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## PROPERTY TAX DELINQUENCY AND REVERSION SYSTEM

**House Bill 4489 as enrolled**  
**Public Act 123 of 1999**  
**Sponsor: Rep. Patricia Birkholz**

**Senate Bill 488 as enrolled**  
**Public Act 132 of 1999**  
**Sponsor: Sen. Glen Steil**

**Senate Bill 489 as enrolled**  
**Public Act 133 of 1999**  
**Sponsor: Sen. Gary Peters**

**Senate Bill 507 as enrolled**  
**Public Act 134 of 1999**  
**Sponsor: Sen. Bill Schuette**

**House Committee: Local Government  
and Urban Policy**

**Senate Committee: Economic Development,  
International Trade and Regulatory  
Affairs**

**Second Analysis (7-23-99)**

### ***THE APPARENT PROBLEM:***

Increasingly, economic development policy has focused on matters of redevelopment, and it has been the experience of developers and land use planners, especially those intent upon rebuilding American cities, that property is far easier to develop than it is to redevelop.

According to the Citizens Research Council, in its report entitled "Delinquent Property Taxes as an Impediment to Development in Michigan" issued in April 1999, two barriers to redevelopment loom especially high as urban pioneers seek a renaissance of reinvestment and resettlement in our cities: environmental contamination, and "tax delinquent and reverted properties which are subject to lengthy and sometimes interminable stretches of time before they are restored to productive status." The report points out that "at its barest essence, the debate over the delinquent property tax process is one of property

rights vs. a community's ability to return properties to the tax rolls." The report calls for some degree of reform.

In the legislative session of 1893, more than a century ago, most of the laws now governing the assessment, administration, and collection of property taxes in Michigan were created. One vestige of Public Act 206 of 1893, also known as the General Property Tax Act, is the procedure to compel payment from property owners who become delinquent in property taxes.

Currently the tax delinquent property reversion process takes about six years to complete. It was designed to give property owners ample time and opportunity to redeem their property by paying the back taxes. For a brief overview of the process, see *BACKGROUND INFORMATION*, below.

As the Citizen Research Council points out in its report, the lengthy process poses several public policy problems: the system is unfair to those who pay their taxes on time; the lack of tax revenue thwarts local government operations; the tax collection process is labor intensive and time-consuming; tax delinquent properties (what are called "upside down properties" when tax arrearages exceed appraised value) cause urban blight; and, it hampers land acquisition and redevelopment projects.

Some have argued that an improved tax delinquency and reversion system is required to facilitate a speedier return of tax delinquent properties to tax-current status. Instead of six years, they have proposed three, and an even speedier one-time two-year process for already abandoned structures. Further, they have argued that the ultimate objective of the new system is to strike the proper balance between owners' property rights and the redevelopment imperative facing local units, particularly those with flat or declining property values. To these ends, legislation has been proposed in both the House and in the Senate to re-design the system.

### ***THE CONTENT OF THE BILLS:***

The delinquent tax and property reversion system reform legislation consists of four bills: House Bill 4489, Senate Bill 488, Senate Bill 489, and Senate Bill 507. The bills are summarized below.

#### House Bill 4489

The bill would amend the General Property Tax Act (MCL 211.57 et al) to provide that for those taxes levied after December 31, 1998, tax delinquent property would be subject to forfeiture, foreclosure, and sale over a three-year period. Under current law, the process takes about six years. The bill would reform the tax reversion process, and lodge primary responsibility for its administration with foreclosing governmental units. (Under the bill, "foreclosing governmental unit" would be defined to mean a county treasurer, or the state if the county had elected to have the state foreclose property that is forfeited to a county treasurer.)

More specifically, the bill would enable county treasurers to cancel tax sales, beginning April 30, 2000; require that a property description and the amount of unpaid taxes on each property be included in the county tax record; require compilation of a list of all tax-delinquent properties by the county treasurer, and the option of publishing the names of all tax delinquent property owners in the local newspaper;

and, require that ample notice of tax delinquency, forfeiture, and foreclosure be given in several separate mailings to all those known to have an interest in the property. Further, the bill would require that the county treasurer assess a \$15 fee for each parcel having unpaid taxes, and a \$175 fee for each parcel that is forfeited after 12 or more months, and it would allow counties the option of having the state collect and return delinquent taxes to the county. The bill would allow counties to establish Delinquent Tax Revolving Funds; establish a Land Reutilization Fund in the Department of Treasury; and both alter and clarify property acquisition procedures in the Department of Natural Resources. Finally, the bill would repeal two sections of the General Property Tax Act on the date the bill is given immediate effect. Further, it would repeal 20 sections of the General Property Tax Act on December 31, 2001, and an additional 37 sections on December 31, 2004. A more detailed explanation of the bill's provisions follows.

Hardship. Under the bill, if a claim was made before February 15 for the credit provided by the Income Tax Act of 1967, a declaration of hardship that would enable waivers of certain interest and fees added to delinquent taxes that are returned would be extended to hemiplegics, and would be retained for senior citizens, paraplegics, quadriplegics, permanently disabled people, blind people, and eligible servicemen, veterans, and widows.

County Tax Sales. Not sooner than April 30, 2000 and April 30, 2001, the county treasurer could cancel the tax sale scheduled to take place on the first Tuesday in May 2000 and the first Tuesday in May 2001, if there are no outstanding bonds or notes issued by a county with respect to the delinquent taxes for which the sale is being conducted.

If a county treasurer cancels the year 2000 tax sale in May 2000, the taxes that were levied between December 31, 1996 and before January 1, 1998 that are delinquent would be returned to the county treasurer for forfeiture, foreclosure, and sale. A county property tax administration fee of four percent and interest computed at a noncompounded rate of one percent per month or fraction of a month on the taxes that were originally returned as delinquent, computed from March 1 when they originally became

delinquent, would be added to the delinquent taxes. A county property tax administration fee would not be less than \$1.

If a county treasurer cancels the year 2001 tax sale in May 2001, taxes that were levied between December 31, 1997 and before January 1, 1999 that are delinquent would be treated in the same manner. For taxes levied after December 31, 1998, property returned for delinquent taxes would be subject to forfeiture, foreclosure, and sale. Further, the people of the state would have a valid lien on property that is returned for delinquent taxes, with rights to enforce the lien as a preferred or first claim on the property. The right to enforce the lien would be the prima facie right of the state and would not be set aside or annulled except in the manner and for the causes specified in the act.

Tax Record and Property Description. The bill would require that the tax record for each property include the amount of unpaid taxes; any penalties, interest, or charges due on the delinquent taxes; a description of the property; parts of description of property upon which taxes are paid before sale that are withheld from sale; the amount paid on taxes before sale; and, special orders made by the court relating to a parcel of property or any tax.

Environmental Contamination Liens. Notwithstanding other contrary provisions of law, all property offered at a tax sale that is sold or bid off to the state would remain subject to a lien recorded under the Natural Resources and Environmental Protection Act. In addition to this lien, property offered at a tax sale would remain subject to any lien recorded by the state prior to the redemption, sale, or transfer of the property by the state. These liens would be extinguished on the sale or transfer of the property under the Natural Resources and Environmental Protection Act.

Essential Public Purpose. The bill would set forth an essential public purpose. It would state that the legislature finds that there exists a continuing need to strengthen and revitalize the economy of the state and its municipalities by encouraging the effective and expeditious return to productive use of property returned for delinquent taxes. It also would specify that it is the legislature's intent that the provisions of the act relating to the return, forfeiture, and foreclosure of property for delinquent taxes satisfy the minimum requirements of due process required under the Michigan and U.S. Constitutions.

State Collection Option Every Five Years. Not later than December 1, 1999, a county board of

commissioners could elect by resolution with the written concurrence of the county treasurer and county executive (if any), to have the state foreclose property forfeited to the county treasurer. At any time during December 2004, the county board could, in an open meeting and with the concurrence of the treasurer and executive, do either of the following: a) elect to have the state foreclose property that is forfeited to the county treasurer; or b) rescind its prior resolution by which it elected to have the state foreclose property.

Delinquent Tax Collections Voluntary. The bill specifies that the collection by a county of taxes returned as delinquent would be voluntary and would not be an activity or service required of units of local government under the Michigan Constitution.

County and Local Government Agreements. A county could enter into an agreement with a local governmental unit within that county for the collection of property taxes, or for the enforcement and consolidation of tax liens within the local governmental unit. A local government unit would be prohibited from establishing a tax revolving fund in this instance.

