

MAINE STATE LEGISLATURE

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Date 6/23/23

L D 101
(Filing No H-713)

TAXATION

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
131ST LEGISLATURE
FIRST SPECIAL SESSION**

COMMITTEE AMENDMENT "A" to H P 69, L D 101, "An Act to Return to the Former Owner Any Excess Funds Remaining After the Sale of Foreclosed Property"

Amend the bill by inserting after the title and before the enacting clause the following

Mandate preamble. This measure requires one or more local units of government to expand or modify activities so as to necessitate additional expenditures from local revenues but does not provide funding for at least 90% of those expenditures Pursuant to the Constitution of Maine, Article IX, Section 21, 2/3 of all of the members elected to each House have determined it necessary to enact this measure

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies, and

Whereas, the United States Supreme Court has ruled in *Tyler v Hennepin County*, 598 U S ___ (2023) that a Minnesota local government sale of property that was acquired by the local government by foreclosure for failure of the owner to pay property taxes without returning to the former owner the surplus proceeds received by the government entity in excess of the amount owed by the former owner violated the takings clause of the Fifth Amendment to the United States Constitution stating that "private property [shall not] be taken for public use, without just compensation", and

Whereas, statutes in this State governing the foreclosure and sale of property for failure to pay property taxes are substantially similar to the laws of Minnesota and are in jeopardy of being found unconstitutional by the United States Supreme Court, and

Whereas, the possibility of multiple legal challenges to the State's statutes regarding sale of property following foreclosure presents the possibility of significant disruption to municipal foreclosure sales, municipal expenditures resulting from challenges to foreclosure sale laws, uncertainty of title to properties sold for foreclosure pursuant to current laws, inconsistencies in municipal responses to the United States Supreme Court decision and general disruption of the foreclosure process, and

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1 ~~and includes bank accounts, certificates of deposit, money market or mutual funds,~~
2 ~~life insurance policies, stocks and bonds, lump sum payments and inheritances and~~
3 ~~funds from a home equity conversion mortgage that are in the individual's~~
4 ~~possession whether they are in cash or have been converted to another form-~~

5 ~~The former owner or owners must provide documentation verifying the former owner's~~
6 ~~or owners' income and liquid assets-~~

7 ~~All applications or information submitted in support of an application under this subsection,~~
8 ~~files and communications relating to the application and the determination on the~~
9 ~~application are confidential records. Hearings and proceedings held pursuant to this~~
10 ~~subsection must be held in executive session-~~

11 **2. Notification; appeal.** ~~At least 90 days prior to listing property described in~~
12 ~~subsection 1 for sale, the municipal officers or their designee shall notify send a written~~
13 ~~notice to the last known address of the former owner or owners, by United States Postal~~
14 ~~Service certified mail, return receipt requested, and first-class mail, of the former owner's~~
15 ~~or owners' right to require the sale process described in subsection 3. ~~The municipal~~~~
16 ~~officers or their designee shall include with the notice an application form with instructions~~
17 ~~concerning application procedures and submission of information necessary for the~~
18 ~~municipality to determine whether the former owner or owners meet the conditions~~
19 ~~required under subsection 1. The former owner or owners must be allowed at least 30 days~~
20 ~~from the date the notice is mailed to submit the required application form and information.~~
21 ~~The municipal officers or their designee, within 30 days after receiving the required form~~
22 ~~and information, shall notify the former owner or owners whether the former owner or~~
23 ~~owners have been determined to be eligible for the sale process described in subsection 3~~
24 ~~and inform the former owner or owners of the right to appeal pursuant to the Maine Rules~~
25 ~~of Civil Procedure, Rule 80B. The State Tax Assessor shall prepare application forms,~~
26 ~~notices and instructions that must be used by municipalities to inform former owners of~~
27 ~~their right to apply for the sale process provided under subsection 3~~

28 **3. Sale process requirements.** ~~If a municipality determines that the former owner or~~
29 ~~owners meet the conditions specified under subsection 1, the former owner submits a~~
30 ~~written demand within 90 days after the notification in subsection 2 that the sale process of~~
31 ~~this subsection be used, the municipal officers or their designee shall~~

32 A List the property for sale with a real estate broker licensed under Title 32, chapter
33 114 who does not hold an elected or appointed office in the municipality and is not
34 employed by the municipality,

35 B Sell the property ~~at fair market value~~ via quitclaim deed to the successful buyer at
36 the highest price at which the property is able to sell, or the price at which the property
37 is anticipated by the real estate broker to sell within 6 months after listing, and

