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SENATE BILL 306

50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

INTRODUCED BY

Tim Eichenberg

AN ACT

RELATING TO PROPERTY TAXATION; PROVIDING FOR COUNTY SALES OF
DELINQUENT PROPERTIES AFTER EIGHT YEARS OF PROPERTY TAX
DELINQUENCY; PROVIDING FOR AGGREGATION OF DELINQUENT CONTIGUOUS
PROPERTIES AND LIMITS ON SUBDIVIDING AFTER SALE BY THE
DEPARTMENT; ESTABLISHING TIME LIMITS ON PAYMENT OF DELINQUENT
PROPERTY TAXES OR ENTERING INTO INSTALLMENT AGREEMENTS.

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

SECTION 1. Section 7-38-62 NMSA 1978 (being Laws 1973,
Chapter 258, Section 102, as amended) is amended to read:

"7-38-62. AUTHORITY OF DEPARTMENT TO COLLECT DELINQUENT
PROPERTY TAXES AFTER RECEIPT OF TAX DELINQUENCY LIST--USE OF
PENALTIES, INTEREST AND COSTS.--

A. After the receipt of the tax delinquency list,
the department has the responsibility and exclusive authority

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1 until July 1, eight years following the first date shown on the
2 tax delinquency list on which the taxes on the real property
3 were shown as delinquent to take all action necessary to
4 collect delinquent taxes shown on the list. This authority
5 includes bringing collection actions in the district courts
6 based upon the personal liability of the property owner for
7 taxes as well as the actions authorized in the Property Tax
8 Code for proceeding against the property subject to the tax for
9 collection of delinquent taxes. Payment of delinquent taxes
10 listed and any penalty, interest or costs due in connection
11 with those taxes shall be made to the department if occurring
12 after the receipt by the department of the tax delinquency
13 list; however, the department may authorize county treasurers
14 to act as its agents in accepting payments of taxes, penalties,
15 interest or costs due. Penalties, interest and costs due
16 received by the department under this section shall be retained
17 by the department for use, subject to appropriation by the
18 legislature, in the administration of the Property Tax Code.

19 B. Beginning on July 1, eight years following the
20 first date shown on the tax delinquency list on which the taxes
21 on a parcel of real property were shown as delinquent, the
22 county may take on the responsibility of selling the real
23 property that has been on the delinquency list for eight years.
24 The county shall retain an amount equal to all costs,
25 penalties, interest and delinquent taxes from a sale of real

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1 property pursuant to this subsection."

2 SECTION 2. Section 7-38-65 NMSA 1978 (being Laws 1973,
3 Chapter 258, Section 105, as amended) is amended to read:

4 "7-38-65. COLLECTION OF DELINQUENT TAXES ON REAL
5 PROPERTY--SALE OF REAL PROPERTY.--

6 A. If a lien exists by the operation of Section
7 7-38-48 NMSA 1978, the department may collect delinquent taxes
8 on real property by selling the real property on which the
9 taxes have become delinquent. The sale of real property for
10 delinquent taxes shall be in accordance with the provisions of
11 the Property Tax Code. Real property may be sold for
12 delinquent taxes at any time after the expiration of three
13 years from the first date shown on the tax delinquency list on
14 which the taxes became delinquent. Real property shall be
15 offered for sale for delinquent taxes either within four years
16 after the first date shown on the tax delinquency list on which
17 the taxes became delinquent or, if the department is barred by
18 operation of law or by order of a court of competent
19 jurisdiction from offering the property for sale for delinquent
20 taxes within four years after the first date shown on the tax
21 delinquency list on which the taxes became delinquent, within
22 one year from the time the department determines that it is no
23 longer barred from selling the property, unless:

24 (1) all delinquent taxes, penalties, interest
25 and costs due are paid by 5:00 p.m. of the tenth business day

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1 prior to the date of the sale; or

2 (2) an installment agreement for payment of
3 all delinquent taxes, penalties, [~~interests~~] interest and costs
4 due is entered into with the department by 5:00 p.m. of the
5 tenth business day prior to the date of the sale pursuant to
6 Section 7-38-68 NMSA 1978.

