

SENATE, No. 3343

STATE OF NEW JERSEY

221st LEGISLATURE

INTRODUCED JUNE 3, 2024

Sponsored by:

Senator VINCENT J. POLISTINA

District 2 (Atlantic)

SYNOPSIS

Revises tax lien foreclosure process to protect equity accrued by property owner in tax lien foreclosure.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT revising the tax lien foreclosure process, revising various
2 parts of the statutory law, and supplementing chapter 5 of Title
3 54 of the Revised Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. (New section) The Legislature finds and declares that:

9 a. On May 25, 2023, the United States Supreme Court issued a
10 decision in a case before it, Tyler v. Hennepin County, Minnesota,
11 et al., 143 S. Ct. 1369 (2023), that has very important implications
12 for the rights of all property owners, and specifically, New Jersey
13 law governing property taxes on real property.

14 Ms. Geraldine Tyler owned a condominium in Hennepin County,
15 Minnesota on which accumulated approximately \$15,000 in unpaid
16 real estate taxes, interest, and penalties. The county seized the
17 condominium and sold it for \$40,000. Instead of returning the
18 excess \$25,000 from the sale to Ms. Tyler, the county kept the
19 money for itself as permitted by that state's law. Ms. Tyler filed
20 suit, alleging that the county unconstitutionally retained the excess
21 value of her condominium beyond the \$15,000 tax debt in violation
22 of the Takings Clause of the Fifth Amendment to the United States
23 Constitution, as well as the Excessive Fines Clause of the Eighth
24 Amendment. In an opinion written by Chief Justice Roberts for a
25 unanimous Court, the Court found that Ms. Tyler had plausibly
26 alleged a taking under the Fifth Amendment. Since Ms. Tyler
27 agreed that relief under the Takings Clause would fully remedy her
28 harm, the Court did not decide whether she also alleged an
29 excessive fine under the Eighth Amendment. However, the
30 acknowledgement that Ms. Tyler had plausibly alleged a taking
31 under the Fifth Amendment has the effect of limiting what a
32 lienholder can collect when a court forecloses the right of
33 redemption of a lien on the lienholder's behalf to only the property
34 taxes paid by the lienholder, plus interest. In the words of Chief
35 Justice Roberts, "(t)he taxpayer must render unto Caesar what is
36 Caesar's, but no more." In this case, the party that kept the excess
37 funds was a public entity, not a private lienholder.

38 On December 4, 2023, the New Jersey Appellate Division court
39 issued its decision in 257-261 20th Avenue Realty, LLC v.
40 Alessandro Roberto, et al., finding that New Jersey's tax sale law,
41 which established the confiscation of a property owner's equity
42 when a tax lien on a property is foreclosed, violates the Takings
43 Clause of the Fifth Amendment to the United States Constitution as
44 determined in the Tyler case, and also approved the retroactive
45 application of the decision to any foreclosure case pending final

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 judgment to account for the new principle of law established in
2 Tyler (The Appellate Division court referred to this as “pipeline
3 retroactivity”).

4 b. New Jersey’s “tax sale law,” R.S.54:5-1 et seq., allows the
5 holder of a tax sale certificate, whether it is a municipality or a
6 private lienholder, the ability to foreclose the right of the property
7 owner to redeem the lien by paying to the tax sale certificate holder
8 all of the property taxes, plus interest, that the holder of the tax sale
9 certificate paid to the municipality. Under R.S.54:5-86, an action to
10 foreclose the right of redemption of a tax lien is filed with the
11 Superior Court. Under R.S.54:5-87, as part of the action to
12 foreclose the right of redemption, the court has the authority to
13 “adjudge an absolute and indefeasible estate of inheritance in fee
14 simple, to be vested in the purchaser.” In other words, the Superior
15 Court is authorized to grant title of the property to the lienholder,
16 without requiring the lienholder to return the excess equity in the
17 property to the prior owner. This authority applies to both
18 municipalities, as lienholders, as well as to private lienholders. The
19 language of R.S.54:5-85 reinforces this authority of the Superior
20 Court: “[t]he provisions of this article shall be liberally construed
21 as remedial legislation to encourage the barring of the right of
22 redemption by actions in the Superior Court to the end that
23 marketable titles may thereby be secured.”

