

Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

SFA



BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 547 (as enrolled)
House Bill 4709 (as enrolled)
House Bill 4711 (as enrolled)
House Bill 4713 (as enrolled)
House Bills 4715 through 4718 (as enrolled)

PUBLIC ACT 94 of 2001
PUBLIC ACT 95 of 2001
PUBLIC ACT 96 of 2001
PUBLIC ACT 97 of 2001
PUBLIC ACTS 98 through 101 of 2001

Sponsor: Senator Shirley Johnson (Senate Bill 547)
Representative Randy Richardville (House Bill 4709)
Representative Lauren Hager (House Bill 4711)
Representative Alan Sanborn (House Bill 4713)
Representative Bill McConico (House Bill 4715)
Representative Patricia Birkholz (House Bill 4716)
Representative Judson Gilbert II (House Bill 4717)
Representative Ruth Ann Jamnick (House Bill 4718)

Senate Committee: Economic Development, International Trade and Regulatory Affairs
House Committee: Local Government and Urban Policy

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RATIONALE

Public Acts 123 and 133 of 1999 amended the General Property Tax Act to establish a new tax reversion process, under which property is subject to forfeiture, foreclosure, and sale over a three-year period if that property is delinquent for nonpayment of taxes levied after December 31, 1998. (The "old" tax reversion process applies with respect to taxes levied before 1999. The old process is being phased out under Public Acts 123 and 133 and will expire fully on December 31, 2003.) Those 1999 amendments were part of a larger package of legislation that provides for "urban homesteading". The tax reversion laws shortened, streamlined, and clarified the process by which tax-delinquent property and abandoned property can be brought back into productive use. In turn, the urban homesteading laws are designed to encourage people to take over public housing units, rehabilitate abandoned buildings, and construct new homes on vacant land.

People involved with the implementation of the 1999 tax reversion amendments reportedly have begun to confront and to anticipate certain problems that they believe will limit the effectiveness of those revisions. The problems include confusion over whether the old or the new tax reversion process

applies to particular cases; potential misreading of, and/or ambiguities in, some provisions; and notice and recording requirements that evidently can be cumbersome.

CONTENT

The bills amended the General Property Tax Act to revise the tax reversion process enacted by Public Acts 123 and 133 of 1999. The bills do the following:

- **Revise various notice and publication requirements.**
- **Require property to be withheld from forfeiture for any reason determined by the State Tax Commission.**
- **Provide that if property is redeemed, unpaid taxes that are not returned as delinquent will not be extinguished.**
- **Provide for counties to include partial redemption payments in their tax records.**
- **Provide that the current calculation of interest applies for taxes levied before 1999 and for taxes levied on personal property.**
- **Expand the purposes for which a county may use proceeds of**

foreclosure sales.

- Provide that, for taxes levied before 1999, property is subject to the new reversion process if it was not offered for sale by May 1, 2001.**
- Provide that the State has a lien with respect to the forfeiture, foreclosure, and sale of property for delinquent taxes under the new process.**
- Expand the categories of people who may perform a title search.**
- Specify information that must be contained in a published notice of foreclosure.**
- Specify that various sections pertaining to the old tax reversion process will be repealed as of December 31, 2003.**

Senate Bill 547

Under the General Property Tax Act, on March 1 of each tax year, certified abandoned property and property that is tax-delinquent for the preceding 12 months or more is forfeited to the county treasurer. The bill requires that a county treasurer withhold a parcel of property from forfeiture for any reason determined by the State Tax Commission. The procedure for withholding property from forfeiture must be determined by the Commission.

Under the Act, within 45 days of the forfeiture of abandoned or tax-delinquent property, the county treasurer must record with the county register of deeds a certificate for each parcel of property forfeited. The bill specifies that, if a certificate is recorded in error, the county treasurer must record with the register of deeds a certificate of error in a form prescribed by the Department of Treasury.

Under the new tax reversion process, abandoned or tax-delinquent property forfeited to the county treasurer may be redeemed at any time before 21 days after the entry of judgment foreclosing the property, upon payment of certain amounts to the county treasurer. The bill specifies that if property is redeemed by a person with a legal interest, any unpaid taxes that are not returned to the county treasurer as delinquent will not be extinguished.

The Act requires a county treasurer to issue a redemption certificate if property is redeemed.

The treasurer must make a note of the redemption certificate in his or her office's tax record, with the name of the person making the redemption payment, the date, and the amount paid. Under the bill, if the county treasurer accepts partial redemption payments, he or she must include in the tax record the name of the person making each partial payment, the date and amount of each payment, and the total amount of all redemption payments. Also, if a certificate is recorded in error, the county treasurer must record with the register of deeds a certificate of error in a form prescribed by the Department of Treasury.

