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 Bills 776 and 778 (as introduced 10-30-97)
Sponsor: Senator Virgil C. Smith, Jr.
Committee: Finance

Date Completed: 11-17-97

CONTENT

Senate Bill 778 would create the "Michigan Tax Lien Sale and Collateralized Securities Act" to allow the City of Detroit to sell tax liens that had been placed on property for which taxes were delinquent; allow the city to create a "tax lien entity" or entities to purchase the city's tax liens; allow the city or its tax lien entity to issue bonds, notes, or other obligations ("tax lien collateralized securities") whose repayment would be secured by tax liens and any other funds, property, or security pledged for repayment; and exempt tax lien collateralized securities from all State taxation except inheritance and transfer taxes, and exempt from all State taxation the interest on tax lien collateralized securities. Senate Bill 776 would amend the General Property Tax Act to allow a city or a tax lien entity, as defined in Senate Bill 778, to purchase any tax lien for delinquent taxes or other charges subject to collection by a county treasurer, if the property subject to the lien being collected by the county treasurer also were subject to a tax lien being collected by the city or a tax lien entity.

Under Senate Bill 778, a "tax lien" would be an interest in or encumbrance on real or personal property, whether or not evidenced by a written instrument, imposed pursuant to law or by judgment, that related to unpaid ad valorem property taxes levied on real or personal property; an unpaid special ad valorem levy, special assessment, or user fee or charge; any lien imposed by the city for unpaid rates and charges for services, including, but not limited to, water, sewer, electricity, and demolition services; and any other charge imposed on real property by or on behalf of the city or collected by the city on behalf of any other municipal corporation, including a school district of the city, a municipal corporation, or special district. A tax lien would include all interest, penalties, charges, and surcharges imposed pursuant to law, municipal charter, or an ordinance authorized by municipal charter. "Tax lien entity" would mean an authority, trust, or other single purpose entity created by the city or in which the city held a beneficial ownership interest, to purchase tax liens from the city or to issue tax lien collateralized securities in anticipation of the collection of tax liens; or an economic development corporation established under the Economic Development Corporations Act.

Following is a detailed description of each bill.

Senate Bill 778

Findings and Declarations

The bill contains the following legislative findings and declarations:

-- "Certain municipalities are owed millions of dollars annually in unpaid property taxes and other assessments and charges."
-- "Uncollected property taxes and other assessments and charges adversely impact the municipalities' ability to timely collect the revenues necessary to meet their operating expenditures, to provide for the delivery of necessary local government services, and to finance public improvements to foster economic growth and development, amplifying the risk of future property tax and assessment increases and negatively impacting those persons who timely remit payment."

-- "Limited means exist for municipalities to expedite the collection of delinquent taxes and other assessments and charges and, as a result, those charges often remain unpaid, creating a lien against the affected property."
-- "The sale of tax liens for delinquent taxes

and other assessments and charges will enable municipalities to expedite the receipt of anticipated revenues and provide a funding source that will enable municipalities to more effectively carry out their public purposes."

-- "This state should exercise its power in the interest of its municipalities to facilitate the sale and purchase of tax liens by authorizing municipalities to utilize existing entities of municipalities, or to authorize municipalities to create an instrumentality, an authority, a trust, or other single purpose entity, having full powers to borrow money and to issue its bonds, notes, certificates of participation, or other obligations, to make funds available to municipalities through the facilities of that instrumentality, authority, trust, or entity by the purchase through that instrumentality, authority, trust, or entity of the delinquent tax liens created and held by municipalities, and by granting broad powers to that instrumentality, authority, trust, or entity to accomplish and to carry out the policies of this state that are in the public interest of the taxpayers and residents of this state."

Further, the bill states that, "It is the purpose of this act to do all of the following:"

-- "Empower certain municipalities to sell or securitize delinquent tax liens to enable them to better collect delinquent property taxes and other delinquent assessments and charges."
-- "Enhance revenue in certain municipalities."
-- "Encourage the return of property to productive uses in certain municipalities."
-- "Enhance and revitalize the business, commerce, and neighborhoods within certain municipalities."

<u>Detroit Authority</u>

The bill would allow the City of Detroit to incorporate one or more authorities to serve as and to exercise the powers of a tax lien entity. An authority would be incorporated by the adoption of articles of incorporation by the city's governing body. The articles of incorporation would have to be executed for and on behalf of the city by its mayor and city clerk. The articles of incorporation would have to state the following: the authority's name and the name of the city that incorporated it; the purpose or purposes for which the authority was created; the number, terms, and manner of selection of the authority's officers, including its governing body which would be known as the board of commissioners; the powers and duties of the authority and of its officers; the date upon which the authority became effective; the name of the newspaper in which the articles of incorporation would be published; and any other matters to be incorporated in the articles of incorporation. Members of the city's governing body would not be eligible for membership or appointment to an authority.