Forfeiture, Foreclosure and Sale. The bill would provide that for taxes levied after December 31, 1998, all property returned for delinquent taxes, and upon which taxes interest, penalties, and fees remain unpaid after the property is returned as delinquent to the county treasurers of the state, would be subject to forfeiture, foreclosure, and sale for the enforcement and collection of the delinquent taxes.

County Property Tax Administration Fee. Under the bill, a county property tax administration fee of four percent and interest computed at a noncompounded rate of one percent per month or fraction of a month on the taxes that were originally returned as delinquent, would have to be assessed on property returned as delinquent. A county property tax administration fee could not be less than \$1.

\$5 Annual Notice Fees. Any person with an unrecorded property interest or any other person who wishes at any time to receive notice of delinquent taxes, could pay a \$5 annual notice fee by February 1 to the county treasurer and specify the parcel identification number, the address of the property, and the address to which the notice would be sent. Holders of any undischarged mortgages wishing to

receive notice of the return of delinquent taxes on a parcel or parcels could provide a list of the parcels and pay an annual fee not to exceed \$1 per parcel. Then the county treasurers would notify those who have paid the fee if delinquent taxes on property or properties are returned.

Michigan Tax Lien Sale and Collateralized Securities. Upon the request of a holder of a tax lien purchased under the Michigan Tax Lien Sale and Collateralized Securities Act, Public Act 379 of 1998, and payment to the county treasurer of the actual costs incurred in complying with that request, the county treasurer would be required to provide a list identifying the parcels of property for which a notice is required under the act. The list could be in a computer generated form, or other form. Notwithstanding any charter provision to the contrary, the governing body of a local governmental unit that collects delinquent taxes could establish for any property, by ordinance, procedures for the collection of delinquent taxes and the enforcement of tax liens and the schedule for the forfeiture or foreclosure of delinquent tax liens. The procedures and schedule established by ordinance would have to conform at a minimum to the procedures and schedule established under the bill. However, those taxes subject to a payment plan approved by the treasurer of the local governmental unit as of July 1, 1999 would not be considered delinquent as of the following March 1, if payments were not delinquent under the payment plan.

County Tax Liens. For taxes levied after December 31, 1996, at any time before the redemption period has expired, a person who holds a tax lien from a city under the Michigan Tax Lien Sale and Collateralized Securities Act could also purchase a county tax lien. (A "county tax lien" would be defined to have two meanings, depending on its application to current law or the proposed legislation. The first meaning applicable to current law would be: an interest in or encumbrance upon property for taxes levied before January 1, 1997, and charges, assessments, penalties, interest, or fees on those taxes that are returned as delinquent to a county treasurer or, after being returned as delinquent and bid off to the state. Its second meaning, as applied to new provisions that are proposed, would be: an interest in or encumbrance upon property for taxes levied after December 31, 1996, and charges, assessments, penalties, interest, or fees that are returned as delinquent to a county treasurer.)

A county tax lien that was purchased would have to be transferred by the county or by the state to the purchaser upon receipt of an amount equal to the delinquent taxes, charges, assessments, penalties,

interest, and fees represented by the county tax lien. However, this would only apply to county tax liens on property for which the purchaser holds a tax lien from a city. A purchaser of a county tax lien could enforce that lien and collect the amount secured by the lien, together with any interest and penalties that accrued before or after the purchase, only in the manner provided under the act, notwithstanding any charter provisions to the contrary. A county tax lien that was sold would be a preferred or first claim upon the property subject to the lien in the same manner as if the city held the tax lien. A county lien purchaser would be prohibited from taking any action to enforce or collect a county tax lien that was not authorized under the act. For taxes levied after December 31, 1996, if a county tax lien was purchased, the portion of the lien that represents delinquent taxes, interest, penalties, and fees would be subject to interest, penalties, and fees. A person who purchases a county tax lien could retain any delinquent taxes, interest, penalties, and fees collected. The fees levied could not be levied more than one time on each parcel in each tax year.

For taxes levied after December 31, 1996, a pledge of tax liens or earnings, revenues, other money, or assets from enforcement of county tax liens purchased would be valid and binding from the time the pledge was made without any filing, recording, or other requirement of notice. The tax liens, earnings, revenue, other money, or assets pledged by a purchaser would be immediately subject to the lien of the pledge without physical delivery or further act. The lien of the pledge of tax liens, earnings, revenues, other money or assets would be valid and binding against all parties having claims of any kind in tort, contract, or otherwise against the purchaser, whether or not the parties had notice of the lien of the pledge. Any instrument by which a pledge was created would not be required to be recorded.

First and Second Notices of Delinquency. Under the bill, on the June 1 immediately succeeding the date that unpaid taxes were returned to the county treasurer for forfeiture, foreclosure, and sale, or returned as delinquent, the county treasurer would have to send a first notice, by first-class mail address correction requested, to the person identified as the owner of the

property, to a person entitled to notice, and to a person to whom a tax certificate for property returned for delinquent taxes was issued. On September 1, a second delinquent notice would be mailed.

The notices would be required to include all of the following: a) the date property on which unpaid taxes were returned as delinquent would be forfeited to the county treasurer for the unpaid delinquent taxes, interest, penalties, and fees; b) a statement that a person who holds legal interest in the property may lose that interest as a result of the forfeiture and subsequent foreclosure proceeding; c) a legal description or parcel number of the property and the street address of the property, if possible; d) the person or persons to whom the notice is addressed; e) the total taxes, interest, penalties, and fees due on the property; f) a statement that unless the taxes, interest, penalties, and fees are paid before the date of the foreclosure proceeding, absolute title to the property will vest in the foreclosing governmental unit; and, g) a statement of the person's rights of redemption and notice that the rights of redemption will expire if the court enters an order foreclosing the property.

\$15 Fee. The bill also provides that, on the October 1 following the March 1 that unpaid taxes were returned to the county treasurer for forfeiture, foreclosure or sale, or returned as delinquent, the county treasurer would have to add a \$15 fee on each parcel for which delinquent taxes, interest, penalties, and fees remain unpaid. Further, the bill stipulates that the fee established must cover expenses.

List of Property Subject to Forfeiture. The bill provides that on November 1 of each year, the county treasurer would have to prepare a list of all property subject to forfeiture for delinquent taxes on the immediately succeeding March 1. The list would have to include all property on which delinquent taxes, interest, penalties, and fees were unpaid on the November 1 immediately succeeding the date that taxes levied on the property were returned for forfeiture, foreclosure and sale. The list would have to indicate for each parcel the total amount of delinquent taxes for all years, interest, penalties, and fees, computed to the date of the foreclosure.

By December 1, the county treasurer would have to determine, to the extent possible, all of the following based on the records contained in the offices of the county treasurer, local assessor, and local treasurer: the street address of the property; the name and address of the owners, the holder of any undischarged mortgage or other legal interest; a subsequent purchaser under any land contract; and, any person entitled to notice.

Third Notice of Forfeiture with Published Addresses.

Under the bill, not later than February 1 immediately succeeding the March 1 that unpaid taxes were returned to the county treasurer for forfeiture, foreclosure, and sale, or as delinquent, the county treasurer would have to send the third notice, by certified mail return receipt requested, to the person to whom a tax bill for property returned for delinquent taxes was last sent, and if different, to the person identified as the owner of such property as shown on the current records.

This notice, like the first and second notices, would have to include all of the following: a) the date property on which unpaid taxes were returned as delinquent would be forfeited to the county treasurer for the unpaid delinquent taxes, interest, penalties, and fees; b) a statement that a person who holds legal interest in the property may lose that interest as a result of the forfeiture and subsequent foreclosure proceeding; c) a legal description or parcel number of the property and the street address of the property, if possible; d) the person or persons to whom the notice is addressed; e) the total unpaid taxes, interest, penalties, and fees due on the property; f) a schedule of the additional interest, penalties, and fees that will accrue on the immediately succeeding March 1 if the unpaid delinquent taxes, interest, penalties, and fees due are not paid; g) a statement that unless the taxes, interest, penalties, and fees are paid before the date of the foreclosure proceeding, absolute title to the property will vest in the foreclosing governmental unit; and, h) a statement of the person's rights of redemption and notice that the rights of redemption will expire if the court enters an order foreclosing the property.

