

Act 106 Working Group Report

Tax Sales and Tax Abatement

Submitted to:

House Committee on Ways and Means,
House Committee on Government Operations and Military Affairs,
Senate Committee on Finance, and
Senate Committee on Government Operations

Introduction

Act 106 of the 2024 Legislative Session created a working group to address seven issues related to tax sale procedures and the tax abatement process.

The assignment for the Working Group was set forth in Section 7 of Act 106.

Sec. 7. WORKING GROUP ON VERMONT'S ABATEMENT AND TAX SALE PROCESSES

(a) Creation. There is created the Working Group on Vermont's Abatement and Tax Sale Processes to assess how Vermont may balance fairness for delinquent taxpayers with the needs of municipalities.

(b) Membership. The Working Group shall be composed of the following members:

- (1) a representative, appointed by Vermont Legal Aid;
- (2) a representative, appointed by the Vermont League of Cities and Towns;
- (3) a representative, appointed by the Vermont Banker's Association;
- (4) a representative, appointed by the Vermont Housing Finance Agency;
- (5) a representative, appointed by the Vermont Municipal Clerk's and Treasurer's Associations;
- (6) a representative, appointed by the Neighborworks Alliance of Vermont;
- (7) a representative, appointed by the Champlain Valley Office of Economic Opportunity Mobile Home Project;
- (8) a representative, appointed by the Vermont Assessors and Listers Association; and
- (9) a representative, appointed by the Vermont Bar Association, with experience practicing real estate law.

(c) Powers and duties. The Working Group shall offer recommendations relating to the following:

- (1) whether the State should change the law to allow a delinquent taxpayer whose property is transferred by a tax collector's deed, or a tax-lien foreclosure sale, to recoup all or part of the equity in the taxpayer's property in excess of the tax debt, fees, and interest for which the taxpayer's property is sold;

- (2) whether further changes are needed to standardize the abatement process across Vermont municipalities;
- (3) whether the State should require a minimum amount of tax debt before a tax sale can be initiated;
- (4) whether the State should allow a tax sale to be initiated for blighted or dilapidated real estate that has been abandoned when taxes are delinquent for less than one year;
- (5) a reasonable percent rate of monthly interest paid by delinquent taxpayers during the redemption period;
- (6) whether the purchaser of a property at a tax sale should be allowed to secure the property against illegal activity, damage from exposure to the elements, deterioration, and potential fire prior to acquiring title to the property; and
- (7) a process for statewide collection of data relating to tax sales, including to whom the data could be reported, the values of properties sold at tax sales, the amounts and types of debts underlying tax sales, and descriptive data for properties subject to tax sales.

Members of the Act 106 Working Group

Vermont Legal Aid – Grace Pazdan, Esq.

Vermont Housing Finance Agency – George Demas, Esq.

Vermont Association of Listers and Assessors: Linda Sherman

CVOEO – Ryan Gerrity

(Neighborworks) Windsor / Windham Housing Trust – Bruce Whitney

Vermont Municipal Clerks and Treasurers Association: Tim Arsenault

Vermont League of Cities and Towns: Kevin O'Toole

Vermont Bankers Association: Christopher D'Elia

Vermont Bar Association: James Knapp

At the initial meeting of the Working Group, the consensus was to group issues by related topic and to have subgroups meet to discuss the issues. As a result, the subgroups created were as follows:

Issues 1, 3, and 5 were combined to account for common elements in the questions. Generally the subgroup addressed the questions related to: (1) should taxpayers whose

property is sold at tax sale recover their equity; (3) should there be a minimum amount of tax debt before a tax sale can be initiated; (5) reasonable percent rate to be paid by delinquent taxpayers on past due amounts.

Issue 2. Are further changes needed to standardize abatement proceedings across the state

Issues 4 and 6 – (4) timing of commencement of tax sale on blighted properties; and (6) should a purchaser at tax sale be allowed to secure the property during the redemption period.

Issue 7 – Recommend a statewide process for collection of data regarding tax sales.

Administrative Issues

Based upon the analysis undertaken by the Secretary of State and the Attorney General's Office, at the request of the working group, it was determined that the working group and each subgroup of the working group was required to comply with the open meeting law provisions of statute. No administrative agency support was assigned to the working group. As a result, much of the initial effort of the group focused on the need to create agendas, notify the public of meetings, hold public meetings, and create formal written elements of each meeting. The lack of administrative support hampered the work of the working group.