An authority would be directed and governed by a three-member board of commissioners selected by the city's chief executive officer. A commissioner would serve for a four-year term. The city's chief executive officer would have to select a commissioner to serve as chairperson of the authority. The commissioners would have to designate one member as secretary and adopt bylaws and rules of procedure. The board's business would have to be conducted at a public meeting held in compliance with the Open Meetings Act. Members of the board of commissioners could be paid compensation, per diems, and mileage for attending meetings, as provided by the board of commissioners with the approval of the city.

An officer designated in the articles of incorporation would have to publish a copy of the articles once in a newspaper circulating within the city, accompanied by a statement of the right to question the incorporation of the authority in court as provided in the bill. The authority would be effective at the time provided in the articles. The validity of the incorporation of the authority would be conclusively presumed unless questioned in a court of competent jurisdiction within 60 days after the certified copies of the articles of incorporation were filed with the Secretary of State.

An authority would have all of the powers necessary to carry out the purpose of its incorporation and those incident to its incorporation. The enumeration of any powers in the bill would not limit the general powers of the authority. An authority would not be authorized to be a debtor under Chapter 9 of Title 11 of the United States Code (which provides for the adjustment of debts of a municipality under Federal laws relating to bankruptcy).

An authority and the city could enter into a contract under which the authority could acquire, sell, or otherwise dispose of property as provided under the bill. The acquisition or sale of any building, lot, or structure, and the necessary site for the property, together with any appurtenant properties and facilities by an authority or the city would be a benefit to and a legitimate public purpose of the authority and the city. The governing body of the city, by a majority vote of its members, could transfer to an authority any real property, except cemetery property, owned or taken by the city. The transfer and use of real property under the bill would be considered a necessary public purpose and for the benefit of the public.

An authority's articles of incorporation could be amended if the amendments were adopted by the governing body of the city. No amendment could impair the obligation of any bond or other contract. An amendment would have to be adopted, executed, and published and certified copies filed, in the same manner as provided for the original articles of incorporation.

All property owned by an authority would be exempt from taxation by the State or any political subdivision of the State. An authority could contract with the city and with third parties to accomplish the objectives of the bill, and could contract with any person, firm, or corporation to service, administer, collect, and foreclose on tax liens and to maintain or sell foreclosed property.

The powers granted under the bill would be in addition to those granted by any other statute or charter.

Purchase and Sale Agreement

The bill would allow the City of Detroit or its tax lien entity, by resolution of the city's or the entity's governing board, to enter into one or more purchase and sale agreements for the sale of tax liens by the city and the purchase of the tax liens by the tax lien entity or a third party. A purchase and sale agreement would have to contain those terms, provisions, and conditions that the city or entity considered necessary or desirable. A resolution authorizing one or more purchase and sale agreements could delegate to the city's chief financial officer the power to enter into the agreements and fix the details of any agreement. Each sale of tax liens by the city pursuant to a purchase and sale agreement would be considered a true sale for all purposes of State law, without recourse to the city for uncollectible tax liens. Each agreement would have to specify the amount to be made available to the city from the sale, which could be more or less than the face amount of the tax liens purchased by the tax lien entity or a third party, and any other amounts that could be made available to the city on a contingent basis under the terms of the agreement. An agreement could require a municipality, subject to appropriation by the city's governing body, to provide for the payment of other fees, charges, costs, or other amounts that the city determined to be necessary or desirable to facilitate the transaction.

An agreement would have to provide that any obligation of the city to fund or pay the amounts provided in the agreement would not be a debt of the city within the meaning of any constitutional, statutory, or charger provision, and would be executory only to the extent of money available; that the city incurred no liability beyond the money available for that purpose; and that any payment obligation of the city, other than the timely payment of any money collected by it and due to it or the tax lien entity, as a result of the redemption of tax liens that were the subject of the agreement, would be subject to appropriation by the city's governing body.

A resolution authorizing an agreement could require that the city establish reserves from the proceeds of the sale of tax liens, to the extent that a portion of the proceeds represented future general fund receipts necessary for future general fund purposes. A resolution also could establish separate funds for the deposit of portions of the proceeds of the sale of tax liens, which funds could be specifically designated for certain city economic development projects or for other lawful purposes, subject to appropriation of the city's governing body.

The city could make certain agreements to effectuate the sale of tax liens, and to facilitate the marketing of tax lien collateralized securities issued by the city or the tax lien entity; and to accept a note or other instrument issued by the city's tax lien entity or a third party evidencing any contingent amounts payable under the terms of the purchase and sale agreement. In connection with the sale or proposed sale of tax liens to the tax lien entity, the city would have to pay fixed or annual charges prescribed by the city, and/or all charges or expenses necessary to convert or reconvert any tax lien into a form required by the city in connection with any sale or other disposition of the tax lien.

