

EHB 2361

THE STATE SENATE
Monday, April 10, 2006

ENGROSSED

House Bill No. 2361

ENGROSSED HOUSE BILL NO. 2361 - By: BANZ of the House and ALDRIDGE and GARRISON of the Senate.

An Act relating to county treasurers; amending 11 O.S. 2001, Section 22-111, which relates to the general powers of municipalities; providing a time limit for forwarding of certain statement to the county treasurer; amending 19 O.S. 2001, Section 682, as amended by Section 4, Chapter 232, O.S.L. 2002 (19 O.S. Supp. 2005, Section 682), which relates to county treasurers; increasing certain fee; amending 42 O.S. 2001, Section 180, as amended by Section 2, Chapter 409, O.S.L. 2003 (42 O.S. Supp. 2005, Section 180), which relate to the enforcement of liens; providing for certain notice to be mailed to a county treasurer and county assessor; amending 68 O.S. 2001, Sections 2913 and 2916, which relates to ad valorem taxes; modifying the monetary range of a certain tax owed and payable before certain date; authorizing the county treasurer an additional medium of receiving payment; amending 68 O.S. 2001, Sections 3108, as amended by Section 1, Chapter 177, O.S.L. 2004 and 3117 (68 O.S. Supp. 2005, Section 3108), which relate to collection of delinquent taxes; clarifying representation allowed for certain purchasers; reducing the statute of limitations for tax sale certificates; deleting certain exception; repealing 68 O.S. 2001, Section 3127.1, which relates to notice of resale of real property; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 11 O.S. 2001, Section 22-111, is amended to read as follows:

Section 22-111. A. A municipal governing body may cause property within the municipal limits to be cleaned of trash and

1 weeds or grass to be cut or mowed in accordance with the following
2 procedure:

3 1. At least ten (10) days' notice shall be given to the owner
4 of the property by mail at the address shown by the current year's
5 tax rolls in the county treasurer's office before the governing body
6 holds a hearing or takes action. The notice shall order the
7 property owner to clean the property of trash, or to cut or mow the
8 weeds or grass on the property, as appropriate, and the notice shall
9 further state that unless such work is performed within ten (10)
10 days of the date of the notice the work shall be done by the
11 municipality and a notice of lien shall be filed with the county
12 clerk against the property for the costs due and owing the
13 municipality. At the time of mailing of notice to the property
14 owner, the municipality shall obtain a receipt of mailing from the
15 postal service, which receipt shall indicate the date of mailing and
16 the name and address of the mailee. However, if the property owner
17 cannot be located within ten (10) days from the date of mailing by
18 the municipal governing body, notice may be given by posting a copy
19 of the notice on the property or by publication, as defined in
20 Section 1-102 of this title, one time not less than ten (10) days
21 prior to any hearing or action by the municipality. If a municipal
22 governing body anticipates summary abatement of a nuisance in
23 accordance with the provisions of subsection B of this section, the

1 notice, whether by mail, posting or publication, shall state: that
2 any accumulations of trash or excessive weed or grass growth on the
3 owner's property occurring within six (6) months from and after the
4 date of this notice may be summarily abated by the municipal
5 governing body; that the costs of such abatement shall be assessed
6 against the owner; and that a lien may be imposed on the property to
7 secure such payment, all without further prior notice to the
8 property owner;

9 2. The owner of the property may give written consent to the
10 municipality authorizing the removal of the trash or the mowing of
11 the weeds or grass. By giving written consent, the owner waives the
12 owner's right to a hearing by the municipality;

13 3. A hearing may be held by the municipal governing body to
14 determine whether the accumulation of trash or the growth of weeds
15 or grass has caused the property to become detrimental to the
16 health, benefit, and welfare of the public and the community or a
17 hazard to traffic, or creates a fire hazard to the danger of
18 property;

19 4. Upon a finding that the condition of the property
20 constitutes a detriment or hazard, and that the property would be
21 benefited by the removal of such conditions, the agents of the
22 municipality are granted the right of entry on the property for the
23 removal of trash, mowing of weeds or grass, and performance of the

