Report of the Task Force to Study Tax Sales in Maryland

Established by SB823/HB659 in the 2017 General Assembly session

January 18, 2018

The Honorable Michael E. Busch Speaker, House of Delegates H- 101 State House 100 State Circle Annapolis, MD 21401 The Honorable Thomas V. Mike Miller, Jr. President of the Senate State House H107 110 State Circle Annapolis, MD 21401

RE: Report of the Task Force to Study Tax Sales in Maryland

Mr. Speaker and Mr. Senate President:

Pursuant to Chapter 616 which was legislation passed in the General Assembly in 2017 to create a task force to study tax sales in Maryland, we are writing to submit to you the report of our findings and recommendations.

The findings and recommendations outlined herein represent several months of meetings and work of the Task Force members, a list of whom can be found on Appendix A of this report.

The recommendations include: additional tools that ensure vacant and abandoned properties are put to productive use, more consumer protections, and specific activities that address drinking water and water bills in our state.

We look forward to working with the General Assembly on passage of the package of bills recommended by this Task Force.

Sincerely,

Senator Adelaide Eckardt, Co-Chair

Delegate Jay Walker, Co-Chair

Task Force to Study Tax Sales in Maryland

Report of Recommendations

Introduction

The General Assembly in 2017 enacted HB659/SB823 Task Force to Study Tax Sales in Maryland. The Task Force leadership was approved by the Speaker and Senate President in June of 2017. The groups designated in the legislation then appointed their representatives and the Task Force started its work in September, meeting four times along with a subgroup that met to study water liens only. One of the Task Force meetings was a public hearing where testimony was heard regarding a multitude of issues and ideas. This report outlines the Task Force's recommendations. Though this panel was staffed by the Maryland Department of Housing and Community Development, the recommendations of the Task Force are not in any way representative of the views of the agency. A list of the members of the Task Force can be found on Appendix A.

We note that the Task Force included a broad range of participants with a wide variety of expertise and differing viewpoints. As noted above, this diverse Task Force had numerous meetings and had varied conversations about whether and how to improve the tax sale system. This report in its numerous statements and even in its recommendations reflects varying degrees of agreement or disagreement among Task Force members on individual points. Accordingly, the report content should not be ascribed to individual Task Force members, except where expressly noted as reflecting the viewpoints of a named individual.

The conversation around tax sale began in the General Assembly during the interim in 2016 when Delegate Marvin Holmes (D-23) held an informal work group around vacant and abandoned properties and tools to address them. What began as a workgroup to explore the Land Bank tool quickly became a work group exploring various aspects of the vacant property problem in Maryland. A study from the Community Development Network of Maryland (CDN), Maryland Association of Counties (MACo) and Maryland Municipal League (MML) helped inform the work group around several issues, including definition of vacant property, use of the Foreclosed Property Registry, and tax sale. The workgroup then passed a series of bills addressing these issues. SB823/HB659 was one of those pieces of legislation.

Maryland's Tax Sale system

The tax sale system in Maryland, like many states throughout the country, is designed for local counties to collect delinquent real property taxes and other unpaid charges owed to the counties (such as water or environmental liens), all of which are liens against the real property. Without the collection of such taxes, local and county government services such as fire, police and 911 services, infrastructure needs, and school districts and libraries could face cash shortfalls.

Each county in Maryland conducts an annual tax sale, whereby the tax liens are offered to the public at auction. Generally, the highest bidder in the auction pays the total amount of the tax liens to the county and receives a tax sale certificate from the county which gives the bidder the right to obtain ownership of the property by filing a tax sale foreclosure lawsuit.

Every owner of record of real property must pay real estate property taxes on that property, and any other fees that become liens on the property if unpaid. Real estate property taxes and fees on rental properties are the responsibility of the property owner. If there is a mortgage on the property, it is the responsibility of the property owner to send or deliver the real estate property tax bill to the bank, building association or other lending

institution. Many times however, mortgage companies pay the real estate property tax bills. Real estate property taxes are due and payable every year even if there is no mortgage due on the property.

