Bill to Revise Delinquent Property Tax Collection is a Lose-Lose

BY DONNA TRUEX AND GEMMA YPPARILA • OCTOBER 19, 2015

Massachusetts Senate Bill 1463 proposes to amend the laws governing the collection of delinquent taxes under M.G.L. c. 60, §§ 2C and 52. The bill proposes to significantly restrain the ability of municipalities to assign real estate tax liens ("tax titles") to private parties who are willing to invest the time and money to complete the foreclosure process. Proponents argue that the bill will help low-income constituents statewide. Jenifer McKim, *Proposed law aims to protect home owners from private tax lien sales*, New Eng. Center For Investigative Reporting, Jan. 28, 2015, http://necir.org/2015/01/28/tax-liens-follow-up/. Currently, the law provides that once property taxes become overdue, municipalities have the option to collect the delinquent taxes by either (a) selling the property by tax collector deed (subject to the right of redemption) under M.G.L. c. 60, §§ 37-45; or (b) executing and recording a tax taking in the name of the municipality under M.G.L. c. 60, §§ 53-57. Under the second option, once the tax taking is executed and recorded, the municipality may assign it to a third party under M.G.L. c. 60, § 2C or § 52. Both options require an open bidding process.

The bill, effectively, eliminates any incentive for private tax lien holders to purchase tax titles, which will substantially cut revenue critical to local municipalities. As proposed, an assignee of a tax title must wait one year before filing a complaint to foreclose, which process can take another six to twelve months and, once foreclosure is completed, to then hold the property for an additional year before it can be sold. After all of that, the foreclosing entity will be required to pay any surplus to the former owner. This lengthy and arduous process would effectively eliminate the incentive for private parties to assume the risk associated with tax title assignments. The bill affords no guidance as to who maintains the property in the interim, who is liable for subsequent property damage, or what happens if the prior owner cannot be located. Without the participation of private investors, municipalities will be deprived of the benefit of receiving immediate payment for delinquent taxes from private parties and be left to endure the long and costly foreclosure process themselves.

To require municipalities to keep tax titles in house is a costly endeavor and strains municipalities' coffers that are already depleted from taxes not being paid. As the tax lien system currently operates, municipalities are guaranteed to receive one hundred percent of the lien value. The assignment of liens efficiently funds the towns while shifting the costs and risk to third parties willing to take on the risk in exchange for the potential benefits. Under the current system, blighted and abandoned properties are quickly returned to the tax roles. Most tax titles are redeemed by the owners and where a foreclosure occurs, investors return the properties to productivity by repairing them and selling or renting them.

While some provisions of the bill could improve the tax collection process by helping property owners understand their rights, imposing greater constraints on municipalities and private tax lien assigns creates a disservice to the overall community by effectively cutting an important source of municipal revenue.