F I S C A L   I M P A C T   R E P O R T

		ORIGINAL DATE	01/16/14		
SPONSOR	Martinez, R	**LAST UPDATED**	02/01/14	**HB**	89
SHORT TITLE	Delinquent Property Taxes To County Treasurer			**SB**	
				ANALYST	Graeser

REVENUE (dollars in thousands)

Estimated Revenue			**Recurring or Nonrecurring**	**Fund Affected**
FY14	**FY15**	**FY16**		
	***	***	Recurring	TRD Operating
	***	***	Recurring	County Treasurers

(Parenthesis ( ) Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	**FY15**	**FY16**	**3 Year Total Cost**	**Recurring or Nonrecurring**	**Fund Affected**
Total		***	***			

(Parenthesis ( ) Indicate Expenditure Decreases)

*** Some portion of the $3.4 million operating budget of the Property Tax Division of Taxation and Revenue Department (TRD/PTD) may be compromised. See “Fiscal Issues” below for an analysis.

SOURCES OF INFORMATION
LFC Files

Responses Received From

SUMMARY

Synopsis of Bill

House Bill 89 “clarifies” that payment of delinquent taxes, penalties and interest for a property for which taxes are delinquent for two years or less may be retained by the county treasurer. The perpetual delinquency list under current statute would report only taxes delinquent for more than two years. The bill also provides that payment of delinquent property taxes should be made directly to each county treasurer who will act as fiscal agent on behalf of TRD/PTD, which agency is entitled to the interest and penalties imposed for the preparation of property for delinquent property sale.

FISCAL IMPLICATIONS

This bill does not alter the ultimate treatment of payments for delinquent property taxes, interest, penalties, but may deny TRD/PTD the fees it currently earns from filing liens, researching titles and preparing the delinquent property sales. In addition, the bill may change the treatment of partial payments of property taxes. Under current practice (and statute – 7-38-71 NMSA 1978), TRD/PTD is authorized to recover costs earned first against redemption payments, then penalty, then interest, then underlying property taxes which would be paid to County Treasurers from property sales or redemption payments. If a property is sold for more than the amount of the taxes, interest, penalties and costs, any excess is remitted to the owner of the property. It is also not clear if the County Treasurers have the statutory or regulatory authority to negotiate installment payments for property tax delinquencies, although the regulations were changed in January 2013 to permit County Treasurers to accept partial payments of property taxes due. There is a concern that the bill could allow County Treasurers the ability to hold properties from sale in perpetuity, if a property owner made a small payment each year.

It is not absolutely clear pursuant to the provisions of the bill if TRD/PTD is entitled to costs it earns from researching titles and preparing delinquent properties for sale, when the payment of the delinquent taxes plus interest and penalties is made to the County Treasurer. If TRD/PTD is not entitled to these fees, then the fiscal impact could be significant.

In recent years, the collections of delinquent base taxes have grown from $6.0 million to over $13.0 million returned to the counties annually. This has provided a source of unbudgeted revenue for the counties and fully funded the $3.4 million operating budget of the Property Tax Division. What portion of the $3.4 million in interest, penalties and fees would be affected by the bill's provisions is uncertain. Under the best of circumstances, there could be a slight increase in amounts of interest, penalties and fees transferred to TRD/PTD attributable to County Treasurer's collection of taxes, interest, penalties and costs as fiscal agent for TRD/PTD. Under the worst of circumstances, there could be a substantial decline in interest, penalties and fees collected by the County Treasurers and transmitted to TRD/PTD.

SIGNIFICANT ISSUES

The title of this bill may mask some profound changes. It converts the delinquency list to an annual list, allowing delinquent accounts, perhaps, to persist in perpetuity. The bill permanently appoints County Treasurers as fiscal agents for TRD/PTD**,** whether the Treasurers discharge this duty well or poorly or whether these Treasurers conform to statute and regulation or do not.

The bill construes the delinquency process in narrow terms using only the provisions of 7-38-61 NMSA 1978 and not the more expansive provisions of 7-38-62 through 7-38-73 and associated DFA regulations. For example, 7-38-71 NMSA 1978 provides the order of disbursement of taxes, penalties, interest and costs associated with property sales.

> 7-38-71. Distribution of amounts received from sale of property. (1995)
>
> A. Money received by the department from the sale of real or personal property for delinquent property taxes shall be deposited in a suspense fund and distributed as follows:
>
> (1) first, that portion equal to the costs shall be retained by the department for use, subject to appropriation by the legislature, in administration of the Property Tax Code

(2) second, that portion equal to the penalties and interest due shall be retained by the department for use, subject to appropriation by the legislature, by the department in administration of the Property Tax Code;
(3) third, that portion equal to the delinquent taxes due shall be remitted by the department to the appropriate county treasurer for distribution by the treasurer to the governmental units in accordance with the law and the regulations of the department of finance and administration; and
(4) the balance shall be paid to the former owner of the property sold or to any other person designated by order directed to the department by a court of competent jurisdiction, provided that the department may first apply all or any portion of the balance to be paid against the amount of any property tax, including any penalty and interest related thereto, owed by the person to whom the balance would otherwise be paid.

Since the bill does not amend 7-38-71 NMSA 1978, it is not clear if the order of disbursement of partial or full payment to the County Treasurer's would be maintained or, if TRD/PTD costs are not collected by the County Treasurers, whether the TRD/PTD would be entitled to be paid for the costs incurred in filing liens, researching titles and preparing property for sale.

Currently, statute provides that once a delinquency list is prepared by the County and submitted to the Department, subsequent action is completely controlled by the Department. If a payment of delinquent taxes, interest penalties or fees is made before a property is sold at delinquent property sale, then that payment is made to TRD and the interest, penalty and costs are retained by the Department. The underlying taxes, including the proceeds of a delinquent property sale, are remitted to the Counties. Under the provisions of the bill, a delinquent taxpayer may make payment of taxes, interest, penalties and fees to the County treasurer at any time until the property is sold (and some period of time after sale). Under the revised procedures, any payments of delinquent taxes, interest, penalties and costs that are remitted to the County Treasurer will be retained by the Treasurer if the delinquency is less than two-years old – even if a delinquency list has been prepared and submitted to TRD. The County treasurer will transfer monthly any interest, penalties or costs for delinquencies more than two-years old. Nominally, this is an NFI, but may also resolve a problem under which TRD has retained the interest, penalties and fees collected on properties less than two-years delinquent for which TRD has expended efforts in preparing for a property sale.

EFFECTIVE DATE

July 1, 2014

TECHNICAL ISSUES

It is not absolutely clear if TRD/PTD is entitled to costs it earns from researching titles and preparing delinquent properties for sale, when the payment of the delinquent taxes plus interest and penalties is made to the County Treasurer. If TRD/PTD is not entitled to these fees, then the fiscal impact could be significant. Fairness argues that a self-financed agency, such as TRD/PTD would be entitled to the fees it earns for doing its job. The taxpayer would not pay these fees directly, but the fees could be taken out of the beneficiary's share prior to disbursement of the funds. LFC recommends amending Sections 7-38-63 through 7-38-72 to make this entitlement clear.

LG/jl:ds