

HOUSE BILL

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

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO PROPERTY TAX ADMINISTRATION; PROVIDING AN OPTION
FOR COUNTIES TO ENFORCE COLLECTION OF DELINQUENT PROPERTY TAXES
ON REAL PROPERTY.

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

SECTION 1. Section 7-35-2.1 NMSA 1978 (being Laws 1995,
Chapter 12, Section 5) is amended to read:

"7-35-2.1. ADDITIONAL ~~DEFINITION~~ DEFINITIONS.--As used
in the Property Tax Code:

A. "collecting authority" means:

(1) the department, when exercising authority
granted pursuant to Section 7-38-62 NMSA 1978; or

(2) a county, when exercising authority
granted pursuant to Section 7-38-62 NMSA 1978;

B. "costs" means the expenses incurred by the

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underscored material = new
[bracketed material] = delete

1 ~~[department]~~ collecting authority in connection with collecting
2 delinquent taxes. As applied to a particular property, "costs"
3 may be, in the discretion of the ~~[department]~~ collecting
4 authority, either the sum of the expenses incurred specifically
5 in connection with that property or the uniform charge applied
6 to the class of delinquent properties of which the property is
7 a member;

8 C. "qualified private attorney" means an attorney
9 licensed to practice law in New Mexico who carries professional
10 liability insurance in an amount determined adequate for the
11 liability exposure the attorney would have if the attorney
12 contracts with a county to perform delinquent tax collections;
13 and

14 D. "receipting authority" means a county treasurer,
15 the department or other collecting authority that receives
16 property tax payments from a taxpayer."

17 SECTION 2. Section 7-38-42 NMSA 1978 (being Laws 1979,
18 Chapter 343, Section 1, as amended) is amended to read:

19 "7-38-42. COLLECTION AND RECEIPT OF AND ACCOUNTING FOR
20 PROPERTY TAXES--APPLICATION OF RECEIPTS TO DELINQUENT
21 TAXES.--

22 A. The county treasurer has the responsibility and
23 authority for collection of taxes and any penalties or interest
24 due under the Property Tax Code except ~~[for the collection of~~
25 ~~delinquent taxes, penalties and interest authorized to be~~

1 ~~collected by the department under Section 7-38-62 NMSA 1978]~~
2 that, pursuant to Section 7-38-62 NMSA 1978, the department has
3 the responsibility and exclusive authority to collect
4 delinquent taxes, penalties and interest for the delinquent
5 taxes shown on a tax delinquency list:

6 (1) prepared and transferred to the department
7 by a county that has not elected, pursuant to Section 7-38-62
8 NMSA 1978, to assume authority for the collection of delinquent
9 taxes; or

10 (2) prepared pursuant to negotiations with the
11 department from the complete list of delinquent properties in
12 the county that have not previously been provided to the
13 department on a tax delinquency list, by a county that has
14 elected, pursuant to Section 7-38-62 NMSA 1978, to assume
15 authority for the collection of delinquent taxes.

16 B. Property taxes, penalties and interest collected
17 shall be receipted and accounted for in accordance with law and
18 ~~[regulations]~~ rules of the department of finance and
19 administration.

20 C. Any payments received by the treasurer or the
21 ~~[department]~~ collecting authority as payments for property
22 taxes, penalties or interest shall be first applied to the
23 oldest outstanding unpaid property taxes, penalties or interest
24 accrued in prior property tax years on the property identified
25 and described in the property tax bill for which payment is

1 tendered or, if the payment cannot be identified with a
2 particular year's property tax bill, then the payment shall be
3 applied first to the oldest liability for property taxes,
4 penalties and interest shown in the treasurer's records under
5 the name of the paying taxpayer. In applying the foregoing
6 requirements for applications of payments and in the adoption
7 of any [~~regulations~~] rules to implement those provisions, the
8 following additional rules shall apply:

9 (1) applications of payments to a prior year's
10 delinquent taxes, penalties and interest shall not be made for
11 more than ten years prior to the year of payment unless the
12 treasurer's records show that the property for which taxes are
13 delinquent has been deeded to the state of New Mexico and that
14 property has not been sold by the state pursuant to applicable
15 law;

16 (2) applications of payments to a prior year's
17 delinquent taxes, penalties and interest shall not be made if:

18 (a) the prior year for which the
19 delinquent taxes, penalties or interest are due is not the
20 immediately preceding tax year;

21 (b) the delinquent taxes, penalties or
22 interest are the result of real estate improvements that were
23 omitted from property tax schedules in the prior year and
24 listed and billed pursuant to Section 7-38-76 NMSA 1978;