The bill would require that this notice also be mailed to the property by first-class mail, addressed to "Occupant", if the notice was not sent to the occupant by certified mail.

Newspaper Notices. Under the bill, a county treasurer could insert one or more additional notices in a newspaper published and circulated in the county in which the property is located, if there is one. If no newspaper is published in that county, publication could be made in a newspaper published in an adjoining county. The county treasurer could publish the street address of the property subject to forfeiture,

and the name of the person to whom a tax bill for property returned for delinquent taxes was last sent, or the name of the person identified as the owner of the property with delinquent taxes as shown on the current records of the county treasurer in a newspaper published and circulated in the county in which the property is located, if there is one, or in an adjoining county's newspaper if there is not.

\$175 Fee on Forfeited Property Whose Taxes are Delinquent 12 Months. On March 1 of each tax year, certified abandoned property and property that is delinquent for taxes, interest, penalties, and fees for the immediately preceding 12 months or more, would be forfeited to the county treasurer for the total amount of unpaid taxes, fees, and penalties. If property were forfeited, the county treasurer would not have the right to possession until a judgment of foreclosure was entered. Further, if property were forfeited, the county treasurer would be required to add a \$175 fee to each parcel of property.

Recording Forfeited Property. Not more than 45 days after property is forfeited, the county treasurer would be required to record with the county register of deeds a certificate (in a form determined by the state) for each parcel, specifying the property had been forfeited and not redeemed, and that absolute title would vest in the county treasurer upon entry of a foreclosure judgment. If the county had elected to have the state foreclose property, the county treasurer would be required to immediately transmit to the state treasurer a copy of each certificate recorded, and upon collection and within 30 days, also to transmit the \$175 fee added to each parcel. The fees may be paid from the county's Delinquent Tax Revolving Fund and they would be deposited in the state's Land Reutilization Fund.

Redemption. Property forfeited to the county treasurer could be redeemed at any time before a judgment foreclosing the property was entered upon payment to the county treasurer of all of the following: the total amount of unpaid delinquent taxes, interest, penalties, and fees for which the property was forfeited; an additional interest computed at a noncompounded rate of one-half percent per month or fraction of a month on the taxes that were originally returned as delinquent, computed from the March 1 preceding the forfeiture; and, all recording fees and all fees for service of process or notice.

Redemption Liens and Certificates. If property were redeemed by a person with a legal interest, the person redeeming would not acquire a title or interest in the property greater than the former owner would have

had if the property had not been forfeited to the county treasurer, but the person redeeming would be entitled to a lien for the amount paid to redeem the property in addition to any other lien or interest the person may have. That lien would be recorded within 30 days with the register of deeds, and the lien acquired would have the same priority as the existing lien, title, or interest.

Further, if property were redeemed, the county treasurer would be required to issue a redemption certificate (in quadruplicate in a form prescribed by the Department of Treasury). One copy of the certificate would be delivered to the person making the redemption payment, one filed in the office of the county treasurer, one recorded in the office of the county register of deeds, and one immediately transmitted to the Department of Treasury. The county treasurer also would be required to make a note of the redemption certificate in the tax record kept in his or her office, with the name of the person making the redemption payment, the date of the payment, and the amount paid. A certificate and the entry of the certificate in the tax record by the county treasurer would be prima facie evidence of a redemption payment in the courts of the state.

Foreclosure Petition and Notice. Not later than June 15 in each tax year, the foreclosing governmental unit would have to file a petition with the clerk of the circuit court listing the property forfeited and not redeemed for the total of the forfeited unpaid delinquent taxes, interest, penalties, and fees. The petition would have to include the address of each parcel of property set forth in the petition, if available to the foreclosing governmental unit. The petition would have to request that a judgment be entered vesting absolute title to each parcel of property in the foreclosing governmental unit, without right of redemption. Before the hearing on the petition, the foreclosing governmental unit would have to file with the clerk of the circuit court proof of any notice, service, or publication required.

If property were redeemed after the foreclosure petition was filed, the foreclosing governmental unit would be required to request that the circuit court remove that property from the petition before judgment foreclosing the property was entered.

The foreclosing governmental unit could withhold from the petition property whose title was held by minor heirs or persons who were incompetent or without means of support until a guardian was appointed to protect their rights and interests. If a county treasurer withheld property from the petition, a taxing unit's lien for taxes due or the county treasurer's right to include the property in a subsequent petition for foreclosure would not be prejudiced.

Foreclosure Hearing. If a petition for foreclosure were filed, the clerk of the circuit court in which the petition was filed immediately would have to set the date, time, and place for a hearing, which would have to be held within 30 days before the March 1 immediately succeeding the date the petition was filed.

Title Searches. Under the bill, not later than May 1 immediately succeeding the forfeiture of property, the foreclosing governmental unit would be required to conduct a title search to identify owners with property interests who are entitled to notice. The foreclosing governmental unit could enter into a contract with one or more state licensed title insurance companies or agents to perform the title searches to identify the owners and to perform other functions.

Show Cause Hearing and Notice. The foreclosing governmental unit or its authorized representative would be required to determine the address reasonably calculated to apprise owners of a show cause hearing, or the foreclosure hearing, and to send notice of those hearings to the owners by certified mail, return receipt requested, not less than 30 days before the hearing. The failure of the foreclosing governmental unit to comply with any provision of this section would not invalidate any proceeding if the owner of a recorded property interest was accorded the minimum due process required under the Michigan Constitution.

Personal Visits to Determine Occupancy & FIA Referral. Under the bill, the foreclosing governmental unit (or an authorized representative) would be required to make a personal visit to each parcel of forfeited property to ascertain whether or not the property was occupied. If the property appeared to be occupied, the foreclosing governmental unit would be required to do all of the following:

- a) attempt to personally serve a person occupying the property a copy of a notice of the show cause hearing;
- b) if a person occupying the property is personally served, to orally inform the occupant 1) that the property will be foreclosed and the occupants will be required to vacate unless all forfeited unpaid delinquent taxes, interest, penalties, and fees were paid, 2) of the

time within which the fees would have to be paid, and 3) of agencies or other resources that may be available to assist the owner to avoid loss of the property;

c) if the occupant appears to lack the ability to understand the advice given, to notify the Family Independence Agency (FIA) or to provide the occupant with the names and telephone number of the agencies that may be able to assist the occupant; and

d) if unable to personally serve notice, to place a notice written in plain English in a conspicuous manner on the property, stating that the property will be foreclosed unless forfeited unpaid delinquent taxes, penalties, interest, and fees are paid; containing the time within which they must be paid; and, the names, addresses, and telephone numbers of agencies or other resources that may be available to assist the occupant to avoid loss of the property.

If the state were the foreclosing governmental unit, the Department of Natural Resources would be required to perform the personal visit to each parcel on behalf of the state.

The foreclosing governmental unit would be required to record the proof of service of the notice of the show cause hearing, the foreclosure hearing, and the personal visit to the property with the register of deeds, and also to the title insurance company under contract in the county. If the foreclosing governmental unit entered into a contract with a title insurance company or licensed agent, the foreclosing governmental unit would be required to provide the proof of service to the title insurance company or agent. Within 10 days after receiving proof of service, the title insurance company would be required to notify the foreclosing governmental unit in writing of any deficiency in service, and the foreclosing governmental unit be required to correct that deficiency and provide proof of the correction. If these efforts to serve notice were not successful because the whereabouts of owners could not be reasonably ascertained, then the county treasurer would be required to serve notice by publication. Under the bill, the notice would be published for three successive weeks, once each week, in a newspaper

published in the county where the property is located, or an adjoining county if there is no newspaper in the county where the property is located. Proof of publication, by affidavit of the printer or publisher of the newspaper, would be recorded with the register of deeds.

Under the bill, the owner of a recorded property interest would be entitled to notice if that owner's interest were identifiable by reference to records in the offices of the register of deeds, county treasurer, local assessor, or local treasurer.

Under this section of the bill, the notice required would include: a) the date on which the property was forfeited to the county treasurer; b) a statement that a person notified may lose his or her interest in the property as a result of the foreclosure; c) a legal description or parcel number of the property and the street address of the property, if possible; d) all persons to whom the notice is addressed; e) the total taxes, interest, penalties, and fees due on the property; f) the date and time of the show cause hearing; g) the date and time of the hearing on the foreclosure petition and a statement that unless the taxes, interest, penalties, and fees are paid before judgment is entered in the foreclosure proceeding, absolute title to the property will vest in the foreclosing governmental unit; and h) a statement of the person's rights of redemption and notice that the rights of redemption will expire if the court enters a judgment foreclosing the property.