Generally, once properties are deemed delinquent, and the owner does not pay within a certain timeframe, the property enters tax sale. Investors purchase the liens, allowing the jurisdiction to collect on those liens and receive the outstanding amounts all at one time. The tax sale purchaser has two years to redeem the lien or foreclose on the property. Homeowners in this situation can redeem the lien by paying the purchaser the amount of the lien, plus up to 18% interest in some jurisdictions, plus various fees outlined in the current statute. In the case of vacant property liens, many are not sold at tax sale, and therefore the liens continue to accumulate and the properties continue to be a nuisance on the community.

Of the jurisdictions who answered an informal online survey, 90% of them include property taxes, water liens, environmental (like cleaning and boarding), and other fees in tax sale. Maryland's current law states that property owners with delinquencies under \$250 may be taken out of tax sale. (For Baltimore City, owner–occupied properties must be withheld from tax sale if the delinquency is less than \$750, and Baltimore City's Mayor chose to remove water liens from tax sale for 2018). In addition, if the property enters tax sale and is redeemed, the owner redeeming the property (i.e. paying off the lien to save their home) must pay the amount of the lien, plus interest and several other fees.

Maryland has almost 100 water and sewer providers, including 89 water and sewer systems owned by small towns, the Washington Suburban Sanitary Commission (WSSC), and county water and sewer systems. Water and sewer systems are funded using "enterprise funds," which means that revenues are derived primarily from ratepayers.

Some municipal water systems send delinquent owners to their respective county to go through the tax sale system. WSSC does not have the power of tax sale by statute. WSSC provides the water and sewer for most of Montgomery and Prince George's Counties. WSSC terminates water service if there is a delinquency that cannot be resolved by other means. WSSC has a water affordability program and uses payment plans as a method for rate payers to resolve delinquencies.

According to informal data compiled by the Center for Community Progress collected through MACo, some jurisdictions take no or very few properties to tax sale, while jurisdictions take thousands of properties to tax sale each year. Data are incomplete on other points (like percentages of the tax sales that were vacant versus those that were owner occupied, properties cycling through tax sale multiple times, etc.) To fully understand the issues, standardized data collection with consistent, hard definitions of relevant terminology are needed

The General Assembly is interested in understanding the tax sale system, its problems and challenges, and solutions to address the challenges. Specifically, HB659/SB823 in uncodified language says "It is the will of the General Assembly to examine the tax sale system to maximize resources, facilitate properties getting to productive use, and protecting residents."

Task Force Process

The Task Force met four separate times to discuss the current Maryland tax sale system and if any changes should be recommended. There was a separate sub-group that met regarding water liens only.

The first meeting took place on Friday, September 29, at Baltimore City Hall. The Co-Founder for the Center for Community Progress (CCP) briefed the members of the Task Force their *In Rem* system, based on the report the CCP did regarding Baltimore's tax sale system.

A subgroup met on October 17 to discuss water liens and the water systems in Maryland.

The second meeting was a public hearing that took place on Wednesday, October 25, in Annapolis. The Task Force heard testimony for various panelists, including county representatives, attorneys representing tax lien holders, and advocates for an against the current Maryland tax sale system. The link to the testimony can be found here. http://mgahouse.maryland.gov/mga/play/bd68b6f5-fc58-40b7-aea5-728e00a03dbc/?catalog/03e481c7-8a42-4438-a7da-93ff74bdaa4c

November 29 and December 5 were meetings where the task force members discussed the numerous recommendations coming from the testimony, and recommendations from task force members themselves.

Separate conversations between parties took place throughout the process and in between meetings to find consensus on recommendations.

Statement of Need

It should be noted that several jurisdictions testified that they have not had any problems with their tax sale system. They are able to collect maximum revenues, get vacant tax sale properties to productive use, and there is minimal impact on homeowners.

However, some specific challenges have surfaced in other jurisdictions that were the reasons this task force was formed. Baltimore City, Dorchester County, and Prince George's County each appointed their own representatives to the Task Force.

In Dorchester County, tax sale properties significantly increased recently, from 5 properties not selling at tax sale in 2010 to 103 properties not selling at tax sale in 2013. The County was caught off guard and did not have the tools they needed to address the properties. They foreclosed on each one that did not sell at tax sale at a large expense. Their goal is to reduce their county's costs and ensure the properties are put to productive use.