25 (c) the current owner was not the owner

1 at the time the improvements were omitted and had no actual
2 notice that the improvements were omitted; and

3 (d) the payments were made by or on
4 behalf of the current owner;

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

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

22 SECTION 3. Section 7-38-48 NMSA 1978 (being Laws 1973,
23 Chapter 258, Section 88, as amended) is amended to read:

24 "7-38-48. PROPERTY TAXES ARE A LIEN AGAINST REAL PROPERTY
25 FROM JANUARY 1--PRIORITIES--CONTINUANCE OF TAXING PROCESS.--

1 A. Except as provided in Subsection B of this
2 section, taxes on real property are a lien against the real
3 property from January 1 of the tax year for which the taxes are
4 imposed. The lien runs in favor of the ~~[state]~~ collecting
5 authority and secures the payment of taxes on the real property
6 and any penalty and interest that become due. The lien
7 continues until the taxes and any penalty and interest are
8 paid. The lien created by this section is a first lien and
9 paramount to any other interest in the property, perfected or
10 unperfected. The annual taxing process provided for in the
11 Property Tax Code shall continue as to any particular property
12 regardless of prior tax delinquencies or of pending protests,
13 actions for refunds or other tax controversies involving the
14 property, including a sale for delinquent taxes.

15 B. No lien is created pursuant to Subsection A of
16 this section if:

17 (1) the tax otherwise creating the lien is not
18 due for the current tax year or the immediately preceding
19 property tax year;

20 (2) the tax otherwise creating the lien is the
21 result of real estate improvements that were omitted from
22 property tax schedules in a prior year and listed and billed
23 pursuant to Section 7-38-76 NMSA 1978; and

24 (3) the current owner was not the owner at the
25 time the improvements were omitted and had no actual notice

1 that the improvements were omitted."

2 SECTION 4. Section 7-38-50 NMSA 1978 (being Laws 1973,
3 Chapter 258, Section 90, as amended) is amended to read:

4 "7-38-50. DELINQUENT TAXES--CIVIL PENALTIES.--

5 A. If property taxes become delinquent, a penalty
6 of one percent of the delinquent taxes for each month or any
7 portion of a month they remain unpaid shall be imposed, but the
8 total penalty shall not exceed five percent of the delinquent
9 taxes except that, when the penalty determined under the
10 foregoing provisions of this subsection is less than five
11 dollars (\$5.00), the penalty to be imposed shall be five
12 dollars (\$5.00). A county may suspend for a particular tax
13 year application of the minimum penalty requirements of this
14 subsection by resolution of its county commissioners adopted
15 not later than September 1 of that tax year. A copy of any
16 such resolution shall be forwarded to the county treasurer.

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

21 C. An additional penalty to defray costs of
22 collection shall be imposed if the county has elected, pursuant
23 to Section 7-38-62 NMSA 1978, to assume authority for
24 collection of delinquent taxes and has referred the collection
25 to a qualified private attorney. The additional penalty shall

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1 equal the amount agreed to between the county and the attorney
2 but shall not exceed thirty percent of the amount of taxes due
3 at the time of collection."

4 SECTION 5. Section 7-38-51 NMSA 1978 (being Laws 1973,
5 Chapter 258, Section 91, as amended) is amended to read:

6 "7-38-51. NOTIFICATION TO PROPERTY OWNER OF DELINQUENT
7 PROPERTY TAXES.--

8 A. In respect to any tax that is delinquent for
9 more than thirty days as of June 30 of each year, the county
10 treasurer, no later than August 1, shall mail a notice of
11 delinquency to:

12 (1) the owner of the property as shown on the
13 property tax schedule at the address of the owner as shown on
14 the most recent property tax schedule; and

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

17 B. The notice required by this section shall be in
18 a form and contain the information prescribed by ~~[division~~
19 ~~regulations]~~ department rules and shall include at least the
20 following:

21 (1) a description of the property upon which
22 the property taxes are due;

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

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1 (3) a statement that if the property taxes due
2 on real property are not paid within three years from the date
3 of delinquency, the real property will be sold and a deed
4 issued by the ~~[division, and]~~ collecting authority;

5 (4) a statement that if property taxes due on
6 personal property are not paid, the personal property may be
7 seized and sold for taxes under authority of a demand warrant;
8 and

9 (5) if the county has elected, pursuant to
10 Section 7-38-62 NMSA 1978, to assume authority for the
11 collection of delinquent taxes, a statement that, if the taxes
12 are not paid before September 1, the delinquent taxes may be
13 referred to a qualified private attorney and that an additional
14 civil penalty of up to thirty percent of the taxes due will be
15 incurred."