The bill states that a certificate of foreclosure, a redemption certificate, and a certificate of error need not be notarized and may be authenticated by a digital signature of the county treasurer or by other electronic means.

Under the bill, if a petition for foreclosure is filed under the new tax reversion process, before the date of the hearing the foreclosing governmental unit must file with the clerk of the circuit court 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. Previously, the governmental unit was required to file proof of any notice, service, or publication required under the Act.

Under the Act, 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 court may withhold that property from foreclosure for one year or may enter an order extending the redemption period as the court determines equitable. Under the bill, this provision also applies if a property owner is undergoing a substantial financial hardship.

The Act allows a foreclosing governmental unit or a person claiming to have an interest in property foreclosed under the new tax reversion process to appeal to the Court of Appeals the circuit court's judgment foreclosing property. Under the bill, a circuit court judgment *or* order may be appealed. The bill specifies that if an appeal stays the circuit court's judgment foreclosing property, the judgment is stayed only as to the property that is the subject of that appeal. The circuit court's judgment foreclosing other property

that is not the subject of the appeal is not stayed.

Under the bill, a foreclosing governmental unit must record with the register of deeds a notice of judgment, in a form prescribed by the Department of Treasury. Previously, the judgment or a notice of judgment had to be recorded.

The Act requires the State Treasurer to prescribe the form of the notice and proof of service of show cause and foreclosure hearings. The bill deleted a requirement that this document describe all steps taken to identify the addresses of the people entitled to notice. (Under the Act, a foreclosing governmental unit must attempt to ascertain the address of each owner of an interest in property forfeited to the county treasurer.)

The Act also requires a foreclosing governmental unit to record with the register of deeds an affidavit that a newspaper notice has been published in the event that a property owner cannot be located or contacted. The bill deleted a requirement that the State Treasurer prescribe the form of the affidavit of publication.

Previously, Section 124 of the Act required the Auditor General to perform all the duties in relation to taxes levied, assessed, collected, returned as delinquent, and sold as required by the Act. The bill, instead, requires the Department of Treasury to perform all such duties as required by Section 60 (under which the "old" tax reversion process applies for taxes levied before 1999). The bill states that Section 124 applies only to taxes levied before 1999 and property offered for sale pursuant to Section 60. Effective December 31, 2003, the bill repeals Section 124 and several other sections that pertain to the old tax reversion process.

House Bill 4709

The Act permits a county treasurer to publish newspaper notices regarding delinquent taxes and the address of property subject to forfeiture. The bill deleted language under which these notices were subject to the requirements in Section 65 of the Act (which limits the cost of advertising and contains specifications for published notices).

House Bill 4711

The Act provides that, by June 15 of each tax year, the foreclosing governmental entity (i.e., the county treasurer or the State) must file with the clerk of the circuit court of that county a petition listing the property forfeited to the county treasurer and not redeemed to be foreclosed for delinquent taxes under the new tax reversion process. The bill specifies that a *single* petition of foreclosure must be filed with the court clerk for *all* property forfeited and redeemed.

The Act allows the foreclosing governmental entity to withhold the following from the petition for foreclosure: property whose title is held by minor heirs or persons who are incompetent or without means of support, until a guardian is appointed to protect that person's rights and interests; or property whose title is held by a person undergoing substantial financial hardship. Under the bill, the foreclosing governmental entity also may withhold property whose title is held by persons unable to manage their affairs due to age or infirmity. In addition, financial hardship will have to be determined under a written policy developed by the foreclosing governmental unit.

The bill deleted a requirement that the foreclosing governmental unit file proof of any notice, service, or publication required under the Act.

House Bill 4713

The Act provides that a person may pay delinquent taxes, including interest, and payment must be made to the county treasurer at any time before the property is sold. The bill specifies that payment must be made at any time before the property is sold at a tax sale or bid off to the State (under the old tax reversion system) or forfeited to a county treasurer 21 days after a judgment of foreclosure is entered by the circuit court (under the new tax reversion process).

Under the Act, for taxes levied before January 1, 1999, the amount paid must include interest computed from the March 1 after the taxes were assessed at the rate of 1% per month or fraction of a month, and 4% of the delinquent taxes as a county property tax administration fee, which must be at least \$1 per payment of delinquent taxes. Under the bill these calculations apply for taxes levied on real property before January 1, 1999, and for taxes levied on personal property.