In Baltimore City, numerous articles in the *Baltimore Sun* highlight the errors in the new water billing system http://www.baltimoresun.com/news/maryland/baltimore-city/bs-md-ci-tax-sale-20170505-story.html and the impact that properties with millions of dollars in liens are causing significant blight in communities http://www.baltimoresun.com/news/maryland/investigations/bs-md-ci-million-dollar-vacants-20170728-story.html. According to the City of Baltimore, in 2016, 9,984 properties were placed in tax sale, 733 of them for water liens only. Of the total, 5,718 of them had the liens sold at tax sale, with 1,945 of those liens on owner occupied homes. Of those owner occupied homes, there were 602 of those owners had lived in the home more than 25 years (it is assumed they had already paid their mortgage.)

In an informal survey from MACo, in the past two years in Baltimore City, of the homes who had water liens only, (which was 902 in 2015 and 671 in 2014) there were 4 homes foreclosed upon when the certificate was not redeemed. These statistics show that affected residents in the city are paying the taxes and liens after the tax sale has occurred. With the amount of the lien plus 12% interest and various fees, residents are paying much more to keep their homes.

In Prince George's County, one of the hardest hit counties in the mortgage foreclosure crisis, officials are interested in any tools available to get properties from vacancy to productive use.

Recommendations

The Task Force looked at the totality of the tax sale system and has come up with recommendations to provide local governments with additional tools to recover lost revenue from delinquencies, help move vacant properties back to productive use, provide additional protections for homeowners, and ensure fair treatment of local ratepayers who have water bill delinquencies as a part of the tax sale system.

As noted above, the Task Force worked to gain consensus from all Task Force members, however there was not full consensus on all recommendations. Objections are noted on those recommendations.

Vacant and Abandoned property

• Enable jurisdictions to voluntarily create the judicial *In Rem* tax sale system recommended by the Center for Community Progress, with additions that provide constitutionally defensible language for jurisdictions to select which properties go through this system. The *In Rem* system is for vacant properties. In essence, it allows jurisdictions to use a deed sale system to address vacant properties, not a tax sale certificate system, in which clear and insurable title is delivered at the completion of the deed sale system. Under this new system, if the jurisdiction chooses to do so, the jurisdiction would establish a date certain by which property owners would either have to pay off delinquent taxes (or, if eligible, enter into a payment plan) or face foreclosure. The jurisdiction would then auction off the deed, and in the absence of any bidder, would assume ownership of the property. In cases where jurisdictions will establish land banks, the property can be transferred to the land bank for disposition and redevelopment. In 2017, the General Assembly gave land banks the power of lien release and updated other aspects of the land bank statute to make land banks a better tool for blight elimination.

In discussions among task force members, it was clear two jurisdictions are interested in such a system (Dorchester County and Prince George's County). The system is a good way to have more control over the outcome of the property. Baltimore City, while clearly not interested in converting its entire tax sale system because of the cost, is interested in this system for some properties.

Community development organizations are interested in this system to enable them to have a chance to bid on properties to help accomplish their redevelopment goals, and could work with land banks or the jurisdiction to take control of the properties after a failed sale. It is difficult for nonprofit community development organizations to compete in the current environment.

There were objections from Task Force members representing the National Tax Lien Association and the Maryland Tax Sale Participants Association. They are opposed to this recommendation claiming that such a system would cause confusion as to what jurisdictions have which system, and possibly deter their members and members of the public from participating in tax sales in Maryland. Some jurisdictions are also hesitant because of concerns about the cost of such a system.

• Authorize the power of lien release to all jurisdictions. Under current statute, only Baltimore City has the legal authority to reduce or eliminate property liens, though other jurisdictions have expressed interest in securing this authority. The power of lien release is an important tool to address blight and put properties back into productive use, as it allows a property to be transferred with clear title, increasing the likelihood that the property will be purchased. This tool provides a jurisdiction greater options in the disposition of property. While this power has been granted to land banks, no jurisdiction has yet used the revised statute to establish land banks and may prefer to incorporate this tool into existing forms of property disposition. This authority should be granted to all jurisdictions.