16 SECTION 6. Section 7-38-60 NMSA 1978 (being Laws 1973,
17 Chapter 258, Section 101, as amended) is amended to read:

18 "7-38-60. NOTIFICATION TO PROPERTY OWNER OF DELINQUENT
19 TAXES.--By June 10 of each year, the county treasurer shall
20 mail a notice to each property owner of property for which
21 taxes have been delinquent for more than two years. The notice
22 shall be in a form and contain the information prescribed by
23 department ~~[regulations]~~ rules and shall include the following:

24 A. a description of the property upon which the
25 taxes are due;

1 B. a statement of the amount of property taxes due,
2 the date on which they became delinquent, the rate of accrual
3 of interest and any penalties or costs that may be charged;

4 C. if the county has not elected, pursuant to
5 Section 7-38-62 NMSA 1978, to assume authority for the
6 collection of the delinquent taxes of the taxpayer to whom the
7 notice is being sent, a statement that the delinquent tax
8 account on real property will be transferred to the department
9 for collection;

10 D. a statement that if taxes due on real property
11 are not paid within three years from the date of delinquency,
12 the real property will be sold and a deed issued; and

13 E. a statement that if taxes due on personal
14 property are not paid, the personal property may be seized and
15 sold for taxes under authority of a demand warrant."

16 SECTION 7. Section 7-38-61 NMSA 1978 (being Laws 1973,
17 Chapter 258, Section 100, as amended) is amended to read:

18 "7-38-61. REAL PROPERTY TAXES DELINQUENT FOR MORE THAN
19 TWO YEARS--TREASURER TO PREPARE DELINQUENCY LIST--NOTATION ON
20 PROPERTY TAX SCHEDULE.--

21 A. By July 1 of each year, the county treasurer
22 shall prepare a property tax delinquency list of all real
23 property for which taxes have been delinquent for more than two
24 years. The tax delinquency list shall contain the information
25 and be in a form prescribed and submitted by the date required

1 by department [~~regulations~~] rules. The county treasurer shall
2 record the tax delinquency list in the office of the county
3 clerk. There shall be no recording fee for recordation of the
4 tax delinquency list. The updated final property tax sale list
5 shall be recorded with the office of the county clerk the day
6 following the sale of the property. There shall be no
7 recording fee for recordation of the final property tax sale
8 list.

9 ~~[B. The county treasurer shall make a notation on~~
10 ~~the property tax schedule indicating that the account has been~~
11 ~~transferred to the department for collection at the time the~~
12 ~~tax delinquency list is mailed to the department.]~~

13 B. If the county has not elected, pursuant to
14 Section 7-38-62 NMSA 1978, to assume authority for the
15 collection of delinquent taxes, the county treasurer shall
16 transfer the tax delinquency list to the department and make a
17 notation on the property tax schedule indicating that the
18 account has been transferred to the department for collection.

19 C. If the county has elected, pursuant to Section
20 7-38-62 NMSA 1978, to assume authority for the collection of
21 delinquent taxes but the department and the county have
22 negotiated an agreement in which the department agrees to
23 collect one or more designated delinquent taxes, the county
24 treasurer shall make a notation on the property tax schedule
25 indicating which collecting authority is responsible for the

1 collection of the taxes due.

2 D. Accounts for the taxes to be collected by the
3 department shall be transferred to the department for
4 collection. The county treasurer shall make a notation on the
5 property tax schedule of the date on which the accounts are
6 transferred to the department."

7 SECTION 8. Section 7-38-62 NMSA 1978 (being Laws 1973,
8 Chapter 258, Section 102, as amended) is amended to read:

9 "7-38-62. AUTHORITY OF DEPARTMENT TO COLLECT DELINQUENT
10 PROPERTY TAXES AFTER RECEIPT OF TAX DELINQUENCY LIST--PROCEDURE
11 AUTHORIZING COUNTY TO COLLECT DELINQUENT PROPERTY TAX--USE OF
12 PENALTIES, INTEREST AND COSTS.--

13 A. After the receipt of the tax delinquency list,
14 the department has the responsibility and exclusive authority
15 to take all action necessary to collect delinquent taxes shown
16 on the list ~~[This]~~ for any county that does not elect to
17 collect all or some of its delinquent tax assessments.