One entire meeting was dedicated to training for the members of the group, most of whom had little or no experience dealing with the requirements for operating under the open meeting law.

As a result of this experience, the working group strongly recommends that any future groups created to study policy issues that do not involve legislators as members have an administrative agency assigned to assist with the administrative and technological requirements related to the process.

Executive Summary / Working Group Recommendations

Issue 1 - Recoup equity following tax sale or foreclosure of property tax lien

A majority of the Working Group recommends that the Legislature develop a process to ensure a taxpayer can access the equity in property that is transferred pursuant to a tax sale deed. The committee did not reach a consensus on the process to achieve this result.

Issue 2 - Standardization of abatement practices across state

- The working group recommends that the Legislature establish a comprehensive statewide education program and resource system for property tax collection processes. This program should include mandatory training for municipal officials, standardized public education materials explaining both tax sale and abatement processes, and centralized resources available to municipalities, residents, and service providers. Materials and training should be regularly updated to reflect current law and best practices.
- The working group recommends that the Legislature establish requirements for municipalities to develop and maintain clear protocols for working with service providers assisting residents with tax delinquency. These protocols must include points of contact, procedures for acknowledging service provider involvement, and requirements for regular status updates about assisted properties.

Issue 3 - Require minimum amount of tax debt before proceeding with tax sale

- The Working Group recommends that the Legislature impose a requirement that the tax debt (delinquent taxes only, excluding penalties, interest, fees) equal or exceed \$1,500 before a tax sale warrant be issued.
- The Working Group recommends that the Legislature create a process to notify municipal officials that a taxpayer has applied for public assistance or programs and while those applications are in process suspend the tax sale proceedings until a final resolution is achieved.

Issue 4 - Tax sales of blighted or dilapidated properties

The Working Group recommends against adopting a shortened timeframe to commence a tax sale of blighted or dilapidated properties on the basis that the one year time frame is adequate and the standards for determining whether a property is dilapidated or blighted are unclear.

Issue 5 - Interest rate for delinquent taxes

The Working Group was unable to reach a consensus on this issue. The positions of Vermont Legal Aid and Vermont League of Cities and Towns are set out in Appendix 1 and Appendix 2.

Issue 6 - Should tax sale purchaser be allowed to secure property during redemption

The Working Group recommends against allowing the successful bidder at the tax sale to have early access to the tax sale property to take action to secure the property against potential loss or to mitigate illegal activity.

Issue 7 - Data collection and reporting of tax sale data

The Working Group recommends that the Legislature adopt legislation to create a process to register tax sales including identifying a responsible party to create and operate the registration

process and funding to establish and maintain the registration process. The recommendations for the registration process are outlined in the discussion.

Analysis and Discussion

Issue 1. Recoup equity following tax sale or foreclosure of property tax lien

The question posed to the working group was this: *whether the State should change the law to allow a delinquent taxpayer whose property is transferred by a tax collector's deed, or a tax-lien foreclosure sale, to recoup all or part of the equity in the taxpayer's property in excess of the tax debt, fees, and interest for which the taxpayer's property is sold.*

Through several meetings, including input from a member of the public who is a tax sale investor / purchaser, the working group developed multiple points of view on the issue. The points of view were sufficiently divergent that the Working Group identified a majority point of view on Issue 1 but acknowledged that the alternate point of view was sufficiently important that both should appear in the report

The following is a summary of the points of view advocated by Vermont Legal Aid (VLA) and Vermont League of Cities and Towns. The full text of the memoranda submitted on these points are attached as Appendix 1 and 2.

The Point of View advocated by Vermont Legal Aid ...	The Point of View advocated by Vermont League of Cities and Towns
In researching other states' responses to <i>Tyler</i> , VLA became interested in Maine's recent statutory amendments to its property tax sale process at 36 MRSA § 943-C. <i>The amendments, passed in response to a legislative working group's recommendations, created a process in Maine where, following a two-year redemption period, municipalities must hire a realtor to market the property via the MLS, and sell for reasonable fair market value, to ensure that both the municipality collects its taxes plus costs and that homeowners can access their remaining equity from the property.</i>	The subcommittee explored a new statutory scheme recently adopted by the Maine legislature: an 18-month redemption period followed by a "taking" by the municipality of real property of the delinquent taxpayer and listing of the property for sale by a broker. Under this procedure, if the property was sold, any excess proceeds, after deducting the amounts owed plus closing costs, would be forwarded to the delinquent taxpayer. If the municipality decided to retain the property, an appraisal would be required and the municipality would be required to pay to the delinquent taxpayer any excess proceeds, after deducting the amounts owed, plus the costs of appraisal, plus closing costs. The subcommittee tabled this "tax deed" system as too cumbersome in terms of time and the additional onus placed on municipalities.

