



Senate Fiscal Agency  
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## BILL ANALYSIS



Telephone: (517) 373-5383  
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Senate Bill 295 (Substitute S-4 as reported)  
Senate Bill 640 (Substitute S-2 as reported)  
Sponsor: Senator Tupac A. Hunter (S.B. 295)  
Senator Darwin Booher (S.B. 640)  
Committee: Banking and Financial Institutions

Date Completed: 5-2-14

**RATIONALE**

The General Property Tax Act allows a local unit of government to foreclose on property that has been forfeited to it due to delinquent property taxes. The foreclosed parcels typically are sold at a public auction, and the money collected at the sale is used to satisfy the delinquent tax amounts, penalties, and other fees. In some communities, individuals and businesses that own property evidently use the foreclosure process to eliminate their tax burden while maintaining ownership in the property, by repurchasing it at a foreclosure sale. In some cases, in addition to being tax-delinquent, the property is blighted and the owner is responsible for related ordinance violations. Apparently, these situations are not uncommon in the City of Detroit, where the volume of foreclosed property is high and the minimum auction bid is low, but the problems are not confined to Detroit. To address these issues, some have suggested that the law should limit who may bid on property at a tax foreclosure auction.

**CONTENT**

**Senate Bill 295 (S-4) would amend Section 78m of the General Property Tax Act (which provides for the sale of foreclosed tax-delinquent property) to do the following:**

- **Require prospective bidders to register with the foreclosing governmental unit at least 14 days before a sale.**
- **Require prospective bidders to certify that they did not own property that was subject to a foreclosure judgment in the previous three tax years, or that had been included in a foreclosure petition in the tax year in which the sale was held.**
- **Preclude a prospective bidder from bidding on foreclosed property if the person had any unpaid fines for the violation of a local blight or nuisance ordinance.**

**Senate Bill 640 (S-2) would amend Section 78m of the General Property Tax Act to:**

- **Allow a foreclosing governmental unit to require a purchaser to provide proof of payment of any property taxes owed on the parcel.**
- **Require a foreclosing governmental unit to hold at least one sale, rather than a minimum of two sales, of foreclosed tax-delinquent property.**
- **Require unsold foreclosed property to be transferred to the applicable city, village, or township by December 30 after the foreclosure judgment was entered, rather than by December 30 following the date of sale.**

Senate Bill 640 (S-2) is tie-barred to Senate Bill 295.

**Senate Bill 295 (S-4)**

Under Section 78m, after judgment in a proceeding for foreclosure of tax-delinquent property is entered vesting absolute title to the property in the foreclosing governmental unit, the State is

granted the right of first refusal to purchase the property at the greater of the minimum bid or its fair market value. If the State elects not to purchase the property, a city, village, or township may purchase it for a public purpose by paying the minimum bid to the foreclosing unit. If the city, village, or township declines to purchase the property, the county in which the property is located may purchase it by paying the minimum bid.

Subject to these provisions, the foreclosing governmental unit must hold at least two sales at which the foreclosed property is to be sold by auction sale. The property must be sold to the person bidding the highest amount above the minimum bid.

Under the bill, a prospective bidder, or any other person or entity acting as an agent for or in concert with the prospective bidder, would be precluded from bidding on the property if the prospective bidder, or any property the prospective bidder owned, had any unpaid fines for the violation of a blight elimination ordinance or a nuisance cessation ordinance of a local tax collecting unit in which the property was located. A person that directly or indirectly held an interest of 10% or more in property that had unpaid fines for such an ordinance violation, or that was under common control with a person who directly or indirectly held an interest of 10% or more in such property, would be ineligible to bid. Credit union service organizations and financial institutions would not be prohibited from bidding under these provisions.

("Credit union service organization" would be defined as that term is defined in the Credit Union Act: "a corporation or other organization that is engaged primarily in providing 1 or more of the products or services described in section 407 to credit unions or their members and that a domestic credit union may organize, invest in, or lend to under section 401(2)(gg)". "Financial institution" would mean that term as defined in the Michigan Strategic Fund Act: "a state or nationally chartered bank or a state or federally chartered savings and loan association, savings bank, or credit union whose deposits are insured by an agency of the United States government and that maintains a principal office or branch office in this state under the laws of this state or the United States.")

The bill would require prospective bidders to register with the foreclosing governmental unit at least 14 days before the start of the sale. Prospective bidders would have to certify under penalty of perjury that they were not a person, were not acting on behalf of a person, or were not under the direction or control of a person who met either of the following conditions:

- Held title to any property or claimed to hold title to any property when the property became subject to a judgment vesting absolute title to that property in the foreclosing governmental unit in the prior three tax years.
- Held title to any property or claimed to hold title to any property that had been included in a foreclosure petition filed in the tax year in which the sale was held under Section 78m.