38 C Pay to the former owner or owners any ~~proceeds from the sale~~ sale proceeds in
39 excess of

- 40 (1) The sum of all taxes owed on the property,
41 (2) Property taxes that would have been assessed on the property during the period
42 following foreclosure when the property is owned by the municipality,
43 (3) All accrued interest,

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- 1 (4) Fees, including property listing and real estate broker's fees, and
- 2 (5) Any other expenses incurred by the municipality in selling or maintaining the
- 3 property, including, but not limited to, an administrative fee equal to 10% of the
- 4 property taxes owed and reasonable attorney's fees,
- 5 (6) The cost to the municipality of the lien and foreclosure process, including, but
- 6 not limited to, reasonable attorney's fees, and
- 7 (7) Unpaid sewer, water or other utility charges and fees imposed by the
- 8 municipality

9 If the municipal officers are unable to list or sell the property under the requirements of
 10 paragraphs A and B, or if the property tax payer does not request that the property be sold
 11 according to the sale process in this subsection, the municipal officers may sell the property
 12 in any manner authorized by the municipality's legislative body, if the municipal officers
 13 pay the former owner any excess sale proceeds as calculated in paragraph C

14 ~~4. **Effect of inability to contract or sell property.** If, after attempting to contract~~
 15 ~~with at least 3 real estate brokers who meet the requirements of subsection 3, paragraph A,~~
 16 ~~a municipality is unable to contract with a real estate broker for the sale of the property as~~
 17 ~~described in subsection 3 or the broker cannot sell the property within 6 months after listing,~~
 18 ~~the municipality may retain, sell or dispose of the property in the same manner as other~~
 19 ~~property acquired through the tax lien foreclosure process-~~

20 **5. Property in the unorganized territory.** With regard to the sale of property
 21 acquired by the State through tax lien foreclosure in the unorganized territory, the State
 22 Tax Assessor has the obligations of a municipality under this section

23 **6. Quitclaim deed and waiver of former owner.** As a condition of disbursement of
 24 excess sale proceeds to the former owner under subsection 3, paragraph C, the municipal
 25 officers may require the former owner to execute a quitclaim deed without covenant
 26 conveying any interest of the former owner in the property to the municipality and to
 27 deliver that deed before conveyance by the municipality to the buyer Receipt of such
 28 excess sale proceeds by the former owner is deemed to be a waiver of any right of the
 29 former owner to commence any action pursuant to section 946-B

30 **Sec. 2. Working group established.** The Department of Administrative and
 31 Financial Services, Maine Revenue Services shall establish a Working Group to Study
 32 Equity in the Property Tax Foreclosure Process, referred to in this section as "the working
 33 group "

34 **1. Membership.** The State Tax Assessor shall appoint the members of the working
 35 group from among those who are interested in property tax lien foreclosure and which must
 36 include at least the following

- 37 A A representative of the Office of the Attorney General,
- 38 B One member from an organization representing municipal tax assessors,
- 39 C One member from a statewide organization that represents the interests of
- 40 municipalities,
- 41 D One member representing the Maine Association of Realtors,

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- 1 E One member representing a statewide organization that represents commercial
- 2 bankers,
- 3 F One member representing a statewide organization that represents attorneys
- 4 working in the field of property title law,
- 5 G. One member representing property title insurance agents, and
- 6 H One member representing an organization of legal services providers that
- 7 specializes in serving clients who are 65 years of age or older or who have low income
- 8 **2. Chair.** The State Tax Assessor, or the assessor's designee, shall serve as the chair
- 9 of the working group
- 10 **3. Appointments; convening of working group.** All appointments must be made no
- 11 later than 30 days following the effective date of this Act
- 12 **4. Duties.** The working group shall study issues associated with the process of
- 13 foreclosure on property for failure of the owner to pay property taxes, including, but not
- 14 limited to
 - 15 A The recent decision of the United States Supreme Court regarding municipal
 - 16 retention of excess revenue retained by a government entity from the sale of property
 - 17 acquired by the government entity following foreclosure for failure of the former owner
 - 18 to pay property taxes,
 - 19 B The constitutional requirements of due process and the takings clause and their
 - 20 impact on the property tax lien foreclosure process, including notice requirements to
 - 21 delinquent taxpayers and related entities that hold liens or mortgages to the property to
 - 22 which the foreclosure is being applied and conditions under which a government entity
 - 23 is or should be entitled to retain excess funds acquired through sale of property that has
 - 24 been acquired by foreclosure,
 - 25 C The role of the Maine Redevelopment Land Bank Authority, mortgage holders and
 - 26 other lienholders and the rights of each in the tax lien foreclosure process,
 - 27 D Whether the tax lien foreclosure process is or should be the same for both residential
 - 28 property and commercial property or whether differences are necessary or desirable,
 - 29 E The rights of former owners, commercial lenders or lienholders and government
 - 30 entities when property has been acquired for nonpayment of property tax and the
 - 31 government entity does not intend to sell the property, and
 - 32 F Whether a redemption period following foreclosure is necessary when the former
 - 33 owner has the right to reacquire the property, the statute of limitations on a former
 - 34 owner's ability to reacquire property or bring action to recover excess funds obtained
 - 35 by a government entity through foreclosure sale and the extent of the rights of
 - 36 subsequent purchasers
- 37 **5. Staff assistance.** The State Tax Assessor shall provide necessary staffing services
- 38 to the working group
- 39 **6. Provision of information to working group.** The Department of Administrative
- 40 and Financial Services, Maine Revenue Services shall provide to the working group
- 41 information, consistent with the restrictions set forth in the Maine Revised Statutes, Title
- 42 36, section 191, that is requested by the working group

