



**House  
Legislative  
Analysis  
Section**

House Office Building, 9 South  
Lansing, Michigan 48909  
Phone: 517/373-6466

**DELINQUENT TAXES**

**Senate Bill 547 as passed by the Senate  
First Analysis (7-10-01)**

**Sponsor: Sen. Shirley Johnson  
House Committee: Local Government  
and Urban Policy  
Senate Committee: Economic  
Development, International Trade &  
Regulatory Affairs**

***THE APPARENT PROBLEM:***

Public Act 123 of 1999 amended the General Property Tax Act to establish a new tax reversion process, which provides that property that is delinquent for taxes levied after December 31, 1998 is subject to forfeiture, foreclosure, and sale over a three-year period. Under the law, the “old tax reversion process” takes up to six years and is being phased out as the new tax reversion process takes full effect. The old tax reversion process will fully expire on December 31, 2003.

People involved with the implementation of the law have begun to confront and to anticipate certain technical details that they believe will limit the law’s effectiveness, including: cases where it is unclear whether the old or the new tax reversion process applies; potential misreadings of (and/or ambiguities in) specific provisions; and cumbersome requirements.

***THE CONTENT OF THE BILL:***

Senate Bill 547 would amend the General Property Tax Act (MCL 211.7a et al.) to make a number of amendments to the provisions of Public Act 123 of 1999.

The bill would amend section 124 of the General Property Tax Act to transfer from the auditor general to the Department of Treasury all duties in relation to taxes levied, assessed, collected, returned as delinquent, and sold or to be sold as required under the old tax reversion process. Thus, the section would only apply to property that is delinquent for taxes levied before January 1, 1999 and that is offered for sale at a May tax sale as established by section 60. The bill would provide for the repeal of section 124, as well as sections 61a, 62, 63, 64, 65, 66, 88, 95, 104, 106, 115, 130, and 140 of the act,

effective December 31, 2003. These sections concern the old tax reversion process.

The bill would amend section 78g of the General Property Tax Act in several ways. First, it would require a county treasurer to withhold property from forfeiture for any reason determined by the state tax commission. The bill would further authorize the commission to determine the procedures for withholding such a property from forfeiture.

Second, currently the law states that if property is forfeited to a county treasurer, the county treasurer does not have a right to possession of the property until 21 days after a judgment of foreclosure is entered. The bill would specify instead that the foreclosing governmental unit does not have a right to possession of the property until 21 days after a judgment of foreclosure is entered.

Third, if a certificate of forfeiture or a certificate of redemption is recorded in error, the bill would require a county treasurer to record with the county register of deeds a certificate of error, in a form prescribed by the Department of Treasury. A copy of a certificate of error would have to be transferred to the Department of Treasury if the state is the foreclosing governmental unit.

Fourth, the bill would specify that certificates of forfeiture and redemption payment—as well as certificates of error in case the original certificates were recorded in error—do not have to be notarized. The certificates could be authenticated by a digital signature of the county treasurer or by other electronic means.

Fifth, the bill would clarify that if someone with a legal interest redeems a property, any unpaid taxes

**Senate Bill 547 (7-10-01)**

that have not been returned as delinquent must still be paid.

Sixth, section 78g currently specifies that a person with a legal interest who redeems a forfeited property does not acquire a title or interest in the property greater than that person would have had if the property had not been forfeited to the county treasurer. Instead, the person redeeming (other than the owner) is entitled to a lien for the amount paid to redeem the property in addition to any other lien or interest the person may have, which must be recorded within 30 days with the county register of deeds. The bill would clarify that persons redeeming forfeited property other than the owner are responsible for recording the lien.

Seventh, the bill would specify that if forfeited property is redeemed, the county treasurer must issue a redemption certificate in quadruplicate in a form prescribed by the Department of Treasury. The bill would establish procedures for delivering, filing and recording each of the quadruplicate certificates if the state is the foreclosing governmental unit.

Eighth, the bill would clarify certain procedures for a county treasurer accepting partial redemption payments. It would also clarify that the redemption certificate must contain the name of the person making the final redemption payment.

The bill would also amend section 78k in several ways. First, it would reduce the number of documents that the foreclosing governmental unit must file with the circuit court prior the date of the foreclosure hearing. Currently, the law states that if a petition for foreclosure is filed, the foreclosing governmental unit must file proof of any notice, service, or publication required under the act. The bill would require the foreclosing governmental unit to file the following documents only: proof of service of the notice of the show cause hearing; proof of service of the notice of the foreclosure hearing; and proof of the personal visit to the property and publication.

Second, the law currently allows the court to withhold property from foreclosure for one year or to extend the redemption period as it deems equitable, if the court determines that the owner of property subject to foreclosure is a minor heir, is incompetent or is without means of support. The bill would further allow the court to withhold property from foreclosure if the property owner is undergoing a substantial financial hardship.