- Shorten the timeframe for redemption on vacant properties so the jurisdiction can control the property sooner. If the tax sale purchaser does not foreclose (or redeem) on the lien within one year of sale, the property should be handled by the jurisdictions (either in a land bank, through receivership, foreclosure or other tools.) The goal is to close that timeframe and to ensure the jurisdiction gets control of the property, and not have to put the property through tax sale again. There is a similar provision for Baltimore City that requires a foreclosure proceeding be filed within 3 months which should be available for all jurisdictions.
- Authorize jurisdictions to take properties out of tax sale for redevelopment purposes. Jurisdictions should
 be able to take a property out of tax sale in order to achieve specific redevelopment or revitalization goals. In
 these cases, the jurisdictions negotiate with a third party who is interested in the property. Baltimore City
 uses this practice often and the Task Force wanted to include this recommendations as an option for other
 jurisdictions around the state.
- Enable and encourage jurisdictions to shut off water if the property is deemed vacant and abandoned. In the 2017 General Assembly, legislation to expedite mortgage foreclosure on vacant and abandoned properties was passed.
 http://mgaleg.maryland.gov/webmga/frmMain.aspx?id=sb1033&stab=01&pid=billpage&tab=subject3&ys=20
 17rs In it, there is a very specific definition of vacant and abandoned properties and conditions in which the secured party can expedite foreclosure. Jurisdictions could use this definition, or use their own vacancy certification process, to determine a property vacant, and shut off the water. The idea was generally viewed positively because it prevents water bills from accruing rapidly, protecting the homeowner (in the event they want to redeem), the lien purchaser, and ultimately preventing further degradation of the home in the event of leaks (which may otherwise add significant costs for redevelopment).

Concerns were raised about how the shut off would affect fire suppression (hydrants, sprinklers, standpipes, etc.). According to WSSC and inquiries conducted by the Maryland Municipal League, fire suppression measures required by law must have separate connections and would be unaffected by shutoff of water service to private property.

• Authorize that all jurisdictions can expedite foreclosure on vacant and abandoned properties that do not sell at tax sale. Section 14-833(g) of the tax property code allow Baltimore City and Prince George's County to expedite foreclosure on tax sale properties. All jurisdictions should have this power to help expedite their processes to control properties that do not sell at tax sale.

Consumer / Homeowner Protections

• Provide information to delinquent homeowners to allow them to avert tax sale. This system would require that once a bill is late (tax, water, environmental, etc.) the jurisdiction or system that sends the late notice must include information letting the homeowner know they can get assistance to avert tax sale. In jurisdictions where the locality has no preference or other consumer protection resources available, the HOPE Hotline would be resource provided. The HOPE Hotline already exists to refer homeowners to nonprofits to help them when they are in or on the verge of mortgage foreclosure. The organizations are legal partner entities that can help with negotiating payment plans, assist with contesting the bill if the homeowner thinks it's incorrect, work with the family's budget to help them manage finances to help pay the bills, and similar services. While the Task Force members agreed in principle with this recommendation, there was concern that the requirements to the notices would add costs.

For those notices sent to homeowners on delinquent taxes, a suggestion was made late in our process to include information about the Homeowners Property Tax Credit and how to access it. The Homeowners

Property Tax Credit can be applied retroactively for seniors age 70 or older. The Homeowners Property Tax Credit is a valuable tool for low income seniors in particular to reduce their property tax burden. Unfortunately, this benefit is underutilized and so a notice to homeowners about the credit and how they can access it would be valuable.