H.629 as introduced included a provision, supported by VLA, that would require tax sale purchasers to pay over the remaining equity after tax sale within 30 days. The equity would have been calculated either by taking “(1) the grand list value of the property minus the cost to redeem under section 5260 of this chapter and minus \$500.00; or (2) if the purchaser has sold the property, the amount received from the sale minus the cost to redeem under section 5260 of this chapter and minus \$500.00.”	The other significant distinction between the tax deed vs. tax lien process is that under the tax deed process (such as in Maine), the delinquent taxpayer loses the title and possession of the property immediately at the close of the action, while the amount needed to “buy back” the property is not known until it is too late. Under the tax lien sale process in Vermont, the tax sale auction determines the amount of any overbid and the amount necessary to redeem with plenty of time for the taxpayer to evaluate and exercise their option whether to accept the overbid amount and enjoy the property tax free for the one-year redemption period, sell the property or otherwise raise money to redeem the property during that period.
From VLA’s perspective, the Maine model addresses the underlying purpose of our tax sale statute – collection of property taxes by the municipality – while also ensuring that homeowners’ constitutional rights to their private property (including home equity) are protected. Because it takes investors out of the property tax collection process, it circumvents the issues raised in response to the process set out in H.629, as introduced.	Vermont’s newly enacted Tax Sale statute introduced several provisions to make the process fairer to delinquent taxpayers, such as the requirement that reasonable payment plans be offered to delinquent taxpayers and that taxpayers must owe property taxes for at least one year before a Tax Warrant can be issued. The new statute should be permitted some time to “breathe” before further revisions are made. The goal of returned equity is obviously desirable but a difficult nut to crack that will require much more study than this subcommittee or the Working Group was afforded the resources to generate a comprehensive, well thought-out proposal to consider.

The working group was able to reach a consensus on the overall policy that some form of protecting or recovering the equity held by a delinquent taxpayer in property being sold for tax debt is reasonable. After reasonable discussion, the working group was unable to reach a consensus on a specific process.

A majority of the Working Group recommends that the Legislature develop a process to ensure a taxpayer can access the equity in property that is transferred pursuant to a tax sale deed. The committee did not reach a consensus on the process to achieve this result.

Issue 2 - Standardization of abatement practices across state

The question presented was: *whether further changes are needed to standardize the abatement process across Vermont municipalities.*

- **The working group recommends that the Legislature establish a comprehensive statewide education program and resource system for property tax collection processes. This program should include mandatory training for municipal officials, standardized public education materials explaining both tax sale and abatement processes, and centralized resources available to municipalities, residents, and service providers. Materials and training should be regularly updated to reflect current law and best practices.**
- **The working group recommends that the Legislature establish requirements for municipalities to develop and maintain clear protocols for working with service providers assisting residents with tax delinquency. These protocols must include points of contact, procedures for acknowledging service provider involvement, and requirements for regular status updates about assisted properties.**

Issue 3 - Require minimum amount of tax debt before proceeding with tax sale

The issue presented was: *whether the State should require a minimum amount of tax debt before a tax sale can be initiated.*

The Working Group recommends that the Legislature impose a requirement that the tax debt (delinquent taxes only, excluding penalties, interest, fees) equal or exceed \$1,500 before a tax sale warrant be issued.

The Working Group recommends that the Legislature create a process to notify municipal officials that a taxpayer has applied for public assistance or programs and while those applications are in process suspend the tax sale proceedings until a final resolution is achieved.

Issue 4 - Tax sales of blighted or dilapidated properties

The question presented was: *whether the State should require a minimum amount of tax debt before a tax sale can be initiated.*

Key points made during discussion

- Adding a new standard for instituting a tax sale is rife with issues.
- “Blighted” and “Dilapidated” are not clear standards, there is no easy definition that can be universally applied.
- Some properties that are involved in tax collection process fall into disrepair due to the economic challenges affecting the property owners. Using “blighted” or “dilapidated”

would unfairly affect persons of lower economic means that were unable to maintain their properties as a result of what might be temporary issues.