1 necessary duties as a governmental function of the municipality.
2 Immediately following the cleaning or mowing of the property, the
3 municipal clerk shall file a notice of lien with the county clerk
4 describing the property and the work performed by the municipality,
5 and stating that the municipality claims a lien on the property for
6 the cleaning or mowing costs;

7 5. The governing body shall determine the actual cost of such
8 cleaning and mowing and any other expenses as may be necessary in
9 connection therewith, including the cost of notice and mailing. The
10 municipal clerk shall forward by mail to the property owner
11 specified in paragraph 1 of this subsection a statement of such
12 actual cost and demanding payment. If the cleaning and mowing are
13 done by the municipality, the cost to the property owner for the
14 cleaning and mowing shall not exceed the actual cost of the labor,
15 maintenance, and equipment required. If the cleaning and mowing are
16 done on a private contract basis, the contract shall be awarded to
17 the lowest and best bidder;

18 6. If payment is not made within thirty (30) days from the date
19 of the mailing of the statement, then within the next sixty (60)
20 days, the municipal clerk shall forward a certified statement of the
21 amount of the cost to the county treasurer of the county in which
22 the property is located and the same shall be levied on the property
23 and collected by the county treasurer as other taxes authorized by

1 law. Once certified by the county treasurer, payment may only be
2 made to the county treasurer except as otherwise provided for in
3 this section. Until fully paid, the cost and the interest thereon
4 shall be the personal obligation of the property owner from and
5 after the date the cost is certified to the county treasurer. In
6 addition the cost and the interest thereon shall be a lien against
7 the property from the date the cost is certified to the county
8 treasurer, coequal with the lien of ad valorem taxes and all other
9 taxes and special assessments and prior and superior to all other
10 titles and liens against the property, and the lien shall continue
11 until the cost shall be fully paid. At the time of collection the
12 county treasurer shall collect a fee of Five Dollars (\$5.00) for
13 each parcel of property. The fee shall be deposited to the credit
14 of the general fund of the county. If the county treasurer and the
15 municipality agree that the county treasurer is unable to collect
16 the assessment, the municipality may pursue a civil remedy for
17 collection of the amount owing and interest thereon by an action in
18 person against the property owner and an action in rem to foreclose
19 its lien against the property. A mineral interest, if severed from
20 the surface interest and not owned by the surface owner, shall not
21 be subject to any tax or judgment lien created pursuant to this
22 section. Upon receiving payment, if any, the municipal clerk shall

1 forward to the county treasurer a notice of such payment and
2 directing discharge of the lien; and

3 7. The municipality may designate by ordinance an
4 administrative officer or administrative body to carry out the
5 duties of the governing body in subsection A of this section. The
6 property owner shall have a right of appeal to the municipal
7 governing body from any order of the administrative officer or
8 administrative body. Such appeal shall be taken by filing written
9 notice of appeal with the municipal clerk within ten (10) days after
10 the administrative order is rendered.

11 B. If a notice is given by a municipal governing body to a
12 property owner ordering the property within the municipal limits to
13 be cleaned of trash and weeds or grass to be cut or mowed in
14 accordance with the procedures provided for in subsection A of this
15 section, any subsequent accumulations of trash or excessive weed or
16 grass growth on the property occurring within a six-month period may
17 be declared to be a nuisance and may be summarily abated without
18 further prior notice to the property owner. At the time of each
19 such summary abatement the municipality shall notify the property
20 owner of the abatement and the costs thereof. The notice shall
21 state that the property owner may request a hearing within ten (10)
22 days after the date of mailing the notice. The notice and hearing
23 shall be as provided for in subsection A of this section. Unless

1 otherwise determined at the hearing the cost of such abatement shall
2 be determined and collected as provided for in paragraphs 5 and 6 of
3 subsection A of this section. This subsection shall not apply if
4 the records of the county clerk show that the property was
5 transferred after notice was given pursuant to subsection A of this
6 section.