24 c. The New Jersey Constitution expressly extends property
25 rights protections to actions taken by private parties. Article I,
26 paragraph 20 of the constitution provides that private property shall
27 not be taken for public use without just compensation. That
28 paragraph goes on to provide that “(i)ndividuals or private
29 corporations shall not be authorized to take private property for
30 public use without just compensation first made to the owners.”

31 d. Case law reinforces the provisions of Article I, paragraph 20.

32 (1) In Hyde v. Somerset Air Service, Inc., 1 N.J. Super. 346,
33 349-350 (Ch. Div. 1948), the court stated that “. . . in such cases it
34 is a question of what’s what rather than who’s who. Indeed, the
35 Legislature or governmental agencies cannot constitutionally confer
36 upon individuals or private corporations, acting primarily for their
37 own profit, although for public benefit as well, any right to deprive
38 persons of the lawful enjoyment of their property.”

39 (2) In Oechsle v. Ruhl, 140 N.J. Eq. 355, 360 (Ch. 1947), the
40 court stated that “[a]n act of the legislature cannot confer any right
41 upon an individual to deprive persons of the ordinary enjoyment of
42 their property without just compensation. This principle rests upon
43 the express terms of the constitution which created such a
44 prohibition.”

45 (3) In Pennsylvania R.R. Co. v. Angel, 41 N.J. Eq. 316 (1886),
46 the court stated that “[a]n act of the legislature cannot confer upon
47 individuals or private corporations, acting primarily for their own
48 profit, although for public benefit as well, any right to deprive

1 persons of the ordinary enjoyment of their property, except upon
2 condition that just compensation be first made to the owners.”

3 (4) In Tide-Water Company v. Coster, 18 N.J. Eq. 518 (1866),
4 the court stated that “[t]he legislative power is not competent to
5 take the property of A and transfer it to B, simply for the benefit or
6 convenience of B, because such an act has no public aspect; it
7 concerns and affects, exclusively, the two individuals. In such case,
8 it would be within the authority of the judiciary to pronounce such
9 transfer unconstitutional and void.”

10 In each of these cases, the court reinforced the principle
11 espoused in Article I, paragraph 20 of the New Jersey Constitution
12 that “(i)ndividuals or private corporations shall not be authorized to
13 take private property for public use without just compensation first
14 made to the owners.” The taking of the entirety of a property
15 owner’s equity in a parcel of real estate because that property owner
16 was delinquent in the payment of property taxes attributable to the
17 parcel of real property would appear to violate Article I, paragraph
18 20 of New Jersey’s Constitution as well as the Fifth Amendment of
19 the United States Constitution based on the reasoning set forth in
20 Tyler v. Hennepin County, Minnesota, et. al. Therefore, the
21 Legislature has the authority, and a legal obligation to end this
22 practice, which has become colloquially known and referred to as
23 “equity theft,” and to require that any excess equity in a parcel of
24 real property that has been the subject of an action in court to
25 foreclose the right of redemption of a tax lien be returned to the
26 former property owner after the lienholder has been reimbursed for
27 property taxes paid, and interest due and owing, on the property
28 during the period in which the lienholder held the tax lien.

29 e. Therefore, in order to protect the equity of every property
30 owner who may fall behind on their property taxes, whether the tax
31 lien is held by a municipality or by a private lienholder, the
32 Legislature has determined that, in light of the Supreme Court’s
33 decision in Tyler v. Hennepin County, Minnesota, et al., the tax sale
34 law shall be amended and supplemented in order to require that all
35 equity remaining after a lienholder, who has foreclosed the right of
36 redemption of a tax lien, has been reimbursed for property taxes
37 paid, plus interest, shall be returned to the delinquent property
38 owner.

