

# DEPARTMENT OF TAXATION

## 2012 Fiscal Impact Statement

1. **Patron** Robert H. Brink

3. **Committee** House Finance

4. **Title** Local Taxes; Procedure for Distrain and  
Sale of Personal Property for Delinquent  
Taxes

2. **Bill Number** HB 919

**House of Origin:**

  X   **Introduced**

       **Substitute**

       **Engrossed**

**Second House:**

       **In Committee**

       **Substitute**

       **Enrolled**

**5. Summary/Purpose:**

This bill would provide that in cases involving the distraint and sale of personal property to satisfy delinquent taxes, the costs of the distress would be chargeable against the delinquent taxpayer and added to what is owed. Under the terms of the bill, the proceeds from the sale must first be applied to the costs of the distraint, followed by the unpaid taxes, penalty and accrued interest, and finally to the claims of secured parties. The bill would also mandate that the distress sale for delinquent taxes be conducted by the sheriff, treasurer, or treasurer's agent under the civil procedures applied to debts owed to private creditors, including those for titling motor vehicles sold in such proceedings.

Current law specifies that in the sale of personal property to satisfy delinquent debts, the person conducting the sale must apply the proceeds of the sale first to unpaid taxes and then to the claims of secured parties of record, in the order of their priority.

The effective date of this bill is not specified.

**6. Budget amendment necessary:** No.

**7. Fiscal Impact Estimates are:** Not available. (See Line 8.)

**8. Fiscal implications:**

This bill would have no impact on state revenues. As this bill provides statutory authorization for localities' current practices, the bill would have no impact on local revenues.

**9. Specific agency or political subdivisions affected:**

All localities

**10. Technical amendment necessary:** No.

## 11. Other comments:

### Collection of Delinquent Taxes by Distress

In order to satisfy a delinquent tax, Virginia law grants local treasurers, sheriffs, constables or collectors of a locality the authority to seize and sell personal property located in the locality that is owned by a person owing taxes. If a third party has a security interest in the property at issue, and that interest is perfected prior to any distraint for taxes, it will have priority over all taxes except those specifically assessed either per item or in bulk against the goods and chattels on which tax is owed. Thus, for example, if a taxpayer fails to pay the personal property tax assessed against a specific vehicle, the treasurer can distraint the taxpayer's vehicle for payment of the delinquent taxes, and the proceeds from the sale of the vehicle would be paid first to the treasurer, and any proceeds remaining after payment would be paid to the secured party.

Current law requires that once goods are sold for taxes and title is conveyed to the purchaser, the title is free of all claims of any creditor. Proceeds from the sale must be applied first to unpaid taxes, followed by the claims of the secured parties of record in the order of their priority. If there is any remaining money, it is delivered to the delinquent taxpayer or the estate assessed with taxes.

### Civil Procedures for Debts Owed to Private Creditors

Virginia law sets out the procedure for when an officer is directed to sell property to enforce judgments for debts owed to private creditors. Generally, the officer must determine a time and place for the sale and post notice of the sale at least ten days before the day of sale. The notice must be placed near the residence of the owner if the owner resides in the county or city and in two or more public places in the county or city. The officer is required to sell only enough property to satisfy the debt and must sell to the highest bidder.

### Proposal

This bill would provide that in cases involving the distraint and sale of personal property to satisfy delinquent taxes, the costs of the distress would be chargeable against the delinquent taxpayer and added to what is owed. Under the terms of the bill, the proceeds from the sale must first be applied to the costs of the distraint; followed by the unpaid taxes, penalty and accrued interest; and finally to the claims of secured parties. The bill would also mandate that the distress sale for delinquent taxes be conducted by the sheriff, treasurer, or treasurer's agent under the civil procedures applied to debts owed to private creditors, including the procedures for titling motor vehicles sold in such proceedings.

### Similar Legislation

**House Bill 1128** would modify the procedures governing delinquent real property taxes by 1) requiring the commissioner of the revenue to correct land records that incorrectly report property as having delinquent taxes; 2) requiring the owner of real property to pay all delinquent town taxes, in addition to paying delinquent county taxes under current law, in order to stop a judicial sale of the property; and 3) conditioning a court's referral of a

judicial sale to a commissioner of chancery for a ruling prior to sale, upon a proper objection having been made by an interested party.

cc : Secretary of Finance

Date: 1/28/2012 KP  
DLAS File Name: HB919F161