7 C. The municipal governing body may enact ordinances to
8 prohibit owners of property or persons otherwise in possession or
9 control located within the municipal limits from allowing trash to
10 accumulate, or weeds to grow or stand upon the premises and may
11 impose penalties for violation of said ordinances.

12 D. As used in this section:

13 1. "Weed" includes but is not limited to poison ivy, poison
14 oak, or poison sumac and all vegetation at any state of maturity
15 which:

16 a. exceeds twelve (12) inches in height, except healthy
17 trees, shrubs, or produce for human consumption grown
18 in a tended and cultivated garden unless such trees
19 and shrubbery by their density or location constitute
20 a detriment to the health, benefit and welfare of the
21 public and community or a hazard to traffic or create
22 a fire hazard to the property or otherwise interfere
23 with the mowing of said weeds;

- 1 b. regardless of height, harbors, conceals, or invites
- 2 deposits or accumulation of refuse or trash;
- 3 c. harbors rodents or vermin;
- 4 d. gives off unpleasant or noxious odors;
- 5 e. constitutes a fire or traffic hazard; or
- 6 f. is dead or diseased.

7 The term "weed" shall not include tended crops on land zoned for
8 agricultural use which are planted more than one hundred fifty (150)
9 feet from a parcel zoned for other than agricultural use.

10 2. "Trash" means any refuse, litter, ashes, leaves, debris,
11 paper, combustible materials, rubbish, offal, or waste, or matter of
12 any kind or form which is uncared for, discarded, or abandoned.

13 3. "Owner" means the owner of record as shown by the most
14 current tax rolls of the county treasurer.

15 4. "Cleaning" means the removal of trash from property.

16 E. The provisions of this section shall not apply to any
17 property zoned and used for agricultural purposes or to railroad
18 property under the jurisdiction of the Oklahoma Corporation
19 Commission. However, a municipal governing body may cause the
20 removal of weeds or trash from property zoned and used for
21 agricultural purposes pursuant to the provisions of this section but
22 only if such weeds or trash pose a hazard to traffic and are located

1 in, or within ten (10) yards of, the public right-of-way at
2 intersections.

3 SECTION 2. AMENDATORY 19 O.S. 2001, Section 682, as
4 amended by Section 4, Chapter 232, O.S.L. 2002 (19 O.S. Supp. 2005,
5 Section 682), is amended to read as follows:

6 Section 682. It shall be the duty of each and every county
7 officer, county board, county commission and all members and
8 employees of either thereof, to deposit daily in the official
9 depository designated in Section 681 of this title, all monies,
10 checks, drafts, orders, vouchers, funds, rentals, penalties, costs,
11 proceeds of sale of property, fees, fines, forfeitures and public
12 charges of every kind received or collected by virtue or under color
13 of office, except that each county officer, county board, and county
14 commission is hereby authorized to keep in the office, from this
15 deposit, no more than One Thousand Five Hundred Dollars (\$1,500.00)
16 to be used for their change needs. The amount so retained shall not
17 be cumulative so that after each such deposit there shall not be on
18 hand more than authorized by this section. A notation of the
19 retention of this money shall be made in the proper accounting
20 records. All checks, drafts, orders and vouchers so deposited shall
21 be credited and cleared at par, and should payment be refused on any
22 check, draft, order or voucher, should the same prove otherwise
23 worthless, the amount thereof and any costs accruing thereon shall