39

40 2. (New section) a. Notwithstanding any provision of the “tax
41 sale law,” R.S.54:5-1 et seq., or the “In Rem Tax Foreclosure Act,
42 1948”, P.L.1948, c.96 (C.54:5-104.29 et seq.), or any other law to
43 the contrary, in the case of a parcel of real property that is the
44 subject of a foreclosure action filed in Superior Court pursuant to
45 the provisions of , “tax sale law,” R.S.54:5-1 et seq. or the “In Rem
46 Tax Foreclosure Act, 1948”, P.L.1948, c.96 (C.54:5-104.29 et seq.),
47 upon the approval of the action to foreclose the right of redemption
48 by the court, the court shall not adjudge an absolute and

1 indefeasible estate of inheritance in fee simple to be vested in the
2 purchaser. The court shall order a judicial sale of the property and
3 shall provide for a writ of execution to the sheriff of the county in
4 which the property is located and shall order the sheriff to conduct
5 the judicial sale, pursuant to any direction or guidance promulgated
6 by the Administrative of the Office of the Courts or the Division of
7 Local Government Services in the Department of Community
8 Affairs. The court shall further order that the sum of all property
9 taxes paid by the purchaser, and interest due thereon, together with
10 all costs related to the filing and adjudication of the action to
11 foreclose the right of redemption that were paid by the purchaser,
12 shall be the first priority lien on the property, paramount to any
13 other lien, including any outstanding municipal lien. The court
14 shall further order that all costs of the judicial sale incurred by the
15 sheriff's office shall be reimbursed from the proceeds of the sale.
16 The amount received at the judicial sale shall be conclusively
17 deemed to be the fair market value of the property. In the event that
18 there are no bidders at the judicial sale and the purchaser obtains
19 fee title from the sheriff, the property shall be deemed to have no
20 equity.

21 b. Not later than 14 days following receipt by the sheriff of the
22 moneys paid by the winning bidder at the judicial sale, the sheriff
23 shall make the following reimbursements from these moneys in the
24 following order as required by this section:

25 (1) to the purchaser, the sum of all property taxes paid, and
26 interest due thereon, together with all costs related to the filing and
27 adjudication of the action to foreclose the right of redemption,
28 notwithstanding any other provision of law. These costs shall
29 include, but shall not be limited to, the costs associated with
30 prejudgment noticing, any service and filing fees, and all reasonable
31 attorney's fees;

32 (2) to the municipality in which the parcel of real property is
33 located, the amount of any other municipal liens on the property
34 together with interest due and owing thereon;

35 (3) to the sheriff's office to cover the costs of the judicial sale,
36 as required by this section; and

37 (4) to the defendant, all remaining moneys from the judicial
38 sale.

39 c. In the event that the sheriff shall be unable to locate and
40 forward any remaining moneys to the defendant, these funds shall
41 escheat to the municipality.

42 d. As used in this section:

43 "Defendant" means the owner of a parcel of real property on
44 which a tax sale certificate was purchased and whose right of
45 redemption was barred by a Superior Court judge after failing to
46 repay the purchaser of the lien.

47 "Person" means any individual, proprietorship, partnership, joint
48 venture, corporation, limited liability company, trust, association, or

S3343 POLISTINA

1 any other entity that has been assigned a unique federal
2 identification number.

3 “Purchaser” means the person who purchased the tax sale
4 certificate, paid the property taxes on the parcel of real property and
5 filed the foreclosure action with a court, and on whose behalf the
6 right to redeem was barred by the court.

7

8 3. R.S.54:5-32 is amended to read as follows:

9 54:5-32. The sale shall be made in fee to such person as will
10 purchase the property, subject to redemption at the lowest rate of
11 interest, but in no case in excess of **[18%]** 18 percent per annum.
12 **[If at the sale a person shall offer to purchase subject to redemption**
13 **at a rate of interest less than 1%, or at no interest, he may, in lieu of**
14 **any rate of interest to redeem, offer a premium over and above the**
15 **amount of taxes, assessments or other charges, as in this chapter**
16 **specified, due the municipality, and the property shall be struck off**
17 **and sold to the bidder who offers to pay the amount of such taxes,**
18 **assessments or charges, plus the highest amount of premium.]**

19 The collector shall accept bids in even increments and in
20 fractional interest rate bids of 0.25 percent only. If multiple bidders
21 offer the same lowest rate of interest, the collector shall use a
22 random-number generator to select the successful bidder. If a
23 certificate is not purchased, the certificate shall be struck off to the
24 municipality at the maximum rate of interest allowed by this
25 section. The collector shall be entitled to a fee of five percent on
26 the amount of the delinquent taxes and interest when a tax sale
27 certificate is sold, except that the fee shall be included in the face
28 value of the certificate and the collector shall not be entitled to the
29 fee until the certificate is redeemed or purchased.

