

Written Testimony for the  
**Senate Finance and Taxation**  
March 27, 2023  
Erica Johnsrud, McKenzie County Auditor/Treasurer



**RE: SUPPORT for HB 1267**

Good morning, Chairman Kannianen, and members of the Senate Finance and Taxation Committee. My name is Erica Johnsrud and I serve as the Auditor/Treasurer for McKenzie County. I stand in support of HB 1267.

This bill seeks to revert the proceeds from tax lien foreclosures back to the County's general fund, which is the way prior to the 2021 Legislative Session when HB 1199 changed the disposition to the system in place today. As I hope you can appreciate below, the time and cost to the counties to complete the process is extensive and complex.

The process currently begins on or before March 1 of each year and currently continues until mid-February of the following year. Only properties that have 3 years of unpaid taxes are subject to the tax lien process and sale described below.

The following processes are currently in place and would not change as a result of the passage of HB 1267:

- Annual notices to taxpayer of unpaid tax:
  - March each year – many counties, including McKenzie County, send out “courtesy notices” to taxpayers reminding them that their taxes for the current year, due March 1 each year, remain unpaid. These notices also include information on previous year unpaid taxes, if applicable.
  - November each year – required “Notice of Delinquent Tax” required by NDCC 57-20.
  - December each year – tax statements mailed out, which also indicate if delinquent taxes are due (NDCC 57-20-07.1).
  - This process occurs each year until the 3 years unpaid period is met.
- Once taxes remain unpaid for a period of 3 years the following steps are taken:
  - On or before March 1
    - Clerk of Court and County Recorder are provided information from the County Auditor on parcels with unpaid tax for the past 3 tax years.
    - Clerk of Court and Recorder are required to provide mortgage holder and lien holder information before April 15 to the County Auditor.
    - Those certifications include the names and addresses of any recorded or filed persons with an interest in the property.
  - By April 15
    - Cost of Service Notice is mailed to all 3-year delinquent taxpayers.
    - Notice includes the amount in dollars to be added to the notice if the taxes remain unpaid for the most outstanding year due.

- For many counties this amount is \$50, allowed by law, as actual costs are unknown at this time to keep counties whole for expenses incurred during the foreclosure process.
- Month of May (must be completed on or before June 1)
  - Foreclosure notices mailed to taxpayers by certified mail. McKenzie County mails these out on the first business day of May.
  - Foreclosure notices mailed via certified mail to each and every single person and address that has an interest in the property, including registered agents on file with the ND Secretary of State.
  - Residential structures on any 3-year delinquent properties are personally served the notice from the Sheriff's Office regarding the delinquent tax and pending tax foreclosure sale in November.
- On or before August 1
  - Foreclosure Notice must be published in County's Official Newspaper.
  - Listing must include taxpayer name, property address, and amount of tax due to redeem the property and end the foreclosure process.
- October 2
  - Tax Deed issued to the County.
  - Homeowner or interested party still has the opportunity to redeem the property and end the foreclosure process, but now must pay all years current.
  - Up to October 2 only the most outstanding year of taxes is required to be paid to stop the foreclosure process.
- 30 days before Annual Sale
  - Minimum Sales Price Set by the Board of County Commissioners.
  - Counties' goal is to return the property to the county tax rolls, not to make a profit on the property.
  - McKenzie County sets the minimum sales price at an amount to cover the 3 years outstanding taxes, special assessments, penalty, and interest due, plus an estimated amount of the following year's taxes and special assessments.
- At least 10-15 days before Annual Sale
  - Official notice listing property address and tax due published in County's Official Newspaper (10 days before Annual Sale).
  - Notice is also required to be posted outside the County Auditor's Office (15 days before Annual Sale).
- Third Tuesday in November
  - Annual Sale of 3-year Delinquent Taxes.
  - Sale price starts at minimum set by Board of County Commissioners.
  - Property sold according to Terms of Annual Sale (example attached to this testimony) to the Highest Bidder.
  - Successful bidder given County Deed for the property.
- Disposition of Proceeds
  - Occurs at 90 days past the Annual Sale Date (mid-February of following year)
  - Following the annual sale, counties mail to former owner(s) a claim form (example attached to this testimony) and process outlining next steps.
  - Excess Proceeds (those not to cover taxes or special assessments due) are to be distributed in one of three ways (NDCC 57-28-20):

