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HOUSE BILL 498

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Robert M. Burpo

AN ACT

RELATING TO TAXATION; PROVIDING OPTIONS FOR COUNTIES TO ENFORCE COLLECTION OF DELINQUENT PROPERTY TAXES ON REAL PROPERTY; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 7-38-42 NMSA 1978 (being Laws 1979, Chapter 343, Section 1) is amended to read:

"7-38-42. COLLECTION AND RECEIPT OF AND ACCOUNTING FOR PROPERTY TAXES--APPLICATION OF RECEIPTS TO DELINQUENT TAXES.--

A. The county treasurer has the responsibility and authority for collection of taxes and any penalties or interest due under the Property Tax Code, ~~[except for]~~ including the collection of delinquent taxes, if the county has elected to do so pursuant to Section 7-38-61.1 NMSA 1978.

In the absence of such an election, the department has

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1 exclusive authority to collect delinquent taxes, penalties and
2 interest [~~authorized to be collected by the department under~~]
3 pursuant to Section 7-38-62 NMSA 1978.

4 B. Property taxes, penalties and interest
5 collected shall be receipted and accounted for in accordance
6 with law and regulations of the department of finance and
7 administration.

8 C. Any payments received by the treasurer or the
9 department as payments for property taxes, penalties or
10 interest shall be first applied to the oldest outstanding
11 unpaid property taxes, penalties or interest accrued in prior
12 property tax years on the property identified and described in
13 the property tax bill for which payment is tendered or, if the
14 payment cannot be identified with a particular year's property
15 tax bill, then the payment shall be applied first to the
16 oldest liability for property taxes, penalties and interest
17 shown in the treasurer's records under the name of the paying
18 taxpayer. In applying the foregoing requirements for
19 applications of payments and in the adoption of any
20 regulations to implement those provisions, the following
21 additional rules shall apply:

22 (1) applications of payments to prior year's
23 delinquent taxes, penalties and interest shall not be made for
24 more than ten years prior to the year of payment unless the
25 treasurer's records show that the property for which taxes are

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1 delinquent has been deeded to the state of New Mexico and that
2 property has not been sold by the state pursuant to applicable
3 law;

4 (2) after application of payment received, if
5 all or part of the payment has been applied to a prior year's
6 delinquent taxes, penalties or interest, the receipting
7 authority shall issue a receipt to the paying taxpayer showing
8 the application of the payment and indicating any balance due
9 for taxes, penalties or interest to bring the property tax
10 payment status current; and

11 (3) the failure of a receipting authority to
12 apply a payment as required under this subsection or the
13 failure to issue a required receipt to the taxpayer of the
14 status of his account shall not relieve the taxpayer of
15 liability for taxes, penalties or interest he would otherwise
16 be required to pay nor does action or inaction by the
17 receipting authority act to estop the collecting authority
18 from taking any action to collect or enforce the payment of
19 taxes, penalties and interest legally due. "

20 Section 2. Section 7-38-50 NMSA 1978 (being Laws 1973,
21 Chapter 258, Section 90, as amended) is amended to read:

22 "7-38-50. DELINQUENT TAXES--CIVIL PENALTIES.--

23 A. If property taxes become delinquent, a penalty
24 of one percent of the delinquent taxes for each month or any
25 portion of a month they remain unpaid shall be imposed, but

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1 the total penalty shall not exceed five percent of the
2 delinquent taxes except that, when the penalty determined
3 under the foregoing provisions of this subsection is less than
4 five dollars (\$5.00), the penalty to be imposed shall be five
5 dollars (\$5.00). A county may suspend for a particular tax
6 year application of the minimum penalty requirements of this
7 subsection by resolution of its county commissioners adopted
8 not later than September 1 of that tax year. A copy of any
9 such resolution shall be forwarded to the county treasurer.

10 B. If property taxes become delinquent because of
11 an intent to defraud by the property owner, fifty percent of
12 the property taxes due or fifty dollars (\$50.00), whichever is
13 greater, shall be added as a penalty.