1 be a charge against the account theretofore credited with the same.
2 Each county officer is hereby authorized to assess and collect a fee
3 of ~~Twenty Dollars (\$20.00)~~ Thirty-five Dollars (\$35.00) for each
4 worthless check, draft, order or voucher. All monies when so
5 received by the county treasurer, as such official depository, shall
6 be deposited in interest-bearing accounts in financial institutions
7 designated and qualified as county depositories as now provided by
8 law and shall draw interest, subject to deduction of financial
9 institution charges for maintaining, processing and collateralizing
10 the account, at a rate of not less than three percent (3%) per annum
11 on average daily balances, which interest shall be paid monthly;
12 and, when collected, shall be credited to the respective funds and
13 accounts so earning the same; provided, that all interest collected
14 on monies deposited pursuant to the provisions hereof shall be paid
15 into the county treasury monthly by the authority to whose financial
16 institution account the same shall have accrued and shall be
17 credited to the general or contingent fund of the county, except
18 that in civil cases all interest earned on funds, other than court
19 costs, deposited in court by litigants shall, when so ordered by the
20 court upon deposit, be disposed of as the court orders. This
21 provision shall only apply to such deposit in excess of One Thousand
22 Dollars (\$1,000.00).

1 SECTION 3. AMENDATORY 42 O.S. 2001, Section 180, as
2 amended by Section 2, Chapter 409, O.S.L. 2003 (42 O.S. Supp. 2005,
3 Section 180), is amended to read as follows:

4 Section 180. A. The owner of real property upon which a
5 manufactured home is located shall have a possessory lien to secure
6 accrued storage or rental charges pursuant to a contract with the
7 owner of the real property and the consumer.

8 B. Except as provided in this section, any lien or charge
9 against a manufactured home for accrued storage or rental charges on
10 the manufactured home upon the real property on which the
11 manufactured home is or has been located is subordinate to the
12 rights of a creditor with a perfected security interest or lien
13 which is recorded on the document of title issued on the
14 manufactured home.

15 C. The maximum storage charge which is not subordinated, and
16 which is secured by the possessory lien, is a daily rate equal to
17 one-thirtieth (1/30) of the amount of the monthly payment last paid
18 by the consumer, or if no payment has been made, the payment
19 required pursuant to contract between the owner of the real property
20 and the consumer, beginning on the date determined by this
21 subsection, not to exceed thirty (30) days.

22 D. That portion of the possessory lien of the owner of the real
23 property occurring after notice under this section shall have

1 priority over a creditor with a perfected security interest fifteen
2 (15) days from and after the date the owner of the real property or
3 his agent shall have given the secured creditor notice that the
4 manufactured home is abandoned or voluntarily surrendered by the
5 consumer.

6 E. For the purposes of this section, a consumer abandons or
7 voluntarily surrenders a manufactured home by:

8 1. The owner of the real property discovering or being notified
9 of the intention to abandon or surrender; or

10 2. Failure to pay storage or rental charges when due.

11 F. Notice required by this section shall be mailed by certified
12 mail, return receipt requested to the secured creditor of record on
13 the document of title and to the mailing address listed therein.
14 Notice by mail shall be effective on the date mailed. Additionally,
15 notice shall also be mailed to the county treasurer and county
16 assessor of the county where the manufactured home is located.

17 G. Unless the owner of the real property has a possessory lien
18 which has priority pursuant to this section, it shall be unlawful
19 for the owner of the real property to refuse to allow the creditor
20 to repossess and move the manufactured home. In the event that the
21 owner of the real property refuses to allow the creditor to
22 repossess and move the home, then the owner of the real property
23 shall be liable to the creditor for each day that the owner of the

1 real property unlawfully maintains possession of the home, at a
2 daily rate equal to one-thirtieth (1/30) of the monthly payment last
3 paid by the consumer, or if no payment has been made, the payment
4 required pursuant to the contract between the secured creditor and
5 the consumer. The prevailing party shall be entitled to reasonable
6 attorneys fees and costs.

7 H. The owner of the real property, pursuant to a possessory
8 lien which has priority pursuant to this section, is entitled to
9 recover the storage charges as set forth in this section. If the
10 owner of the real property is required to retain legal counsel to
11 recover the amounts subject to the possessory lien, such owner is
12 entitled to recover reasonable attorneys fees and court costs
13 incurred.