- It can be very hard to accurately collect information about properties given the limited circumstances in which town officials are allowed to enter into a property without obtaining consent or a warrant. The burden on town officials to pursue an analysis of the condition of the property and then apply unclear standards does not create a scenario in which all properties across the state would be treated equally.
- The requirement that taxes be delinquent for a minimum of one year is adequate to address all the issues around timing and conditions.
- Municipalities have other remedies in statute for dilapidated or dangerous properties and implementing a tax sale is not an appropriate remedy for those circumstances

The Working Group recommends against adopting a shortened timeframe to commence a tax sale of blighted or dilapidated properties on the basis that the one year time frame is adequate and the standards for determining whether a property is dilapidated or blighted are unclear.

Issue 5 - Interest rate for delinquent taxes

The question presented was: *a reasonable percent rate of monthly interest paid by delinquent taxpayers during the redemption period.*

Through several meetings, including input from a member of the public who is a tax sale investor / purchaser, the working group developed multiple points of view. The points of view were sufficiently divergent that the working group decided to identify the key points but was unable to reach a consensus.

The following is a summary of the points of view advocated by Vermont Legal Aid (VLA) and Vermont League of Cities and Towns. The memoranda submitted on these points are attached as Appendix 1 and 2.

The Point of View advocated by Vermont Legal Aid	The Point of View advocated by Vermont League of Cities and Towns
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VLA believes that reducing the interest rate to one tied to the market would balance the competing interests of attracting tax-sale bidders while keeping the redemption amount within reach for struggling homeowners. For example, Maine sets a statutory maximum rate that municipalities can charge: “the prime rate as published in the Wall Street Journal on the first business day of the calendar year, rounded up to the next whole percent plus 3 percentage points.” For 2024, that translated to an 8.5% rate.	The current interest rate charged during the 12-month redemption period is 12% of the high bid at tax sale. That rate represented a decrease from the 18% interest rate charged by many towns prior to tax sale and matches Vermont’s statutory rate of interest for judgments. This interest rate should stay “as is.”
Additionally, VLA urges the committee to consider explicitly excluding any overbid amount from the statutory interest due to redeem after tax sale. Requiring homeowners to pay interest on any overbid amount only serves to increase the likelihood that the home will be lost to tax sale without serving any reasonable public purpose. It simply penalizes the homeowner while increasing investor’s profits.	

Issue 6 - Should tax sale purchaser be allowed to secure property during redemption

Key points made during the discussion

- Allowing the successful bidder to enter into and take action on a property:
- Is disruptive to the delinquent taxpayer, particularly if the delinquent taxpayer is in possession of the tax sale property
- Is inconsistent with recognized legal rights, even a landlord is not allowed to take such actions with regard to leased property except under extreme circumstances
- There is no control over what a third party might do while pursuing actions apparently authorized by the suggested language.
- If the delinquent taxpayer redeems, then any action taken by the bidder may have to be undone. It is also possible that the action by the bidder might have further altered the property in ways the taxpayer did not approve.
- There is no particularly strong policy reason to allow such actions on property that is still owned by the delinquent taxpayer and remains subject to a redemption right.

- Third parties, including bidders at tax sales, do not have an insurable interest in the tax sale property until the redemption period expires. That would result in a 3rd party entering on the property at their own risk, with the potential for causing injury to the occupants of the property without possibility of the protection of insurance.
- The underlying concern giving rise to the suggested expansion of rights for the bidder at the tax sale is the possibility of illegal activity on the property during the redemption period, i.e., squatters, or manufacture and/or sale of illegal substances.
- Unclear how a bidder at a tax sale would secure the property against such activities i.e., squatters, or manufacture and/or sale of illegal substances.
- There are other remedies available (e.g., law enforcement) at least for illegal activities.

The Working Group recommends against allowing the successful bidder at the tax sale to have early access to the tax sale property to take action to secure the property against potential loss or to mitigate illegal activity.