18 B. The department's authority includes:

19 (1) bringing collection actions in the
20 district courts based upon the personal liability of the
21 property owner for taxes as well as the actions authorized in
22 the Property Tax Code for proceeding against the property
23 subject to the tax for collection of delinquent taxes; ~~[Payment~~
24 ~~of delinquent taxes listed and any penalty, interest or costs~~
25 ~~due in connection with those taxes shall be made to the~~

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1 ~~department if occurring after the receipt by the department of~~
2 ~~the tax delinquency list; however, the department may authorize~~
3 ~~county treasurers to act as its agents in accepting payments of~~
4 ~~taxes, penalties, interest or costs due. Penalties, interest~~
5 ~~and costs due received by the department under this section~~
6 ~~shall be retained by the department for use, subject to~~
7 ~~appropriation by the legislature, in the administration of the~~
8 ~~Property Tax Code.]~~

9 (2) accepting payment and acting as the
10 receipting authority for payments of delinquent taxes for which
11 the department is responsible for collecting, including
12 penalties, interest or costs due in connection with those
13 taxes; however, the department may authorize county treasurers
14 to act as its agents in accepting payments of taxes, penalties,
15 interest or costs due; and

16 (3) retaining penalties, interest and costs
17 due for use by the department, subject to appropriation by the
18 legislature, in the administration of the Property Tax Code.

19 C. Beginning in the 2013 tax year, a county may
20 elect to assume authority for collection of delinquent property
21 taxes due on real property in the county, including authority
22 to sell the property pursuant to the provisions of the Property
23 Tax Code. To make the election, the board of county
24 commissioners of a county, with the express concurrence in
25 writing of the county treasurer, shall adopt a resolution to

1 assume the authority for collection of delinquent property
2 taxes and shall deliver or mail a copy of the resolution to the
3 department no later than thirty days after the adoption of the
4 resolution and no later than July 1 of the year prior to the
5 tax year in which the county begins to perform all or some of
6 its delinquent property tax collections.

7 D. A county that has assumed authority to collect
8 delinquent taxes pursuant to this section:

9 (1) shall develop a tax delinquency list and
10 by November 1 enter into an agreement with the department that
11 identifies the properties over which the county shall exert
12 delinquent tax collection authority and the properties for
13 which the department retains delinquent tax collection
14 authority;

15 (2) may take all actions allowed by law to
16 collect delinquent taxes, penalties and interest, including:

17 (a) filing suit pursuant to Chapter 7,
18 Article 38 NMSA 1978;

19 (b) selling the real property on which
20 taxes have become delinquent pursuant to Sections 7-38-65
21 through 7-38-67 and 7-38-70 through 7-38-72 NMSA 1978;

22 (c) entering into installment agreements
23 pursuant to Sections 7-38-68 and 7-38-69 NMSA 1978; and

24 (d) assessing costs to collect the
25 delinquent tax not to exceed one-third of the tax due;

1 (3) may request competitive proposals pursuant
2 to the Procurement Code from qualified private attorneys in
3 which an amount of professional liability insurance that must
4 be carried by the attorney is specified; and

5 (4) may execute a contract:

6 (a) with one or more successful offerors
7 for the collection of delinquent taxes, penalties and interest
8 due on the taxes that are owed to the county or governmental
9 units for which the county collects the taxes, as well as costs
10 incurred by the attorney in performing under the contract; and

11 (b) that authorizes the contracting
12 attorney to take such actions to collect the taxes, penalties,
13 interests and costs on behalf of the county as are allowed by
14 law.

15 E. An assumption of collection authority adopted by
16 a board of county commissioners pursuant to this section may be
17 revoked by a subsequent resolution of the board of county
18 commissioners; provided that the effective date of the
19 revocation shall be the beginning of the tax year beginning not
20 less than six months but not more than twelve months after the
21 department receives written notification of the revocation.
22 Contracts in place at the time of revocation shall remain in
23 effect until the performance under the contract is completed
24 unless the contract is otherwise terminated pursuant to the
25 terms of the contract.

1 F. The department may prepare and require the use
2 of model resolutions for use of the counties in assuming and
3 revoking collection authority provided in this section."

4 SECTION 9. A new section of Chapter 7, Article 38 NMSA
5 1978 is enacted to read:

6 "[NEW MATERIAL] ACTION TO COLLECT DELINQUENT PROPERTY
7 TAXES, INTEREST AND PENALTIES.--At any time after a tax on
8 property becomes delinquent, a county that, pursuant to Section
9 7-38-62 NMSA 1978, has elected to assume the authority to
10 collect delinquent taxes or its qualified private attorney may
11 file suit seeking a personal judgment against the taxpayer.
12 The action shall be filed in the district court for the county
13 in which the tax is due."

