

**Kevin M. O’Toole, Esq.**  
**Testimony on H. 629**  
**Scheduled for February 27, 2024**

My name is Kevin O’Toole. I am an attorney and resident of Dorset, Vermont. Since 1988, I have helped delinquent tax collectors conduct tax sales in Andover, Arlington, Danby, Dorset, Hartford, Hartland, Ira, Jamaica, Landgrove, Londonderry, Middletown Springs, Mount Holly, Mount Tabor, North Bennington, Pawlet, Peru, Readsboro, Rupert, Sandgate, Searsburg, Shaftsbury, Stamford, Sunderland, Tinmouth, Wallingford, Wells, Weston, Winhall, and Woodford, Vermont.

Tax sales should be viewed by tax collectors as a last resort to enforce a statutory mandate to collect amounts owed to the municipality by individuals and entities. When conducted in accordance with the requirements of 32 V.S.A. §§5251 *et seq.*, and in keeping with a consistent, public policy for collection of taxes, scheduled tax sales can reinforce the public’s confidence that every property owner will be required to meet his or her financial obligation. When the public knows that the tax collector means business, the amount of delinquencies diminishes and the need to conduct actual tax sales becomes less and less frequent.

H.629, as proposed, significantly changes how municipal tax sales are conducted in Vermont, if sales actually continue to be conducted. My testimony will be from a practical standpoint as someone who has been in the trenches.

Set forth below are my comments on the draft issued on 2/20/2024 at 8:45 a.m.

**§5252(a) [Page 6, Line 9]**

A fair collection policy allows for some individual setbacks, but does not permit delinquents to get in too deep. On its face, the one-year threshold is a good compromise. Legally, the existing minimum threshold is sixty days. Most of the municipalities that I represent do not initiate tax sale proceedings unless the taxpayer is delinquent for at least one year for at least one fiscal period.

Turning to the proposed language changes to Section 5252, even the compromise of one year raises an issue that is easily fixed.

In, say, the Town of Dorset, property taxes become due in equal installments on or about September 10<sup>th</sup> and on or about March 10<sup>th</sup>. Let us say that the taxpayer is delinquent for taxes for the fiscal year beginning July 1, 2022. A tax sale normally would not be scheduled to occur until June of 2024 so that the tax sale would be for the 2022-2023 fiscal year and also for the 2023-

2024 fiscal year, which taxes become delinquent as of March 11, 2024. Otherwise, at the end of the one-year redemption period, the high bidder, if there is no redemption, would receive a Tax Deed, as well as two years of delinquent tax bills instead of just one. If it is to be “one year,” I would suggest a change in the language to:

“When the collector of taxes of a town or municipality within it has for collection a tax assessed against real estate in the town and the taxpayer is delinquent for a period longer than one year, the collector may extend a warrant on such land for all then delinquent taxes.”

As a practical matter, no bidder wants to be met with more than one delinquent tax bill when receiving title and no taxpayer that redeems wants to know that not only are they on the hook for the taxes that became delinquent during the redemption period, but for taxes that became delinquent before the tax sale as well.

#### **§5252(a) [Page 6, Lines 10 - 12] & §5252 ( c )**

This provision requires that before initiating tax sale proceedings, the municipality must offer a delinquent taxpayer a “reasonable repayment plan” and give the taxpayer at least 30 days to respond. In Section 5252( c )(1)(E), the plan, among other things, must consider “the taxpayer’s reason for the delinquency.” This is misguided because how does the municipality know the taxpayer’s personal situation? The notice of tax sale should trigger a response from the taxpayer, who may or may not choose to share information with the municipality.

Moreover, the taxpayer can petition for relief before the Town’s Board of Abatement, who are assigned this responsibility. (Suspending interest when scheduled for an abatement hearing is a mistake, too. If afforded relief, the Board can abate interim interest as well. (To suspend interest in any event rewards requests for abatement filed simply to stop the clock from ticking.)

As a practical matter, it is my practice to send out a thirty-day final demand letter to taxpayers by First Class Mail. It filters out misunderstandings about new owners and affords taxpayers a final chance to work things out without incurring additional fees such as publication costs and attorney’s fees. This is when payment plans, which must somehow get the taxpayer out from under within one or two years, are worked out. Not everyone, however, deserves an installment payment plan. Too, the Town may have to borrow because others are being afforded more time to pay their tax obligation.

In prior testimony before the House Ways and Means Committee, Ted Brady from the Vermont League of Cities and Towns expressed that his organization would not object to this requirement, so long as the phrase “reasonable” was deleted.

## §5252(a)(3) & (4)

This provision would extend the notification period by certified mail to a taxpayer from 10 to 20 days to 30 days. While this would be cumbersome, it would simply force the Collector to schedule the tax sale further out. Section 4, however, leaves the period for mortgagees and lien holders intact. If one provision is changed, the other should be changed as well.

What is objectionable is in the case of a delinquent taxpayer whose last known address is in Vermont, requiring one attempt at personal service if the certified mailing is returned unclaimed, and if that personal service attempt fails, requiring the Collector to “affix the notice to the exterior door of the delinquent taxpayer’s last known address.” What if the property is unimproved land or the last known address in Vermont is a Post Office Box? There is no exterior door to which a notice can be affixed. Moreover, the costs of service will be added to the delinquent taxpayer’s tab under §5258.

The underlined language that appears in Lines 14 - 19 should be deleted.

In *Jones v. Flowers*, 547 U.S. 220 (2006), the United States Supreme Court, citing the Due Process Clause of the Fourteenth Amendment, overturned an Arkansas tax sale in which a certified letter was returned “unclaimed.” Writing for the majority, Chief Justice Roberts noted that if the notice of sale had been also sent via First Class Mail, the process would have passed constitutional muster, as the municipality was only required to take steps reasonably calculated to provide notice, even if actual notice was not obtained.