7 B. Failure to offer property for sale within the
8 time prescribed by Subsection A of this section shall not
9 impair the validity or effect of any sale [~~which~~] that does
10 take place.

11 C. The time requirements of this section are
12 subject to the provisions of Section 7-38-83 NMSA 1978."

13 **SECTION 3.** Section 7-38-66 NMSA 1978 (being Laws 1973,
14 Chapter 258, Section 106, as amended by Laws 2001, Chapter 253,
15 Section 2 and by Laws 2001, Chapter 254, Section 2) is amended
16 to read:

17 "7-38-66. SALE OF REAL PROPERTY FOR DELINQUENT TAXES--
18 NOTICE OF SALE.--

19 A. At least [~~twenty~~] thirty days but not more than
20 [~~thirty~~] sixty days before the date of the sale for delinquent
21 taxes, the department shall notify by certified mail, return
22 receipt requested, to the address as shown on the most recent
23 property tax schedule, each property owner whose real property
24 will be sold that the owner's real property will be sold to
25 satisfy delinquent taxes, unless:

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1 (1) all delinquent taxes, penalties, interest
2 and costs due are paid by 5:00 p.m. of the tenth business day
3 prior to the date of the sale; or

4 (2) an installment agreement for payment of
5 all delinquent taxes, penalties, interest and costs due is
6 entered into with the department by 5:00 p.m. of the tenth
7 business day prior to the date of sale in accordance with
8 Section 7-38-68 NMSA 1978.

9 B. The notice shall also:

10 (1) state the amount of taxes, penalties,
11 interest and costs due;

12 (2) state the time and place of the sale;

13 (3) describe the real property that will be
14 sold;

15 (4) inform the property owner of [~~his~~] the
16 property owner's right to enter into an installment agreement
17 with the department for payment of delinquent taxes, penalties,
18 interest and costs, in accordance with Section 7-38-68 NMSA
19 1978;

20 (5) provide information on the name and phone
21 number of the individual in the department the [~~taxpayer~~] owner
22 can contact to arrange for an installment agreement in
23 accordance with Section 7-38-68 NMSA 1978; and

24 (6) contain any other information that the
25 department may require by regulation.

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1 C. At the same time a notice required by Subsection
2 A of this section is sent to the owner of the real property, a
3 notice containing the information set out in Subsection B of
4 this section shall also be sent to each person holding a lien
5 or security interest of record in the property if an address
6 for such person is reasonably ascertainable through a search of
7 the property records of the county in which the property is
8 located.

9 D. Failure of the department to mail a required
10 notice by certified mail, return receipt requested, shall
11 invalidate the sale; provided, however, that return to the
12 department of the notice of the return receipt shall be deemed
13 adequate notice and shall not invalidate the sale.

14 E. Proof by the [~~taxpayer~~] owner that all
15 delinquent taxes, penalties, interest and costs had been paid
16 by 5:00 p.m. of the tenth business day prior to the date of
17 sale shall prevent or invalidate the sale.

18 F. Proof by the [~~taxpayer~~] owner that the
19 [~~taxpayer~~] owner has, by 5:00 p.m. of the tenth business day
20 prior to the date of sale, entered into an installment
21 agreement to pay all delinquent taxes, penalties, interest and
22 costs as provided in Section 7-38-68 NMSA 1978 and that timely
23 payments under such agreement are being made shall prevent or
24 invalidate the sale.

25 G. The time requirements of this section are

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1 subject to the provisions of Section 7-38-83 NMSA 1978."

2 SECTION 4. Section 7-38-67 NMSA 1978 (being Laws 1973,
3 Chapter 258, Section 107, as amended) is amended to read:

4 "7-38-67. REAL PROPERTY SALE REQUIREMENTS.--

5 A. Real property shall not be sold for delinquent
6 taxes before the expiration of three years from the first date
7 shown on the tax delinquency list on which the taxes on the
8 real property became delinquent.