30 (cf: P.L.2009, c.320, s.6)

31

32 4. R.S.54:5-86 is amended to read as follows:

33 54:5-86. a. When the municipality is the purchaser of a tax sale
34 certificate, the municipality, or its assignee or transferee, may, at
35 any time after the expiration of the term of six months from the date
36 of sale, institute an action to foreclose the right of redemption.
37 Except as provided in subsection a. of section 39 of P.L.1996, c.62
38 (C.55:19-58) or as provided in subsection b. of this section, for all
39 other persons that do not acquire a tax sale certificate from a
40 municipality, an action to foreclose the right of redemption may be
41 instituted at any time after the expiration of the term of two years
42 from the date of sale of the tax sale certificate, subject to the
43 requirements of section 2 of P.L. , c. (C.) (pending before the
44 Legislature as this bill). On instituting the action the right to
45 redeem shall exist and continue until barred by the judgment of the
46 Superior Court.

47 b. Any person holding a tax sale certificate on a property that
48 meets the definition of abandoned property as set forth in P.L.2003,

1 c.210 (C.55:19-78 et al.), either at the time of the tax sale or
2 thereafter, may at any time file an action with the Superior Court in
3 the county wherein said municipality is situate, demanding that the
4 right of redemption on such property be barred, pursuant to the "tax
5 sale law," R.S.54:5-1 et seq., or the In Rem Tax Foreclosure Act
6 (1948), P.L.1948, c.96 (C.54:5-104.29 et seq.), subject to the
7 requirements of section 2 of P.L. , c. (C.) (pending before the
8 Legislature as this bill). The filing shall include a certification by
9 the public officer or the tax collector that the property is abandoned,
10 provided pursuant to subsection d. of section 6 of P.L.2003, c.210
11 (C.55:19-83). In the event that the certificate holder has
12 unsuccessfully sought such certification from the public officer or
13 tax collector, as the case may be, the certificate holder may submit
14 to the court evidence that the property is abandoned, accompanied
15 by a report and sworn statement by an individual holding
16 appropriate licensure or professional qualifications, and shall
17 provide a copy of those documents submitted to the court to the
18 public officer and the tax collector. On the basis of this submission
19 and any submission provided by the public officer or tax collector,
20 as the case may be, the court shall determine whether the property
21 meets the definition of abandoned property.

22 c. Any person holding a tax sale certificate on a property that
23 meets the definition of abandoned property as set forth in P.L.2003,
24 c.210 (C.55:19-78 et al.), either at the time of the tax sale or
25 thereafter, may enter upon that property at any time after written
26 notice to the owner by certified mail return receipt requested in
27 order to make repairs, or abate, remove or correct any condition
28 harmful to the public health, safety and welfare, or any condition
29 that is materially reducing the value of the property.

30 d. Any sums incurred or advanced pursuant to subsection c. of
31 this section may be added to the unpaid balance due the holder of
32 the tax sale certificate at the statutory interest rate for subsequent
33 liens.

34 (cf: P.L.2015, c.16, s.1)

35

36 5. R.S.54:5-87 is amended to read as follows:

37 54:5-87. The Superior Court, in an action to foreclose the right
38 of redemption, may give full and complete relief under this chapter,
39 in accordance with other statutory authority of the court, to bar the
40 right of redemption and to foreclose all prior or subsequent
41 alienations and descents of the lands and encumbrances thereon,
42 except subsequent municipal liens, and to adjudge an absolute and
43 indefeasible estate of inheritance in fee simple, to be vested in the
44 purchaser, subject to the requirements of section 2 of P.L. , c.
45 (C.) (pending before the Legislature as this bill). The judgment
46 shall be final upon the defendants, their heirs, devisees and personal
47 representatives, and their or any of their heirs, devisees, executors,
48 administrators, grantees, assigns or successors in right, title or

S3343 POLISTINA

1 interest and no application shall be entertained to reopen the
2 judgment after three months from the date thereof, and then only
3 upon the grounds of lack of jurisdiction or fraud in the conduct of
4 the suit. Such judgment and recording thereof shall not be deemed
5 a sale, transfer, or conveyance of title or interest to the subject
6 property under the provisions of the "Uniform Voidable
7 Transactions Act," R.S.25:2-20 et seq.