14 I. Upon receipt of notice of bankruptcy, the secured creditor
15 shall, within five (5) days after receipt thereof, notify the owner
16 of the real estate by certified mail, return receipt requested, of
17 said bankruptcy. Failure of the secured creditor to notify said
18 owner of the real estate will cause said creditor to be held liable
19 for any storage charges not paid by the trustee in bankruptcy.

20 SECTION 4. AMENDATORY 68 O.S. 2001, Section 2913, is
21 amended to read as follows:

22 Section 2913. A. All taxes levied upon an ad valorem basis for
23 each fiscal year shall become due and payable on the first day of

1 November. Except for mortgage servicers, the exclusive method for
2 payment shall be as follows:

3 1. Unless one-half (1/2) of the taxes so levied has been paid
4 before the first day of January, the entire tax levy for such fiscal
5 year shall become delinquent on that date.

6 2. If the first half of the taxes levied upon an ad valorem
7 basis for any such fiscal year has been paid before the first day of
8 January, the second half shall be paid before the first day of April
9 thereafter and if not paid shall become delinquent on that date.
10 In no event may payment be made in more than two equal installments
11 subject to the provisions of the payment schedule specified in this
12 subsection.

13 B. Mortgage servicers, as defined in 24 C.F.R., part 3500.17,
14 shall pay all accounts which they are servicing in one annual
15 payment before the first day of January or the entire tax levy for
16 such fiscal year shall become delinquent on that date.

17 C. If the total tax owed is ~~Ten Dollars (\$10.00)~~ Twenty-five
18 Dollars (\$25.00) or less, then the total amount must be paid before
19 January 1. If the total tax is not paid before January 1, the
20 unpaid balance owing shall become delinquent on the first day of
21 January and shall be subject to delinquent charges as provided for
22 in this section.

1 D. All delinquent taxes shall bear interest at the rate of one
2 and one-half percent (1 1/2%) per month or major fraction thereof
3 until paid. In no event shall such interest exceed a sum equal to
4 the unpaid principal amount of tax, and when such interest has
5 accumulated to a sum equivalent to one hundred percent (100%) of the
6 unpaid tax the further accumulation of interest shall cease.

7 E. The county treasurer shall stamp the date of receipt on each
8 letter received containing funds for payment of taxes and no
9 interest shall be added or charged after the receipt of such letter
10 or the amount due. It shall be the duty of every person subject to
11 taxation according to the law to attend the county treasurer's
12 office and pay his or her taxes. If any person neglects to pay his
13 or her taxes until after they have become delinquent, the county
14 treasurer is directed and required to collect the delinquent tax as
15 provided for by law. The first half of taxes payable pursuant to
16 the provisions of this section shall not become delinquent until
17 thirty (30) days after the tax rolls have become completed and filed
18 by the county assessor with the county treasurer.

19 F. The county treasurer may waive penalties or interest in any
20 case where it is shown to the county treasurer that such penalties
21 or interest were incurred through no fault of the taxpayer. Each
22 waiver of penalties or interest shall be audited by the Office of

1 the State Auditor and Inspector each year during the annual audit of
2 the county offices.

3 SECTION 5. AMENDATORY 68 O.S. 2001, Section 2916, is
4 amended to read as follows:

5 Section 2916. All state, county, school district, city, town,
6 or other taxes shall be paid to the county treasurer, either in
7 lawful currency, or by check or draft upon a bank therein stated, or
8 by post office or express order, or at the option of the county
9 treasurer, by a nationally recognized credit or debit card as
10 determined acceptable by the Oklahoma Tax Commission. If payment is
11 made by a credit or debit card, the county treasurer may add an
12 amount equal to the amount of the service charge incurred for the
13 acceptance of such card. County treasurers may enter into contracts
14 for credit card processing services according to applicable county
15 purchasing law or may enter into agreements with the State Treasurer
16 to participate in any credit card processing agreements entered into
17 by the State Treasurer. It shall be unlawful for any county
18 treasurer to receive in payment of any taxes to be collected, any
19 state, county, school district, city or town warrants. No county
20 treasurer shall be required to execute a tax receipt for any taxes
21 except those paid in lawful money, until the check, draft, post
22 office or express order has been actually paid, and in case any such
23 check, draft, post office or express order should prove to be

1 worthless, it shall not operate as a payment of the tax for the
2 payment of which it was given, and any tax receipt or other receipt
3 given therefor shall be illegal and void. Further, the county
4 treasurer has the option of requiring cash as the method of payment
5 if the taxpayer has previously issued bad or hot checks.