14 SECTION 10. A new section of Chapter 7, Article 38 NMSA
15 1978 is enacted to read:

16 "[NEW MATERIAL] RECOVERY OF COSTS IN COLLECTION ACTION.--

17 A. If successful in an action to collect a
18 delinquent tax pursuant to Section 7-38-62 NMSA 1978, in
19 addition to other costs authorized by law, a county or its
20 qualified private attorney is entitled to recover from the
21 delinquent taxpayer the following costs:

- 22 (1) court costs;
23 (2) costs of filing for record a notice of *lis*
24 *pendens* against the property;
25 (3) expenses of a tax sale; and

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1 (4) reasonable expenses that are incurred by
2 the county or its qualified private attorney in determining the
3 name, identity and location of necessary parties and in
4 procuring necessary legal descriptions of the property on which
5 a delinquent tax is due.

6 B. Each item specified by Subsection A of this
7 section is a charge against the property and a personal
8 obligation of the property owner and shall be collectible in
9 the same manner as the taxes, penalties, interests and costs
10 due by the owner."

11 SECTION 11. A new section of Chapter 7, Article 38 NMSA
12 1978 is enacted to read:

13 "[NEW MATERIAL] DISTRIBUTION OF PROCEEDS RECEIVED.--Except
14 for proceeds from the sale of real property distributed
15 pursuant to Section 7-38-71 NMSA 1978 and amounts collected
16 under installment agreements distributed pursuant to Section
17 7-38-69 NMSA 1978, delinquent taxes, penalties, interest and
18 costs received by a county after a matter has been referred by
19 the county to a qualified private attorney pursuant to Section
20 7-38-62 NMSA 1978 shall be distributed as follows:

21 A. first, the amount owed to the county in taxes,
22 penalties and interest shall be distributed to the county
23 treasurer for distribution pursuant to Section 7-38-43 NMSA
24 1978;

25 B. second, the amount owed to the qualified private

1 attorney under a contract entered into pursuant to Section
2 7-38-62 NMSA 1978 shall be paid to that attorney; and

3 C. third, that portion equal to the costs incurred
4 by the county, exclusive of other amounts distributed pursuant
5 to this section, shall be deposited in the general fund of the
6 county."

7 SECTION 12. Section 7-38-65 NMSA 1978 (being Laws 1973,
8 Chapter 258, Section 105, as amended) is amended to read:

9 "7-38-65. COLLECTION OF DELINQUENT TAXES ON REAL
10 PROPERTY--SALE OF REAL PROPERTY.--

11 A. If a lien exists by the operation of Section
12 7-38-48 NMSA 1978, the ~~[department]~~ collecting authority may
13 collect delinquent taxes on real property by selling the real
14 property on which the taxes have become delinquent. The sale
15 of real property for delinquent taxes shall be in accordance
16 with the provisions of the Property Tax Code. Real property
17 may be sold for delinquent taxes at any time after the
18 expiration of three years from the first date shown on the tax
19 delinquency list on which the taxes became delinquent. Real
20 property shall be offered for sale for delinquent taxes either
21 within four years after the first date shown on the tax
22 delinquency list on which the taxes became delinquent or, if
23 the ~~[department]~~ collecting authority is barred by operation of
24 law or by order of a court of competent jurisdiction from
25 offering the property for sale for delinquent taxes within four

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1 years after the first date shown on the tax delinquency list on
2 which the taxes became delinquent, within one year from the
3 time the ~~[department]~~ collecting authority determines that it
4 is no longer barred from selling the property, unless:

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

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

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

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

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

23 "7-38-66. SALE OF REAL PROPERTY FOR DELINQUENT TAXES--
24 NOTICE OF SALE.--

25 A. At least twenty days but not more than thirty

1 days before the date of the sale for delinquent taxes, the
2 [~~department~~] collecting authority shall notify by certified
3 mail, return receipt requested, to the address as shown on the
4 most recent property tax schedule, each property owner whose
5 real property will be sold that the owner's real property will
6 be sold to satisfy delinquent taxes, unless:

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

10 (2) an installment agreement for payment of
11 all delinquent taxes, penalties, interest and costs due is
12 entered into with the [~~department~~] collecting authority by 5:00
13 p.m. of the day prior to the date of sale in accordance with
14 Section 7-38-68 NMSA 1978.

15 B. The notice shall also:

16 (1) state the amount of taxes, penalties,
17 interest and costs due;

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

19 (3) describe the real property that will be
20 sold;

21 (4) inform the property owner of [~~his~~] the
22 property owner's right to enter into an installment agreement
23 with the [~~department~~] collecting authority for payment of
24 delinquent taxes, penalties, interest and costs, in accordance
25 with Section 7-38-68 NMSA 1978;

1 (5) provide information on the name and phone
2 number of the individual in the ~~[department]~~ collecting
3 authority the ~~[taxpayer]~~ owner can contact to arrange for an
4 installment agreement in accordance with Section 7-38-68 NMSA
5 1978; and

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

8 C. At the same time a notice required by Subsection
9 A of this section is sent to the owner of the real property, a
10 notice containing the information set out in Subsection B of
11 this section shall also be sent by the collecting authority to
12 each person holding a lien or security interest of record in
13 the property if an address for ~~[such]~~ the person is reasonably
14 ascertainable through a search of the property records of the
15 county in which the property is located.