8 In the event that any federal statute or regulation requires a
9 judicial sale of the property in order to debar and foreclose a
10 mortgage interest or any other lien held by the United States or any
11 agency or instrumentality thereof, then the tax lien may be
12 foreclosed in the same manner as a mortgage, and the final
13 judgment shall provide for the issuance of a writ of execution to the
14 sheriff of the county wherein the property is situated and the
15 holding of a judicial sale as in the manner of the foreclosure of a
16 mortgage.

17 (cf: P.L.2021, c.92, s.23)

18

19 6. Section 4 of P.L.1948, c.96 (C.54:5-104.32) is amended to
20 read as follows:

21 4. Any municipality or abandoned property certificate holder
22 may proceed, In Rem, pursuant to the provisions of the In Rem Tax
23 Foreclosure Act (1948), P.L.1948, c.96 (C.54:5-104.29 et seq.),
24 similarly to bar rights of redemption, after said certificate has been
25 recorded in the office of the county recording officer, subject to the
26 requirements of section 2 of P.L. , c. (C.) (pending before the
27 Legislature as this bill). Neither the foreclosure nor the recording
28 of any such judgment or certificate shall be construed to be a sale,
29 transfer, or conveyance of title or interest to the subject property
30 under the provisions of the "Uniform Voidable Transactions Act,"
31 R.S.25:2-20 et seq.

32 (cf: P.L.2021, c.92, s.25)

33

34 7. Section 2 of P.L.1964, c.39 (C.54:5-104.32a) is amended to
35 read as follows:

36 2. In any case in which any municipality has conveyed to the
37 State of New Jersey or a county thereof its right, title and interest in
38 any real property, acquired through the purchase of any tax sale
39 certificate covering said real property, the State or the county may,
40 in the name of the municipality, foreclose the rights of redemption
41 of said real property from tax sales, in the name of the municipality
42 but for the use of the State or the county, as the case may be, under
43 the In Rem Tax Foreclosure Act, **[1948]** (1948), subject to the
44 requirements of section 2 of P.L. , c. (C.) (pending before the
45 Legislature as this bill).

46 (cf: P.L.1974, c.22, s.2)

1 8. Section 36 of P.L.1948, c.96 (C.54:5-104.64) is amended to
2 read as follows:

3 36. **[(a)] a.** The judgment shall give full and complete relief, in
4 accordance with the provisions of this act, and in accordance with
5 any other statutory authority, to bar the right of redemption, and to
6 foreclose all prior or subsequent alienations and descents of the
7 lands and encumbrances thereon, and to adjudge an absolute and
8 indefeasible estate of inheritance in fee simple in the lands therein
9 described, to be vested in the plaintiff.

10 **[(b)] b.** Such judgment shall be binding and final upon all
11 persons having a vested or contingent title or interest in or lien or
12 claim upon or against said lands, including the State of New Jersey,
13 and any agency and political subdivision thereof, and their heirs,
14 devisees and personal representatives, and their, or any of their
15 heirs, devisees, executors, administrators, grantees, assigns or
16 successors in right, title or interest, notwithstanding any infancy or
17 incompetency of such person or persons, and upon all other persons,
18 their heirs, devisees and personal representatives and their or any of
19 their heirs, devisees, executors, administrators, grantees, assigns or
20 successors in right, title or interest.

