, until one of the following dates: the date the property owner redeems the property, or the date the certificate holder makes a payment, which may or may not be required, to the county treasurer to initiate foreclosure proceedings. The bill clarifies that, if this payment is not required, interest accrues until the certificate holder files a request for foreclosure or a notice of intent to foreclose with the treasurer.

Deposit

Current law requires the winning bidder to pay the treasurer a deposit of at least 10% of the certificate purchase price by the close of business on the day of the sale. Within five business days the winning bidder must tender the remaining amount due, plus a "reasonable" administrative fee to cover the treasurer's costs. If the bidder fails to do so, the bidder forfeits the deposit.

The bill modifies this forfeiture. The bill provides that, at the request of a winning bidder, the county treasurer may release the bidder from the bidder's purchase obligation and may, but is not required to, retain some or all of the deposit. The treasurer may then award the tax certificate to the second lowest bidder.

Tax certificate register; notice of sale to owner

Under current law, once a tax certificate has been paid for, the treasurer must deliver the tax certificate to the purchaser and record the sale in a register. The treasurer must record the certificate price, the rate of interest, the date of sale, the name and address of the purchaser and, upon the purchaser's request, the name and address of any party having a security interest in the certificate; that information also must be marked on the certificate. The treasurer must also send written notice of the sale to the owner of the property at the owner's last known tax-mailing address.

Under the bill, the treasurer is no longer required to mark that information on the certificate. Also, if previous attempts to notify the property owner have been returned by the postal service as undeliverable, the treasurer need not send notice of the sale. Finally, the bill authorizes the treasurer to keep the register in hard copy or electronic format.

The bill's provisions relating to registering certificates and notifying property owners also apply to private certificate sales.

Private sales

(R.C. 5721.33)

Current law authorizes the county treasurer to sell tax certificates through private negotiations with one or more persons instead of by public auction. The treasurer may negotiate the certificate price and any other terms of sale the county treasurer determines necessary or appropriate.

The bill expressly authorizes the treasurer also to negotiate different time frames under which the certificate holder may initiate a foreclosure action than are otherwise allowed by statute (i.e., between one and six years after the certificate is sold, with extensions allowed some circumstances. The negotiated time frame, however, may not extend beyond six years after the date the tax certificate is sold. The treasurer also may negotiate the amount to be paid in private attorney's fees for prosecuting any foreclosure action.

Under current law, the proceeds from a private sale must be deposited to the county's general revenue fund and credited to the same account to which real property taxes are credited. From that account, the proceeds must be distributed to the appropriate taxing jurisdictions in accordance with their respective shares of the preceding year's taxes or their share of special assessments.

The bill permits any premium that was paid for the tax certificate to be deposited in any "authorized" county fund, at the discretion of the treasurer.

Purchase of subsequent tax certificates

(R.C. 5721.42)

Current law authorizes the holder of the most recently issued tax certificate to pay all taxes, assessments, penalties, interest, and charges that have been certified delinquent by the county auditor since the issuance of the most recent tax certificate. The holder must make payment not earlier than 60 days nor later than 90 days after the due date for payment of the second installment of current taxes (usually the first Monday in June). If the certificate holder makes the payment, the treasurer must issue an additional tax certificate to the certificate holder, which represents an additional lien on the property.

The bill changes the notification period by providing that the notice may be made any time after the settlement of the second installment is completed (the settlement must occur by August 10). The certificate holder has 30 days after receiving the notice to make payment.

Void certificate sales

(R.C. 5721.34)

Under current law, if a tax certificate is sold, but all amounts due have been paid or a valid contract establishing a payment plan for the delinquent taxes is in effect, the certificate is void. If a certificate is void the purchaser is entitled to a refund of the certificate purchase price and any fee. If the certificate is discovered to be void more than 60 days after the sale, the purchaser is entitled to interest from the date of the sale at the rate of 5% per year. In lieu of refunding the purchase price, the treasurer may issue a substitute tax certificate of equal value if the purchaser consents.

The bill specifies that if a sale is void for any reason the purchaser is entitled to a refund. The bill extends the 60-day period no-interest period to 90 days, and specifies that interest accrues from the first day of the month following the month in which the certificate was sold to the first day of the month in which the treasurer determined the sale to be void. The bill also permits a substitute tax certificate to be issued only if the substitute certificate has already been selected and advertised for sale and if the true value of the certificate's property is equivalent to that of the voided certificate's property.