House Bill 4715

The Act provided that the taxes on any property returned as delinquent could be paid to the county treasurer at any time before the day of sale. Under the bill, for taxes levied before January 1, 1999, the taxes on any property returned as delinquent may be paid to the county treasurer at any time before the day of sale pursuant to the old tax reversion system. If the property is subject to forfeiture, foreclosure, and sale under the new tax reversion system, the taxes may be paid until the day the property is forfeited to the county treasurer (i.e., 21 days after a judgment of foreclosure is entered by the circuit court).

House Bill 4716

The Act requires a foreclosing governmental unit to deposit the proceeds from the sale of property into a restricted account, and limits the purposes for which the proceeds may be used. (A foreclosing governmental unit is either a county whose treasurer acts as its foreclosure agent, or the State, if a county has elected to have the State foreclose tax-delinquent property that has been forfeited to the county treasurer.)

Under the bill, in addition to using proceeds as already allowed, a county whose treasurer acts as its foreclosure agent may use the proceeds for any of the following: sale or foreclosure costs for a subsequent year if the costs are not covered by that year's sales proceeds; costs for the defense of title actions; and any costs of administering the foreclosure and disposition of property forfeited for delinquent taxes.

In addition, the bill requires a foreclosing governmental unit to record a deed with the county register of deeds for any transfer of foreclosed property. The foreclosing governmental unit may charge a fee, in excess of the minimum bid and any sale proceeds, for the cost of recording a deed.

House Bill 4717

Under the "old" tax reversion process, for taxes levied before January 1, 1999, the county treasurers must hold a tax sale, on behalf of the State, on the first Tuesday in May each year. At a county's tax sale, property delinquent for taxes assessed in the third year preceding the sale or in a prior year

must be sold for the total of the unpaid taxes of those years. The Act allowed a county treasurer to cancel the tax sale scheduled to take place in May 2000 and May 2001, if there were no outstanding bonds or notes issued by a county with respect to the delinquent taxes for which the sale was being conducted.

The bill specifies that, for taxes levied before January 1, 1999, if property returned for delinquent taxes was not offered at a tax sale by May 1, 2001, the property is subject to forfeiture, foreclosure, and sale for the collection of delinquent taxes under the new tax reversion process.

The Act provides that in the sale of liens on property for delinquent taxes (under the old tax reversion process), the people of this State have a valid lien on the property, with rights to enforce the lien as a preferred or first claim on the property. Under the bill, this provision also applies to the forfeiture, foreclosure, and sale of property for delinquent taxes under the new tax reversion process.

House Bill 4718

The bill provides that, by May 1 immediately following the forfeiture of property, the foreclosing governmental unit must initiate a title search to identify the owners of a property interest in the forfeited property who are entitled to notice of a show cause hearing and a foreclosure hearing under the new tax reversion process. The Act had required the foreclosing governmental unit to conduct, rather than initiate, the title search.

Under the Act, the foreclosing governmental unit may enter into a contract with one or more title insurance companies or agents licensed to conduct business in Michigan to perform the title search. The bill allows a foreclosing governmental unit, instead, to enter into a contract with one or more "authorized representatives" to perform the title search. (That term includes a title insurance company or agent licensed to conduct business in Michigan; an attorney licensed to practice law in Michigan; a person accredited in title search procedures by a nationally recognized organization in the field of title searching; and a person with demonstrated experience in the field of title searching, as determined by the foreclosing governmental unit.)

The Act previously required the foreclosing governmental unit or its authorized representative to record certain documents with the register of deeds in the county in which the property was located. Specifically, the foreclosing governmental unit had to record proof of service of the notice of a show cause hearing, proof of service of the notice of a foreclosure hearing, and proof of the personal visit to the property. The bill deleted this provision.

The bill also deleted a requirement that the title insurance company or agent notify the foreclosing governmental unit of any deficiency in service. Instead, if a foreclosing governmental unit or its authorized representative discovers any deficiency in the provision of notice, the foreclosing governmental unit must take reasonable steps in good faith to correct that deficiency at least 30 days before the show cause hearing.

Under the Act, if a foreclosing governmental unit or its authorized representative cannot ascertain the address reasonably calculated to apprise the owners of a property interest entitled to notice under the new tax reversion process, or cannot serve the owner of a property interest, service of the notice must be made by publication. The bill specifies that the published notice must include a legal description or parcel number of each property; the street address of each property, if possible; the name of any person or entity entitled to notice who has not been notified; the date and time of the show cause hearing; the date and time of the hearing on the foreclosure petition; a statement that, unless all forfeited unpaid delinquent taxes, interest, penalties, and fees are paid within 21 days after judgment is entered in the foreclosure proceeding, the title to the property will vest absolutely in the foreclosing governmental unit; and a statement that a person with an interest in the property may lose his or her interest as a result of the foreclosure proceeding.