Third, the law currently states that all liens against the property are extinguished, if the property is not redeemed within 21 days after entry of a judgment for foreclosure. The law makes an exception for future installments of special assessments and liens recorded by the state or the foreclosing governmental unit under the Natural Resources and Environmental Protection Act (MCL 324.101 et al.). The bill would clarify that the provision applies to all liens against the property, *including any lien for unpaid taxes or special assessment*, except as otherwise provided under current law.

Fourth, the law states that a person with a legal interest in foreclosed property has the right to appeal a circuit court's judgment of foreclosure to the court of appeals. The appellant must file a notice of appeal with the county treasurer and pay the amount that the circuit court determined to be due to the county treasurer in the judgment of foreclosure within 21 days after the circuit court's judgment is entered. The circuit court's judgment is stayed until the court of appeals has reversed, modified, or affirmed the circuit court's judgment. The bill would specify that a person with a property interest could appeal the circuit court's judgment foreclosing property *or the circuit court's order*. The bill would also clarify that if the circuit court's judgment foreclosing property is stayed by an appeal, the judgment is only stayed for the property that is the subject of the appeal.

Fifth, the bill would require that the foreclosing governmental unit record with the register of deeds in the county in which the property is located a notice of judgment—rather than the judgment itself—for each parcel of property. It would authorize the Department of Treasury to determine how the notice of judgment is to be recorded.

Finally, the bill would amend section 78o of the General Property Tax Act in two ways. First, section 78i of the act requires the foreclosing governmental unit to attempt to ascertain the address of each owner of a property interest in a parcel of property forfeited to the county treasurer. Section 78o requires the state treasurer to prescribe the form in which the notice and proof of service of the show cause and foreclosure hearings are to be recorded with the register of deeds. Currently, this document is required to describe all steps taken to identify the addresses of the persons entitled to notices. The bill would eliminate the requirement that all steps taken to identify the addresses of persons entitled to notices be included on the required form.

Section 78i currently requires the foreclosing governmental unit to record with the register of deeds proof, by affidavit of the printer or publisher of the newspaper, that a newspaper notice has been published, in the event that a property owner cannot be located or contacted. The bill would relieve the state treasurer of the duty to prescribe the form of the affidavit of publication. (House Bill 4718 would eliminate the requirement altogether.)

### ***BACKGROUND INFORMATION:***

Changes to the property tax reversion process. 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 Michigan’s 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 called for some degree of reform of the old tax reversion process, which took up to six years.

Public Act 123 of 1999 established a new tax reversion process, which provides for the forfeiture, foreclosure, and sale of property that is returned for delinquent taxes over a three-year period. The new tax reversion process works roughly as follows: summer and winter property tax payments are due on July 1 and December 1 in most Michigan communities. If property tax payments are not made by March 1 of the following year, they become delinquent. On the following June 1, September 1, and February 1, the county treasurer must send notices of delinquent taxes to the property owner and other interested parties, as specified by the act. On the following March 1, if the tax delinquent property has not been redeemed, it is forfeited to the county treasurer for the total of the unpaid taxes, interest, fees, and penalties. At this point, new interest rates, fees, and penalties apply. By May 1, the foreclosing governmental unit—i.e., the county treasurer or the state, if the county has decided to “opt-out” of the foreclosure process—must conduct a title search to identify all owners of property interests. Each owner of a property interest is entitled to subsequent notices informing them of the various steps in the foreclosure process.

On June 15 of that year the foreclosing governmental unit must file a petition of foreclosure with the circuit court listing the properties that have been forfeited and that have not been redeemed. It may exclude from the petition of foreclosure properties held by minor heirs or persons who are incompetent or without means of support until a guardian is appointed. It may also exclude from the petition properties held by persons undergoing substantial financial hardship. The petition of foreclosure must seek a judgment in favor of the foreclosing governmental unit for the unpaid delinquent taxes, interest, fees, and penalties. It must also request that the tax delinquent property be vested in the foreclosing governmental unit without right of redemption. All property owners (as well as others with an interest in the property as specified by the act) must be served notice of a show cause hearing and a foreclosure hearing, where they have the right to contest the validity or correctness of the forfeited unpaid delinquent taxes, interest, penalties, and fees. If the petition of foreclosure goes uncontested, the circuit court must enter a judgment on the petition no later than ten days after March 1 of the following year. If the petition of foreclosure is contested, the circuit court must enter a judgment on the petition no later than ten days after the conclusion of the hearing for the contested case.