1. To the owner of record title if the owner has submitted an undisputed claim for the excess within the 90-day period.
  2. To the clerk of the district court...if a disputed claim or multiple claims for excess were filed within 90-day period.
  3. To unclaimed property if no claim was submitted within the 90-day period.
- **Property Owners Rights of Redemption** - Property Owners have until the time of the sale on the 3<sup>rd</sup> Tuesday in November to redeem the property by paying all taxes, specials, interest, penalties in full/current.

**HB 1267 only changes the disposition of the excess proceeds from the tax sale back to the manner in which it was prior to the 67th Legislative Assembly.**

We respectfully request the proceeds are submitted back to the county's general fund to assist in covering some of the costs incurred during the process. By the time get to the annual foreclosure sale in November, owners likely have received at least 9 notices by mail, plus possible personal service by the Sheriff, plus 2 published notices in the Official Newspaper. All other interested parties (lienholder, mortgage holders, etc.) based on records certified by Clerk of Court or County Recorder have been sent notices, including registered agents. Additional county expenses incurred during the process include:

- Cost of certified mail – As an example, McKenzie County has had to send 10 certified letters on one parcel at cost of at least \$5.50 for each letter mailed.
- Cost of service of Sheriff Deputy – can be multiple attempts at personal service.
- Cost of publication two times in the official newspaper.
- Costs of property upkeep, cleanup, etc if needed.

Counties make every attempt to locate former owners or anyone with an interest in the property, but when you can't find the owner, you can't find them. Often times, in my experience, developers or other owners have made the business decision to let the property go through this process, essentially they walk away without incurring any additional costs and have no desire to retain ownership of the property. The current process extends red tape by sending funds to Unclaimed Property with very remote chance the person will redeem the funds. Funds deposited to the County would cover the burden of the costs and time incurred during the foreclosure process, which I can assure you is not a money-maker for counties.

As this bill would assist counties in recouping costs incurred during a complex and lengthy tax foreclosure and sale process, I urge a DO PASS recommendation on HB 1267.

**Terms of Annual Sale**  
**November 15, 2022**  
**McKenzie County Auditor/Treasurer**

1. Each parcel of land will be sold at auction to the highest bidder for not less than the posted minimum sale price. Terms are cash or check to be deposited immediately with the McKenzie County Auditor/Treasurer's Office. The county is deeding its interest in the property. We recommend the successful bidder perfect their title. The county issues what is known as a "county deed". Any questions of a legal nature should be discussed with your attorney.
2. The descriptions provided are based on the Official Records of the County Recorder's Office and are presumed to be correct.
3. Prospective purchasers are urged to examine the title, location and desirability of the properties available to their own satisfaction prior to the sale. The County makes no guarantee, expressed or implied, relative to the title, location or condition of the properties for sale. The County assumes no liability for any other possible liens, encumbrances or easements, recorded or not recorded.
4. Prospective purchasers are advised that some assessments which are levied by agencies or offices other than the County may still be outstanding after the tax sale; in addition, the I.R.S. has the option of redeeming, up until 120 days after the sale, any property on which there is an I.R.S. lien recorded.
5. If the successful purchaser desires a survey of the property, it will be at the purchaser's own initiative and expense. The County makes no warranty, either expressed or implied, relative to the usability, the ground location, or property lines of the properties. The prospective purchaser must determine the exact location, desirability, and usefulness of the properties.
6. The sale of these properties should not, in any way, be equated to real estate sales by licensed salesmen, brokers and realtors. The County cannot guarantee the condition of the property nor assume any responsibility for conformance to codes, permits or zoning ordinances. You should inspect the property before investing. The burden is on the purchaser to thoroughly research, before the sale, any matters relevant to his or her decision to purchase, rather than on the county, whose sole interest is the recovery of back taxes.
7. Your bid is an irrevocable offer to purchase the asset.
8. Successful bidder shall state in writing the name(s) and address(es) in which the County Deed shall be issued. Note that the property will be deeded in the name of the bidder unless the bidder has written, signed permission from another party to record the deed in their name.