14 C. An additional penalty to defray costs of
15 collection shall be imposed if the county has elected to
16 collect delinquent taxes and has referred to the collection of
17 the delinquent taxes, penalties and interest to a private
18 attorney. The additional penalty shall be no greater than
19 thirty percent of the amount of taxes, penalties, interest,
20 costs and expenses due at the time of collection. A penalty
21 assessed pursuant to this subsection shall be used to pay the
22 private attorney employed by the county when the delinquent
23 taxes, penalties and interest are collected."

24 Section 3. Section 7-38-51 NMSA 1978 (being Laws 1973,
25 Chapter 258, Section 91, as amended) is amended to read:

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1 "7-38-51. NOTIFICATION TO PROPERTY OWNER OF DELINQUENT
2 PROPERTY TAXES. --

3 A. In respect to any tax that is delinquent for
4 more than thirty days as of June 30 of each year, the county
5 treasurer shall mail a notice of delinquency at least thirty
6 and no more than sixty days before September 1 to:

7 (1) the owner of the property as shown on the
8 property tax schedule at the address of the owner as shown on
9 the most recent property tax schedule; and

10 (2) any person other than the owner to whom
11 the tax bill on the property was sent.

12 B. The notice required by this section shall be in
13 a form and contain the information prescribed by ~~[division]~~
14 department regulations and shall include at least the
15 following:

16 (1) a description of the property upon which
17 the property taxes are due;

18 (2) a statement of the amount of property
19 taxes due, the date on which they became delinquent, the rate
20 of accrual of interest and any penalties that may be charged;

21 (3) a statement that if the property taxes
22 due on real property are not paid within three years from the
23 date of delinquency, the real property will be sold and a deed
24 issued by the ~~[division]~~ department; ~~[and]~~

25 (4) a statement that if property taxes due on

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1 personal property are not paid, the personal property may be
2 seized and sold for taxes under authority of a demand warrant;
3 and

4 (5) a statement that the delinquent taxes
5 have been referred for collection to a private attorney
6 pursuant to Section 7-38-61.1 NMSA 1978, if that is the case,
7 and that an additional civil penalty of up to thirty percent
8 of the taxes, penalties, interest, costs and expenses due will
9 be incurred if the taxes are not paid before September 1. "

10 Section 4. Section 7-38-53 NMSA 1978 (being Laws 1973,
11 Chapter 258, Section 93) is amended to read:

12 "7-38-53. COLLECTION OF DELINQUENT PROPERTY TAXES ON
13 PERSONAL PROPERTY--ASSERTION OF CLAIM AGAINST PERSONAL
14 PROPERTY.--A county treasurer may collect delinquent property
15 taxes on personal property by asserting a claim against the
16 owner's personal property for which taxes are delinquent. A
17 claim shall be asserted by service of a demand warrant by the
18 county treasurer, an employee of his office designated by him,
19 a private attorney retained by the county pursuant to Section
20 7-38-61.1 NMSA 1978 or the county sheriff upon any person in
21 possession of the personal property subject to the claim. "

22 Section 5. Section 7-38-61 NMSA 1978 (being Laws 1973,
23 Chapter 258, Section 100, as amended) is amended to read:

24 "7-38-61. REAL PROPERTY TAXES DELINQUENT FOR MORE THAN
25 TWO YEARS--TREASURER TO PREPARE DELINQUENCY LIST--NOTATION ON

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1 PROPERTY TAX SCHEDULE. --

2 A. By July 1 of each year, the county treasurer
3 shall prepare a property tax delinquency list of all real
4 property for which taxes have been delinquent for more than
5 two years. The tax delinquency list shall contain the
6 information and be in a form prescribed and submitted by the
7 date required by department regulations. The county treasurer
8 shall record the tax delinquency list in the office of the
9 county clerk. There shall be no recording fee for recordation
10 of the tax delinquency list. The updated final property tax
11 sale list shall be recorded with the office of the county
12 clerk the day following the sale of the property. There shall
13 be no recording fee for recordation of the final property tax
14 sale list.