Show Cause Hearing and Notice. Under the bill, if a petition for foreclosure were filed, the foreclosing governmental unit would be required to schedule a hearing not later than December 31 immediately preceding the date of the foreclosure hearing to show cause why absolute title to the property forfeited should not vest in the foreclosing governmental unit. The foreclosing governmental unit could hold combined or separate hearings for different owners or persons with a property interest in the property forfeited to the county treasurer. The owner and any person with a recorded property interest could appear at the hearing and redeem the property, or show cause why absolute title should not vest in the foreclosing governmental unit. If the owner prevailed, the foreclosing governmental unit would be required to correct the tax roll to reflect the determination.

If a petition of foreclosure were filed, the foreclosing governmental unit would be required to file with the circuit court clerk, before the date of the hearing, proof of any notice, service, or publication.

Contesting the Foreclosure Petition. A person claiming an interest in a parcel set forth in the petition for foreclosure could contest the validity or correctness of the forfeited unpaid delinquent taxes, interest, penalties, and fees for any of the following reasons: a) no law authorizes the tax; b) the person appointed to decide whether a tax shall be levied acted without jurisdiction, or did not impose the tax in question; c) the property assessed was exempt from the tax in question, or not legally assessed; d) the tax had been paid within the time limited by law for payment or redemption; e) the tax had been assessed fraudulently; and, f) the description of the property used in the assessment was so indefinite or erroneous that the forfeiture was void.

A person who desired to contest the petition would be required to file written objections with the circuit court clerk, and serve those objections on the foreclosing governmental unit. If the court determined that the owner of property subject to foreclosure was a minor heir, was incompetent, or was without means of support, the court could withhold that property from foreclosure for one year, or could enter an order extending the redemption period. If the court withheld property from foreclosure, a taxing unit's lien for taxes due would not be prejudiced, and that property would be included in the immediately succeeding year's tax foreclosure proceeding.

Judgment. The circuit court would have to enter judgment on a petition for foreclosure at least 10 days after the March 1 immediately succeeding the date the petition was filed. If the court entered a judgment foreclosing the property as requested in the foreclosure petition, all redemption rights to the property would expire.

The court's judgment would have to specify all of the following:

--The legal description and, if known, the street address of the property foreclosed and the unpaid delinquent taxes, interest, penalties, and fees due on each parcel of tax delinquent or certified abandoned property.



--That fee simple title to the property was vested absolutely in the foreclosing governmental unit, without any further rights of redemption.

--That all liens and encumbrances against the property of any kind were extinguished, except current taxes and future installments of special assessments, and liens recorded by this state or the foreclosing governmental unit under the Natural Resources and Environmental Protection Act.

--That the foreclosing governmental unit had good and marketable fee simple title to the property.

--That all existing recorded and unrecorded interests in the property were extinguished except a visible or recorded easement or right-of-way, private deed restrictions, restrictions imposed under the Natural Resources and Environmental Protection Act, or other governmental interests.

--A finding that those entitled to notice and an opportunity to be heard had been provided notice and opportunity.

Fee simple title to property set forth in a petition for foreclosure in which forfeited delinquent taxes, interest, penalties, and fees were not paid before judgment was entered would vest absolutely in the foreclosing governmental unit, and the foreclosing governmental unit would have absolute title to the property. The title would not be subject to any recorded or unrecorded lien and could not be stayed or held invalid except as provided in the bill.

Appeal to Court of Appeals. The foreclosing governmental unit or a person who is determined to have an interest in the foreclosed property could appeal the circuit court's judgment to the court of appeals. An appeal would be limited to the record of the proceedings in the circuit court and would be de novo. The circuit court's judgment foreclosing the property would be stayed until the court of appeals had reversed, modified, or affirmed.

To appeal the judgment, a person appealing would have to pay the amount determined to be due to the county treasurer within 21 days after the judgment was entered, together with a notice of appeal. If the judgment were affirmed on appeal, the amount determined to be due would have to be retained by the county treasurer and credited to the proper fund or account in that county. If the judgment were reversed or modified on appeal, the county treasurer would have to refund the amount determined to be due to the person who appealed the judgment. Finally, the foreclosing governmental unit would be required to

record either the judgment or a notice of judgment in the office of the register of deeds.

Recovery of Monetary Damages Only. If a judgment for foreclosure were entered, the owners of any extinguished recorded or unrecorded interest in the property would be prohibited from bringing an action for possession of the property against any subsequent owner, but could, instead, only bring an action to recover monetary damages. The court of claims would have original and exclusive jurisdiction in any action to recover monetary damages, and an action could not be brought more than two years after a foreclosure judgment was entered. Any monetary damages recoverable would be determined as of the date the foreclosure judgment was entered, and could not exceed fair market value of the property on that date.

Sale of Foreclosed Property to Local Governments. By the first Tuesday in July (or in some sale circumstances, the first Tuesday in September) immediately succeeding the entry of judgment vesting absolute title to tax delinquent property in the foreclosing governmental unit, the state would be granted the right of first refusal to purchase property at the greater of the minimum bid or its fair market value by paying that amount to the foreclosing governmental unit. If the state elected not to purchase the property, a city, village, or township could purchase for a public purpose any property located within that city, village, or township set forth in the judgment and subject to sale by payment to the foreclosing governmental unit of the minimum bid. If a city, village or township did not purchase the property, the county could do so. If the property were purchased by a city, village, or township under this provision, the foreclosing governmental unit would have to convey the property to the purchasing city, village, or township within 30 days.

If property purchased by a city, village, township, or county were subsequently sold for more than the minimum bid, together with all the costs incurred relating to demolition, improvements, or infrastructure development, then the excess would be returned to the city, village, township, or county's delinquent tax property sales account, or if the state were the foreclosing governmental unit, to the Land Reutilization Fund. Upon request of the foreclosing governmental unit, a city, village, township, or county

that purchased property would be required to provide the foreclosing governmental unit with free information concerning subsequent sale or transfer of the property. These provisions would apply prior to all land sales described in the act.

Auction Sale and Notice. Subject to the preceding provisions, beginning on the third Tuesday in July immediately succeeding the entry of judgment vesting absolute title to the property in the foreclosing governmental unit, the foreclosing governmental unit or its representative could hold one or more property sales at one or more convenient locations at which property foreclosed by the judgment would have to be sold by auction sale. Notice of the time and location of the sale would be required to be published not less than 30 days before the sale in the county's newspaper, or if there is no county newspaper where the property is located, then in an adjoining county's newspaper. The sale or sales would have to be completed within 15 days. The property would have to be sold to the person bidding the highest amount above the minimum bid, and could be offered as individual parcels or as two or more parcels for sale as a group. 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 after the date of a sale, the foreclosing governmental unit would have to convey the property by deed to the person. The deed would vest fee simple title to the property in the person bidding the highest amount above the minimum bid. If the state were the foreclosing governmental unit, the Department of Natural Resources would conduct the sale.

After the sale, and not later than the first Tuesday in September immediately after that sale, a city, village, or township could purchase any property not previously sold by paying the minimum bid to the foreclosing governmental unit. If a city, village, or township did not purchase the property, the county where the property is located could do so. If the property were purchased by a city, village, or township, the county treasurer would have to convey the property to the purchasing city, village, or township within 30 days.

Beginning on the third Tuesday in September immediately after the auction sale, all property not previously sold would have to be re-offered for sale, subject to the requirements for an auction sale. Beginning on the third Tuesday in November immediately after the property sale held in September, all property not previously sold would have to be re-offered for sale again subject to the same requirements, except that the minimum bid would not be required.

["Minimum bid" would mean the minimum amount established by the foreclosing governmental unit for which property could be sold. The minimum bid would have to include all of the following: a) all delinquent taxes, interest, penalties, and fees due on the property (however, if a city, village, or township purchased the property, the minimum bid could not include any taxes levied by that jurisdiction, or any interest penalties, or fees due on those taxes); and, b) the expenses of administering the sale, including all preparations for the sale. The foreclosing governmental unit would be required under the bill to estimate the cost of preparing for and administering the annual sale for purposes of prorating the cost for each property included in the sale.]