16 D. Failure of the ~~[department]~~ collecting authority
17 to mail a required notice by certified mail, return receipt
18 requested, shall invalidate the sale; provided, however, that
19 return to the ~~[department]~~ collecting authority of the notice
20 of the return receipt shall be deemed adequate notice and shall
21 not invalidate the sale.

22 E. Proof by the ~~[taxpayer]~~ owner that all
23 delinquent taxes, penalties, interest and costs had been paid
24 by 5:00 p.m. of the day prior to the date of sale shall prevent
25 or invalidate the sale.

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

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

9 SECTION 14. Section 7-38-67 NMSA 1978 (being Laws 1973,
10 Chapter 258, Section 107, as amended) is amended to read:

11 "7-38-67. REAL PROPERTY SALE REQUIREMENTS.--

12 A. Real property shall not be sold for delinquent
13 taxes before the expiration of three years from the first date
14 shown on the tax delinquency list on which the taxes on the
15 real property became delinquent.

16 B. Notice of the sale shall be published in a local
17 newspaper within the county where the real property is located
18 or, if there is no local county or municipal newspaper, then a
19 newspaper of broad circulation in the county and a newspaper
20 published in a county contiguous to or near the county in which
21 the real property is located, at least once a week for the
22 three weeks immediately preceding the week of the sale. [~~For~~
23 ~~more generalized notice, the department may choose to publish~~
24 ~~notice of the sale also in a newspaper not published within the~~
25 ~~county and of more general circulation.~~] The notice shall state

1 the time and place of the sale and shall include a description
2 of the real property sufficient to permit its identification
3 and location by potential purchasers.

4 C. Real property shall be sold at public auction
5 either by the ~~[department]~~ collecting authority or an
6 auctioneer hired by the ~~[department]~~ collecting authority. The
7 auction shall be held in the county where the real property is
8 located at a time and place designated by the ~~[department]~~
9 collecting authority.

10 D. If the real property can be divided so as to
11 enable the ~~[department]~~ collecting authority to sell only part
12 of it and pay all delinquent taxes, penalties, interest and
13 costs, the ~~[department]~~ collecting authority may, with the
14 consent of the owner, sell only a part of the real property.

15 E. If the real property that is to be sold for
16 delinquent taxes is contiguous to other properties that are to
17 be sold for delinquent taxes and consolidation of the tracts
18 would facilitate the sale and payment of the taxes, penalties,
19 interest and costs, the collecting authority may consolidate
20 contiguous tracts of real property to facilitate the sale.

21 ~~[E.]~~ F. Before the sale, the ~~[department]~~
22 collecting authority shall determine a minimum sale price for
23 the real property. In determining the minimum price, the
24 ~~[department]~~ collecting authority shall consider the value of
25 the property owner's interest in the real property, the amount

1 of all delinquent taxes, penalties and interest for which it is
2 being sold and the costs. The minimum price shall not be less
3 than the total of all delinquent taxes, penalties, interest and
4 costs. Real property shall not be sold for less than the
5 minimum price unless no offer met the minimum price when it was
6 offered at an earlier public auction or the property is sold in
7 accordance with the provisions of Subsection [H] I of this
8 section. A sale properly made under the authority of and in
9 accordance with the requirements of this section constitutes
10 full payment of all delinquent taxes, penalties and interest
11 that are a lien against the property at the time of sale, and
12 the sale extinguishes the lien.

13 ~~[F.]~~ G. Payment shall be made in full by the close
14 of the public auction before an offer may be deemed accepted by
15 the ~~[department]~~ collecting authority.

16 ~~[G.]~~ H. Real property not offered for sale may be
17 offered for sale at a later sale, but the requirements of this
18 section and Section 7-38-66 NMSA 1978 shall be met in
19 connection with each sale.

20 ~~[H.]~~ I. The board of trustees of a community land
21 grant-merced governed pursuant to the provisions of Chapter 49,
22 Article 1 NMSA 1978 or by statutes specific to the named land
23 grant-merced shall be allowed to match the highest bid at a
24 public auction, which shall entitle the board of trustees to
25 purchase the property for the amount bid if:

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

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

6 (3) the land becomes part of the common lands
7 of the land grant-merced."