15 B. Except for accounts referred for collection
16 pursuant to Section 7-38-61.1 NMSA 1978, and not returned, the
17 county treasurer shall make a notation on the property tax
18 schedule indicating that the account has been transferred to
19 the department for collection at the time the tax delinquency
20 list is mailed to the department. "

21 Section 6. A new section of the Property Tax Code,
22 Section 7-38-61.1 NMSA 1978, is enacted to read:

23 "7-38-61.1. [NEW MATERIAL] COUNTY ELECTION TO COLLECT
24 DELINQUENT TAXES ON REAL PROPERTY--AUTHORITY TO CONTRACT FOR
25 THE COLLECTION OF DELINQUENT TAXES. --

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1 A. For the 2002 and subsequent tax years, a county
2 may elect to assume authority for collection of delinquent
3 property taxes due on real property in the county, including
4 authority to sell the property pursuant to the provisions of
5 Sections 7-38-65 and 7-38-66 NMSA 1978. In the absence of
6 that election by a county, the department retains authority to
7 collect delinquent taxes, penalties, interest and costs on
8 property submitted on a tax delinquency list until the taxes,
9 penalties, interest and costs are collected or the property is
10 sold pursuant to Sections 7-38-65 and 7-38-66 NMSA 1978. To
11 make the election, the board of county commissioners, with the
12 express concurrence in writing of the county treasurer, shall
13 adopt a resolution to assume the authority and shall deliver
14 or mail a copy of the resolution to the department prior to
15 the July 1 immediately preceding the tax year to which the
16 resolution first applies.

17 B. A county that has assumed authority under
18 Subsection A of this section is authorized to request
19 competitive proposals pursuant to the applicable provisions of
20 the Procurement Code from qualified attorneys and may execute
21 a professional services contract with a successful offeror for
22 the collection of delinquent taxes, penalties and interest due
23 thereon that are owed to the county or taxing jurisdictions
24 for which the county collects the taxes.

25 C. Having assumed authority to collect delinquent

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1 taxes due on real property, the county may elect to return
2 that authority to the department. To make this election, the
3 board of county commissioners shall adopt a resolution
4 returning the authority and shall deliver or mail a copy of
5 the resolution to the department at least eighteen months
6 prior to the beginning of the tax year to which the return of
7 authority is to apply.

8 D. The department may prepare and require the use
9 of model resolutions for use of the counties in assuming and
10 returning authority as provided in this section.

11 E. As used in this section, "qualified attorney"
12 means an attorney licensed to practice in New Mexico and who
13 carries professional liability insurance in an amount
14 determined adequate by a board of county commissioners, which
15 amount shall be specified in the request for proposals."

16 Section 7. A new section of the Property Tax Code,
17 Section 7-38-61.2 NMSA 1978, is enacted to read:

18 "7-38-61.2. [NEW MATERIAL] SUIT TO COLLECT DELINQUENT
19 TAXES AND INTEREST AND PENALTIES. --

20 A. At any time after a tax on property becomes
21 delinquent, a county or its retained attorney may file suit to
22 foreclose a lien securing payment of the tax or seeking a
23 personal judgment against the taxpayer. The suit shall be
24 filed in a court of competent jurisdiction for the county in
25 which the tax was or is imposed.

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1 B. In a suit brought under Subsection A of this
2 section, a county may foreclose any other property tax lien on
3 the property in favor of the county. "

4 Section 8. A new section of the Property Tax Code,
5 Section 7-38-61.3 NMSA 1978, is enacted to read:

6 "7-38-61.3. [NEW MATERIAL] RECOVERY OF COSTS AND
7 EXPENSES IN COLLECTION SUIT. --

8 A. In addition to other costs authorized by law, a
9 county or its contractor is entitled to recover from the
10 delinquent taxpayer the following costs and expenses if
11 successful in a suit to collect a delinquent tax:

12 (1) court costs;

13 (2) costs of filing for record any notice of
14 lis pendens against property;

15 (3) expenses of a tax sale; and

16 (4) reasonable expenses that are incurred by
17 the county or its retained attorney in determining the name,
18 identity and location of necessary parties and in procuring
19 necessary legal descriptions of the property on which a
20 delinquent tax is due.