9 B. Notice of the sale shall be published in a local
10 newspaper within the county where the real property is located
11 or, if there is no local county or municipal newspaper, then a
12 newspaper published in a county contiguous to or near the
13 county in which the real property is located, at least once a
14 week for the three weeks immediately preceding the week of the
15 sale. For more generalized notice, the department may choose
16 to publish notice of the sale also in a newspaper not published
17 within the county and of more general circulation. The notice
18 shall state the time and place of the sale and shall include a
19 description of the real property sufficient to permit its
20 identification and location by potential purchasers.

21 C. Real property shall be sold at public auction
22 either by the department or an auctioneer hired by the
23 department. The auction shall be held in the county where the
24 real property is located at a time and place designated by the
25 department.

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1 D. If the real property can be:

2 (1) divided so as to enable the department to
3 sell only part of it and pay all delinquent taxes, penalties,
4 interest and costs, the department may, with the consent of the
5 owner, sell only a part of the real property; and

6 (2) can be aggregated into blocks of lots that
7 render the lots more easily sold, provided that a covenant
8 shall be placed in the deed executed by the department pursuant
9 to Section 7-38-70 NMSA 1978, that the aggregated lots cannot
10 again be subdivided for a period of ten years following the
11 sale of the real property by the department for delinquent
12 property taxes.

13 E. Before the sale, the department shall determine
14 a minimum sale price for the real property. In determining the
15 minimum price, the department shall consider the value of the
16 property owner's interest in the real property, the amount of
17 all delinquent taxes, penalties and interest for which it is
18 being sold and the costs. The minimum price shall not be less
19 than the total of all delinquent taxes, penalties, interest and
20 costs. Real property shall not be sold for less than the
21 minimum price unless no offer met the minimum price when it was
22 offered at an earlier public auction or the property is sold in
23 accordance with the provisions of Subsection H of this section.
24 A sale properly made under the authority of and in accordance
25 with the requirements of this section constitutes full payment

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1 of all delinquent taxes, penalties and interest that are a lien
2 against the property at the time of sale, and the sale
3 extinguishes the lien.

4 F. Payment shall be made in full by the close of
5 the public auction before an offer may be deemed accepted by
6 the department.

7 G. Real property not offered for sale may be
8 offered for sale at a later sale, but the requirements of this
9 section and Section 7-38-66 NMSA 1978 shall be met in
10 connection with each sale.

11 H. The board of trustees of a community land grant-
12 merced governed pursuant to the provisions of Chapter 49,
13 Article 1 NMSA 1978 or by statutes specific to the named land
14 grant-merced shall be allowed to match the highest bid at a
15 public auction, which shall entitle the board of trustees to
16 purchase the property for the amount bid if:

17 (1) the property is situated within the
18 boundaries of that land grant-merced as shown in the United
19 States patent to the grant;

20 (2) the bid covers all past taxes, penalties,
21 interest and costs due on the property; and

22 (3) the land becomes part of the common lands
23 of the land grant-merced."

24 SECTION 5. Section 7-38-68 NMSA 1978 (being Laws 1973,
25 Chapter 258, Section 108, as amended) is amended to read:

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1 "7-38-68. INSTALLMENT AGREEMENTS.--

2 A. ~~[The division]~~ No later than July 1, eight years
3 following the first date shown on the tax delinquency list on
4 which the taxes on the real property were shown as delinquent,
5 the department may enter into an installment agreement for the
6 payment of all delinquent property taxes, penalties, interest
7 and costs due with respect to either real property or a
8 manufactured home with the owner of the real property or
9 manufactured home whose taxes have become delinquent and whose
10 account for all or part of the delinquent taxes has been
11 transferred for collection to the ~~[division]~~ department.

12 Execution of an installment agreement under this section by a
13 property owner is an irrevocable admission of liability for all
14 taxes that are the subject of the agreement. The installment
15 agreement shall be in writing and shall not extend for a period
16 of more than thirty-six months. Interest shall accrue on the
17 unpaid balance during the period of the installment agreement.