Transfer of Property. On December 1 immediately after the date of the property sale held in November, all property not previously sold by the foreclosing governmental unit would have to be transferred to the clerk of the city, village, or township in which the property is located. The city, village, or township could object in writing to that transfer. On December 30, all property not previously sold by the foreclosing governmental unit would be transferred to the city, village, or township, except those parcels to which the cities, villages, or townships had objected. The city, village, or township could then make the property available under the Urban Homestead Act. If the property were not transferred, the foreclosing governmental unit would retain possession of the property.

Delinquent Tax Sales Accounts. A foreclosing governmental unit would be required to deposit the proceeds from the sale of property into a restricted account designated as the Delinquent Tax Property Sales Proceeds for the Year (specified), and the foreclosing governmental unit would direct the investment of the account. The foreclosing governmental unit would be required to credit to the account all interest and earnings from account investments, and proceeds could only be used by the foreclosing governmental unit for the following purposes in the following order: 1) the Delinquent Tax Revolving Fund would be reimbursed for any amounts that had not been charged back to a local unit of government if the local unit was paid the delinquent tax on property offered for sale, whether or not that

property was sold; 2) all costs of the sale of property for the year would be paid; 3) any costs of the foreclosure proceedings for the year, including but not limited to costs of mailing, publication, personal service, and outside contractors would be paid; 4) any costs for the sale of property or foreclosure proceedings for any prior year that had not been paid, or reimbursement from that prior year's delinquent tax property sales proceeds would be paid; 5) any costs incurred by the foreclosing governmental unit in maintaining foreclosed property before the sale, including costs for any environmental remediation; and 6) if the foreclosing governmental unit is the state, any remaining balance would be transferred to the Land Reutilization Fund.

Joint Sale. Two or more county treasurers could elect to hold a joint sale of property. If two or more county treasurers elected to do so, property could be sold at a location outside of the county in which the property was located. The sale could be conducted by any county treasurer participating in the joint sale.

Land Reutilization Fund. Under the bill, the Land Reutilization Fund would be created in the Department of Treasury. The state treasurer could receive money or other assets from any source for deposit into the fund, and would direct the fund's investment. The state treasurer would be required to credit to the fund interest and earnings from fund investments. Money in the fund at the close of the fiscal year would remain in the fund and would not lapse to the general fund.

The Department of Treasury could expend money from the fund for any of the following purposes: a) contracts with title insurance companies; b) costs of determining addresses, service of notices, and recording fees; c) defense of title actions as determined by the state treasurer; and, d) other costs incurred in administering the collection of delinquent taxes under the act.

Administrative Uniformity, Fees, Annual Reports, Evaluation. Under the bill, not later than one year after the effective date, the state treasurer would be required to develop the form of several procedures that would be used to administer the collection of taxes, including a) the proof of service and notice, b) the affidavit of publication, and c) the judgment of foreclosure. In prescribing these forms, the state treasurer would be required to actively solicit recommendations from county treasurers and other interested parties.

Not later than March 1 each year, the state treasurer would be required to establish the following fees, adequate to meet the expense incurred by the

foreclosing governmental unit, to be added to each parcel on which delinquent taxes remain unpaid: a) a fee not less than \$15 for parcels which on the October 1 immediately succeeding the date that unpaid taxes are returned to the county treasurer for forfeiture, foreclosure, or sale, or returned as delinquent; and, b) a fee not less than \$175 for each parcel of certified abandoned property and property that is delinquent for taxes, interest, penalties, and fees, if the parcel is forfeited to the county treasurer.

Not later than December 31 each year, each county treasurer would be required to report to the state treasurer detailing the expense incurred, and the adequacy of the fees in relation to those expenses.

Not later than December 31, 2003, a committee of county treasurers selected by the Michigan Association of County Treasurers would be required to submit a report to the House and Senate committees on local government and urban or state affairs, or their successors, on the delinquent tax collection process. The report would contain but not be limited to a) the potential successes and areas of improvement, and b) the adequacy of the fees established under the act.

Revolving Fund Notes. Currently, if a county establishes a Delinquent Tax Revolving Fund and borrows or issues revolving fund notes, it must make application to the Municipal Finance Commission. Under House Bill 4489, the application would be made to the Department of Treasury.

County Treasurers as Paid County Agents Prohibited in Future. Currently, a county board of commissioners that borrows from its Delinquent Tax Revolving Fund is required to pay from the surplus in the fund an amount equal to 20 percent of the following amount to the county treasurer for services as agent for the county and the remainder of the following amount to the county treasurer's office for delinquent tax administration expenses: a) for any delinquent tax on which the interest rate before sale exceeds one percent per month, 1/27 of the interest collected per month; and, b) for any delinquent tax on which the interest rate before sale is one percent per month or less, 3/64 of the interest collected each month.

Under House Bill 4489, a county treasurer elected or appointed after the effective date of the bill would not be eligible for payment for services as an agent, unless the county treasurer held office and had not vacated office on the effective date.

Department of Natural Resources. Under current law, the director of the Department of Natural Resources, with the approval of the Commission of Natural Resources, may withhold from sale any land suitable for state forests, state parks, state game refuges, public hunting, or recreational grounds. The bill would eliminate the required approval of the Natural Resources Commission, and allow the director to withhold from sale any property the director deemed suitable for these purposes. The bill specifies that a deed issued during the tax reversion process would remain subject to any restrictions approved by the state, or the foreclosing governmental unit, and recorded with the register of deeds under the Natural Resources and Environmental Protection Act. The bill also would eliminate the provisions concerning the process for applications from a local tax collecting unit or a county, requesting the conveyance by the Department of Natural Resources of certified special residential property for which the redemption period has expired.

Further, under the bill, the Department of Treasury could hold combined or separate show cause hearings for different owners of a recorded property interest. In addition, the bill would provide that for all property the title to which vested in this state after October 25, 1997, the owner of a recorded property interest who had been properly served with a notice of hearing, and who failed to redeem the property, could not assert either a) that notice was insufficient or inadequate on the grounds that some other owner of a property had not also been served, or b) that the redemption period was extended on the grounds that some other owner of a property interest had not also been served.

Enacting Sections and Repealed Sections of Law. The bill specifies that section 131e of the General Property Tax Act, as amended by the bill, would be retroactive and would be effective for all property the title to which vested in the state after October 25, 1976. The bill also specifies that 30 sections of the new act would go into effect October 1, 1999.

Further, the bill would repeal two sections of the General Property Tax Act, concerning certified special residential property tax rolls, and the sale of certified special residential property.

And, effective December 31, 2003, House Bill 4489 would repeal 20 sections of the General Property Tax

Act concerning, among other things, a county treasurer's annual tax sale, the current petition, notice, and publication requirements to sell delinquent tax lands (except the limits on advertising costs); the duties during this process of the county clerk and the circuit court judge; the vesting of title in the state; the disposition of disputed taxes; conveyance of land to the state; cancellation of taxes and special assessments; deference of special assessments pledged for repayment of bonds; conveyance to the state housing department authority; sale, cancellation, and forfeiture; the purchaser's certificate; the quieting of title; tax deeds; and, redemption.

Finally, effective December 31, 2006, the bill would repeal 37 sections of the General Property Tax Act concerning, among other things, redemption and annulment; the grounds for bringing suit concerning illegal taxes; competent evidence; loss of certificate of sale or deed; purchase of state bids after tax sale; withholding sale because of error; rejected taxes; grounds for withholding conveyance; unprejudicial irregularities; land office commissioner; waste injunction by certificate holder; abandoned land; lands withheld from tax sale; bids; conveyance of certified special residential property; redemption by owner; municipal redemptions; management contracts with licensed real estate brokers; writ of assistance; proof of notice on improved residential parcels; contact of owner by county department of social services; persons entitled to release and quitclaim; grantees' lien; notice by tax purchaser to owners; failure to redeem; proceedings to set aside sale; waste and removal of property from tax delinquent lands; and county treasurer entitled to injunction.

Tie-Bars. House Bill 4489 is tie-barred to Senate Bills 343, 488, and 489. None of the bills would become law unless all were enacted. Senate Bill 343 would create an Urban Homesteading Program that would make property available to qualified buyers. Senate Bill 488 would create the Certification of Abandoned Property for Accelerated Forfeiture Act. Finally, Senate Bill 489 would provide that certified abandoned property would be subject to forfeiture, foreclosure, and sale.