A tax lien entity would have all of the rights provided by law to the city to enforce and collect amounts secured by a tax lien purchased by the entity from the city. Such a tax lien would be a preferred or first claim upon the property in the same manner as if the tax lien were held by the city. The city or the tax lien entity could purchase any tax lien for delinquent taxes, charges, assessments, penalties, interest, or fees that was subject to collection by a county treasurer if the property subject to a tax lien being collected by a county treasurer also were subject to a tax lien being collected by the city or its tax lien entity. The purchase of a tax lien in this manner could be made before or after tax sale by the county. Upon purchase, the city or the tax lien entity could enforce the tax lien in any manner in which the city or the tax lien entity was authorized to use to enforce a tax lien subject to collection by the city. After purchase, the portion of the tax lien that represented delinquent taxes, charges, and assessments would be subject to interest and penalties at the same rate as that imposed by the city for delinquent taxes, charges, and assessments.

Tax Lien Collateralized Securities

The city or its tax lien entity could, by resolution of its governing body and without a vote of the city's voters, authorize and issue tax lien collateralized securities in anticipation of the collection of tax lines for any of the following purposes:

- To purchase tax liens, including tax liens subject to collection by a county treasurer.
- To refund outstanding tax lien collateralized securities of the city or its tax lien entity.
- To establish reserves to secure tax lien collateralized securities.
- To pay capitalized interest, if any.
- To pay a letter of credit, bond insurance, or other credit and liquidity support facility fees, premiums, reimbursements, and expenses; fees and expenses of trustees and paying agents; other financing and issuance costs; and all other expenditures of the city or its tax lien entity incident to, and necessary or convenient to, the sale and purchase of tax liens and the issuance of the tax lien collateralized securities.

(A further provision in the bill states that tax lien collateralized securities "shall be authorized without a vote of the electors", by resolution of the governing body of the city or its tax lien entity. Under this provision, the resolution authorizing the securities could delegate to the city's chief financial officer the power to issue the securities and to establish the details of any issue of the securities by an appropriate certificate.)

Except as otherwise expressly provided by the city, all tax lien collateralized securities issued by the city or its tax lien entity would be special limited obligations of the city or the entity, payable only from the redemption, payment, or other satisfaction of the tax liens purchased or the liquidation of the related real property, other collateral, or credit enhancement agreements pledged to secure the securities, subject to any agreements pledging any particular money, assets, or revenues of the city or its tax lien entity. The securities could be secured by past, present, and future tax liens as designated by the city or the entity.

A resolution authorizing the issuance of tax lien collateralized securities or the certificate of the city's authorized chief financial officer would have to establish the date or dates of issue; the maturity date or dates; the interest rate or rates, which could be on a fixed or variable rate basis; the denominations; the form and registration privileges; the manner of execution; and the terms of redemption prior to maturity; and provide that the securities were payable at a place or places within or outside the State.

A resolution authorizing tax lien collateralized securities of the city or of its tax lien entity could contain the following provisions that could be a part of the contract with the holders of the securities:

- Pledging or creating a lien on all or any part of any money or assets of the city and its tax lien entity, or of any money held in trust or by others for the payment of the securities.
- Providing for the custody, collection, securing, investment, and payment of any money of the city or its tax lien entity.
- Setting aside reserves or sinking funds and regulating or disposing of reserves or sinking funds.
- Determining the application of the proceeds of the sale of any issue of securities.
- Applying limitations on the issuance of additional securities on a parity or subordinate basis, the terms upon which additional securities could be issued and secured, and upon the refunding of outstanding or other securities.
- The procedure and criteria, if any, by which the terms of any contract with the holders of tax lien collateralized securities could be amended or abrogated.
- The creation of special funds into which any money of the city or its tax lien entity could be deposited.
- Vesting a trustee with properties, rights, powers, and duties.
- Defining the acts or omissions to act that would constitute a default in the obligations and duties of the city or its tax lien entity, and

providing the rights and remedies of the holders of the securities in the event of a default.

-- Any other matters that affected the security and protection of the securities and the rights of their holders.

Any trust indenture or other agreement under which the securities of the city or its tax lien entity were authorized to be issued could contain provisions for vesting in a trustee the properties, rights, powers, and duties that the city considered appropriate.

A sale or pledge of tax liens, earnings, revenues, other money, or assets made by the city or its tax lien entity would be valid and binding from the time the sale or pledge was made without any filing, recording, or other requirement of notice. The tax liens, earnings, revenues, other money, or assets pledged and received by the city or its tax lien entity would be immediately subject to the lien of the pledge without physical delivery or further act.