- Clarify the notices sent to property owners pre-tax sale and post-tax sale. Jurisdictions are using the language directly from the tax sale statute which is very confusing to the average homeowner. The statute should be updated to make the language more understandable. The notices that need revising include those sent to the homeowner when the taxes are late, when there is a final bill because the homeowner has not paid the lien, the notice that tax sale purchasers send to the homeowner to try to redeem, and so on.
- Waive probate fees for opening estates when transferring property from a deceased relative to a family member for the purpose of resolving the tax sale situation. Whereas many courts do have hardship or indigent processes by which costs are waived, probate court does not in the case of estates. This legislation would apply the same process used in other courts to the probate court estate process. At least 19% of the cases that the Maryland Volunteer Lawyers Service sees are an occupant of the home who is a family member of the deceased person whose name is on the deed. In order to avoid tax sale, the occupant needs to have themselves on the deed and therefore must open an estate to do so.
- Enable jurisdictions to set the minimum threshold in which properties are removed from tax sale (except Baltimore City). Under current law, if a homeowner has eligible delinquencies totaling \$250 or more, then a property must go to tax sale. For any lesser amount, the jurisdiction can use its discretion. Baltimore City is the exception; the threshold at which a property must go to tax sale was changed to \$750 in the 2016 General Assembly. (although recently determined that no delinquent water liens of any amount would go to tax sale in the short term) The Task Force recommends that jurisdictions (except Baltimore City) should have the ability to increase the threshold above which a delinquent property must be put into tax sale from \$250 up to an amount of their own choosing, but not more than \$750.
- Enable water affordability programs. Jurisdictions may be interested in establishing such programs to help homeowners who struggle with paying water bills. WSSC instituted a Customer Affordability Program in 2015 to assist qualified customers with paying their water bills which could be a model for other jurisdictions in Maryland to use. More details are needed on the types of programs that may work for individual jurisdictions and other water providers.
- Encourage jurisdictions and water and sewer systems to have payment plans. These plans are important to help customers settle their delinquent water bills. State legislation would not be prescriptive as to what those plans would look like, criteria for applying for the plans, or implementation. It would only give the jurisdictions the option to do so. Uncodified language could be included to encourage jurisdictions to provide payment plans. The Task Force notes that many jurisdictions and other entities providing water and sewer service already have payment plan options for customers who face financial challenges.
- Require that landlords owning one and two unit buildings with leases that have the tenants paying the water bills, show a copy of the water bill to tenants upon request of the tenant. It is important that the tenant and the landlord have the same document should questions arise concerning the rate the tenant pays, any increase in payments, or the frequency or timing of water bill payments. This recommendation is not intended to consider water bills as rent and grounds for eviction, but is only to create better communication between landlords and tenants in tenants' use and payment of water in the property.

• Enable jurisdictions to create "round up" policies and processes so that rate payers can round up their payment, the remainder of which would go into a fund to help others pay their water bills. The fund could be set up locally. There are many jurisdictions where residents are interested in helping others pay their bills through such a round up policy. The legislation would not prescribe how jurisdictions create or administer such a program, nor would it be prescriptive as to how the funds could be used. It would simply give the option for jurisdictions to create the program.

Additional Tools:

- Examine the infrastructure of the water and sewer systems to determine what the maintenance needs are to maintain quality water, the costs to maintain them, and a proposal for how to pay for the maintenance. MACo has said it would include such an examination in their overall infrastructure bill. Maryland has had extensive studies and policies related to storm water run-off, bay restoration, and other items related to our state's water. However, such an examination has not been done regarding our state's drinking water quality. The water and sewer treatment facilities are aging, and the only funds that can be used to maintain such systems is from rate payers and federal grants. Other sources of revenues cannot be used for maintaining water and sewer systems (and that can't be changed as we found out through this process.) An overarching examination of the systems, maintenance needs, and how to pay for them is long overdue.
- Allow tax liens to be entrusted as collateral for loans to a jurisdiction. Across the country some jurisdictions have explored a system that allows liens to be placed into a Trust, and used as collateral for loans to the jurisdiction creating cash flow for the jurisdiction. This would allow a jurisdiction to potentially see some financial gain out of properties that might otherwise cycle through tax sale. Because it is a non-recourse loan, there is no liability for the jurisdiction should the value of the properties placed into trust not redeem at the agreed upon value. Liens can be placed in the trust prior to tax sale, or after a failed sale (for example, liens could be partially released and placed into the Trust). This was a late suggestion for the Task Force to consider. Changes to the tax property article to enable jurisdictions to use this system would be needed. The cost and benefit of tax lien securitization as they have been experimented in other places requires additional study.

General Recommendations

- Reconvene the Task Force 4 years after enactment of this package of legislation (presumably 2022 or 2023) to understand the impact of the reforms and determine if additional changes need to be made.
- Ensure specific data are collected by the jurisdictions, and water and sewer systems in order to measure the
 impact of the reforms generated from this report. The data the Task Force is asking to be collected are the
 following. They should be collected by MACo from each affected jurisdiction every year for the next four
 years.
 - Total number of taxable properties in each jurisdiction
 - Number of certificates offered at tax sale
 - Number of certificates issued for owner-occupied properties and for vacant properties
 - Number of certificates for water/sewer bills only
 - Number of certificates sold at tax sale; and
 - Number of certificates redeemed in one year of sale, number redeemed within 2 years of sale, number of certificates not redeemed after two years of sale.