#### Senate Bill 488

The bill would create the Certification of Abandoned Property for Accelerated Forfeiture Act. The bill would prescribe the duties of the local unit of

government and the county treasurer; provide a sample resolution to be adopted in order to declare accelerated forfeiture; and, describe an affidavit of interest that an owner could file to delay certification for one year.

Under the bill, a local unit of government (defined to mean a city, village, or township) could make a declaration of accelerated forfeiture of abandoned property by adopting a resolution stating three conditions: the existence of a large number of parcels of abandoned tax delinquent property; the contribution of such property to crime, blight, and decay; and, that certification of such property as certified abandoned property would result in accelerated forfeiture and foreclosure, and would return the property to productive use more rapidly, thereby reducing crime, blight, and decay.

If a local unit of government were to make a declaration of accelerated forfeiture of abandoned property before October 1 of any tax year, the local unit could identify property within the local unit as abandoned property, if all of the following procedures were met: before February 1, the local unit inspected the property and determined that it was abandoned; at the time of inspection, the local unit posted a notice on the property that if taxes levied were returned as delinquent, the property will be subject to accelerated forfeiture and foreclosure, unless an affidavit claiming the property is not abandoned was filed; the local unit sends a copy of the notice to the owner of the property or to the taxpayer of record by first-class mail; and taxes levied on the property were returned as delinquent on March 1 to the county treasurer. If the local unit of government determined that the property was occupied by an owner or a person with a legal interest, the local unit would be prohibited from certifying the property as abandoned.

The bill would provide that an owner or person with a legal interest could file an affidavit with the local unit claiming the property was not abandoned before taxes were returned as delinquent, or with the county treasurer after taxes were returned as delinquent. If an affidavit were filed, the property would not be forfeited on the immediately preceding March 1, but would be forfeited on the immediate succeeding March 1 if all delinquent taxes, interest, penalties, and fees had not been paid. If no owner or person with a legal interest responded, then the local unit could certify the property as abandoned.

Senate Bill 488 is tie-barred to Senate Bill 343, which would create an urban homesteading program; Senate Bill 489, which also would provide that certified abandoned property would be subject to forfeiture, foreclosure, and sale; and, House Bill 4489, which

provides that tax delinquent property would be subject to forfeiture, foreclosure, and sale. The bills would not become law unless all of the bills were enacted.

#### Senate Bill 489

The bill would amend the General Property Tax Act (MCL 211.79, 211.79a and 211.79b) to define certified abandoned property that would be subject to forfeiture, foreclosure, and sale; and, also to specify the rights and responsibilities of those who hold tax deeds. Under the bill, the new provisions would apply for taxes levied after December 31, 1998.

Specifically, under Senate Bill 489, "certified abandoned property" would mean property that was returned as delinquent to the county treasurer on March 1 of each tax year and was certified as certified abandoned property under the Certification of Abandoned Property for Accelerated Forfeiture Act [as proposed in Senate Bill 488].

Under the bill, a person who holds a tax deed issued on abandoned property could quiet title in the circuit court by satisfying the following requirements.

- 1) Conduct a title search.
- 2) Send notice by mail, return receipt requested, to the owner and to all who have a legal interest in each parcel subject to accelerated foreclosure, as determined by the records in the office of the register of deeds, and in records maintained by the county treasurer and the state treasurer. If for any reason the notice could not be delivered, notice would be required by publication for four successive weeks, once each week, in a newspaper published and circulated in the county in which the parcel is located, if there is one, or if not, then publication in a newspaper published and circulated in an adjoining county.
- 3) Request that the city building inspector inspect the property and execute an affidavit attesting that it is abandoned, vacant, dilapidated, or open to entrance or trespass. The cost of the inspection would be paid by the tax deed holder and would be included in the amount necessary to redeem the property.

4) Post a notice on the abandoned property not less than 90 days before a foreclosure action is brought.

5) In the notice, include: the legal description, parcel number, and if known, the street address of the abandoned property; a statement of the total amount that must be paid to the county treasurer to redeem the abandoned property within 90 days; and, a statement that unless taxes are paid before the 90-day redemption period expires and a foreclosure judgment is entered, title to the abandoned property will vest absolutely in the deed holder.

If the abandoned property is not redeemed by the owner or a person with a legal interest by payment to the county treasurer within 90 days, the tax deed holder could bring an action in the circuit court where the abandoned property is located and petition the court to issue a judgment to quiet title in favor of the deed holder. The tax deed holder would be required to provide all of the following to the court: a) an affidavit from the city building inspector; b) a title search that identified all owners and those with a legal interest in the abandoned property; c) proofs of service; and, d) an affidavit from the county treasurer certifying to the lack of payment within the 90-day period.

If the circuit court were to enter a judgment in favor of the deed holder, the court would be required to foreclose the abandoned property, and under the bill that judgment would be required to specify: a) the legal description, street address, and parcel number; b) that fee simple title is vested absolutely in the deed holder without any further rights of redemption; c) that as of the date of judgment, all delinquent property taxes, demolition liens, and all other municipal liens of any kind, except future installments of special assessments, were extinguished; d) that all existing recorded and unrecorded interests in the property were extinguished, except a visible or recorded easement or right-of-way; and, e) that the petitioning deed holder had good and marketable fee simple title to the property.

If a judgment of foreclosure was entered and all recorded and unrecorded interest was extinguished, the owner of any interest would be prohibited from bringing an action for possession of the property against any subsequent owner, but could bring an action to recover monetary damages. However, an action to recover monetary damages could not be brought more than two years after a foreclosure judgment was entered, and would be determined as of the foreclosure judgment date.

Under Senate Bill 489, property would be considered abandoned if all of the following requirements were satisfied: a) within 30 days before the foreclosure

proceedings began, the deed holder mailed by certified mail, return receipt requested, to the last known address of the owner and all who have a legal interest, a notice that the property was abandoned and that the deed holder intended to foreclose it; b) before commencing foreclosure proceedings, the deed holder executed and recorded an affidavit in the office of the register of deeds that states he or she had given notice and there had been no response, and that a personal inspection had been made and that no one was occupying the abandoned property; c) the deed holder mailed by certified mail, return receipt requested, a copy of the affidavit to the owner or any person with a legal interest before commencing foreclosure proceedings; and d) the owner or any person with a legal interest in the abandoned property did not give a written affidavit to the deed holder (and record a duplicate original in the office of the register of deeds), stating that the owner or person with a legal interest in the abandoned property was occupying or intends to occupy the abandoned property.

Senate Bill 489 is tie-barred to Senate Bill 343, which would create an urban homesteading program to make property available to qualified buyers; Senate Bill 488, which would provide for accelerated certification of abandoned property; and, House Bill 4489, which would provide that tax delinquent property would be subject to forfeiture, foreclosure, and sale. The bills would not become law unless all the bills were enacted.

#### Senate Bill 507

The bill would create the Tax Reverted Property Emergency Disposal Act. Under the bill, a local unit of government (defined to be a city, village, or township) could obtain clear title to tax reverted property, the title to which vested in the local unit of government prior to January 1, 2000, if a declaration of emergency backlog were made. Under the bill, the procedures would be as follows.

Resolution to Declare Emergency Backlog. A local unit of government could make a declaration that an emergency backlog of tax reverted property exists within a portion of the local unit, if the legislative

body of the local unit approved a resolution at a public meeting. The resolution would be required to state that a) the existing inventory of tax reverted property within all or a portion of the local unit was too large and of uncertain title, b) that the tax reverted property was impairing the local unit's ability to market the tax reverted property by conventional means, and c) that the tax reverted property was contributing to the spread of neighborhood blight and deterioration.

Title Insurance Companies. If a declaration of emergency backlog were made, the local unit would be required to enter into a contract with one or more licensed title insurance companies to identify the owners of a recorded property interest in any parcel of tax reverted property located within the area identified in the resolution. If the post office address of a person with a recorded property interest in the tax reverted property could not be determined, the local government would be required to review the records of the treasurer, the records of the assessor, and the qualified voter file.

Notice and Affidavit Requirements. After a title search and not less than 30 days before a quiet title action was begun, the local unit of government would be required to send notice by certified mail return receipt requested to all people having a recorded interest in each parcel. The bill also would require that the notice be mailed to the property by first-class mail, addressed to "occupant." If the local unit were unable to ascertain the address of a person with a recorded property interest in the tax reverted property, or if notice by certified mail were refused, the local unit would be required to serve notice by publication. The bill would require that notice be published for three successive weeks in a newspaper published and circulated in the county in which the tax reverted property is located, or if there were no county newspaper, in a newspaper published in an adjoining county. The bill would require that proof of publication by affidavit of the printer or publisher of the newspaper be recorded with the register of deeds in the county where the tax reverted property is located. Further, an authorized officer of the local unit of government would be required to file an affidavit attesting to his or her compliance with the notice requirements in the office of the register of deeds.