21 **[(c)] c.** In the event that any federal statute or regulation
22 requires a judicial sale of the property in order to debar and
23 foreclose a mortgage interest or any other lien held by the United
24 States or any agency or instrumentality thereof, then the tax lien
25 may be foreclosed in the same manner as a mortgage, and the final
26 judgment shall provide for the issuance of a writ of execution to the
27 sheriff of the county wherein the property is situated and the
28 holding of a judicial sale as in the manner of the foreclosure of a
29 mortgage.

30 **[(d)] d.** The provisions of this section shall be subject to the
31 provisions of section 2 of P.L. , c. (C.) (pending before the
32 Legislature as this bill).

33 (cf: P.L.1995, c.326, s.3)

34

35 9. Section 17 of P.L.1997, c.99 (C.54:5-113.6) is amended to
36 read as follows:

37 17. Bid specifications for a contract for the sale of the total
38 property tax levy shall be subject to the following minimum terms
39 and conditions:

40 a. The municipality shall have the right to set a minimum bid
41 price, expressed in dollars, percent of levy, or both, which may
42 include a **[premium over the total property tax levy amount or a**
43 **discount from the total property tax levy amount]** fee of five
44 percent on the amount of the delinquent taxes and interest when a
45 tax sale certificate is sold. The municipality shall reserve the right
46 to reject any and all bids if, in the discretion of the municipality, it
47 determines that the bid sale price is inadequate.

1 b. The municipality shall require the successful bidder to secure
2 its payment obligation with either an irrevocable letter of credit or a
3 bond from a surety or insurance company, the form and sufficiency
4 of which is acceptable to and approved by the municipality, but
5 which initially shall not be less than ~~【105%】~~ 105 percent of the
6 amount of the uncollected taxes levied and payable as of the last
7 day of the prior year or ~~【105%】~~ 105 percent of the amount actually
8 paid by the levy purchaser in the prior year for taxes levied and
9 payable for that year, whichever is greater, or, in the case of a levy
10 sale concluded in the final month of the fiscal year, an amount
11 equal to ~~【105%】~~ 105 percent of the actual tax collection
12 delinquency for the prior fiscal year. The amount of the letter of
13 credit or surety bond may be reduced proportionately throughout
14 the year as the total property tax levy purchaser satisfies its
15 payment obligation. The irrevocable letter of credit or the bond
16 shall be provided prior to the sale of the total property tax levy
17 becoming effective.

18 c. The purchaser shall pay for the total property tax levy bid
19 amount in quarterly installments or, if there is to be one annual
20 installment, after the last fiscal year quarterly delinquent date as
21 indicated in the contract for the sale of the total property tax levy.
22 These installments shall be due no earlier than 10 days, and no later
23 than 30 days after the appropriate quarterly tax due date. Whether
24 there is one annual installment payment prior to the end of the fiscal
25 year as indicated in the contract for the sale of the total property tax
26 levy or quarterly installments, in either event, the installment shall
27 be due upon the presentation of a certification from the tax collector
28 stating; (1) the total amount of the total property tax levy for the
29 quarter or year, as appropriate, (2) the amount of property taxes that
30 are delinquent for the quarter or year, as appropriate, (3) a list of the
31 amount of the delinquent property taxes for each property, which
32 property shall be identified by block, lot and the name of the owner,
33 and (4) the amount due and payable by the property tax levy
34 purchaser pursuant to its contract with the municipality. The tax
35 collector shall deliver the certification to the purchaser within five
36 business days following 10 days after the quarterly tax due date. At
37 the time of the quarterly or annual payment, as appropriate, the
38 purchaser shall receive as a credit against the payment due, an
39 amount equal to the taxes paid to the tax collector. If, within five
40 business days of receipt of the certification from the tax collector,
41 payment is not made by the total property tax levy purchaser in
42 accordance with the contract, the municipality may charge a penalty
43 not to exceed three times the maximum delinquent rate of interest
44 permitted by statute until such time as the required payment is made
45 in full. The penalty interest rate shall be set forth in the bid
46 specifications and contract.