The foreclosing governmental unit could not accept bids from any person who did not register as required or who met either of the conditions described above. This prohibition, however, would not prevent the foreclosing unit from selling property to a person as otherwise allowed by law after the property vested in the foreclosing unit, as described below.

(By December 1 after the date of the sale, a list of all property not sold by a foreclosing governmental unit must be transferred to the clerk of the city, village, or township where the property is located. By December 30 after the date of the sale, all unsold property must be transferred to the city, village, or township where it is located, except parcels to which the local unit has objected. The city, village, or township may make the property available under the Urban Homestead Act or for any other legal purpose. If the property is not transferred to the city, village, or township, the foreclosing governmental unit must retain possession. If the foreclosing governmental unit is the State, title to the property must vest in the Land Bank Fast Track Authority.)

## **Senate Bill 640 (S-2)**

If a tax-delinquent foreclosed property is not purchased by the State or a city, village, township, or county, the foreclosing governmental unit must hold at least two auction sales. The bill would require the foreclosing governmental unit to hold one or more sales, rather than at least two. The bill would allow a joint sale by one or more foreclosing units. The bill also would allow notice of a sale to be published on an internet website maintained by the foreclosing agency, in addition to being published in a newspaper.

Currently, foreclosed property must be sold to the person bidding the highest amount above the minimum bid. Under the bill, instead, when property was offered for sale with a minimum bid established by the foreclosing governmental unit, the property would have to be sold to the person bidding the minimum bid or, if a bid were greater than the minimum, the highest amount bid above the minimum.

In addition, the bill would allow a foreclosing governmental unit to require a purchaser to provide to the tax collecting unit proof of payment of any property taxes owed on the parcel at the time of the sale. A foreclosing unit could cancel a sale if unpaid property taxes owed on a parcel or parcels at the time of a sale were not paid within 30 days of the sale. The bill would require the foreclosing unit to convey the property by deed to the winning bidder within 15 days after proof of payment was provided to the tax collecting unit, or (as currently required) within 30 days after the sale, whichever was later.

If the State is the foreclosing unit, the Act requires the Department of Natural Resources to conduct the sale of property. The bill would refer to the Department of Treasury.

In provisions regarding the deposit of proceeds in a restricted account, the bill would require that the foreclosing unit direct the expenditure and investment of the account consistent with the Act's requirements applicable to a delinquent tax revolving fund. In the provisions regarding the transfer of property not sold by a foreclosing governmental unit, the bill would refer to the December 1 or December 30 following the entry of judgment, rather following the date of the sale.

MCL 211.78m

### **BACKGROUND**

#### Tax Foreclosures in Detroit

One of the issues affecting the City of Detroit is the number of tax delinquent and foreclosed properties. In 2013, nearly half of Detroit's 305,000 properties were behind on property taxes.<sup>1</sup> Between 2008 and early 2013, Wayne County foreclosed on approximately 64,000 properties for non-payment of tax.<sup>2</sup> In 2012, because of the volume of tax-delinquent properties, the county did not pursue the potential foreclosure of 40,000 parcels.<sup>3</sup> There are several reasons for the number of tax foreclosures. In 2011, *The Detroit News* wrote that the tax rate for homeowners was 65 mills, more than double the State average.<sup>4</sup> At the same time, assessments in Detroit are

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<sup>1</sup> Christine MacDonald and Mike Wilkinson, "Half of Detroit property owners don't pay taxes", *The Detroit News*, 2-21-13, retrieved 3-25-13, <http://www.detroitnews.com/article/20130221/METRO01/302210375>.

<sup>2</sup> Christine MacDonald, "Overwhelmed Wayne County ignores thousands of possible Detroit foreclosures", *The Detroit News*, 2-21-13, retrieved 3-25-13, <http://www.detroitnews.com/article/20130221/METRO01/302210394>.

<sup>3</sup> See n. 2

<sup>4</sup> Christine MacDonald, "Owners escape tax debt by rebuying foreclosed homes", *The Detroit News*, 9-7-11. *The 50 State Property Tax Study 2011*, published by the Minnesota Taxpayers Association and the Lincoln Institute of Land Policy, ranked Detroit first among the 50 largest cities in taxes and last among property values, see [http://www.lincolnst.edu/subcenters/significant-features-property-tax/upload/sources/ContentPages/documents/Pay\\_2011\\_PT\\_Report.pdf](http://www.lincolnst.edu/subcenters/significant-features-property-tax/upload/sources/ContentPages/documents/Pay_2011_PT_Report.pdf). The State of Michigan Department of Treasury estimated that the total millage rate for a principal residence in the City of Detroit was over 67.7

said to be seriously inflated.<sup>5</sup> Many homeowners are incapable of paying the taxes on their property because of financial hardship, or view nonpayment of taxes as a referendum against a lack of city services.<sup>6</sup>

### Property Speculation & Foreclosure Sales

The number of foreclosures in Detroit, and other economically distressed communities in Michigan, has resulted in an abundance of inexpensive properties. As a result, investors and businesses have bought significant numbers of parcels over the last few years. It is estimated that approximately 10 businesses or individuals control over 5,000 parcels in Detroit alone.<sup>7</sup> Often, these parcels are purchased through tax foreclosure sales.

