

SENATE, No. 1296

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED FEBRUARY 10, 2020

Sponsored by:

Senator SHIRLEY K. TURNER

District 15 (Hunterdon and Mercer)

SYNOPSIS

Enhances transparency, and accountability of online tax sales.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning online tax sales, supplementing P.L.2001,
2 c.160 (C.54:5-19.1), and amending various parts of the statutory
3 law.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. (New section) The Legislature finds and declares that:

9 a. Each of New Jersey's 565 municipalities is required to
10 conduct a sale at least once every year in an effort to recoup the
11 value of liens filed for delinquent property taxes and for unpaid fees
12 involving municipal services, such as water and sewer services and
13 garbage collection.

14 b. Tax sales involve the auction of tax liens. Tax lien auctions
15 have generated controversy in recent years because the interest rates
16 associated with liens from unpaid residential taxes and municipal
17 fees are sometimes exorbitant and unfairly burdensome. Moreover,
18 online tax sales authorized under a 2001 pilot program have been
19 criticized because they lack oversight, transparency, and
20 accountability and are therefore vulnerable to bid rigging and other
21 forms of manipulation.

22 c. Concerns over improprieties in the administration of tax lien
23 auctions—particularly with regard to online tax sales—prompted
24 the State of New Jersey Commission of Investigation ("SCI") to
25 investigate the integrity of the process.

26 d. SCI's investigation discovered that the Department of
27 Community Affairs never publicly sought any applications, issued
28 any requests for proposals, or sought any competitive bids to select
29 a vendor to conduct online tax sales. A lone vendor received State
30 approval to conduct online tax sales and the department's rules
31 allowed municipalities to contract with that vendor without being
32 subject to the public bidding requirements of the "Local Public
33 Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.). The
34 department approved the vendor, its partner, and subcontractors
35 without checking the firms' professional references and inquiring
36 into the firms' ownership structure.

37 e. Loose administration and oversight by the State, a lack of
38 competition, and limited monitoring and control over the fees
39 charged by the vendor has left local governments vulnerable to
40 unreasonable cost escalations and abuse.

41 f. SCI recommended significant reforms in order to ensure the
42 integrity of the online tax sale system and to safeguard the best
43 interests of the State, its local government units, and the taxpayers
44 at large.

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 2. (New section) a. Within 30 days of the effective date of
2 P.L. , c. (C.) (pending before the Legislature as this bill),
3 the Department of Community Affairs shall solicit proposals from
4 nationally recognized electronic municipal tax lien services in order
5 to create a list of qualified vendors from which municipalities may
6 select a vendor to conduct electronic tax lien sales pursuant to
7 section 1 of P.L.2001, c.160 (C.54:5-19.1). The department shall
8 select at least five nationally recognized electronic municipal tax
9 lien services to conduct electronic tax lien sales. The department
10 may periodically select additional nationally recognized electronic
11 municipal tax lien services to conduct electronic tax lien sales, in
12 accordance with this section, as the department determines to be
13 necessary or desirable.

14 b. The Department of Community Affairs shall solicit
15 quotations from nationally recognized electronic municipal tax lien
16 services in the following manner:

17 (1) A notice requesting quotations shall be published on the
18 Internet website of the department. In its request for quotations, the
19 department shall require vendors to demonstrate experience
20 providing some form of tax lien-related services within New Jersey
21 and nationwide experience in the electronic publication of tax lien
22 sale notices, electronic auctions, electronic payment for purchased
23 liens, and digital signature validation. Vendors shall have at least
24 20 days to respond to the department's request.

25 (2) Each interested vendor shall submit a quotation, which shall
26 include all the information required by the request for quotations.
27 Failure to meet the requirements of the request may result in the
28 department disqualifying the vendor from further consideration.

29 (3) Each interested vendor shall submit a statement of corporate
30 ownership pursuant to section 1 of P.L.1977, c.33 (C.52:25-24.2) at
31 the time specified by the department for the receipt of quotations.
32 If the department selects a vendor, then that vendor shall continue
33 to provide the department with updated corporate ownership
34 statements for as long as the vendor remains on the department's
35 qualified list of vendors established pursuant to this section.

36 (4) The department shall evaluate all quotations in accordance
37 with the methodology described in the request. After the
38 department has evaluated all quotations, the department shall
39 prepare a report evaluating and recommending a list of qualified
40 vendors suitable to conduct electronic tax lien sales pursuant to
41 section 1 of P.L.2001, c.160 (C.54:5-19.1). The report shall list the
42 names of all potential vendors with the requisite experience who
43 submitted a quotation and shall summarize the quotation and
44 corporate ownership of each vendor. The report shall rank vendors
45 in order of evaluation, shall select all qualified vendors, and shall be
46 clear in the reasons why the department selected the vendors. The
47 report shall be made available to each municipality in the State and
48 shall be published on the department's Internet website.