47 d. Subject to the payment of quarterly delinquent property taxes
48 or the fiscal year delinquency by the total property tax levy

1 purchaser as specified in the contract for the sale of the total
2 property tax levy, the levy purchaser shall be paid, upon collection
3 by the municipal tax collector, all delinquent taxes and other
4 municipal charges that are owing, due and payable, subject to any
5 contract provision pursuant to subsection h. of this section,
6 including interest and penalties, if applicable. The municipal tax
7 collector or chief financial officer shall remit such funds as
8 authorized by the governing body to the levy purchaser only upon
9 collection of the outstanding tax delinquencies, municipal liens or
10 charges, or certificate redemptions, including interest or penalties
11 that are due and paid to the tax collector. Such funds shall be
12 remitted by the tax collector or chief financial officer to the total tax
13 levy purchaser within 30 days of collection by the tax collector
14 unless a different schedule is specified in the contract for the sale of
15 the total property tax levy. Upon issuance of an appropriate tax sale
16 certificate the total property tax levy purchaser may also pay
17 subsequent taxes and other municipal liens and charges, subject to
18 any limitations contained in the total property tax levy sale bid
19 specifications and contract. The total property tax levy purchaser
20 may file an action to foreclose the right to redeem the tax sale
21 certificate, in personam, upon expiration of two years from the date
22 of its issuance pursuant to R.S.54:5-86 et seq.

23 e. The collection and enforcement of taxes and the preparation
24 of redemption statements and discharges of tax lien certificates
25 shall remain the right and obligation of the municipal tax collector.

26 f. The purchaser shall provide reports as are requested by the
27 municipality.

28 g. The purchaser of the total property tax levy may be obligated
29 by the bid specifications and contract to pay all subsequent taxes,
30 municipal liens or other municipal charges on each tax sale
31 certificate acquired under the total property tax levy purchase until
32 redemption or foreclosure of the tax sale certificate has been
33 completed, whichever occurs first. The total property tax levy
34 purchase contract may provide that failure to make such payments
35 within each fiscal year shall result in the forfeiture of any such
36 certificate and any amount due thereon and require the assignment
37 of the certificate back to the municipality. The bid specifications
38 and contract may include a sunset provision on provisions relating
39 to the total property tax levy purchaser's right or obligation to pay
40 subsequent taxes and other municipal liens and charges.

41 h. The bid specifications and contract may contain provisions
42 relating to the resolution of tax appeals on properties for which the
43 total property tax levy purchaser has acquired tax sale certificates
44 from the municipality.

45 i. The bid specification and contract may permit the
46 municipality to conduct a public tax sale and reimburse the total
47 property tax levy purchaser from the proceeds of the tax sale.

1 j. In the event that a tax sale certificate is issued in connection
2 with the sale of a total property tax levy, the account of the
3 municipality with the total property tax levy purchaser shall be
4 credited with the total face amount of the certificate as of the date
5 of its issuance.

6 k. The bid specifications and contract may provide that the total
7 property tax levy purchaser, at the closing of the levy sale, shall
8 have the right, but not the obligation, to acquire by assignment all
9 tax lien certificates held by the municipality, excluding those
10 certificates relating to known or suspected sites of environmental
11 contamination. This right of the purchaser may be exercised only if
12 the purchaser's bid is equal to or greater than **[98%]** 98 percent of
13 the combined dollar value of the total property tax levy and the full
14 redemptive value of the municipal tax lien certificates so assigned.
15 (cf: P.L.1997, c.99, s.17)

16
17 10. R.S.54:5-33 is repealed.

18
19 11. This act shall take effect immediately and shall apply to any
20 tax lien for which the right of redemption has not been foreclosed,
21 or final judgment rendered, as of that effective date.

22
23
24 STATEMENT

25
26 This bill revises New Jersey's tax lien foreclosure laws to
27 comply with the United States Supreme Court's decision in Tyler v.
28 Hennepin County, Minnesota, et al., 143 S. Ct. 1369 (2023), and the
29 New Jersey Appellate Division court decision in 257-261 20th
30 Avenue Realty, LLC v. Alessandro Roberto, et al., A-3315-21
31 (December 4, 2023).