A tax foreclosure sale occurs after a property owner has been delinquent on the property taxes for two years. Under the General Property Tax Act, taxes become delinquent in the March after the year after they are assessed.<sup>8</sup> If the property taxes are not paid within a year of becoming delinquent, the property goes into forfeiture.<sup>9</sup> While in forfeiture, the owner still has an opportunity to "redeem" the property by paying the taxes owed and any fees or penalties. If the property is not redeemed, a judgment of foreclosure is entered, and the property may be sold to satisfy the outstanding taxes.<sup>10</sup>

As required by law, Wayne County holds two tax foreclosure auctions each year. In the first auction, the starting bid is the amount of outstanding taxes, fees, and penalties assessed.<sup>11</sup> If the property does not sell, it is sold at the second auction with a starting bid of \$500. Because of the number of properties that are available in Detroit, many of them make it to the second sale and are sold for around \$500.

As a result of this process, many property owners are able to avoid paying the property taxes that are owed on the property, allow the properties to go into foreclosure, wait until the second auction, purchase at the starting bid price of \$500 or close to that amount, and effectively eliminate their liability for property tax. This mechanism has been used by nonprofits and property owners suffering hardship to eliminate their tax burden.<sup>12</sup> However, investors and businesses involved in land speculation also have used the tax foreclosure process to eliminate their tax burden. *The Detroit News* reported that, in 2010, the estimated amount of tax revenue lost by Wayne County due to this process was \$1.8 million.<sup>13</sup>

### **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

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mills for the 2013 tax year. See "2013 Total Property Tax Rates in Michigan", Michigan Department of Treasury, [http://www.michigan.gov/documents/taxes/2013\\_Total\\_Rates\\_450527\\_7.pdf](http://www.michigan.gov/documents/taxes/2013_Total_Rates_450527_7.pdf).

<sup>5</sup> See n.1. "Many houses are assessed at more than 10 times their market price, according to new research from two Michigan professors."

<sup>6</sup> Joel Kurth, "Tax burden, low property values lead to exodus of Detroit residents", *The Detroit News*, 2-21-13, retrieved 3-25-14, <http://www.detroitnews.com/article/20130221/METRO01/302210398>.

<sup>7</sup> Christine MacDonald, "Private landowners complicate reshaping of Detroit", *The Detroit News*, 2-3-11, retrieved 3-25-14, <http://www.detroitnews.com/article/20110203/METRO01/102030395>. See also, "Interactive map: Who owns the most private property in Detroit?", *The Detroit News Special Reports*, 2-3-11, retrieved 3-25-14, <http://www.detroitnews.com/article/20110203/SPECIAL01/110202002>.

<sup>8</sup> M.C.L. 211.78a.

<sup>9</sup> M.C.L. 211.78g.

<sup>10</sup> M.C.L. 211.78k.

<sup>11</sup> Gary Anglebrandt, "Deputy treasurer: Wayne County 'worst off' in country for tax foreclosures", *Crain's Detroit Business*, 8-19-13, retrieved 3-28-14, <http://www.crainsdetroit.com/article/20130818/NEWS/130819876/deputy-treasurer-wayne-county-worst-off-in-country-for-tax#>.

<sup>12</sup> See n. 4.

<sup>13</sup> Gary Heinlein, "Michigan Senate committee advances anti-blight measures", *The Detroit News*, 2-21-14, retrieved 3-25-14, <http://www.detroitnews.com/article/20140221/POLITICS02/302210123>.

### **Supporting Argument**

These bills would prevent individuals and businesses from reacquiring tax-foreclosed property and eliminating their responsibility to pay taxes or blight fees. Many blighted communities suffer from the cyclical nature of the tax foreclosure process and lose significant tax revenue to businesses and individuals who are looking to profit off of this system. Land speculators are able to avoid paying thousands in blight fees and property taxes by using this process. Reforming the tax foreclosure process would allow tax-foreclosed properties to go to buyers who are interested in renovating them and establishing themselves in the community, rather than to land speculators or irresponsible landlords.

Legislative Analyst: Jeff Mann

### **FISCAL IMPACT**

The bills would potentially increase local unit revenue by an unknown and likely minimal amount and would reduce the local and State costs of selling tax-delinquent property by an unknown amount.

To the extent that Senate Bill 295 (S-4) would reduce instances in which taxpayers fail to pay taxes and then repurchase the delinquent properties after they have been foreclosed, and other similar situations, the bill would likely generate additional revenue. To the extent that sale prices were reduced and/or taxes remained unpaid after a foreclosure sale, the impact of the bill would be less.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.