Deadline to file foreclosure action

(R.C. 5721.37(A) and 5721.38(D)(2))

Under current law, the certificate holder must file a foreclosure action not earlier than one year after the date the tax certificate was sold and not later than three years after that date if the certificate is sold in a public auction, or not later than six years after the sale date if the certificate is sold in a private sale. The six-year deadline is extended if the certificate holder enters into a payment plan with the property owner or other person entitled to redeem the property. The deadline is also extended if under federal bankruptcy law the property becomes protected by the automatic stay. In the event of a bankruptcy, the deadline to foreclose is the later of three years after the date the certificate was sold or 180 days after the bankruptcy case is closed.

The bill clarifies that interest at the certificate rate of interest continues to accrue during any extension; that the 180-day period begins once the property is no longer subject to the automatic stay; and that, in the event of a bankruptcy filing, the certificate holder is responsible for filing a proof of claim.

Foreclosure complaint

(R.C. 5721.37(B) to (F))

Under current law, the holder of a tax certificate purchased in a public auction may file a foreclosure action through a private attorney after filing with the treasurer a notice of intent to foreclose, or through the county prosecuting attorney after filing a request for foreclosure with the treasurer. A holder of a tax certificate purchased in a private sale must file any foreclosure action through a private attorney. In either case, the foreclosure complaint must include a certification by the county treasurer that the property has not been redeemed.

The bill adds two additional requirements. The filing attorney must attach to the foreclosure complaint a copy of the notice of intent to foreclose, or the request for foreclosure, and a certification by the county treasurer that the tax certificate has not been redeemed. The bill also establishes a deadline by which the complaint must be filed if it is filed by a private attorney. The complaint must be filed within 180 days after the filing of the notice of intent to foreclose. If the tax certificate was purchased in a private sale, the purchase contract may specify a different deadline as negotiated.

Under current law, along with the request for foreclosure or notice of intent to foreclose, the tax certificate holder must pay the treasurer four sums: the certificate redemption prices of all other tax certificates respecting the property not owned by the certificate holder seeking to file the foreclosure suit, all past-due taxes due on the property not represented by a tax certificate, the attorney's fees of the county prosecutor if the prosecutor is to file the foreclosure, and, if the foreclosure is to be filed by a private attorney, all other liens with priority over the lien related to the tax certificate.

The bill removes the requirement of paying prior liens, and requires payment of all unpaid, but not yet delinquent, taxes and charges.

Under current law, the certificate holder may join in one action any number of tax certificates relating to the same owner, but only if all parties on each of the tax certificates are identical as to name and priority of interest. The bill removes this condition.

Attorney's fees

(R.C. 5721.371)

The bill limits the amount of attorney's fees that may be charged as costs against the property if the foreclosure action is filed by a private attorney. The limit is $2,500, unless otherwise authorized by the court. The bill requires attorney's fees to be reasonable and necessary. It also provides that the amount of attorney's fees to be paid may be negotiated by the treasurer in the case of a private sale, subject to the $2,500 limit.

Judgment of foreclosure

(R.C. 5721.39)

Finding

Current law requires the court, in the judgment of foreclosure, to make specific factual findings regarding the amounts to be paid from the proceeds of the sale of the property.

The bill specifies that, if, at the time the certificate holder filed the request for foreclosure or the notice of intent to foreclose, the certificate holder paid the certificate redemption prices of all other tax certificates respecting the property, all past-due taxes due on the property, and attorney's fees for the prosecuting attorney, the court must determine the interest that accrued on those amounts. If the tax certificate holder made no payment to the county treasurer prior to filing the foreclosure, the court must determine only the date the certificate holder filed its request for foreclosure or notice of intent to foreclose. The bill also specifies that the court's finding is to include all unpaid or delinquent taxes not paid when the foreclosure notice or foreclosure request was filed, as well as interest on foreclosure costs (including the county prosecutor's fee).

Sale price

Current law provides that the court must order sale of the property for not less than the amount of its finding unless the court finds that the property's value is less than the certificate purchase price, in which case the court may decree the property to be conveyed to the certificate holder bringing the foreclosure action.

The bill specifies that the county auditor, not the court, is to determine the value of the property, that the value at issue is the property's true value in money, and that the true value is to be compared to the certificate redemption price instead of the certificate purchase price (which generally would be less than the redemption price).