Chart A. Chart of recommendations, and which legislation is needed

Recommendation	Legislation
Vacant properties	
In Rem enabling legislation	New legislation establishing the <i>In Rem</i> process – Amend Tax–Property Article Title 14
Authorize lien release power	Amend tax property law § 14–806
Shorten timeframe for redemption of vacant properties	Amend tax property law § 14–833(c)(2)
Authorize taking properties out of tax sale for redevelopment purposes	Amend tax property law § 14–811
Enable jurisdiction to shut off water to vacant properties	Amend Environment Article
Authorize that all jurisdictions can expedite foreclosure on tax sale properties	Amend tax-property law § 14–833(g)
Consumer protection	
Create system to prevent homeowners from going to tax sale	Amend tax sale law § 14–812
Clarify notices pre-tax sale and post-tax sale	Amend tax sale law §§ 14–812 and 14–817.1
Waive probate fees for opening estates	Amend Estates and Trusts § 2–206
Enable jurisdictions to set minimum threshold	Amend tax sale law § 14–811
Enable water affordability programs	Amend Environment Article
Encourage payment plans for water bills	Amend Environment Article
Require landlords to produce a copy of the water bill if requested in 1 and 2 unit buildings	Amend Real Property Article
Enable jurisdictions to create "round up" programs	Amend Environment Article
Additional tools	
Examine water infrastructure	MACo infrastructure bill
Tax liens collateralized into a Trust	Amend tax property article 14-801

Using this chart, we anticipate at least six pieces of legislation to accomplish the recommendations in this report

Proposed suggestions and reasons for not including them in the new reforms.

In this process, several recommendations were made regarding possible reforms to the current system. The Task Force was asked to include any significant recommendations that Task Force members did not agree with in the report, with and a description of why the recommendations were unnecessary or unacceptable.

Vacant properties

- Provide jurisdictions authority to take possession of the property if the property does not sell at tax sale immediately. This authority is already in the statute.
- Remove the requirement that jurisdictions have to foreclose if a property does not sell at tax sale in two cycles. The statute does not require that a jurisdiction foreclose if the property does not sell at tax sale.
- Clarify that jurisdictions are secured parties in the expedited foreclosure law passed in 2017 legislature. While jurisdictions are secured parties in the case of having a secured interest like a mortgage or deed of trust, this law does not apply to tax sale properties where the jurisdictions does not have a secured interest in the property.

Consumer protection

• Require that jurisdictions can't put homeowners in tax sale if there is a bone fide appeal of the bills. This cannot be done, as there is case law that such a move would be challenged in court. See Brown v. Montgomery County, 30 Md. App. 107 (1976).

Water liens

- Keep the current language regarding water bill inclusion in tax sale. Although there is interest to exclude
 water bills from tax sale to protect homeowners, the Tax Sale Task Force determined that the current
 language in the statute should stand. This language says that jurisdictions may determine if and when water
 liens can be removed from tax sale. The Task Force heard testimony from several towns and jurisdictions that
 they want a tax sale option as enforcement rather than shut offs.
- Remove requirement that water and sewer systems have to only use revenue from rate payers in order to
 fund the ongoing operating and maintenance of the system. This recommendations raises constitutional
 issues.

Increase fees

- Add a \$50 fee to the sale of the certificate fund the consumer protection recommendation above. There
 was strong opposition to adding any fees to this initiative. It was clear the administration would not approve
 such fees.
- Increase fees for redemption of the certificate for non-owner occupied properties. All fees that were recommended were opposed. There will be no fee increases. Consumer advocates and the administration opposed such fee increases.

Appendix A.

Members of the Task Force to Study Tax Sales in Maryland

The Honorable Adelaide Eckardt, Senator, District 37, Co-Chair

The Honorable Jay Walker, Delegate, District 26, Co-Chair

The Honorable Bill Ferguson, Senator District 46

The Honorable Jason Buckel, Delegate, District 1B

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Heidi Kenny, Maryland Multifamily Housing Association

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Brad Westover, National Tax Lien Association

Aaron Naiman, Maryland Tax Sale Participants Association

The Task Force would like to thank Stan Ward, House Ways and Means Committee staff, and Phillip Anthony, Senate Budget and Taxation Committee staff, for their assistance during the process and the writing of the report.