LEGISLATIVE FISCAL ESTIMATE

ASSEMBLY, No. 3772

STATE OF NEW JERSEY
221st LEGISLATURE

DATED: JUNE 25, 2024

SUMMARY

Synopsis: Revises process for property tax lien holder to foreclose right to redeem property tax lien; allows property owner to protect remaining equity.

Type of Impact: Annual decrease in municipal revenues.
Offsetting county cost and revenue increases.

Agencies Affected: Counties and municipalities.

Office of Legislative Services Estimate

Fiscal Impact	**CY 2024 and Thereafter**
Municipal Revenue Decrease	Indeterminate
County Cost Increase	Indeterminate
County Revenue Increase	Indeterminate

- The Office of Legislative Services (OLS) concludes that the bill will result in an indeterminate reduction in annual municipal revenues and have no net impact on county finances.

- Municipalities will incur a revenue loss because they will no longer be permitted to retain full proceeds resulting from the sale of foreclosed property for which a municipality holds the tax sale certificate. Data on the total amount of revenue generated by the sale of these properties are not compiled on a Statewide basis, hindering a full accounting of the potential impact of the bill on municipal revenues.

- The OLS anticipates that the bill will not have a net impact on county finances because it requires county sheriffs to deduct the costs of holding a judicial sale or an Internet auction from the proceeds of the sale of a property prior to remitting any funds to the property owner, resulting in offsetting county costs and revenues.

BILL DESCRIPTION

The bill revises the “tax sale law” and the In Rem Tax Foreclosure Act to bring these laws into compliance with the United States Supreme Court decision in Tyler v. Hennepin County,

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Minnesota et al. concerning the ability of a property owner, whose right to redeem a tax lien on their property has been foreclosed by the holder of a tax sale certificate, to receive any of the owner's equity remaining in the property after the tax lien foreclosure.

Under current law, the holder of a tax sale certificate, after six months, in the case of a municipality that holds the tax sale certificate or in the case of the holder of a tax sale certificate on a property that is abandoned, or after two years, in the case of a third party lienholder, may file suit in Superior Court to foreclose the right of the property owner to redeem the tax lien. Upon the foreclosure, the lienholder receives title to the property and all of the equity remaining in the property, leaving the former property owner with no funds from the foreclosure with which to purchase another property.

The bill amends current law to permit a property owner to require a judicial sale as in the manner of the foreclosure of a mortgage of the property by the county sheriff in the same manner as mortgage foreclosures are subject to a judicial sale or an Internet auction of the property through the office of the county sheriff. The bill requires the property owner to make a motion to the Superior Court for either a judicial sale or an Internet auction within 45 days of receiving the complaint for foreclosure or, in the case of an in rem foreclosure, within 45 days of receiving the complaint for foreclosure or the publication of the notice required by law, whichever date is later. The bill requires a portion of the proceeds from the sale of the property to be returned to the property owner or the owner's heirs.

The bill does not require a property to be sold by judicial sale or an Internet auction if the property owner does not demand one. However, any property owner will be able to obtain a judicial sale or Internet auction for the sale of their property by filing a request with the Superior Court.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates that the bill will result in an indeterminate decrease in annual municipal revenues and have no net impact on county finances. Municipalities would experience a decrease in revenues because they would no longer retain the full amount of revenues generated by the sale of a foreclosed property. Although municipalities are required to report in their annual financial statements the amount of revenue generated from the sale of foreclosed property, these data are not compiled on a Statewide basis and the annual financial statement does not specify what amount of revenue generated by the sale of foreclosed property constitute surplus funds, hindering a full accounting of the bill's impact on municipal revenues.

Current law requires every municipality to hold at least one tax sale per year if the municipality has delinquent properties. At the tax sale, the title to the delinquent property itself is not sold. The municipality auctions a tax sale certificate that constitutes a lien on the property. At the auction, bidders bid down the interest rate that will be paid by the owner for continuing interest on the certificate amount. The "tax sale law" permits the governing body of a municipality to adopt a resolution stating that a particular property (or properties) would be useful for a public purpose. After adopting the resolution, the governing body may authorize a municipal official, other than the tax collector, to attend the tax sale and bid on the parcel on behalf of the municipality. If the municipality is the winning bidder, it holds the tax certificate. If there are no bidders for any parcel at the sale, the tax collector is required to strike it off in the name of the municipality. In either case, the municipality has the same rights and remedies as any other purchaser of a tax sale certificate, including the right to bar or foreclose the right of redemption. Redemption is the right of an owner to reclaim their property after a tax sale by paying all delinquent taxes, interest, and other municipal charges assessed on the property.

As noted above, the "tax sale law" allows any holder of a tax sale certificate, including a municipality, to foreclose the right of the property owner to redeem the tax lien. Before the Supreme Court's decision in Tyler v. Hennepin County, Minnesota et al., current law provided that upon the foreclosure, the lienholder receives title to the property. In this circumstance, if the lienholder sells the property, they would be entitled to keep all of the revenues generated by its sale, even if the lienholder is a municipality. Under the bill, and consistent with the decision in Tyler v. Hennepin County, Minnesota et al., municipalities would no longer be permitted to retain the full amount of moneys constituting surplus funds following the sale of a foreclosed property. The bill requires payments to the holder of the tax sale certificate and costs incurred by the county sheriff for holding the judicial sale or Internet auction to be deducted from the surplus funds. Additionally, subsequent lienholders are given up to seven months to file a claim for a portion of the surplus funds with the Superior Court. Any remaining surplus funds are paid to the property owner. Any unclaimed funds remaining after five years from the date of the judicial sale or Internet auction are returned to the municipality in which the property is located.

Accordingly, the bill is expected to reduce annual municipal revenues by limiting the amount of moneys that may be retained by municipalities upon the foreclosure of certain properties for which the municipality held a tax sale certificate. However, because data is not available concerning the total value of surplus equity that will be returned to foreclosed property owners in these circumstances, the OLS is unable to quantify the magnitude of this anticipated municipal revenue loss.

Although the bill requires a county sheriff to hold, at the request of the property owner, a judicial sale or an Internet auction for a property subject to foreclosure, the OLS does not expect this requirement to result in a county net fiscal impact since the bill requires the county sheriff to deduct the costs of conducting the sale or auction from the proceeds of the sale of the property prior to remitting any moneys to the property owner, thereby offsetting anticipated cost increases with corresponding revenue gains.

Section: *Revenue, Finance, and Appropriations*

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This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).