9. A copy of the deed will be mailed to the purchaser after it is signed by the Chair of the McKenzie County Commission. The County Recorder will send the original deed to the owner after recording is completed.

10. The minimum bid price includes all taxes, penalties, interest and annual installments of specials certified to the McKenzie County Auditor/Treasurer through the 2021 tax year. The bid price also includes the estimated taxes and annual installment of special assessments for the 2022 tax year.

11. Upon delivery of the deed, the property becomes taxable to the purchaser for the 2022 tax year.

Clean Petroleum Services Inc  
4530 Baywalk Circle  
Pensacola, FL 32514

December 1, 2022

RE: 03-00-10032  
Notice of Excess Foreclosure Proceeds

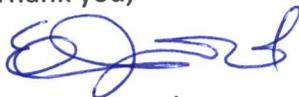
This letter is to inform you that the above listed property was sold at the annual tax sale on November 15, 2022 pursuant to NDCC 57-28 in the amount of \$9,500.00. There is a balance of \$4,229.44 in excess proceeds after taxes, special assessments, penalties, interest, and costs associated with selling the property are deducted from the purchase amount.

Pursuant to NDCC 57-28-20, excess proceeds must be retained by the county for 90 days following the date of the sale. After the 90-day retention period, any excess proceeds must be distributed:

- a. To the owner of the record title in the notice of foreclosure of tax lien if the owner submits an undisputed claim for the excess proceeds within the 90-day retention period.
- b. To the clerk of district court in McKenzie County if a disputed or multiple claims are submitted for the excess funds within the 90-day retention period.
- c. To unclaimed property under NDCC 47-30.1 if no claims are submitted within the 90-day retention period.

If you are entitled to excess proceeds pursuant to NDCC 57-28-20, please complete the enclosed claim for excess foreclosure proceeds and return to the McKenzie County Auditor/Treasurer's office by February 13, 2023.

Thank you,



Erica Johnsrud  
McKenzie County Auditor/Treasurer

**CLAIM FOR EXCESS FORECLOSURE PROCEEDS**

*(Per NDCC 57-28-20 - Disposition of proceeds of sale)*

Date: \_\_\_\_\_

Claimant(s) Name: \_\_\_\_\_ claims to be entitled to payment of the excess of the foreclosure sale proceeds of real estate property described below. Claimant is entitled to the excess proceeds because he/she is (check one):

Owner of Record                      Lien Holder                      Mortgage Holder  
Judgment Holder                      Estate                      Other (explain) \_\_\_\_\_

Legal Description of Foreclosure Property for which claim is being made: \_\_\_\_\_

Parcel #: \_\_\_\_\_ Amount of Claim: \$ \_\_\_\_\_

**Claimant Contact Information:**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Street Address, City, State, Zip

\_\_\_\_\_  
Mailing Address (if different)

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Email

**AFFIDAVIT & AGREEMENT**

I / we \_\_\_\_\_ hereby state under oath that the information provided above is complete and accurate to the best of our ability and that no intentional misstatements or misrepresentations are included on this Claim for Excess Foreclosure Proceeds. I / we agree to indemnify, compensate, or make restitution to \_\_\_\_\_ County for any loss, damage, or expense experienced by the County as a result of any misstatement or misrepresentation in this Claim for Excess Foreclosure Proceeds.

X \_\_\_\_\_  
*Claimant Signature*

X \_\_\_\_\_  
*Claimant Signature*

**NOTARY PUBLIC:**

State of \_\_\_\_\_  
County of \_\_\_\_\_

This document was acknowledged before me by \_\_\_\_\_  
*Name(s) of Claimant(s)*  
who personally signed and appeared before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
*Signature of Notary Official*                      My commission expires: \_\_\_\_\_