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7. Report. No later than January 15, 2024, the working group shall submit a report that includes its findings and recommendations, including suggested legislation, for presentation to the Second Regular Session of the 131st Legislature. The Joint Standing Committee on Taxation may report out legislation related to the report to the Second Regular Session.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

Amend the bill by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.

SUMMARY

This amendment replaces the bill. The amendment replaces the process provided in the bill for returning to the former owner excess proceeds from sale of property acquired by a municipality by foreclosure for failure to pay property taxes. Instead of creating an entirely new process, the amendment amends current law that provides such a process when the foreclosed property is a homestead owned by a person 65 years of age or older by extending that process to property owners regardless of age and without regard to whether the property is a homestead and makes changes to facilitate administration of the process for foreclosure and return of excess proceeds to the former owner of the property.

The amendment also creates a Working Group to Study Equity in the Property Tax Foreclosure Process under the direction of the Department of Administrative and Financial Services, Bureau of Revenue Services, and directs it to study and report to the Legislature on issues associated with the process regarding foreclosure for failure to pay property tax. The amendment also adds a mandate preamble and an emergency preamble and emergency clause.

FISCAL NOTE REQUIRED
(See attached)



131st MAINE LEGISLATURE

LD 101

LR 253(02)

An Act to Return to the Former Owner Any Excess Funds Remaining After the Sale of Foreclosed Property

Fiscal Note for Bill as Amended by Committee Amendment

Committee: Taxation

Fiscal Note Required: Yes

A(H-713)

Fiscal Note

State Mandate - Exempted

Current biennium revenue decrease - Other Special Revenue Funds

Current biennium revenue decrease - Municipalities

State Mandates

Required Activity

Requires municipalities to follow certain requirements for the sale of a property acquired by foreclosure for nonpayment of property taxes, including returning to the former owner excess proceeds from the sale, regardless of the age, income and assets of the property owner and regardless of whether the property is a homestead. In current law, sale process requirements for properties acquired by a municipality by foreclosure only apply to homestead properties owned by a person who is 65 years or older below certain income and asset levels.

Unit Affected

Municipality

Local Cost

Moderate statewide

Pursuant to the Mandate Preamble, the two-thirds vote of all members elected to each House exempts the State from the constitutional requirement to fund 90% of the additional costs.

Fiscal Detail and Notes

This bill amends the law governing the process for the sale of foreclosed properties and return of excess proceeds from the sale to former owners. The bill makes additional foreclosed properties eligible for this process by removing limitations in current law related to homestead status and the age, income and assets of the former owner and it changes the calculation of excess proceeds to subtract from the amount a municipality must pay to the former owner, the municipality's cost of the lien and foreclosure process, unpaid utility charges and fees, property listing fees and an administrative fee equal to 10% of property taxes owed.

C "A" (H-713)

Implementation of this bill is expected to decrease revenue to municipalities and to the Unorganized Territory Education and Services fund from the sale of foreclosed properties, as the requirement to return excess proceeds to property owners is expanded. The amounts of any revenue reductions will depend on future tax foreclosures and cannot be determined at this time.

Additional costs to the Office of the State Auditor and Maine Revenue Services to implement the provisions in this bill with respect to properties in the Unorganized Territory are expected to be minor and can be absorbed within existing budgeted resources.

Additional costs to the Department of Administrative Services, Bureau of Revenue Services and the Office of the Attorney General associated with the working group to study equity in the property tax foreclosure process can be absorbed within existing budgeted resources.