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BILL ANALYSIS

Senate Fiscal Agency

Lansing, Michigan 48909

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Senate Bill 731 (as passed by the Senate)
Sponsor: Senator Vern Ehlers
Committee: Local Government and Veterans

Date Completed: 8-13-90

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RATIONALE

Under the General Property Tax Act, real property sold for taxes remains subject to any visible or recorded easement, right of way, or permit in favor of the United States, the State, a political subdivision or agency of the State, or a public utility. The same does not hold true, however, for easements held by other parties. For example, if "Landowner A" has access to his or her property through an easement in land of "Landowner B", and Landowner B's property is sold due to unpaid taxes, Landowner A's easement is extinguished. As a result, if the easement provided the only access to Landowner A's property, Landowner A would find himself or herself landlocked. Many people consider this inequitable and believe that the law should be amended to preserve easements in land subject to a tax sale.

CONTENT

The bill would amend the General Property Tax Act to provide that, notwithstanding any other provision of law, any land sold for taxes would remain subject to any visible or recorded easement.

MCL 211.67b

BACKGROUND

In regard to the effect upon an easement of a tax sale, Michigan does not subscribe to the majority rule among states that an easement or servitude is not extinguished by a sale of the land subject to the easement for taxes. In this State, with two statutory exceptions, a tax sale of real property does result in the extinguishment of all easements and

encumbrances associated with that property. One of the statutory exceptions applies to easements held by a governmental entity or public utility (MCL 211.67b). The other exception is for special assessments pledged for the repayment of bonds or notes issued by a local unit to finance public improvements; these special assessments are deferred at the time title becomes absolute in the State, but only until the property is sold by the State (MCL 211.67a).

Michigan's approach was articulated by the State Supreme Court as early as 1875, when the Court held that, "A tax title, if valid, destroys and cuts off all liens and encumbrances previously existing against the land" (Robbins v Barron, 32 Mich 36). More recently, in 1950, the Court stated that, "...when title becomes absolute in the State, on sale for delinquent taxes, the land becomes 'free of all taxes and other liens and incumbrances of whatever kind or nature...'" (Young v Thendara, Inc., 328 Mich 42).

Although the majority view among other states preserves an easement in land subject to a tax sale, some states, as well as the Restatement of Property, differentiate between "easements appurtenant" to the land and "easements in gross". An easement appurtenant serves or benefits one parcel of land (the "dominant tenement") by passing over or burdening another parcel (the "servient tenement"). An easement in gross, on the other hand, is personal, is granted for the benefit of a particular person, and is not created to benefit any specific parcel of land.

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In respect to easements appurtenant, the tax assessment of the dominant tenement is assumed to include an assessment on the value of the easement. In effect, payment of the tax on the dominant tenement results in the payment of a tax on the easement. Therefore, the failure of the owner of the servient estate to pay the tax on that land does not affect the easement. As a result, according to the Restatement of Property, an easement appurtenant is not extinguished by a sale and conveyance of the land subject to it for nonpayment of taxes assessed against the land. In the case of easements in gross, however, there is not usually any separate assessment of the easement; the Restatement provides that in the absence of a duly authorized separate tax upon it, an easement in gross is extinguished by a sale and conveyance of the land subject to it for nonpayment of taxes.

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

ARGUMENTS

Supporting Argument

The bill would cure an inequitable quirk in the law that can result in a parcel's becoming landlocked if an easement to it is extinguished by the sale of the land subject to the easement for unpaid taxes. Although easements are preserved if they are in favor of governmental entities and public utilities, easements held by individuals simply are lost in the event of a tax sale. In addition to removing this inequity, the bill would bring Michigan into line with the majority rule of other states that an easement is not extinguished by a tax sale of the land subject to it.

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