21 B. Each item specified by Subsection A of this
22 section is a charge against the property and shall be
23 collectible in the same manner as the taxes, penalties,
24 interest and costs due by the tax debtor and is subject to
25 collection by foreclosure in a suit or as otherwise provided

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1 by law and shall be collected out of the proceeds of sale of
2 the property. "

3 Section 9. A new section of the Property Tax Code,
4 Section 7-38-61.4 NMSA 1978, is enacted to read:

5 "7-38-61.4. [NEW MATERIAL] LIABILITY FOR COSTS--COUNTY
6 AND ITS CONTRACTOR. --

7 A. Except as provided by Subsection B of this
8 section, a county or its retained attorney is not liable in an
9 unsuccessful suit to collect taxes for court costs, costs or
10 fees of opposing counsel or arbitration or mediation. The
11 county or its retained attorney is not required to post
12 security for costs.

13 B. A county shall pay the cost of publishing
14 notices of sale or other notices necessary in a suit to
15 collect delinquent taxes. The county is entitled to
16 reimbursement from other taxing units that are parties to the
17 suit for their proportionate share of the publication costs on
18 satisfaction of any portion of the tax indebtedness before
19 further distribution of the proceeds. A county shall not be
20 required to pay a word or line rate for publication of
21 citation or other required notice that exceeds the rate that
22 the newspaper publishing the notice charges private entities
23 for similar classes of advertising. "

24 Section 10. Section 7-38-62 NMSA 1978 (being Laws 1973,
25 Chapter 258, Section 102, as amended) is amended to read:

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1 "7-38-62. AUTHORITY OF DEPARTMENT AND COUNTY TO COLLECT
2 DELINQUENT PROPERTY TAXES [~~AFTER RECEIPT OF TAX DELINQUENCY~~
3 ~~LIST~~]- - USE OF PENALTIES, INTEREST AND COSTS. - -

4 A. After the receipt of the tax delinquency list,
5 the department has the responsibility and exclusive authority
6 to take all action necessary to collect delinquent taxes shown
7 on the list unless the county has assumed authority pursuant
8 to Section 7-38-61.1 NMSA 1978 to collect delinquent taxes due
9 on real property. In that case, the county or its retained
10 attorney has the same authority as that granted to the
11 department in Subsection B of this section.

12 B. This authority includes bringing collection
13 actions in the district courts based upon the personal
14 liability of the property owner for taxes as well as the
15 actions authorized in the Property Tax Code for proceeding
16 against the property subject to the tax for collection of
17 delinquent taxes.

18 C. For delinquent taxes being collected by the
19 department, payment of delinquent taxes listed and any
20 penalty, interest or costs due in connection with those taxes
21 shall be made to the department if occurring after the receipt
22 by the department of the tax delinquency list; however, the
23 department may authorize county treasurers to act as its
24 agents in accepting payments of taxes, penalties, interest or
25 costs due.

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1 D. Penalties, interest and costs due received by
2 the department under this section shall be retained by the
3 department for use, subject to appropriation by the
4 legislature, in the administration of the Property Tax Code. "

