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## BILL ANALYSIS

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Senate Bill 295 (as enacted)  
Sponsor: Senator Tupac A. Hunter  
Senate Committee: Banking and Financial Institutions  
House Committee: Detroit's Recovery and Michigan's Future

**PUBLIC ACT 501 of 2014**

Date Completed: 4-13-15

### **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 owning property evidently have used 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 was blighted and the owner was responsible for related ordinance violations. Apparently, these situations were 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 have not been confined to Detroit. To address these issues, some suggested modifications to the law to amend the procedure for selling and conveying tax-foreclosed property, and to limit who may bid on property at a tax foreclosure auction.

### **CONTENT**

**The bill amended Section 78m of the General Property Tax Act (which provides for the sale of foreclosed tax-delinquent property) to do the following:**

- **Require the purchaser of tax-foreclosed property to provide the foreclosing governmental unit with proof of payment to the local tax collecting unit in which the property is located of any property tax owed on the parcel at the time of the sale.**
- **Specify that a foreclosing governmental unit must require a person purchasing foreclosed property to execute and file an affidavit indicating that the person satisfies certain conditions.**
- **Require the foreclosing unit to cancel a sale if unpaid property taxes owed on a parcel are not paid, or the required affidavit is not executed, within 21 days of the sale.**
- **Prohibit a person convicted for executing a false affidavit from bidding for, or purchasing, property at any sale of tax-foreclosed property.**
- **Require a foreclosing governmental unit to hold at least one sale, rather than a minimum of two sales, of foreclosed tax-delinquent property.**
- **Specify that the foreclosing government unit must require full payment at the close of each day's bidding or within 21 days of the sale.**

The bill took effect on January 14, 2015.

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.

Previously, the foreclosing governmental unit had to hold at least two sales at which the foreclosed property was sold by auction sale to the person bidding the highest amount above the minimum bid. The bill instead specifies that the foreclosing unit must hold one or more sales. The bill requires the property to be sold to the person bidding the minimum bid, or if a bid is greater than the minimum bid, then the highest amount above the minimum bid. If a foreclosing unit elects to hold more than one sale, the final sale must be held within 28 days after the immediate preceding sale.

Formerly, the foreclosing governmental unit could require full payment by cash, certified check, or money order at the close of each day's bidding. Within 30 days of the sale, the governmental unit had to convey the property by deed to the winning bidder. The bill specifies that the foreclosing governmental unit must require full payment at the close of each day's bidding or by a date within 21 days of the sale.

Under the bill, before the governmental unit conveys a parcel sold at a sale, the purchaser must provide the governmental unit with proof of payment to the local tax collecting unit in which the property is located of any property tax owed on the parcel at the time of the sale. A foreclosing governmental unit must cancel a sale if unpaid property taxes owed on a parcel or parcels at the time of a sale are not paid within 21 days of the sale. If a sale is canceled, the governmental unit may offer and convey the property to the next-highest bidder. Within 14 days of payment to the foreclosing governmental unit of all amounts required, the governmental unit must convey the property by deed to the highest bidder or next-highest bidder.

The deed will vest fee simple title to the property in the highest bidder unless the foreclosing discovers a defect in the foreclosure of the property, as the Act already provided, or the sale is canceled under the bill's provisions.

Previously, if the State was the foreclosing unit, the Act required the Department of Natural Resources to conduct the sale of property. The bill instead refers to the Department of Treasury.

The bill specifies that, before issuing a deed to a person purchasing foreclosed property, the foreclosing governmental unit must require the person to execute and file with the foreclosing governmental unit an affidavit under penalty of perjury. If the person fails to execute and file the affidavit by the date payment for the property is required, the governmental unit must cancel the sale. The affidavit must indicate that the person meets the following conditions: a) the person does not directly or indirectly hold more than a de minimis legal interest in any property with delinquent property taxes located in the same county as the property, and b) the person is not directly or indirectly responsible for a violation of an ordinance authorized by Section 4I of the Home Rule City Act, in the local tax collection unit in which the property is located.

(Section 4I allows the legislative body of a city to adopt an ordinance that designates a violation of that ordinance as a civil violation or blight violation, and to specify a civil fine for the violation.)

The General Property Tax Act specifies that in a final sale, the sale is subject to all of the Act's requirements, except that the minimum bid is not required. The foreclosing unit may establish a reasonable opening bid to recover the cost of the sale of the parcel or parcels. The bill also provides that the foreclosing governmental unit must require a person who held an interest in property sold at the time a judgment of foreclosure was entered against the property under Section 78k to pay the minimum bid for the property before issuing a deed to the person. If the person fails to pay the minimum bid for the property and other amounts by the required date, the governmental unit must cancel the sale of the property. (Section 78k prescribes the procedures for an action in circuit court if governmental unit files a foreclosure petition.)

The bill specifies that a person convicted for executing a false affidavit must be prohibited from bidding for property or purchasing property at any sale of tax-foreclosed property.

In the provisions regarding the transfer of property not sold by a foreclosing governmental unit, the bill refers to the December 1 or December 30 following the entry of judgment under Section 78k, rather than following the date of the sale as the Act previously designated.

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 nonpayment 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 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 led to an abundance of inexpensive properties. As a result, investors and businesses have bought significant numbers of parcels over the last few years. It has been 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>

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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 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.

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

As a result of this process, many property owners have been able to avoid paying the property taxes 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.)*

### **Supporting Argument**

The bill will prevent individuals and businesses from reacquiring tax-foreclosed property and eliminating their responsibility to pay taxes or blight fees. Many blighted communities have suffered from the cyclical nature of the tax foreclosure process and lost significant tax revenue to businesses and individuals looking to profit off of this system. Land speculators have been able to avoid paying thousands in blight fees and property taxes by using this process. Reforming the tax foreclosure process will 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 will potentially increase local unit revenue by an unknown and likely minimal amount and will reduce the local and State costs of selling tax-delinquent property by an unknown amount. This will be offset to some extent by additional costs of an unknown amount due to the requirement for a foreclosing governmental unit to receive filings of a purchaser's affidavit that the purchaser does not hold more than a de minimis legal interest in any property with delinquent property taxes in the same county and that the purchaser does not have unpaid civil fines for civil infractions or blight violations in the local tax collection unit where the property is located.

To the extent that Senate Bill 295 reduces 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 will likely generate additional revenue. To the extent that sale prices are reduced and/or taxes remain unpaid after a foreclosure sale, the impact of the bill will be less.

Fiscal Analyst: Elizabeth Pratt  
David Zin

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<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>.

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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.