Disposition of sale proceeds

Current law specifies the order in which foreclosure sale proceeds are to be disposed of. The costs of the action are to be paid first, including any part of the county prosecutor's fee not paid by the certificate holder. Remaining proceeds are to be paid to the certificate holder who brought the action (or requested the prosecutor to bring the action), up to the total certificate redemption price payable to that certificate holder, any premium, amounts paid by the certificate holder for other outstanding certificates, for other unpaid taxes, and for the prosecutor's fee, and interest accruing on those amounts. Any balance remaining is distributed to the purchaser to the extent that there are unpaid taxes against the property not covered by the certificate holder's payment of such amounts. If there is any remaining balance, it is payable to the property owner if the owner claims the money within six years.

The bill specifies that if the certificate holder engaged an attorney to bring the action, the attorney's fees are among the first priority payments, and limits interest payable on amounts paid by the certificate holder for other unpaid taxes and for the prosecutor's fee to three years, instead of six years, after those amounts were paid if the certificate was purchased at public auction (in accordance with the three-year time limit for bringing foreclosure actions for such certificates).

Unsold property

(R.C. 5721.40)

Under current law, if the property is twice offered for sale and remains unsold, the court must order the property forfeited to the certificate holder prosecuting the foreclosure. The title to the property and all rights and interests are deemed to be vested in the certificate holder.

The bill specifically states that title to the property is incontestable and is free and clear of all liens and encumbrances except for federal tax liens filed before the foreclosure action was filed, and easements and covenants of record running with the land created before the taxes or assessments covered by the certificate became due.

Redemption of property by owner or other interested person

(R.C. 5721.38 and 5721.381)

Under current law, the property owner (or other interested party, such as a lienholder) may redeem the property by paying a certain amount at any time before the foreclosure sale, if any, is confirmed. The amount required to be paid depends on when the redemption occurs. If the redemption occurs before the tax certificate holder files a request for foreclosure or notice of intent to foreclose with the treasurer and makes any required payment to the treasurer, the property owner must pay to the treasurer an amount equal to the total of the certificate redemption prices of all tax certificates for the property.

If the certificate holder has filed its request for foreclosure and paid the treasurer's fee to cover costs of litigation, the owner of the property must pay the certificate purchase prices of all tax certificates for the property plus interest, the prosecutor's fees, and other costs.

Under the bill, if the property owner pays some, but not all, of the total amount due to redeem the property, the amount paid is applied to the tax certificates in the order of oldest to newest based on the earliest day of attachment of the related liens. The payment must be credited to the tax certificate redemption fund.

The bill specifies that the treasurer may collect the total amount due to redeem the property in the form of "guaranteed funds" acceptable to the treasurer. It also specifies that the interest on the tax certificates begins to accrue on the first day of the month following the month in which the certificate holder paid the treasurer's fee before initiating the foreclosure and ends on the date the property is redeemed. The bill requires the person redeeming the property also to pay the private attorney's fees if a private foreclosure action is pending, and to pay interest on the prosecuting attorney's fees, if any. The interest accrues at an annual rate of 18% and begins to accrue at the same time as the interest that accrues on the purchase price of the tax certificates. No interest accrues on attorney's fees paid to a private attorney. Finally, in addition to all other amounts to be refunded to the certificate holder for the certificate redemption price, the treasurer must refund to the certificate holder the interest on the amount of unpaid and delinquent taxes not represented by a certificate and on the prosecutor's fees.

<u>Redemption of tax certificate</u>

(R.C. 5721.38(D) and (E))

Under current law, if the property owner has redeemed the property or has paid all amounts due on a particular tax certificate, the treasurer must notify certificate holders, by certified mail, that the tax certificate may be redeemed. If the certificate holder fails to redeem the certificate within five years after service of the notice, an amount equal to the certificate redemption price and any applicable interest on the certificate is deposited to the general revenue fund of the county.

The bill removes this entire five-year limitation. The bill also permits notice to be provided by means other than certified mail, by agreement between the treasurer and certificate holder.

Contacting the property owner

(R.C. 5721.43)

Current law prohibits a certificate holder, or the holder's agent, from contacting the property owner. The bill permits such contact but only if the contact is authorized in writing by the county treasurer.

HISTORY

ACTION	DATE
Introduced	06-12-07

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