Once a judgment has been entered, it may be appealed by either the foreclosing governmental unit or the person claiming to have a property interest in the property foreclosed. The circuit court’s judgment foreclosing property is to be stayed until the court of appeals has reversed, modified, or affirmed that judgment. To appeal the circuit court’s judgment foreclosing property, a person appealing the judgment must pay to the county treasurer the amount determined to be due to the county treasurer under the judgment within 21 days after the circuit court’s judgment is entered, together with a notice of appeal. If the circuit court’s judgment is affirmed on appeal, the amount determined to be due is to be refunded to the person who appealed the judgment. If the circuit court’s judgment is reversed or modified on appeal, the county treasurer must refund the amount determined to be due to the appellant, if any, and retain the balance in accordance with the order of the court of appeals.

If all forfeited delinquent taxes, interest, penalties, and fees are not paid within 21 days after a circuit court enters a judgment for foreclosure, the foreclosed property vests absolutely in the foreclosing governmental unit. The law grants the state first right of refusal to purchase the property. If

the state elects 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 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. Further provisions regarding the sale foreclosed property that vests absolutely in the foreclosing governmental unit apply.

Related legislation. House Bills 4708 to 4718, introduced and passed by the House earlier this year, address certain technical details of Public Act 123 of 1999. Senate Bill 547 (S-1) would amend the same sections of the General Property Tax Act as House Bills 4708, 4710, 4712, and 4714. Portions of the Senate bill corresponding to House Bills 4708 and 4712 are identical to these bills. The most significant difference between House Bills 4710 and 4714 and the relevant sections of the Senate bill involve the definition of “substantial financial hardship,” and provisions for property owners undergoing such hardship. For further information, see the House Legislative Analysis Section’s analysis of House Bills 4708 to 4718.

### ***FISCAL IMPLICATIONS:***

According to the House Fiscal Agency, the bill has no fiscal impact. (6-29-01)

### ***ARGUMENTS:***

#### ***For:***

Eliminating excess recording requirements would lead to more efficient administration of the law and would save money for taxpayers, counties, and the state. The proposed changes to recording requirements would not substantially affect the procedures that the foreclosing governmental unit must follow to ensure that property owners are informed of, and involved with, any actions that affect their interests.

#### ***For:***

The bill would allow the court to withhold property from foreclosure for one year or to extend the redemption period as it deems equitable if it determined that a property owner is undergoing substantial financial hardship. Thus, the bill would provide a “safety net” by ensuring that the state’s interest in a more efficient tax reversion process would recognize the plight of those who truly cannot afford to pay their property taxes.

#### ***Response:***

County treasurers originally expressed concerns about the lack of clear, uniform standards for defining “substantial financial hardship.” House Bills 4710 and 4714 would specify that substantial financial hardship includes, but is not be limited to, the standards for the homestead poverty exemption, as specified in section 7u of the law. However, Senate Bill 547 would provide no explicit clarification of what would be meant by “substantial financial hardship.” The bill would not ensure that standards are applied uniformly throughout the state. The bill should provide some guidelines for the determination of substantial financial hardship.

#### ***Reply:***

Section 7u not only establishes criteria, including meeting federal poverty standards, for qualifying for the homestead poverty exemption, but also sets forth procedures for qualifying for the exemption. Due to the law’s specification of procedures for qualifying for the exemption, certain technical problems have been raised with including references to section 7u in the provisions for the tax reversion process. The law would instead state that the State Tax Commission would determine procedures for withholding a parcel of property from forfeiture. The Michigan Association of County Treasurers and the Department of Treasury agree that the tax commission’s procedures satisfy the need for clear, uniform procedures.

#### ***Against:***

The bill would *allow* the circuit court to withhold property from foreclosure for one year or to extend the redemption period as the court deems equitable, if the court determines that the owner of property subject to foreclosure is a minor heir, incompetent, without means of support or undergoing substantial financial hardship. This would allow the court too much discretion, and thus would provide no assurance that a uniform standard of protection is available to such property owners. Instead, the court should be required to withhold property from foreclosure or extend the redemption period for these individuals, as would be required by House Bill 4714.

#### ***Response:***

The bill would leave it to the circuit court to determine whether an owner of property subject to foreclosure is a minor heir, is incompetent, is without means of support, or is undergoing a substantial financial hardship. If the court makes such a determination, it is unlikely that the court would then proceed to foreclose the property. The distinction between *allowing* and *requiring* the court to delay

foreclosure is really a distinction without a difference, since the court would have discretion in making the original determination as to whether the property owner qualifies for a delay.

**Reply:**

Whether or not it is *likely* that a court would do so, the bill would allow a court would proceed to foreclose property after making a determination that a property owner is a minor heir is incompetent, is without means of support, or is undergoing substantial financial hardship. This potential loophole should be eliminated.

**POSITIONS:**

The Department of Treasury supports the bill. (6-28-01)

The Michigan Association of County Treasurers supports the bill. (6-28-01)

The Michigan Municipal League supports the bill. (6-28-01)

The Michigan Townships Association supports the bill. (6-28-01)

Analyst: J. Caver

---

■ 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.