8 SECTION 15. Section 7-38-68 NMSA 1978 (being Laws 1973,
9 Chapter 258, Section 108, as amended) is amended to read:

10 "7-38-68. INSTALLMENT AGREEMENTS.--

11 A. The ~~[division]~~ collecting authority may enter
12 into an installment agreement for the payment of all delinquent
13 property taxes, penalties, interest and costs due with respect
14 to either real property or a manufactured home with the owner
15 of the real property or manufactured home whose taxes have
16 become delinquent ~~[and whose account for all or part of the~~
17 ~~delinquent taxes has been transferred for collection to the~~
18 ~~division]~~. Execution of an installment agreement under this
19 section by a property owner is an irrevocable admission of
20 liability for all taxes that are the subject of the agreement.
21 The installment agreement shall be in writing and shall not
22 extend for a period of more than thirty-six months. Interest
23 shall accrue on the unpaid balance during the period of the
24 installment agreement. The rate of interest shall be one
25 percent a month, and no other interest on that portion of the

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1 principal representing unpaid taxes shall accrue while an
2 installment agreement is in effect. The ~~[division]~~ collecting
3 authority shall not enter into an installment agreement with a
4 property owner on or after the date of the initial sale of real
5 property or manufactured home for delinquent taxes whether or
6 not the real property or manufactured home is sold and a deed
7 issued as a result of that sale. The ~~[division]~~ department
8 shall promulgate ~~[regulations]~~ rules establishing requirements
9 for a minimum down payment and substantially equal monthly
10 payments for installment agreements.

11 B. An installment agreement prevents any further
12 action to collect the delinquent taxes stated in the agreement
13 as long as the terms of the agreement are met.

14 C. The ~~[division]~~ collecting authority may proceed
15 under the Property Tax Code to collect the property taxes,
16 penalties, interest and costs due and unpaid if:

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

19 (2) the property owner fails to pay other
20 property taxes when required; or

21 (3) any other condition contained in the
22 agreement is not met.

23 D. For the purpose of computing the time when real
24 property or a manufactured home may be sold for delinquent
25 taxes, the date of original delinquency shall be used when the

1 delinquent taxes have been the subject of an installment
2 agreement that was subsequently breached by the property owner.

3 E. If an owner of real property or a manufactured
4 home enters into an installment agreement and subsequently
5 breaches the agreement under this section, the ~~[division]~~
6 collecting authority shall not enter into another installment
7 agreement with that property owner for the payment of the
8 delinquent taxes that were the subject of the installment
9 agreement.

10 F. Alphabetically indexed and serially numbered
11 records of installment agreements must be kept in the office of
12 the ~~[director]~~ secretary and made available for public
13 inspection. A county that has elected pursuant to Section
14 7-38-62 NMSA 1978 to assume the authority to collect delinquent
15 taxes shall submit a copy of each installment agreement entered
16 into with the owner of the property within ten working days
17 following the date of execution of the installment agreement."

18 SECTION 16. Section 7-38-69 NMSA 1978 (being Laws 1973,
19 Chapter 258, Section 109, as amended) is amended to read:

20 "7-38-69. DISTRIBUTION OF AMOUNTS COLLECTED UNDER
21 INSTALLMENT AGREEMENTS.--Amounts collected under installment
22 agreements entered into by the ~~[department]~~ collecting
23 authority that represent delinquent taxes shall be remitted to
24 the county treasurer of the county to which the net taxable
25 value of the property is allocated for distribution to the

1 governmental units. Amounts collected that represent
2 penalties, interest and costs shall be ~~[retained by the~~
3 ~~department]~~ distributed by the collecting authority in
4 accordance with Section 7-38-71 NMSA 1978. Money collected
5 shall be remitted at the times and in the manner required by
6 ~~[regulations]~~ rules of the department of finance and
7 administration. When the ~~[department]~~ collecting authority has
8 received payment in full of delinquent taxes, penalties,
9 interest and costs paid under an installment agreement, the
10 ~~[department]~~ collecting authority shall notify the county
11 treasurer of that fact, and the county treasurer shall make an
12 entry on the property tax schedule indicating that the
13 delinquent property taxes, penalties and interest have been
14 paid."

15 SECTION 17. Section 7-38-70 NMSA 1978 (being Laws 1973,
16 Chapter 258, Section 110, as amended) is amended to read:

17 "7-38-70. ISSUANCE OF DEEDS AS RESULT OF SALE OF REAL
18 PROPERTY FOR DELINQUENT TAXES--EFFECT OF DEEDS--LIMITATION OF
19 ACTION TO CHALLENGE CONVEYANCE.--

20 A. Upon receiving payment for real property sold
21 for delinquent taxes, the ~~[division]~~ collecting authority shall
22 execute and deliver a deed to the purchaser.