Under the bill, the notice would be required to include all of the following: a) the date the property was deeded to the local unit of government; b) the date of the court hearing; c) a statement that a person notified could lose his or her interest in the property as a result of a circuit court judgment quieting title to the tax reverted property; d) a legal description or parcel number and the street address of the tax reverted

property, if available; e) the person or people to whom the notice is addressed; f) the total of taxes, interest, penalties, and fees due as of the expiration of the redemption period; and, g) a statement that unless all taxes, interest, fees, and penalties were paid before a judgment quieting title was entered, absolute title to the tax reverted property would vest in the local unit of government without any further redemption rights.

The bill further specifies that after the local unit of government made a declaration that an emergency backlog of tax reverted property exists, rights of redemption to tax reverted property would not be transferable and a subsequent transferee would not be entitled to notice and would have no rights of redemption.

Quiet Title Action in Circuit Court. After notice was provided, the local unit of government could bring a quiet title action in the circuit court for the county where the tax reverted property is located. If a local unit brought a quiet title action, a person claiming a recorded interest could contest the validity or correctness of the unpaid delinquent taxes, interest, penalties and fees for one or more of the following reasons: a) no law authorized the tax; b) the person appointed to decide whether a tax would be levied acted without jurisdiction, or did not impose the tax in question; c) the person or property assessed was exempt, or was not legally assessed; d) the tax had been paid; and, e) the tax was assessed fraudulently. Under the bill, an owner who wished to contest a quiet title action would be required to file written objections with the circuit court clerk, and to serve those objections on the local unit of government.

Under the bill, the circuit court's judgment would be required to specify all of the following: a) the legal description and, if known, the street address of the tax reverted property and the unpaid delinquent taxes on each parcel; b) that fee simple title to the tax reverted property is vested absolutely in the local unit of government, without any further rights of redemption; c) that all liens against the tax reverted property of any kind are extinguished, except a visible or recorded easement or right-of-way; d) that the local unit of government has good and marketable fee simple title to the tax reverted property; and e) that any rights or interest claimed by any person to the tax reverted property are extinguished.

The bill specifies that fee simple title to tax reverted property would vest absolutely in the local unit of government upon entry of the judgment, and that the local unit of government would have absolute title to the property. The local unit of government's title would not be subject to any recorded or unrecorded lien, and would not be stayed or held invalid, unless the judgment were appealed and overturned. The local unit or a person claiming an interest in the tax reverted property could appeal the circuit court's judgment to the court of appeals, and the circuit court's judgment would be stayed until the court of appeals issued an opinion. To appeal the circuit court's judgment, a person would be required to pay the amount determined to be due to the local unit of government under the judgment within 21 days, together with a notice of appeal.

**Right of Redemption.** Finally, the bill specifies that if the title search identified any person who had a recorded interest in the tax reverted property who had not been provided notice of tax foreclosure, that person would not have any rights of redemption under the General Property Tax Act, and would only have the rights of redemption provided under the bill.

**Definitions.** Senate Bill 507 would define "tax reverted property" to mean property the title to which had vested in a local unit of government pursuant to the General Property Tax Act as a result of the nonpayment of delinquent taxes and nonredemption within the statutory period provided under that act.

**Tie Bar.** Senate Bill 507 is tie-barred to House Bill 4489, which provides that tax delinquent property would be subject to forfeiture, foreclosure, and sale as provided under that bill. The bill would not become law unless House Bill 4489 also were enacted.

## **BACKGROUND INFORMATION:**

**Delinquent Tax Reversion Process.** A brief explanation of the delinquent tax property reversion process follows. The explanation is an excerpt from Part II of the 19-page report issued by the Citizens Research Council (CRC) in April 1999, entitled "Delinquent Property Taxes as an Impediment to Development in Michigan." For a more complete description, the reader is referred to the entire report which is available at the CRC website. Chart I on page three of that report provides an overview of the six-year process. The report can be obtained at the following address: <http://www.crcmich.org>.

*Brief Description of the Delinquent Tax Process in Michigan.* Although the immediate local unit of

government is accorded the responsibility of all local tax collections including the county portion, it is the county that acts on behalf of the state as collection agency of any delinquent portion of property taxes. Summer and winter tax payments (due July 1 and December 1 in most Michigan communities) are payable to local taxing units--the cities and townships--who forward non-local portions to their respective units: the State, counties, local schools, and intermediate school districts. Unpaid taxes are returned as delinquent on March 1 of the following year to the county treasurer, who then certifies them as such. The county reimburses local units, local schools, intermediate school districts, and regional authorities for lost revenues that are due to delinquencies. They do this through the county delinquent tax revolving fund.

Upon delinquency, the taxpayer of record becomes liable for delinquency fees and penalties, as well as interest, at a rate of one percent per month, on the unpaid balance. In addition, the taxpayer of record is liable for a one percent local administration fee, and a four percent county administration fee. Interest, fees, and penalties increase throughout the several stages of delinquency.

**Delinquent Tax Revolving Fund.** Michigan allows counties to establish a delinquent tax revolving fund to reimburse local units for revenues forgone by delinquencies. Counties may issue revolving fund notes (short-term borrowing), backed by the full faith and credit of the county, to establish and maintain the revolving tax fund. Payments to the fund are made by delinquent tax redemptions and proceeds from the annual tax sale. According to the Hudson Institute, most counties show an annual surplus in their delinquent tax revolving funds, due to the significant interest and penalties due for delinquent tax payments.

**County Tax Lien Sale.** After two years and two months of delinquency, the county holds a tax lien sale at which buyers can purchase the right to become lien holders on the delinquent taxes payable on the property. The purpose is to sell the right to become senior lienholder on property that has been delinquent for over two years. Redemption costs accelerate if the property goes to tax sale. Specifically, interest on the delinquent property is recalculated at 1.25 percent per month, up from 1 percent per month during the 26-month delinquency period leading up to the sale. It is



important to note that properties that remain delinquent after the sale of a tax lien can come up for bid at subsequent tax sales for subsequent delinquencies. It is therefore possible for several liens, held by different interests, to be outstanding on a tax delinquent property.

During the year immediately after the tax sale, purchasers of tax liens are entitled to: a) any delinquent tax proceeds paid on the property; b) 1.25 percent per month interest on delinquent taxes; and, c) any administrative fees paid to obtain the lien.

*Tax Sales and the Bidding Process.* The county tax lien sale is held on the first Tuesday of each May, a statutorially prescribed date. However, in order to allow for the last-minute rush of tax payments, many counties offer only one tax lien for sale on this day. Most of the liens are offered for sale beginning the next day, to allow time for processing the last-minute tax payments. The entire sale may take several days in larger counties. The sale price of the lien is the total amount of delinquent taxes, interest, and fees due on the property for the delinquent tax year(s).

The bidding process is not conventional. In law, if there is more than one buyer, the bidding proceeds with each potential buyer pledging a successively declining interest in ownership of the property. That is, if five buyers wish to buy the same lien, then the winning bid is the buyer who is willing to accept the smallest ownership interest in the property, when and if the process gets to the point where they may take partial title to the property. When the ownership percentage is less than 100 percent, any such lien, if perfected, entitles the holder to a tenancy in common with the owner.

The lien holder, upon purchase, is entitled to the benefits noted above--tax proceeds, 1.25 percent per month interest on taxes, and administrative fees. If the taxes are not redeemed, the lien holder may eventually take title to the property by perfecting the lien. (See discussion on page 5 of the report.)

*Tax Lien Sales Sometimes Ineffective.* Although tax lien sales serve to effectively preserve owners' property rights, the general efficacy of the tax sale is under scrutiny, given that most unredeemed liens are never perfected. That is, most lien purchasers have no intention of eventually taking control of the property, but rather are solely interested in the redemption of the taxes by the owner. If the owner never redeems the taxes, and the lien buyer never perfects the lien, then the property is bid off to the state. Further, the tax sale is ineffective in many of the state's urban counties, because a high percentage of liens offered do not

generate purchaser interest. In many urban counties, properties offered at tax sale are unattractive to buyers because they have a relative low sale value to tax delinquency ratio.