18 The rate of interest shall be one percent a month, and no other
19 interest on that portion of the principal representing unpaid
20 taxes shall accrue while an installment agreement is in effect.

21 The ~~[division]~~ department shall not enter into an installment
22 agreement with a property owner on or after ten business days
23 prior to the date of the initial sale of real property or
24 manufactured home for delinquent taxes whether or not the real
25 property or manufactured home is sold and a deed issued as a

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1 result of that sale. The [~~division~~] department shall
2 promulgate regulations establishing requirements for a minimum
3 down payment and substantially equal monthly payments for
4 installment agreements.

5 B. An installment agreement prevents any further
6 action to collect the delinquent taxes stated in the agreement
7 as long as the terms of the agreement are met.

8 C. The [~~division~~] department may proceed under the
9 Property Tax Code to collect the property taxes, penalties,
10 interest and costs due and unpaid if:

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

13 (2) the property owner fails to pay other
14 property taxes when required; or

15 (3) any other condition contained in the
16 agreement is not met.

17 D. For the purpose of computing the time when real
18 property or a manufactured home may be sold for delinquent
19 taxes, the date of original delinquency shall be used when the
20 delinquent taxes have been the subject of an installment
21 agreement that was subsequently breached by the property owner.

22 E. If an owner of real property or a manufactured
23 home enters into an installment agreement and subsequently
24 breaches the agreement under this section, the [~~division~~]
25 department shall not enter into another installment agreement

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1 with that property owner for the payment of the delinquent
2 taxes that were the subject of the installment agreement.

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

6 SECTION 6. Section 7-38-70 NMSA 1978 (being Laws 1973,
7 Chapter 258, Section 110, as amended) is amended to read:

8 "7-38-70. ISSUANCE OF DEEDS AS RESULT OF SALE OF REAL
9 PROPERTY FOR DELINQUENT TAXES--EFFECT OF DEEDS--LIMITATION OF
10 ACTION TO CHALLENGE CONVEYANCE.--

11 A. Upon receiving payment for real property sold
12 for delinquent taxes, the [~~division~~] department shall execute
13 and deliver a deed to the purchaser.

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

21 C. A covenant shall be included in the deed
22 executed by the department stating that the real property
23 transferred by the deed shall not be subdivided for a period of
24 ten years following the date of transfer of the property by the
25 department.

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1 ~~[G-]~~ D. After two years from the date of sale,
2 neither the former real property owner shown on the property
3 tax schedule as the delinquent taxpayer nor anyone claiming
4 through ~~[him]~~ that owner may bring an action challenging the
5 conveyance.

6 ~~[D-]~~ E. Subject to the limitation of Subsection ~~[G]~~
7 D of this section, in all controversies and suits involving
8 title to real property held under a deed from the state issued
9 under this section, any person claiming title adverse to that
10 acquired by the deed from the state ~~[must]~~ shall prove, in
11 order to defeat the title, that:

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

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

18 (3) ~~[he]~~ the person, or the person through
19 whom ~~[he]~~ that person claims, had title to the real property at
20 the time of the sale and had paid all delinquent taxes,
21 penalties, interest and costs no later than ten business days
22 prior to the sale as provided in Subsection E of Section
23 7-38-66 NMSA 1978; or

24 (4) ~~[he]~~ the person, or the person through
25 whom ~~[he]~~ that person claims, had entered into an installment

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1 agreement to pay all delinquent taxes, penalties, interest and
2 costs prior to the sale as provided in Section 7-38-68 NMSA
3 1978 and that all payments due were made timely."

