



**House
Legislative
Analysis
Section**

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**LET DNR, TREASURY EMPLOYEES
BUY TAX-REVERTED LANDS**

**House Bill 5489 with committee
amendment
First Analysis (2-20-96)**

**Sponsor: Rep. David Galloway
Committee: House Oversight and Ethics**

THE APPARENT PROBLEM:

Generally, under the General Property Tax Act, property taxes not paid by March 1 of the year after they are assessed are declared delinquent, and most of these delinquent taxes are turned over to county treasurers for collection. (See BACKGROUND INFORMATION below.) Property taxes that remain delinquent after three years are put up for competitive "sale" by the county treasurer in May, at which time "tax lien investors" (private tax lien, or "tax sale," buyers) can pay the taxes, along with fees and interest, thereby gaining the right to collect a premium from property owners who want to reclaim or "redeem" their property. Taxes not sold at the county treasurer's sale are "bid off" to the state. That is, they are turned over, first, to the Department of Treasury, and then, if still not sold after another year, to the Department of Natural Resources (DNR), which also can then try to sell them.

Under a state law passed at the beginning of the American Civil War (Public Act 258 of 1861), employees of the DNR and the treasury department are prohibited from buying such tax-reverted lands. The DNR parks supervisor for the Pontiac Lake Recreation Area discovered this law when he attended a state "tax sale" for southeastern Michigan. In response to constituent request, legislation has been introduced that would allow DNR or treasury employees to buy tax-reverted lands.

THE CONTENT OF THE BILL:

The bill would repeal Public Act 258 of 1861 (see BACKGROUND INFORMATION below) which prohibits employees of the Department of Natural Resources or the office of auditor general from buying land sold through either the department or the auditor general's office.

The bill also would amend Public Act 317 of 1968 to exempt "public servants of this state" from the act's prohibition against public servants (see BACKGROUND INFORMATION below) being a

party, directly or indirectly, to any contract between themselves and the public entity of which they are employees. More specifically, the bill would amend the act to say that the act didn't prohibit public servants of this state from buying at a tax sale land returned as delinquent for taxes under the General Property Tax, unless otherwise prohibited or restricted by the rules of the Michigan Civil Service Commission or by the department or agency of which the public servant is an employee.

MCL 15.323a

BACKGROUND INFORMATION:

The General Property Tax Act. Public Act 291 of 1993 (enrolled House Bill 4346) amended the General Property Tax Act to provide an expedited tax foreclosure process for abandoned residential property and certain rental properties in counties containing a city that had a population of more than 25,000 or that had an enterprise zone under the Enterprise Zone Act of 1985. (See the House Legislative Analysis Section analysis of House Bill 4346 dated 8-2-94. For further background information, see also the HLAS analysis of House Bill 4670 of 1989 dated 11-13-90.)

DNR and treasury employees. The two laws involved in the bill are Public Act 258 of 1861, which would be repealed, and Public Act 317 of 1968:

Public Act 258 of 1861 (MCL 322.271 and 322.272) reads in its entirety:

Sec. 1. That it shall be unlawful for any officer or clerk employed in the state land office or in the office of the auditor general of this state during the term of his service or within 3 months after the discontinuance of such service to purchase either directly or indirectly from the state, at either of said offices, any lands for sale at said offices or either of them: Provided, That the officers of the department of conservation may purchase any of such lands to be used for state purposes

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only, the deed for such lands to run to the state of Michigan.

Sec. 2. Any purchases made in violation of the first section of this act shall be void.

The "state land office" referred to in the act became the "Public Domain Commission," whose powers and duties were transferred and vested in the Department of Conservation, created under Public Act 17 of 1921. The Department of Conservation was renamed the Department of Natural Resources (DNR) in 1968, and the department's Real Estate Division generally corresponds to the act's "state land office." Similarly, "the office of auditor general," which was an executive department of state government, was superseded by the Department of Treasury, established by the Executive Organization Act of 1965 (which merged the operations of six agencies: state treasurer, Department of Revenue, Municipal Finance Commission, Board of Tax Appeals, State Tax Commission, and auditor general, except for its state audit function). Thus, "officers" or "clerks" employed in "the state land office" or the "office of auditor general" came to mean "DNR employee" or "treasury employee."

Public Act 317 of 1968 prohibits "public servants" (generally, anyone serving any public entity) from being a party, directly or indirectly, to any contract between the employee and his or her public employer. However, the act does have two sections listing exemptions to this prohibition. Public Act 317 defines "public servant" to include "all persons serving any public entity, except members of the legislature and state officers who are within the provisions of section 10, of article 4 of the state constitution as implemented by legislative act." (Section 10 of Article 4 of the 1963 constitution reads: *No member of the legislature nor any state officer shall be interested directly or indirectly in any contract within the state or any political subdivision thereof which shall cause a substantial conflict of interest. The legislature shall further implement this provision by appropriate legislation.*) "Public entity" means "the state including all agencies thereof, any public body corporate within the state, including all agencies thereof, or any non-incorporated public body within the state of whatever nature, including all agencies thereof."

FISCAL IMPLICATIONS:

The House Fiscal Agency says the bill has no fiscal implications for the state. (2-20-96)

ARGUMENTS:

For:

It is unreasonable to exclude people with no influence over the tax-reversion process from buying tax-reverted lands from the state. The repeal of a nineteenth-century law that prohibits DNR and treasury employees from buying tax-reverted lands is long overdue. The 1861 act unfairly prohibits employees of only two state agencies from bidding in tax sales; employees of all other state departments -- including the newly created Department of Environmental Quality that recently was split off from the DNR -- and employees of local units of government all can bid in such sales. Why were these two categories of state employees singled out in the first place? Testimony before the House Committee on Oversight and Ethics suggested that at one time collusion by state employees in buying state land may have necessitated this restriction. However, the land sold at "tax sales" (or, rather, the tax liens sold at such sales) is not state land, and today it is local officials -- particularly, local tax assessors -- who have detailed knowledge of tax-reverted lands. With the recent split of the DNR into the Department of Natural Resources and the Department of Environmental Quality (DEQ), some former DNR employees who now work for the DEQ already can buy tax-reverted lands. Surely, however, a prohibition against bidding in "tax sales" shouldn't be based on such an arbitrary distinction. Repeal of the 1861 law, in addition to correcting an existing inequity, could increase the number of bidders in tax sales and, as a result, could result in an increase in revenues from land which otherwise might go unsold. It also could conceivably help some urban areas by increasing sales of urban tax-reverted lands, since, according to testimony before the House committee, many of the parcels of land available through "tax sales" are too small to be "buildable," and in urban neighborhoods the most interested buyers are likely to be adjacent neighbors. It also was pointed out in committee that DNR and treasury employees already can get around the existing law if they really want to by having their spouses or adult children bid in these otherwise prohibited tax sales. The law's repeal would simply allow more direct and open bidding in such cases. Finally, the amendment to the so-called public employees' conflict of interest act would specifically recognize the right of public employees -- not just local, but state employees as well -- to enter into tax lien purchases, but would allow the agencies to prudently restrict this right where there did appear to be a conflict of interest.

Response:

Given that local government employees (such as local tax assessors) are more likely to have "insider" information on tax-reverted land, perhaps certain local officials or employees should be prohibited from bidding in "tax sales."

POSITIONS:

Representatives of the following agencies or groups testified in support of the bill:

- * The Department of Natural Resources

- * Oakland County

The Michigan Association of Government Employees supports the bill. (2-20-96)

The Michigan State Employee Association supports the bill. (2-20-96)

■ 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.