5 Section 11. Section 7-38-65 NMSA 1978 (being Laws 1973,
6 Chapter 258, Section 105, as amended) is amended to read:

7 "7-38-65. COLLECTION OF DELINQUENT TAXES ON REAL
8 PROPERTY--SALE OF REAL PROPERTY.--

9 A. The department or a county having authority
10 pursuant to Section 7-38-61.1 NMSA 1978 may collect delinquent
11 taxes on real property by selling the real property on which
12 the taxes have become delinquent. The sale of real property
13 for delinquent taxes shall be in accordance with the
14 provisions of the Property Tax Code. Real property may be
15 sold for delinquent taxes at any time after the expiration of
16 three years from the first date shown on the tax delinquency
17 list on which the taxes became delinquent. Real property
18 shall be offered for sale for delinquent taxes either within
19 four years after the first date shown on the tax delinquency
20 list on which the taxes became delinquent or, if the
21 department or county is barred by operation of law or by order
22 of a court of competent jurisdiction from offering the
23 property for sale for delinquent taxes within four years after
24 the first date shown on the tax delinquency list on which the
25 taxes became delinquent, within one year from the time the

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1 department or county determines that it is no longer barred
2 from selling the property, unless:

3 (1) all delinquent taxes, penalties, interest
4 and costs due are paid by the date of the sale; or

5 (2) an installment agreement for payment of
6 all delinquent taxes, penalties, interests and costs due is
7 entered into with the department or county by the date of the
8 sale pursuant to Section 7-38-68 NMSA 1978.

9 B. Failure to offer property for sale within the
10 time prescribed by Subsection A of this section shall not
11 impair the validity or effect of any sale which does take
12 place. "

13 Section 12. Section 7-38-68 NMSA 1978 (being Laws 1973,
14 Chapter 258, Section 108, as amended) is amended to read:

15 "7-38-68. INSTALLMENT AGREEMENTS. --

16 A. The [~~division~~] department or a county that has
17 authority to collect delinquent taxes pursuant to Section
18 7-38-61.1 NMSA 1978 may enter into an installment agreement
19 for the payment of all delinquent property taxes, penalties,
20 interest and costs due with respect to either real property or
21 a ~~manufactured home~~ with the owner of the real property or
22 ~~manufactured home~~ whose taxes have become delinquent and whose
23 account for all or part of the delinquent taxes has been
24 transferred for collection to the [~~division~~] department or
25 retained for collection by the county. Execution of an

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1 installment agreement under this section by a property owner
2 is an irrevocable admission of liability for all taxes that
3 are the subject of the agreement. The installment agreement
4 shall be in writing and shall not extend for a period of more
5 than thirty-six months. Interest shall accrue on the unpaid
6 balance during the period of the installment agreement. The
7 rate of interest shall be one percent a month, and no other
8 interest on that portion of the principal representing unpaid
9 taxes shall accrue while an installment agreement is in
10 effect. [~~The division shall not enter into~~] An installment
11 agreement with a property owner shall not be entered into on
12 or after the date of the initial sale of real property or
13 manufactured home for delinquent taxes whether or not the real
14 property or manufactured home is sold and a deed issued as a
15 result of that sale. Unless a county has authority to collect
16 delinquent taxes pursuant to Section 7-38-61.1 NMSA 1978, the
17 [~~division~~] department shall promulgate regulations
18 establishing requirements for a minimum down payment and
19 substantially equal monthly payments for installment
20 agreements.

21 B. An installment agreement prevents any further
22 action to collect the delinquent taxes stated in the agreement
23 as long as the terms of the agreement are met.

24 C. The [~~division~~] department or a county having
25 authority to collect delinquent taxes pursuant to Section

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1 7-38-61.1 NMSA 1978 may proceed under the Property Tax Code to
2 collect the property taxes, penalties, interest and costs due
3 and unpaid if:

4 (1) installment payments are not made on or
5 before the dates specified in the agreement;

6 (2) the property owner fails to pay other
7 property taxes when required; or

8 (3) any other condition contained in the
9 agreement is not met.

10 D. For the purpose of computing the time when real
11 property or a manufactured home may be sold for delinquent
12 taxes, the date of original delinquency shall be used when the
13 delinquent taxes have been the subject of an installment
14 agreement that was subsequently breached by the property
15 owner.

16 E. If an owner of real property or a manufactured
17 home enters into an installment agreement and subsequently
18 breaches the agreement under this section, neither the
19 [~~division~~] department nor the counties shall [~~not~~] enter into
20 another installment agreement with that property owner for the
21 payment of the delinquent taxes that were the subject of the
22 installment agreement.