*When Liens are not Purchased.* If the lien is not purchased at the tax sale, the lien is bid off to the state, which then acts as custodian for the property. The lien is sent to the Department of Treasury's Local Property Service Division, where it remains available for sale or redemption until April 20 of the following year. During the six-month to one-year period with the Department of Treasury, the property owner and all interested parties are given one last opportunity to redeem the taxes and prevent reversion to the state.

*Dow Hearings and Due Process through Notice.* Before the property title can pass to the state, a Michigan Supreme Court decision mandates that property notification shall be sent to all potentially affected interests in the property. *Dow v. Michigan* 396 Mich 192 (1976) arose when plaintiffs, as land contract purchasers of property that became tax delinquent, were provided no formal notice of the delinquency or tax sale because of their unrecorded interest in the property. Finding that the plaintiffs had a significant interest within the meaning of the Due Process Clause of the U.S. Constitution, the *Dow* court held that written, mailed notice need be provided to all such interests, not just recorded interests.

*Public Act 476 of 1996.* In an effort to ease notice requirements by statute, the legislature enacted Public Act 476 of 1996. PA 476 accords actual notice to recorded interests only, but extends the time of the final redemption period until all such recorded interests are found and notified. Before *Dow*, the state was required to provide such notice to property owners only. After *Dow*, the state was required to find (and notify) unrecorded interests in the property before the deed could be transferred, an expensive and time-consuming task. After Public Act 476 of 1996, the state's range of notice extended only to recorded interests, and thereby placed a burden on potential significant property interests, such as land contractors and mortgage lenders, to record their interests in order to preserve their rights in state deed transfer proceedings. However, Public Act 476 of 1996 did not resolve the problem of obtaining title insurance on tax reverted properties. Private title insurers are reluctant to write policies against such properties,

because they fear having to defend possible due process challenges to Public Act 476 of 1996.

*The City of Detroit.* The City of Detroit does not send local portions of delinquent taxes to Wayne County for collection. In accordance with the city charter, local portions of delinquencies are retained, as partial tax payments are applied to local taxes first. Unpaid county taxes are subject to the same collection procedures as other Michigan counties. The local tax collection process in Detroit is similar to the typical county tax collection process, insofar as a tax delinquent property becomes subject to a lien after a specified time. Liens on city taxes are not offered for sale to the public, although the city charter allows for it. This leaves the threat of a civil action by the city--judicial foreclosure--as the sole motivation for the taxpayer to resolve delinquency. According to the city law department, Detroit has a higher tax collection rate than does the county of Wayne.

*Securitized Liens in Detroit and Kalamazoo.* A set of state laws passed in 1998 allows Detroit and Kalamazoo to securitize tax liens. Public Act 379 of 1998 allows municipalities that do not return unpaid ad valorem taxes to the county to package delinquent tax liens into security instruments, and sell bonds backed by them. This law allows Detroit and Kalamazoo to a) set up tax lien authorities that act as collection agencies for delinquent taxes, b) purchase tax liens against local delinquencies as they become available, and c) purchase concomitant county tax liens, if any (to reduce the number of possible outstanding liens on city properties). Any bonds sold against tax lien securities are capped at an interest (or discount) rate of 10 percent. The bonds are not a debt of the State or the issuing city, and are secured solely by the tax liens. Bond proceeds can be used to step up local tax collection efforts, specifically by hiring full-time collection staff at the delinquent tax authorities, or to hire private collection agencies, or both.

### **FISCAL IMPLICATIONS:**

The House Fiscal Agency notes that House Bill 4489 would increase revenue to local units of government by accelerating the recoupment of delinquent taxes. State education property tax revenue to the state also would increase. (5-13-99)

The Senate Fiscal Agency notes that with regard to Senate Bill 488, there would be no fiscal impact on state or local government. (5-18-99) With regard to Senate Bill 507, the Senate Fiscal Agency notes data are not available to determine the fiscal impact. (5-10-99)

### **ARGUMENTS:**

#### **For:**

Michigan's current two-track, six-year tax reversion process is too long and too cumbersome. Under the current system, delinquent tax properties that are not redeemed are either acquired by private purchasers, or deeded to the state. The process for properties deeded to the state can take more than five or six years. More important, title companies are often reluctant to insure title to tax delinquent properties acquired from the state, largely because of concerns about attacks on the state's title based on the adequacy of notice--both because of concerns that the state may not have complied with statutory requirements and because of concerns that a title defense may require defending a constitutional challenge to the statute. As a consequence, many delinquent tax properties deeded to the state are effectively unmarketable.

The current tax reversion process allows properties to deteriorate and serves as a barrier to their productive use. The process promotes urban blight as it thwarts urban reinvestment. These bills would reform the tax reversion system to 1) shorten the process; 2) simplify the steps for taxpayers; and 3) provide clear and marketable title to tax reverted property. Clear title will facilitate property improvements and it will encourage new construction and renovation. What's more, these bills strike the necessary balance between property owners' rights and the need for neighborhood revitalization in the heart of our urban centers. The legislation achieves that balance by providing for sufficient notice to all who have an interest in tax delinquent property. Following ample notice, the bills allow a court to reliably quiet title to the property, and then to transfer absolute title to a new owner who can invest in the property with confidence and security. This legislation, together with the legislation that creates the Urban Homesteading Program, can help improve the quality of life in cities throughout Michigan.

#### **For:**

The Hudson Institute has noted that during its 18-month project to develop the Urban Homesteading Program here in Michigan, its project directors were determined to identify serious barriers to urban redevelopment. They note there is very strong agreement across the state that the biggest barrier to homesteading--indeed, the biggest barrier to

community preservation and revitalization in general--is Michigan's tax reversion process for tax delinquent homes and rental housing. The current law, dating back more than a century to the Depression of 1893, is designed to protect homeowners and farmers who are having financial difficulties. While a laudable objective, the process fails completely to address the problems of abandoned housing in Michigan's cities: homes deteriorate until they are unfit to live in, and destroy the neighborhoods in which they are located, while the tax reversion process grinds on for years.

The Hudson Institute project directors noted that they heard about the tax reversion process from mayors, from local officials who are responsible for housing and community development, and from nonprofit community development organizations, almost everywhere they went in Michigan.

Consequently, the Hudson Institute recommendations for urban redevelopment covered two issues that the project directors have identified as keys to a successful program: urban homesteading and home ownership, and reform of the tax reversion process. These policy areas, while distinct, are interrelated. By creating an urban homesteading program, the state will create the opportunity to restore tax reverted properties to productive use. By reforming the tax reversion process, the state will allow urban homesteaders to own their own homes, before those houses have deteriorated past the point of no return. Abandoned property also will be available for other community development activities, while the buildings are still usable. Taken together, these proposals encourage the reclamation of damaged urban neighborhoods, and they preserve existing communities.

### ***Against:***

These bills may not provide property owners with ample notice and opportunity for hearing to contest the decision that their tax delinquent property will be foreclosed. If so, the bills will violate property owners' constitutional rights.

According to the Real Property Law Section of the State Bar of Michigan, concerns about validity of the state's title are found in state and federal constitutional due process requirements. Specifically, the Michigan Supreme Court has ruled that "the state has no proper interest in taking a person's property for nonpayment

of taxes without proper notice and opportunity for hearing at which the person can contest the state's right to foreclose and cure any default determined . . . by

reason of the Due Process Clause, it may not do so." *Dow v State of Michigan*, 306 Mich 192, 240 NW2d 450, 459 (1976). The court ruled, "Before the state may deprive parties with a significant interest in property of those interests, the Constitution requires that they be afforded an opportunity to be heard at a meaningful time in a meaningful manner." Additionally, the court ruled that such parties were entitled to notice "reasonably calculated, under all the circumstances," to apprise them of that opportunity. The United States Supreme Court has expressed similar views in *Mennonite Board of Missions v Adams*, 462 US 791, 77L.Ed2d 180, 103 Sup Ct 2706 (1983).

Although these bills emphasize notice for those who have a recorded interest in the property, they seem not to afford ample notice to parties whose interests in property may be granted or transferred in a divorce, death, or other probate proceeding, where such transfers often go unrecorded. The fact that a party has an interest that does not appear of record does not mean that he or she is not deserving of protection--both as a constitutional matter, and as a matter of public policy.

Analyst: J. Hunault

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■This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.