23 B. If the real property was sold substantially in
24 accordance with the Property Tax Code, the deed conveys all of
25 the former property owner's interest in the real property as of

1 the date the [~~state's~~] collecting authority's lien for real
2 property taxes arose in accordance with the Property Tax Code,
3 subject only to perfected interests in the real property
4 existing before the date the property tax lien arose.

5 C. After two years from the date of sale, neither
6 the former real property owner shown on the property tax
7 schedule as the delinquent taxpayer nor anyone claiming through
8 [~~him~~] that owner may bring an action challenging the
9 conveyance.

10 D. Subject to the limitation of Subsection C of
11 this section, in all controversies and suits involving title to
12 real property held under a deed from the [~~state~~] collecting
13 authority issued under this section, any person claiming title
14 adverse to that acquired by the deed from the [~~state must~~]
15 collecting authority shall prove, in order to defeat the title,
16 that:

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

20 (2) the [~~division~~] collecting authority failed
21 to mail the notice required under Section 7-38-66 NMSA 1978 or
22 to receive any required return receipt;

23 (3) [~~he~~] the person, or the person through
24 whom [~~he~~] that person claims, had title to the real property at
25 the time of the sale and had paid all delinquent taxes,

1 penalties, interest and costs prior to the sale as provided in
2 Subsection E of Section 7-38-66 NMSA 1978; or

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

8 SECTION 18. Section 7-38-71 NMSA 1978 (being Laws 1973,
9 Chapter 258, Section 111, as amended) is amended to read:

10 "7-38-71. DISTRIBUTION OF AMOUNTS RECEIVED FROM SALE OF
11 PROPERTY.--

12 A. If the collecting authority is the department,
13 money received by the department from the sale of real or
14 personal property for delinquent property taxes shall be
15 deposited in a suspense fund and distributed as follows:

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

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

24 (3) third, that portion equal to the
25 delinquent taxes due shall be remitted by the department to the

1 appropriate county treasurer for distribution by the treasurer
2 to the governmental units in accordance with the law and the
3 ~~[regulations]~~ rules of the department of finance and
4 administration; and

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

13 B. If the collecting authority is a county, money
14 received by the county from the sale of real or personal
15 property for delinquent property taxes shall be distributed as
16 follows:

17 (1) first, that portion equal to the
18 delinquent taxes due shall be distributed by the county
19 treasurer to the governmental units to which they are due in
20 accordance with law and the rules of the department of finance
21 and administration;

22 (2) second, that portion, if any, owed to a
23 qualified private attorney under a contract entered into
24 pursuant to Section 7-38-62 NMSA 1978 shall be paid to that
25 attorney;

1 (3) third, that portion equal to the costs
2 incurred by the county, exclusive of any payment made pursuant
3 to payments to a qualified private attorney pursuant to this
4 subsection, and the penalties and interest due shall be
5 deposited in the general fund of the county; and

6 (4) the balance shall be paid to the former
7 owner of the property sold or to any other person designated by
8 order directed to the county by a court of competent
9 jurisdiction; provided that the county may first apply all or
10 any portion of the balance to be paid against the amount of any
11 property tax owed by the person to whom the balance would
12 otherwise be paid, including penalties or interest related to
13 the property on which the tax is due.

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

24 [~~E.~~] D. If no person claims the balance of sale
25 proceeds, whether the property was sold under the provisions of

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

8 D. If the balance of proceeds from the sale after
9 paying a higher priority claim under Subsection A or B of this
10 section is insufficient to pay all of the next priority claim,
11 then the complete balance shall be applied to that next
12 priority claim as partial payment."

13 SECTION 19. Section 7-38-72 NMSA 1978 (being Laws 1973,
14 Chapter 258, Section 112, as amended) is amended to read:

15 "7-38-72. NOTATION ON PROPERTY TAX SCHEDULE BY COUNTY
16 TREASURER WHEN PROPERTY SOLD FOR DELINQUENT TAXES.--When the
17 county treasurer receives written notification from the
18 ~~[division]~~ collecting authority of the sale of property for
19 delinquent taxes, ~~[he]~~ the county treasurer shall make an entry
20 on the property tax schedule indicating that the delinquent
21 property taxes, penalties and interest are no longer a lien
22 against the property."

23 SECTION 20. EFFECTIVE DATE.--The effective date of the
24 provisions of this act is July 1, 2012.