Issue 7 - Data collection and reporting of tax sale data

The issue presented was: *a process for statewide collection of data relating to tax sales, including to whom the data could be reported, the values of properties sold at tax sales, the amounts and types of debts underlying tax sales, and descriptive data for properties subject to tax sales.*

Proposed Solution / Recommendation

- I. Create a process requiring municipalities or attorneys acting on behalf of municipalities to register a tax sale when the warrant and levy for delinquent taxes have been recorded and procure a “Docket” number to tie future proceedings to the registered tax sale. The registration process would allow for the collection of relevant data regarding the delinquent taxes and property.
 - A. To create the registration process, the following would be required:
 1. A website/web portal with sufficient interactive features allowing for a municipality to register a tax sale including the information that is specified to be collected. The website would calculate and assign a docket number to the specific tax sale. All future correspondence and proceedings related to the tax sale would carry the assigned docket number.
 2. An entity, department or agency to host the website, manage and maintain the website, and prepare and issue reports based on the collected data.
 3. Possible operators of the website
 - a) Department of Taxes - Operates a number of portals to communicate with municipal officials (Transfer Tax, Current Use, Property Tax Management)

- b) Vermont Housing & Conservation Board
 - c) Vermont Department of Housing and Community Development
 - d) Vermont Judiciary - Portal already exists
 - e) A quasi-public special purpose entity created for the purpose of operating the data collection website
4. Reporting and registration must be mandatory.
 5. The working group recommends that the Legislature << allow social service providers who are involved in tax delinquency cases, to report when providers become involved, current status of assistance being provided, and outcomes of intervention efforts.
 6. In order to collect the best data, the process would end with a final report of the outcome of the tax sale process. In the event that the party who originally registered the tax sale did not complete the final report, the system would need to generate reminders, prompting the responsible party to report the final outcome.

B. Discussion

1. If the entire process of registration is done online through a relatively simple process, the registration will not add an additional significant burden on a municipality or attorney representing a municipality in a tax sale process.
2. The data collected could include a relatively broad scope of relevant information to facilitate future analysis of the efficacy of future revisions to the tax collection process.
3. The design, development, and initial implementation of the registration process will have substantial costs associated with it. There is essentially no solution that won't have some related costs. To the extent potential operators already have portals for other operations, the addition of new functions would be a process of programming existing frameworks rather than starting from a blank slate.
4. Once the application is up and running, the maintenance should be relatively minor. If the programming is done with an eye to generating specific reports, the logic of the reports can be built into the application. There would also need to be a process for creating an ad hoc report, but any website/application that would serve the required functions would be based on one of the standard databases, so ad hoc queries would not be a challenge.
5. The collected data (or some subset of the collected data) could be offered to the public through a public portal. The advantage to having a broader public notice of pending tax sales would include potentially increasing the field of bidders, perhaps increasing the prices paid for the property.
6. The data collection process should include whether an abatement was requested and the outcome of the abatement proceedings.

The Working Group recommends that the Legislature adopt legislation to create a process to register tax sales including identifying a responsible party to create and operate the

registration process and funding to establish and maintain the registration process. The recommendations for the registration process are outlined in the discussion.

Appendix 1 and Appendix 2 Follow

Appendix 1
Memorandum to Act 106 Committee
Prepared by Grace Pazdan, Esq.
Vermont Legal Aid

From: Grace Pazdan, Vermont Legal Aid

To: Act 106 Committee

Date: January 2, 2025

Re: Vermont Legal Aid's Position on Committee Topics

Homeowner's Loss of Equity After Tax Sale

The point of the property tax sale statute is to ensure municipalities can collect needed revenue to do municipal business and pay into the state education fund. When properties are sold at tax sale and cannot be redeemed, the town is made whole – the tax debt and costs of sale are recouped out of sale proceeds. From Vermont Legal Aid's (VLA) perspective the question at that point becomes **what is fair and what is good public policy?**

In the midst of a crushing affordable housing crisis where homeowners are experiencing historic property tax hikes, VLA believes that financially struggling taxpayers should not, in addition to losing their homes/properties to tax sale, also lose the equity that they built in their homes, which in some cases we have seen is in the tens and even hundreds of thousands of dollars.