Members of the city's governing body or any person executing the tax lien collateralized securities would not be personally liable for repayment of the securities, or subject to any personal liability or accountability arising from the issuance or nonissuance of the securities. Tax lien collateralized securities and other obligations of the city and its tax lien entity would not be a debt of the State or of any municipality within the meaning of any constitutional, statutory, or charter debt limitation, and neither the State nor any municipality would be liable on the securities or obligations. The securities and other obligations of the city and its tax lien entity would not be payable out of any funds other than those of the city or entity pledged for payment of the tax liens, and the securities and other obligations would have to state that fact on their face.

Tax lien collateralized securities and related tax lien purchase and sale agreements could not be required to be reviewed by any State agency, department, or bureau and would not be subject to the provisions of the Municipal Finance Act.

A tax lien collateralized security could be sold at public or private sale upon terms and at prices and discounts determined by the city or the entity. The city or entity could pay all expenses, premiums, and commissions necessary or advantageous in connection with the issuance and sale of the securities.

Whether or not the securities were of a form and character as to be negotiable instruments under the terms of the Uniform Commercial Code, the bill provides that the securities "are hereby made negotiable instruments within the meaning of and for all the purposes of the uniform commercial code...subject only to the provisions of the tax lien collateralized securities for registration."

<u>General Provisions for Detroit</u>

The bill would allow the City of Detroit to do any of the following:

-- Make and execute contracts and any other instruments necessary or convenient for the purposes of the bill, including a purchase and sale agreement entered into pursuant to the bill.
-- By charter, ordinance, or resolution establish procedures for collecting delinquent taxes and enforcing tax liens including, but not limited to, reimbursement of all costs of the financing and collection by the city or its tax lien entity including attorney's fees and service charges.
-- Establish, create, form, control, or own a beneficial ownership interest in one or more trusts or other single purpose entities to facilitate the purchase of tax liens, and the issuance of tax lien collateralized securities.
-- Sell or contract to sell at public or private sale tax liens, singly, in bulk, or in groups, and to enter into advance commitments with a tax lien entity or third party for the sale of tax liens for any portion of the amount owed with respect to the liens.
-- Make and execute contracts for professional services to service or collect tax liens sold by the city or acquired by its tax lien entity, or to service tax lien purchase and sale agreements, including, but not limited to, attorneys, financial advisors, accountants, or due diligence providers.
-- Subject to any agreement with the holders or owners of tax lien collateralized securities, modify the time of payment, interest, penalties, or fees of a tax lien owned by the city or its tax lien entity, or of any other contract or agreement to which the city was a party.
-- Establish terms and provisions for the sale of tax liens by the city to its tax lien entity or to a third party including, but not limited to, provisions specified in the bill.
-- Establish terms and provisions for a tax lien purchase and sale agreement, including any terms for payment and any other matters that the city determined to be necessary,

desirable, or advisable.

-- Pledge or assign as security, on a priority or subordinate basis, for any tax lien collateralized securities any tax liens, money, funds, tax lien purchase and sale agreements, assets, or revenue of the city or its tax lien entity.

Senate Bill 776

The bill provides that the City of Detroit or its tax lien entity could purchase any tax lien for delinquent taxes, charges, assessments, penalties, interest, or fees that was subject to collection by a county treasurer, if the property subject to a tax lien being collected by the county treasurer also were subject to a tax lien being collected by the city or a tax lien entity. A purchase of a tax lien under this provision could be made before or after tax sale by the county. Upon purchase, the city or the tax lien entity could enforce the tax lien in any manner in which the city or the tax lien entity was authorized to use to enforce a tax lien subject to collection by the city. After purchase, the portion of the tax lien purchased pursuant to the bill that represented delinquent taxes, charges, and assessments would be subject to interest and penalties at the same rate as that imposed by the city for delinquent taxes, charges, and assessments subject to collection by the city.

MCL 211.107 (S.B. 776)

Legislative Analyst: G. Towne

FISCAL IMPACT

Senate Bill 776

The bill would allow the City of Detroit or its tax lien entity to purchase any tax lien for delinquent taxes or other charges from the county if the property also were subject to a city tax lien. The City of Detroit then could enforce the tax lien purchased from the county in the same manner as the enforcement of a city tax lien occurs.

Senate Bill 778

The bill would allow the City of Detroit to sell tax liens to a tax lien entity. The City of Detroit or its tax lien entity would be able to purchase any tax lien for delinquent taxes or other charges from the county if the property also were subject to a city tax lien. The city or tax lien entity could then enforce the tax lien purchased from the county in the same manner as the enforcement of a city tax lien occurs. In addition, the city or tax lien entity could authorize and issue tax lien collaterized securities in anticipation of the collection of tax liens. Tax lien collaterized securities and other obligations of the city or the tax lien entity would not be a debt of the State or city.

Fiscal Analyst: R. Ross

S9798\S776SA

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.