4 SECTION 7. Section 7-38-71 NMSA 1978 (being Laws 1973,
5 Chapter 258, Section 111, as amended) is amended to read:

6 "7-38-71. DISTRIBUTION OF AMOUNTS RECEIVED FROM SALE OF
7 PROPERTY.--

8 A. Money received by the department from the sale
9 of real property sold before July 1, eight years following the
10 first date shown on the tax delinquency list on which the taxes
11 on the real property were shown as delinquent or personal
12 property for delinquent property taxes shall be deposited in a
13 suspense fund and distributed as follows:

14 (1) first, that portion equal to the costs
15 shall be retained by the department for use, subject to
16 appropriation by the legislature, in administration of the
17 Property Tax Code;

18 (2) second, that portion equal to the
19 penalties and interest due shall be retained by the department
20 for use, subject to appropriation by the legislature, by the
21 department in administration of the Property Tax Code;

22 (3) third, that portion equal to the
23 delinquent taxes due shall be remitted by the department to the
24 appropriate county treasurer for distribution by the treasurer
25 to the governmental units in accordance with the law and the

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1 regulations of the department of finance and administration;
2 and

3 (4) the balance shall be paid to the former
4 owner of the property sold or to any other person designated by
5 order directed to the department by a court of competent
6 jurisdiction, provided that the department may first apply all
7 or any portion of the balance to be paid against the amount of
8 any property tax, including any penalty and interest related
9 thereto, owed by the person to whom the balance would otherwise
10 be paid.

11 B. After July 1, eight years following the first
12 date shown on the tax delinquency list on which the taxes on
13 the real property were shown as delinquent, money received from
14 the sale of real properties rejected by a county and retained
15 by the department for sale shall be distributed pursuant to the
16 provisions of Subsection A of this section.

17 [~~B-~~] C. As a condition precedent to payment of the
18 balance of the sale amount received to the former owner of the
19 property, the department may require any person claiming to be
20 entitled to that payment to present sufficient evidence of
21 proof of former ownership of the property to the department.
22 The department shall adopt regulations providing for the
23 procedures to be followed by persons claiming sale proceeds as
24 former owners in those instances where conflicting claims exist
25 or the department requires proof of ownership.

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1 ~~[G-]~~ D. If no person claims the balance of sale
2 proceeds, whether the property was sold under the provisions of
3 the Property Tax Code or prior law, as the former owner of the
4 property within two years of the date of the sale and after a
5 reasonable search to determine the former owner is made by the
6 department and no former owner is found, the balance of the
7 sale proceeds shall be considered abandoned property and
8 deposited in accordance with the provisions of the Uniform
9 Unclaimed Property Act (1995).

10 ~~[D-]~~ E. If the balance of proceeds from the sale
11 after paying a higher priority claim under Subsection A of this
12 section is insufficient to pay all of the next priority claim,
13 then the complete balance shall be applied to that next
14 priority claim as partial payment."

15 **SECTION 8.** Section 7-38-81 NMSA 1978 (being Laws 1973,
16 Chapter 258, Section 121) is amended to read:

17 "7-38-81. LIMITATION ON ACTIONS FOR COLLECTION OF
18 PROPERTY TAXES--PRESUMPTION OF PAYMENT OF PROPERTY TAXES AFTER
19 TEN YEARS.--

20 A. Property may not be sold and proceedings may not
21 be initiated for the collection of property taxes that have
22 been delinquent for more than ten years.

23 B. Property that has not been included on a
24 property tax schedule may not be subjected to the imposition of
25 property taxes for more than ten tax years immediately

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1 preceding the date of its entry on the property tax schedule.

2 C. Property taxes that have been delinquent for
3 more than ten years, together with any penalties and interest,
4 are presumed to have been paid. The county treasurer shall
5 indicate on the property tax schedule that all such property
6 taxes and any penalties and interest have been "presumed paid
7 by act of the legislature".

8 D. By July 1, eight years following the first date
9 shown on the tax delinquency list on which the real property
10 appears, the department shall provide each county with the real
11 properties located within that county that have been on the
12 delinquency list for eight years. If a county agrees to
13 dispose of the real property that is listed by the department
14 as having delinquent taxes for eight years, the county shall
15 sell that real property at public auction. Notice shall be
16 provided by the county as required in Section 7-38-66 NMSA
17 1978."

18 SECTION 9. APPLICABILITY.--The provisions of this act
19 apply to property tax years beginning on or after January 1,
20 2012.