- Many low-and-moderate-income homeowners in Vermont are struggling. This is only exacerbated by property tax increases due to the education funding crisis.
- We have a current property tax collection process that allows towns to auction properties at tax sale for the amount of the tax debt. This can result in investors bidding a fraction of the value of the house at tax sale and ultimately reaping incredible windfalls at the expense of already financially distressed Vermonters who lose not only their homes but the equity they may have built up over many years. Often, the homeowners affected are fixed-income older Vermonters who no longer have paid off their mortgages or disabled and other low-income heirs who do not have a mortgage on the home.
- *Tyler v. Hennepin Co.*, the US Supreme Court decision from 2023, unanimously held that the takings clause of the US Constitution “was designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole. A taxpayer who loses her \$40,000 house to the State to fulfill a \$15,000 tax debt has made a far greater contribution to the public fisc than she owed. The taxpayer must render unto Caesar what is Caesar’s, but no more.” 598 U.S. 631, 647 (2023) (internal citations omitted). The Court held that where Minnesota took Tyler’s home worth \$40,000 for \$15,000 and did not pay her the difference, she stated a claim under the Takings Clause of the US Constitution which provides that “private property shall not be taken for public use without just compensation.”
- In 1970, in *Bogie v. Town of Barnet*, the Vermont Supreme Court held that a Town cannot take a property via tax sale and then sell it and keep the proceeds because that violates the Takings Clause of the US and Vermont Constitution. 129 Vt. 46. In 2006, the Vermont Supreme Court, in *Ran-mar, Inc. v. Town of Berlin*, confirmed that excess proceeds from a private investor at tax sale must be paid over to the taxpayer if they fail to redeem and the property transfers.
- However, both of these decisions preceded the *Tyler* case and did not deal with the question of just compensation or the value of equity taken from taxpayers in the tax-sale process. The *Tyler* decision is framed in terms of “value” and the Takings framework requires just compensation, which has been deemed to be fair market value in the eminent domain context. The practice in Vermont is to only pay over the excess sale

process, not the excess value, which can result in hundreds of thousands of dollars of lost equity.

- Regardless of whether Committee members agree that there is a takings issue inherent in our current system, the question remains whether it is fair to take not only financially struggling taxpayers' homes/properties but also all of the equity they may have built in their property, while giving investors a windfall.
- VLA has so far pursued two takings' cases, one filed in federal district court and one in bankruptcy court on behalf of homeowners whose equity was taken via tax sale without just compensation. These legal issues and consequent litigation will persist, creating risk for municipalities, unless and until there is clarity either via legislation or court decisions about how just compensation is calculated and how homeowners can access it post-tax sale.
- H.629 as introduced included a provision, supported by VLA, that would require tax sale purchasers to pay over the remaining equity after tax sale within 30 days. The equity would have been calculated either by taking "(1) the grand list value of the property minus the cost to redeem under section 5260 of this chapter and minus \$500.00; or (2) if the purchaser has sold the property, the amount received from the sale minus the cost to redeem under section 5260 of this chapter and minus \$500.00."
- Because a number of stakeholders voiced concerns about the provision and how it would impact tax-sale process, specifically investors' willingness to bid, the provision was removed from the bill and the question was added to the study committee's charge.
- In researching other states' responses to *Tyler*, VLA became interested in Maine's recent statutory amendments to its property tax sale process at 36 MRSA § 943-C. The amendments, passed in response to a legislative working group's recommendations, created a process in Maine where, following a two-year redemption period, municipalities must hire a realtor to market the property via the MLS, and sell for reasonable fair market value, to ensure that both the municipality collects its taxes plus costs and that homeowners can access their remaining equity from the property.
- From VLA's perspective, the Maine model addresses the underlying purpose of our tax sale statute – collection of property taxes by the municipality – while also ensuring that homeowners' constitutional rights to their private property (including home equity) are protected. Because it takes investors out of the property tax collection process, it circumvents the issues raised in response to the process set out in H.629, as introduced.
- The subcommittee heard from Peter Lacy, the chair of Maine's working group that studied tax-sale process and recommended the changes to Maine law that were ultimately passed by their legislature and signed into law.
- However, after hearing from Mr. Lacy, the majority of subcommittee members felt there was too much uncertainty about how Maine's process would work in practice to recommend it to the legislature, since the new law only went into effect this past summer.