In *Hogaboom v. Jenkins v. Town of Milton*, 2014 Vt. 11 (filed February 21, 2014), the Vermont Supreme Court affirmed a decision by the trial court, voiding a tax sale of property in Milton, Vermont. In doing so, it echoed the holding in *Jones v. Flowers*. In *Hogaboom*, notice by certified mail was returned unclaimed almost two weeks prior to the tax sale. No notice of the sale was provided by First Class Mail, although after the sale, a notice was mailed to the taxpayer, informing the taxpayer of the one-year redemption period. The Court concluded that “once notice of a tax sale is returned unclaimed, a town must take additional steps to apprise the taxpayer of the impending tax sale before the sale occurs. This notice must be more than a “mere gesture” and must be reasonably calculated to provide the taxpayer notice of the impending sale.” The Court, citing *Jones v. Flowers*, identified re-sending the notice by regular mail as one such reasonable step.

On May 2, 2018, Governor Scott signed into law H.300, which became effective as of July 1, 2018. Among other things, it essentially codified the Vermont Supreme Court’s requirements in *Hogaboom*.

Many municipalities simply do not have the resources to retain process servers in other states in order to initiate tax sale proceedings. When the property involves a building, people generally can be tracked down. When it is just land, it becomes much more difficult. People move and do not always, as they should, let the municipality know of a forwarding address. The recording of the notice in the land records and publication in the local newspaper provide other ways for the taxpayer to learn of the sale. Several times, I have encountered taxpayers who first learned of a pending tax sale from a neighbor who read about it in the newspaper.

**§5260(a) [Page 12, Line 14]**

Interest during the redemption period currently is one percent per month or fraction thereof. It should remain so. This draft would change that to a calculation of one-half percent per month, period. Bidders, who relieve municipalities of immediate tax burdens, need an incentive to bid. In most instances, interest is all bidders receive. A bid at a tax sale carries a great deal of risk. If the taxpayer files for bankruptcy, the bid might remain stuck in court proceedings for up to five years. A certificate of deposit now yields about four and one-half percent interest. Moreover, the current interest rate provides delinquent taxpayers with an incentive to redeem at their earliest opportunity.

Most towns charge an interest rate of at least one percent per month, and many charge one percent per month for the first three months and then charge one and one-half percent each subsequent month. What is the justification for charging a lesser interest rate to taxpayers in the redemption period following a tax sale and a full one to one and one-half percent per month for taxpayers who are delinquent but have properties that have not gone to tax sale?

Even eliminating the language “or fraction thereof” causes unintended mischief. Using that language, I tell bidders, taxpayers, mortgagees and lien holders that to redeem, what must be paid is the purchase price, plus 12% interest on the purchase price, divided by the per diem rate, multiplied by the number of days from date of sale to date of redemption. Deleting the language “or fraction thereof” denies the Collector the right to charge the redeeming taxpayer less than one percent per month.

**§5260(a) [Page 12, Lines 10 & 17]**

This language should be revised to read “owner’s or mortgagees or lien holder’s. . .” §5252(4) [see Page 8, Line 20] requires that the Collector give the “mortgagee or lien holder of record” written notice, but for whatever reason, the reference to the lien holder was dropped in §5260. The reference to the lien holder of record should be added back.

**§5260(a) [Page 13, Lines 11 - 15]**

The underlined language set forth on Lines 11 - 12 on Page 13 should be deleted.

This provision requires specific wording to be contained in a 90-day notice during the redemption period “with every notice required under this section.” One such notice is in posting the notice in some public place in the municipality. While sending this notice directly to the taxpayer makes sense, posting it does not. The language of the notice is geared to the taxpayer and the taxpayer alone. Posting such a notice is the equivalent of putting the delinquent taxpayer in the public stocks.

**Section 7 [Page 15, Lines 11 - 14]**

The underlined language in Lines 11-14 should be deleted. This language in Section 7 presupposes that a goal of the new working group would establish a process to recoup equity for taxpayers whose properties have been conveyed to third party purchasers after the expiration of the redemption period.

First, be aware that after the one-year redemption period has expired, if the Town is the purchaser, any excess proceeds must be returned to the taxpayer. *See Bogie v. Town of Barnet*, 129 Vt. 46 (1970). The Vermont Supreme Court’s decision in *Bogie* was confirmed by the United States Supreme Court in *Tyler v. Hennepin County, Minnesota, et al*, 598 U.S. \_\_\_\_\_ (May 25, 2023). In a unanimous decision, the Court found that retaining the excess proceeds from a tax sale conducted by Hennepin County, Minnesota violated the Takings Clause of the United States Constitution.

So this provision only affects the private purchaser. It removes much of the incentive for bidders to bid: getting a good deal. Without private bidders, towns will accumulate more and more properties, properties the towns do not want. If private bidders are allowed a profit, they may renovate them, sell them and put the properties back on the tax rolls. The working group would be much better served establishing ways for residents to fully take advantage of the “prebate” availability, among other things.

The underlined language set forth on Lines 10 - 12 on Page 15 should be deleted. The statute should not establish a working group to come to a conclusion, and then state what the conclusion will be.

**Conclusion:**

As currently drafted, H.629 may stop any tax sales from being initiated and municipalities will have lost a valuable tool that may be used as a last resort. The current law is not broken and was revisited only six years ago, when the statute of limitations to challenge a tax sale was shortened. Without the recommended changes, this bill should be defeated.