MCL 211.78g et al. (S.B. 547)
211.78f (H.B. 4709)
211.78h (H.B. 4711)
211.59 (H.B. 4713)
211.106 (H.B. 4715)
211.78m (H.B. 4716)
211.60 (H.B. 4717)
211.78i (H.B. 4718)

ARGUMENTS

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

Supporting Argument

Certain problems began to arise, or to be anticipated, with regard to the tax reversion procedures enacted in 1999. For instance, it became apparent that several notice, reporting, and recording requirements were unnecessary, cumbersome, or duplicative. In order to help implement a more streamlined tax reversion process, as the 1999 legislation envisioned, the bills eliminated or consolidated some of those requirements. This should lead to more efficient administration of the law.

Also, House Bills 4713 and 4715 should help to alleviate some confusion over whether the old or new tax reversion process governs the deadline for redeeming tax-delinquent property. The General Property Tax Act previously provided that a person could pay delinquent taxes at any time before tax-delinquent property was sold. The bills clarify that, for property subject to forfeiture, foreclosure, and sale under the new tax reversion process, payment must be made before the property is forfeited to a county treasurer (which occurs 21 days after a judgment of foreclosure is entered by the circuit court).

Supporting Argument

Under the new tax reversion process, on March 1 of each year, certified abandoned property and property that is tax-delinquent for the preceding 12 months or more is forfeited to the county treasurer. A petition for foreclosure of the property then may be filed with the circuit court. If a property owner is in the process of appealing any of various tax issues, such as the denial of a homestead exemption, it is possible that his or her property might get caught up in this forfeiture and foreclosure process because he or she has not paid the full amount of tax due for that property. Senate Bill 547 addresses this situation by requiring that a county treasurer withhold property from forfeiture for reasons determined by the State Tax Commission.

In addition, the bill specifies that, even if forfeited abandoned or tax-delinquent property is redeemed by a person with a legal

interest in the property within 21 days after the entry of judgment foreclosing the property (as is allowed under the new tax reversion process), any unpaid taxes that are not returned as delinquent still are due on that property.

Supporting Argument

House Bill 4718 addresses concerns pertaining to the Act's requirement that a foreclosing governmental unit conduct or contract for a title search on forfeited property to identify the owners of an interest in the forfeited property who are entitled to notice of show cause and foreclosure hearings. Previously, the title search had to be "conducted" by May 1 immediately after the forfeiture of property. Often, however, a foreclosing governmental unit might not have the information necessary to initiate a title search until April 15, so the May 1 deadline left it with insufficient time in which to complete the search. The bill alleviates this problem by requiring that a title search be initiated, rather than completed, by May 1.

In addition, the Act previously allowed a foreclosing governmental unit to enter into a contract to perform a title search on forfeited property only with a licensed title insurance company or agent. Limiting this contractual authority to an insurance company was too restrictive, especially when other professionals are fully qualified to perform the title search task. The bill gives a foreclosing governmental unit more options by allowing it to contract with a licensed title insurance company or agent, a licensed attorney, a person accredited in title search procedures, or a person with demonstrated experience in the field of title searching.

Supporting Argument

The Act requires a foreclosing governmental unit to deposit the proceeds from the sale of property into a restricted account, and limits the use of that account to certain purposes. A county whose treasurer acts as its foreclosure agent should be able to use that account's proceeds for costs related to the sale of property or foreclosure proceedings for any subsequent year that are not paid or reimbursed from that subsequent year's proceeds from the sale of tax delinquent property, as well as for costs related to the defense of title actions and administrative costs incurred in the foreclosure and disposition of property forfeited for delinquent taxes. House Bill 4716 allows those uses.

Supporting Argument

The Act allows a foreclosing governmental unit to withhold from a foreclosure petition forfeited property whose title is held by a minor heir or person who is incompetent or without means of support, until a guardian is appointed to protect that person's rights and interests. Those who are unable to manage their own affairs due to age or infirmity also are included in this protection under House Bill 4711.

In addition, the Act allows a foreclosing governmental unit to withhold property whose title is held by a person undergoing substantial financial hardship. This provision was meant to provide a type of "safety net" to ensure that the State's interest in a more efficient tax reversion process does not trample the property rights of those who temporarily cannot afford to pay their taxes. Apparently, the "substantial financial hardship" designation has been the cause of confusion on the part of some local officials, and county treasurers reportedly contacted the Department of Treasury seeking a determination of what constituted substantial financial hardship. Under House Bill 4711, qualification for that designation must be determined under a written policy developed by the foreclosing governmental unit.

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bills will have no fiscal impact on State or local government.

Fiscal Analyst: D. Zin

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