1 c. (1) Within 60 days of the effective date of P.L. ,
2 c. (C.) (pending before the Legislature as this bill), the
3 Director of the Division of Local Government Services in the
4 department shall release a Local Finance Notice providing guidance
5 to municipalities related to contracting with vendors to conduct
6 electronic tax lien sales, including, but not limited to, suggested
7 contract terms and durations, permissibility of assignment to
8 another vendor, fees, indemnification, warranties, disclosure of any
9 subcontractors, and language assuring that vendors and their
10 principals do not participate as bidders in tax lien sales conducted
11 by the vendor or any related entity.

12 (2) The director shall release, as the director deems appropriate,
13 Local Finance Notices providing recommendations related to
14 general bidding rules that should be enforced during actual online
15 tax sales, including, but not limited to, protocols to ensure only
16 legitimate bidders register; obtaining non-collusion affidavits that
17 are consistent with federal and State antitrust laws; prohibitions
18 against bidders actually or effectively bidding against themselves;
19 and the actual operation of the sale, such as the process for selecting
20 winners, sale duration, and whether bidding should be transparent
21 or blind.

22 d. The department shall adopt additional rules and regulations,
23 in accordance with the "Administrative Procedure Act," P.L.1968,
24 c.410 (C.52:14B-1 et seq.), as may be necessary to effectuate the
25 provisions of this section.
26

27 3. (New section) a. A municipality may, without advertising
28 for bids, contract with a vendor selected and approved by the
29 Department of Community Affairs pursuant to section 2 of P.L. ,
30 c. (C.) (pending before the Legislature as this bill) to conduct
31 electronic tax lien sales pursuant to section 1 of P.L.2001,
32 c.160 (C.54:5-19.1).

33 b. A municipality shall receive a statement of corporate or
34 partnership ownership pursuant to section 1 of P.L.1977,
35 c.33 (C.52:25-24.2) for each of the vendor's significant
36 subcontractors. For the purpose of this subsection, "significant
37 subcontractor" means an entity expected to receive 50 percent or
38 more of estimated contract revenue.
39

40 4. (New section) Within 90 days of the effective date of
41 P.L. , c. (C.) (pending before the Legislature as this bill), the
42 Director of the Division of Local Government Services in the
43 Department of Community Affairs, in consultation with the
44 Director of the Division of Taxation, shall report to the Governor
45 and the Legislature, pursuant to section 2 of P.L.1991,
46 c.164 (C.52:14-19.1), on the efficacy of online tax lien sales. The
47 report shall include:

1 a. an assessment of the pilot program established in subsection
2 c. of section 1 of P.L.2001, c.160 (C.54:5-19.1), including an
3 evaluation of the performance of any vendor receiving approval
4 from the department to conduct online tax sales under the pilot
5 program;

6 b. a determination of whether tax sales should be carried out at
7 the county level rather than the municipal level;

8 c. a determination of whether the State should adopt a
9 mandatory minimum amount for which delinquencies would lead to
10 a lien being sold at a tax sale; and

11 d. a determination of whether the State should adopt a
12 maximum tax delinquency interest rate indexed to prevailing market
13 rates.

14
15 5. Section 1 of P.L.2001, c.160 (C.54:5-19.1) is amended to
16 read as follows:

17 1. a. Any provision of law to the contrary notwithstanding, a
18 municipality may satisfy requirements of the "tax sale law,"
19 R.S.54:5-1 et seq., electronically through the use of any nationally
20 recognized electronic municipal tax lien service, including, but not
21 limited to, electronic publication of tax lien sale notices, electronic
22 auctions, electronic payment for purchased liens, digital signature
23 validation, or any other matters necessary for the conduct of
24 electronic tax lien sales in accordance with rules, regulations and
25 procedures promulgated by the Director of the Division of Local
26 Government Services in the Department of Community Affairs in
27 accordance with the "Administrative Procedure Act," P.L.1968,
28 c.410 (C.52:14B-1 et seq.).

29 b. Any tax sale notices required to be sent to a property owner
30 or lienholder shall continue to be made by mail pursuant to the "tax
31 sale law," R.S.54:5-1 et seq.

32 c. **【**The director may authorize "electronic tax lien sale" pilot
33 programs on a case-by-case basis upon application of individual
34 municipalities prior to the director's promulgation of rules,
35 regulations and procedures pursuant to subsection a. of this
36 section.**】** (Deleted by amendment, P.L. , c.) (pending before the
37 Legislature as this bill)
38 (cf: P.L.2001, c.160, s.1)

39
40 6. R.S.54:5-25 is amended to read as follows:

41 54:5-25. a. After completing the list or sections thereof the
42 collector shall give public notice of the time and **【place】** physical
43 or electronic location of sale, stating the description of the several
44 lots and parcels of land and the owner's name as contained in the
45 list, together with the total amount due thereon respectively as
46 computed to the date of tax sale and stating in substance that the
47 respective lands will be sold to make the amounts severally
48 chargeable against them on said date as computed in the list,

1 together with interest to the date of sale, and the costs of sale. No
2 other statements need be included in the notice.