VLA urges the committee to issue a recommendation to the legislature that it take action to ensure homeowners can access the equity in their properties to which they are entitled after the deed is transferred to a tax-sale purchaser. While a majority of the subcommittee felt that they

lacked sufficient knowledge/expertise to recommend a specific process or framework to get taxpayers back their equity, many expressed support for the underlying idea that there should be a process for homeowners to, at a minimum, recoup their equity after already having lost their home and paid their tax debt (plus interest, fees, and costs) in full.

Minimum Threshold to Proceed to Tax Sale

The Vermont League of Cities and Towns (VLCT) and VLA agreed in the subcommittee to a statutory amendment to require a minimum tax debt amount of \$1500 before a municipality can proceed to tax-sale process. Last session, VLA advocated for a \$15,000 minimum threshold based on its research in 2019 and 2020 which found that the median amount of tax debt for which homes were sold at tax sale in Vermont was only ~\$3500. Given that median home prices in the state exceed \$300,000, VLA believes a higher threshold is appropriate to allow homeowners an opportunity to resolve their debt before the additional costs of tax sale make the redemption amount prohibitive, putting them at risk of losing their home and potentially a significant amount of equity. That said, VLA has agreed to VLCT's proposal of \$1500 in the subcommittee because our public records research revealed that many of the lowest income, mobile homeowners facing tax debt were subject to tax sale for amounts less than \$1500, with some being sold for less than \$200 past due.

Interest During Post-Sale Redemption Period

H. 629, as introduced, included a provision to reduce the redemption period interest rate, in an effort to make redemption more feasible for financially struggling homeowners. The current 12% annualized interest rate significantly exceeds market rates and typically goes into the pockets of investors rather than the municipality. Because of limited time and the subcommittee's primary focus on the equity issue, however, the question of an appropriate interest rate was not thoroughly studied or discussed.

- VLA believes that reducing the interest rate to one tied to the market would balance the competing interests of attracting tax-sale bidders while keeping the redemption amount within reach for struggling homeowners. For example, Maine sets a statutory maximum rate that municipalities can charge: "the prime rate as published in the Wall Street Journal on the first business day of the calendar year, rounded up to the next whole percent plus 3 percentage points." For 2024, that translated to an 8.5% rate.
- Additionally, VLA urges the committee to consider explicitly excluding any overbid amount from the statutory interest due to redeem after tax sale. Requiring homeowners to pay interest on any overbid amount only serves to increase the likelihood that the home will be lost to tax sale without serving any reasonable public purpose. It simply penalizes the homeowner while increasing investor's profits and is challengeable as an excessive fine in violation of the US Constitution.

Appendix 2
Memorandum to Act 106 Committee
Prepared by Kevin M. O'Toole, Esq.
Vermont League of Cities and Towns

Report of the “Items 1, 3 & 5” Subcommittee of the S.106 Working Group

On December 6, 2024, the members of the Items 1,3 & 5 subcommittee of the S.106 Working Group met via Zoom to further review and discuss Items 1, 3 and 5 of Section 7 (c) of S.106, the newly enacted tax sale statute. The subcommittee arrived at a consensus finding on Item (3) but not on Items (1)and (5). It was decided that the subcommittee would submit its finding on Item (3) to the Working Group, and asked that members Grace Pazden, an attorney nominated by Vermont Legal Aid, and Kevin M. O’Toole, a private attorney nominated by the Vermont League of Cities and Towns, each submit their opposing positions on Items (1) and (3) so that the same could be attached to the Working Group’s final report to the Vermont Legislature.

- 3) Whether the State should require a minimum amount of tax debt before a tax sale can be initiated.

Under Vermont law, bidding at a tax sale begins with the total of the taxes, interest, penalties and costs then owed to the municipality and not upon the property’s fair market value.

The original draft of the new tax sale statute included a minimum bid of \$15,000.00, but that was dropped before passage. Municipalities are encouraged not to allow taxpayers to get too far behind, or the “nut” will get too big and taxpayers may lose their homes. With the requirement that reasonable payment plans be offered to delinquent taxpayers and that taxpayers must owe property taxes for at least one year before a Tax Warrant can be issued, this, arguably, has been covered. Even so, the subcommittee unanimously agreed that a minimum amount owed for taxes, accrued interest and penalties of at least \$1,500.00 would remove the most egregious cases of tax sales being initiated for nominal amounts owed.