32 In the Tyler decision, the Supreme Court concluded that the
33 taking of the entirety of a property owner's equity in a parcel of real
34 estate because that property owner was delinquent in the payment of
35 property taxes attributable to the parcel of real property violates the
36 Takings Clause of the Fifth Amendment to the United States
37 Constitution. In the Roberto decision, the Appellate Division found
38 that New Jersey's tax sale law, which established the confiscation
39 of a property owner's equity when a tax lien on a property is
40 foreclosed, violates the Takings Clause of the Fifth Amendment to
41 the United States Constitution as determined in the Tyler case, and
42 also approved the retroactive application of the decision to any
43 foreclosure case pending final judgment to account for the new
44 principle of law established in Tyler (The Appellate Division court
45 referred to this as "pipeline retroactivity").

46 In order to address the Tyler and Roberto decisions, the bill
47 provides that notwithstanding any provision of the "tax sale law,"
48 R.S.54:5-1 et seq., or the "In Rem Tax Foreclosure Act, 1948",

1 P.L.1948, c.96 (C.54:5-104.29 et seq.), or any other law to the
2 contrary, in the case of a parcel of real property that is the subject
3 of a foreclosure action filed in Superior Court pursuant to the
4 provisions of either law, upon the approval of the action to
5 foreclose the right of redemption by the court, the court may not
6 award a property ownership to the tax lien purchaser.

7 Instead, the court would be required to order: (1) a judicial sale
8 of the property to be conducted by the sheriff of the county in
9 which the property is located, pursuant to any direction or guidance
10 promulgated by the Administrative Office of the Courts or the
11 Division of Local Government Services in the Department of
12 Community Affairs; (2) that the sum of all property taxes paid by
13 the tax lien purchaser, and interest due thereon, together with all
14 costs related to the filing and adjudication of the action to foreclose
15 the right of redemption that were paid by the tax lien purchaser,
16 would be the first priority lien on the property, paramount to any
17 other lien, including any outstanding municipal lien; and (3) that all
18 costs of the judicial sale incurred by the sheriff's office would be
19 reimbursed from the proceeds of the sale. The bill also provides
20 that the amount received at the judicial sale would be conclusively
21 deemed to be the fair market value of the property, and in the event
22 that there are no bidders at the judicial sale and the purchaser
23 obtains fee title from the sheriff, the property would be deemed to
24 have no equity.

25 With regard to the disbursement of funds from a judicial sale of a
26 foreclosed property, the bill would require the sheriff to make the
27 following reimbursements from these moneys in the following order
28 not later than 14 days following receipt by the sheriff of the moneys
29 paid by the winning bidder:

30 (1) to the purchaser, the sum of all property taxes paid, and
31 interest due thereon, together with all costs related to the filing and
32 adjudication of the action to foreclose the right of redemption,
33 notwithstanding any other provision of law. These costs may
34 include, but shall not be limited to, the costs associated with
35 prejudgment noticing, any service and filing fees, and all reasonable
36 attorney's fees;

37 (2) to the municipality in which the real property is located, the
38 amount of any other municipal liens on the property together with
39 interest due and owing thereon;

40 3) to the sheriff's office, the amounts needed to reimburse the
41 costs of the judicial sale, and

42 (4) to the defendant, all remaining moneys from the judicial
43 sale, except that if the sheriff is unable to locate and forward any
44 remaining moneys to the defendant, those funds would escheat to
45 the municipality.

46 The bill would also prohibit the payment by a bidder at a tax lien
47 sale of a premium payment to the municipality in order to obtain a
48 tax sale certificate, once the interest rate has been bid down to zero.

S3343 POLISTINA

1 Instead, the bill would require a tax collector to accept interest rate
2 bids in even increments and in fractional interest rates of
3 0.25percent only. If multiple bidders offer the same lowest rate of
4 interest, the collector would then be required to use a random-
5 number generator to select the successful bidder. If a tax sale
6 certificate is not purchased, the certificate would be struck off to the
7 municipality at the maximum rate of interest allowed by law. The
8 bill would entitle the collector to a fee of five percent of the amount
9 of the delinquent taxes and interest when a tax sale certificate is
10 sold, except that the fee would be included in the face value of the
11 certificate, and the collector would not be entitled to the fee until
12 that certificate is redeemed or purchased.