6 SECTION 6. AMENDATORY 68 O.S. 2001, Section 3108, as
7 amended by Section 1, Chapter 177, O.S.L. 2004 (68 O.S. Supp. 2005,
8 Section 3108), is amended to read as follows:

9 Section 3108. The first person who offers to pay the full
10 amount due on any parcel of land shall be considered to be the
11 successful purchaser. Any person offering to pay the full amount
12 due shall only represent one person or legal entity at the sale.
13 Brokers or agents representing or submitting bids for multiple
14 parties or entities shall not be allowed. In the event that more
15 than one such person shall so appear at the same time the county
16 treasurer shall decide the issue by fair and impartial drawing.
17 Parcels of land shall be sold to prospective purchasers on a first-
18 come, first-served basis. The county treasurer is hereby authorized
19 at all tax sales made under the laws of this state, in case there
20 are no other purchasers offering the amount due, to purchase all or
21 any real estate offered at the sale for the amount of taxes,
22 penalty, interest and costs due and unpaid thereon, in the name of
23 the county in which the sale takes place, the county acquiring all

1 the rights both legal and equitable that any other purchaser could
2 acquire by reason of the purchase. Whenever the county treasurer of
3 any county shall purchase any real estate in the name of the county,
4 the county treasurer shall note the purchase upon the sale record
5 and show the same in the return of sale.

6 SECTION 7. AMENDATORY 68 O.S. 2001, Section 3117, is
7 amended to read as follows:

8 Section 3117. (a) A statute of limitation of ~~seven (7)~~ three
9 (3) years is hereby fixed for tax sale certificates. No firm,
10 association, corporation or individual holding a tax sale
11 certificate shall be entitled to have a tax deed issued thereon
12 after ~~seven (7)~~ three (3) years shall have elapsed from the date of
13 the issuance of said tax sale certificate. In such cases the right
14 to such deed shall be barred by the lapse of said ~~seven-year~~ three-
15 year period ~~unless he has kept the taxes for all subsequent years~~
16 ~~endorsed thereon~~. The county treasurer of said county is directed
17 to make the proper entry on the tax rolls and sale records of said
18 county showing that said certificate has been canceled, and the
19 county clerk of said county is directed to make the proper entry on
20 his sales record showing that said certificate has been canceled.

21 (b) When a person entitled to redeem from a tax sale as
22 evidenced by a tax sale certificate held by a firm, association,
23 corporation or individual, pays sufficient money to the county

1 treasurer to redeem said property from said tax sale, the holder of
2 said tax certificate shall not be entitled to recover or receive
3 said redemption money unless the tax sale certificate shall be
4 presented and surrendered to the county treasurer within ~~seven (7)~~
5 three (3) years from the date such redemption money is paid to the
6 county treasurer. After the expiration of said ~~seven-year~~ three-
7 year period, said redemption money shall be credited by the county
8 treasurer to the general fund of the county, and he shall mark his
9 records accordingly.

10 SECTION 8. REPEALER 68 O.S. 2001, Section 3127.1, is
11 hereby repealed.

12 SECTION 9. This act shall become effective July 1, 2006.

13 SECTION 10. It being immediately necessary for the preservation
14 of the public peace, health and safety, an emergency is hereby
15 declared to exist, by reason whereof this act shall take effect and
16 be in full force from and after its passage and approval.

17 COMMITTEE REPORT BY: COMMITTEE ON GENERAL GOVERNMENT, dated 4-3-06 -
18 DO PASS, As Coauthored.