23 F. Alphabetically indexed and serially numbered
24 records of installment agreements must be kept in the office
25 of the director and made available for public inspection."

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1 Section 13. Section 7-38-69 NMSA 1978 (being Laws 1973,
2 Chapter 258, Section 109, as amended) is amended to read:

3 "7-38-69. DISTRIBUTION OF AMOUNTS COLLECTED UNDER
4 INSTALLMENT AGREEMENTS. -- Amounts that represent delinquent
5 taxes collected under installment agreements entered into by
6 the department [~~that represent delinquent taxes~~] or a county
7 pursuant to Section 7-38-68 NMSA 1978 shall be remitted to the
8 county treasurer of the county to which the net taxable value
9 of the property is allocated for distribution to the
10 governmental units. Amounts collected that represent
11 penalties, interest and costs shall be retained by the
12 department in accordance with Section 7-38-71 NMSA 1978.
13 Money collected shall be remitted at the times and in the
14 manner required by applicable law and the regulations of the
15 department of finance and administration. When the department
16 has received payment in full of delinquent taxes, penalties,
17 interest and costs paid under an installment agreement, the
18 department shall notify the county treasurer of that fact, and
19 the county treasurer shall make an entry on the property tax
20 schedule indicating that the delinquent property taxes,
21 penalties and interest have been paid. "

22 Section 14. Section 7-38-70 NMSA 1978 (being Laws 1973,
23 Chapter 258, Section 110, as amended) is amended to read:

24 "7-38-70. ISSUANCE OF DEEDS AS RESULT OF SALE OF REAL
25 PROPERTY FOR DELINQUENT TAXES--EFFECT OF DEEDS--LIMITATION OF

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1 ACTION TO CHALLENGE CONVEYANCE. --

2 A. Upon receiving payment for real property sold
3 by the department for delinquent taxes, the ~~[division]~~
4 department shall execute and deliver a deed to the purchaser.
5 If the property was sold by a county pursuant to its authority
6 pursuant to Section 7-38-61.1 NMSA 1978, upon receiving
7 payment the county treasurer shall execute and deliver a deed
8 to the purchaser.

9 B. If the real property was sold substantially in
10 accordance with the Property Tax Code, the deed conveys all of
11 the former property owner's interest in the real property as
12 of the date the state's lien for real property taxes arose in
13 accordance with the Property Tax Code, subject only to
14 perfected interests in the real property existing before the
15 date the property tax lien arose.

16 C. After two years from the date of sale, neither
17 the former real property owner shown on the property tax
18 schedule as the delinquent taxpayer nor anyone claiming
19 through him may bring an action challenging the conveyance.

20 D. Subject to the limitation of Subsection C of
21 this section, in all controversies and suits involving title
22 to real property held under a deed from the state issued under
23 this section, any person claiming title adverse to that
24 acquired by the deed from the state ~~[must]~~ or the county shall
25 prove, in order to defeat the title, that:

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1 (1) the real property was not subject to
2 taxation for the tax years for which the delinquent taxes for
3 which it was sold were imposed;

4 (2) the ~~[division]~~ department or the county
5 failed to mail the notice required under Section 7-38-66 NMSA
6 1978 or to receive any required return receipt;

7 (3) he, or the person through whom he claims,
8 had title to the real property at the time of the sale and had
9 paid all delinquent taxes, penalties, interest and costs prior
10 to the sale as provided in Subsection E of Section 7-38-66
11 NMSA 1978; or

12 (4) he, or the person through whom he claims,
13 had entered into an installment agreement to pay all
14 delinquent taxes, penalties, interest and costs prior to the
15 sale as provided in Section 7-38-68 NMSA 1978 and that all
16 payments due were made timely. "

17 Section 15. EFFECTIVE DATE. -- The effective date of the
18 provisions of this act is July 1, 2001.

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