- (1) Whether the State should change the law to allow a delinquent taxpayer whose property is transferred to by a tax collector’s deed, or a tax-lien foreclosure sale, to recoup all or part of the equity in the taxpayer’s property in excess of the tax debt, fees, and interest for which the taxpayer’s property is sold.

Pursuant to the Vermont Supreme Court’s decision in *Bogie v. Town of Barnet*, 129 Vt. 46 (1970), a municipality that is the only bidder at tax sale, pursuant to 32 V.S.A. §5259, must return any excess proceeds from the eventual sale of the property to the delinquent taxpayer. Accordingly, *Bogie* is in line with *Tyler v. Hennepin County, Minnesota, et al*, 598 U.S. 631 (May 25, 2023), in which the Court found that Hennepin County, Minnesota retaining the excess proceeds from a tax sale conducted by Hennepin County, Minnesota violated the Sixth Amendment of the United States Constitution. Therefore, what the subcommittee was addressing was the situation where a private investor was the high bidder. A lawsuit challenging a tax sale to a private party of property in Barton, Vermont on Sixth Amendment grounds had been settled, and so did not establish a Vermont precedent.

The subcommittee explored a new statutory scheme recently adopted by the Maine legislature: an 18-month redemption period followed by a “taking” by the municipality of real property of the delinquent taxpayer and listing of the property for sale by a broker. Under this procedure, if the property was sold, any excess proceeds, after deducting the amounts owed plus closing costs,

would be forwarded to the delinquent taxpayer. If the municipality decided to retain the property, an appraisal would be required and the municipality would be required to pay to the delinquent taxpayer any excess proceeds, after deducting the amounts owed, plus the costs of appraisal, plus closing costs. The subcommittee tabled this “tax deed” system as too cumbersome in terms of time and the additional onus placed on municipalities.

The members of the subcommittee all agreed on the goal of recovering the maximum amount of excess equity in the property subject to a sale for the collection of delinquent taxes. There was no agreement on how to accomplish that goal. The way in which to substantially deliver that result is not subject to any easy answer. Methodologies that maximize the sale price of a property at tax sale also involve the immediate loss of that property by the delinquent taxpayer. The “tax deed” sale process (such as Maine) maximizes the purchase price recovered but may actually result in a lower net recovery for the delinquent taxpayer than the “tax lien” sale process that Vermont currently employs.

The other significant distinction between the tax deed vs. tax lien process is that under the tax deed process (such as in Maine), the delinquent taxpayer loses the title and possession of the property immediately at the close of the action, while the amount needed to “buy back” the property is not known until it is too late.

Under the tax lien sale process in Vermont, the tax sale auction determines the amount of any overbid and the amount necessary to redeem with plenty of time for the taxpayer to evaluate and exercise their option whether to accept the overbid amount and enjoy the property tax free for the one-year redemption period, sell the property or otherwise raise money to redeem the property during that period.

While the subcommittee agrees that it is desirable to preserve as much equity as possible for the delinquent taxpayer who is losing their property through this process, the subcommittee was unable to discover or invent any magic bullet that would solve this issue. The policy choice comes down to either maximizing equity recovery for taxpayers coupled with substantial detriment to taxpayers who wish to retain their property vs. the efficient collection of taxes for the municipality and giving delinquent taxpayers the benefit of a full year to address and resolve their potential loss of the property through borrowing or sale.

Vermont’s newly enacted Tax Sale statute introduced several provisions to make the process fairer to delinquent taxpayers, such as the requirement that reasonable payment plans be offered to delinquent taxpayers and that taxpayers must owe property taxes for at least one year before a Tax Warrant can be issued. The new statute should be permitted some time to “breathe” before further revisions are made. The goal of returned equity is obviously desirable but a difficult nut to crack that will require much more study than this subcommittee or the Working Group was afforded the resources to generate a comprehensive, well thought-out proposal to consider.

- (5) A reasonable percent rate of monthly interest paid by delinquent taxpayers during the redemption period.

The current interest rate charged during the 12-month redemption period is 12% of the high bid at tax sale. That rate represented a decrease from the 18% interest rate charges by many towns prior to tax sale and matches Vermont's statutory rate of interest for judgments.

The Vermont legislature, seeking clarity, rejected a provision in the first draft of the new Vermont tax sale statute that tied the redemption rate of interest to contemporary index rates. This interest rate should stay "as is."

Respectfully submitted,

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End of Act 106 Working Group Report