3 b. After completing a sale, the collector shall notify the owner
4 that a lien on the owner's property has been sold. The notice shall
5 be provided with a description of how the owner can pay off any
6 outstanding debt and a clear disclosure of the consequences of the
7 tax lien sale, including any delinquency interest or other fees the
8 owner may incur.

9 (cf: P.L.1991, c.75, s.45)

10

11 7. R.S.54:5-28 is amended to read as follows:

12 54:5-28. At the time and **【place】** physical or electronic
13 location fixed for the sale and from time to time thereafter the
14 collector may adjourn the sale in his discretion, either for want of
15 bidders or at the request of persons interested, or for any other
16 reason satisfactory to him, from day to day or from week to week,
17 on making public announcement thereof, and noting the
18 adjournment on the list. Adjournments shall not be made for more
19 than eight weeks in all, after which new public notice shall be given
20 as hereinbefore provided if further sale is to be made.

21 (cf: R.S.54:5-28)

22

23 8. Section 1 of P.L.1962, c.161 (C.54:5-30.1) is amended to
24 read as follows:

25 1. Whenever the governing body of a municipality shall by
26 resolution determine that a particular parcel or parcels of real estate,
27 scheduled to be sold at public auction pursuant to the tax sale law,
28 would be useful for a public purpose, it may authorize and direct a
29 municipal official to attend the auction or participate electronically,
30 as applicable, and bid for such parcel or parcels at such sale on
31 behalf of the municipality in the same manner as any other bidder.

32 (cf: P.L.1962, c.161, s.1)

33

34 9. R.S.54:5-31 is amended to read as follows:

35 54:5-31. At the time and **【place】** physical or electronic
36 location specified in the notice of sale, or adjournment, the collector
37 shall sell at public auction each parcel of real property which has
38 been so advertised, upon which the municipal liens remain unpaid,
39 unless an error is found requiring readvertisement. The sale shall
40 be made for the amount for which the parcel was advertised, unless
41 that amount is found to be in excess of the correct amount, and then
42 for the correct amount together with the interest thereon unless such
43 interest has already been included in the notice of sale and the costs
44 of sale.

45 (cf: P.L.1991, c.75, s.46)

46

47 10. This act shall take effect immediately.

STATEMENT

This bill is in response to an investigative report issued by the State Commission of Investigation, dated June 30, 2015, concerning questionable contracting in online tax sales. Tax lien auctions have generated controversy in recent years because the interest rates associated with liens from unpaid residential taxes and municipal fees are exorbitant and unfairly burdensome. Concerns over improprieties in the administration of tax lien auctions—particularly with regard to online tax sales—prompted the State of New Jersey Commission of Investigation (“SCI”) to investigate the integrity of the process.

This bill would implement SCI’s recommendations in order to reform the online tax sale system. Under the bill, the Department of Community Affairs (“DCA”) would evaluate and select vendors to conduct electronic tax lien sales. The bill requires DCA to publish on its website a request for quotations from nationally recognized electronic municipal tax lien services. Vendors seeking selection would be required to disclose their corporate or other ownership and to submit other information required by DCA. After evaluating the quotations submitted by interested vendors, DCA would create a list of at least five qualified vendors from which municipalities may select a vendor to conduct online tax sales.

Under the bill, a municipality may, without advertising for bids, contract with a vendor selected and approved by the Department of Community Affairs pursuant to this bill to conduct electronic tax lien sales. To contract with a municipality, a vendor must provide the municipality with a corporate disclosure form for its significant subcontractors. The bill defines “significant subcontractor” as any entity expected to receive 50 percent or more of estimated contract revenue.

The bill also requires the Director of the Division of Local Government Services in the Department of Community Affairs, in consultation with the Director of the Division of Taxation to report to the Governor and the Legislature, within 90 days of the effective date, on the efficacy of online tax lien sales. The report must include:

- an assessment of the pilot program established in P.L.2001, c.160 (C.54:5-19.1), including an evaluation of the performance of the lone vendor receiving approval from the department to conduct online tax sales under the pilot program;
- a determination of whether tax sales should be carried out at the county level rather than the municipal level;
- a determination of whether the State should adopt a mandatory minimum for which delinquencies would lead to a lien being sold at a tax sale; and

1 • a determination of whether the State should adopt a
2 maximum tax delinquency interest rate indexed to prevailing
3 market rates.

4 The bill also requires tax collectors, after completing a tax lien
5 sale, to notify the property owner that the lien on the owner's
6 property has been sold. The notice would be provided with a
7 description of how the owner can pay off any outstanding debt and
8 a clear disclosure of the consequences of the tax lien sale, including
9 any delinquency interest or other fees the owner may incur.

10 Lastly, the bill facilitates the establishment of electronic tax sales
11 by eliminating the pilot program status of such sales.