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SFA



BILL ANALYSIS

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House Bill 4708 (as reported without amendment)
House Bill 4709 (Substitute H-1 as reported without amendment)
House Bill 4710 (Substitute H-1 as reported without amendment)
House Bill 4711 (Substitute S-2 as reported)
House Bill 4712 (Substitute H-1 as reported without amendment)
House Bill 4713 (Substitute H-1 as reported without amendment)
House Bill 4714 (Substitute S-2 as reported)
House Bill 4715 (Substitute H-1 as reported without amendment)
House Bill 4716 (Substitute H-1 as reported without amendment)
House Bill 4717 (Substitute H-1 as reported without amendment)
House Bill 4718 (Substitute S-1 as reported by the Committee of the Whole)

Sponsor: Representative Artina Tinsley Hardman (House Bill 4708)
Representative Randy Richardville (House Bill 4709)
Representative Robert Gosselin (House Bill 4710)
Representative Lauren Hager (House Bill 4711)
Representative Julie Dennis (House Bill 4712)
Representative Alan Sanborn (House Bill 4713)
Representative Leon Drolet (House Bill 4714)
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)

House Committee: Local Government and Urban Policy

Senate Committee: Economic Development, International Trade and Regulatory Affairs

Date Completed: 6-26-01

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 misreadings of, and/or ambiguities in, some provisions; and notice and recording requirements that evidently can be cumbersome.

CONTENT

The bills would amend the General Property Tax Act to revise the tax

reversion process enacted by Public Acts 123 and 133 of 1999. The bills would do the following:

- Revise various notice and publication requirements.**
- Require property to be withheld from forfeiture if the denial of a homestead exemption for the property were being appealed.**
- Provide that if property were redeemed, unpaid taxes that were not returned as delinquent would not be extinguished.**
- Provide for counties to include partial redemption payments in their tax records.**
- Provide that the current calculation of interest would apply 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 would be subject to the new reversion process if it had not been offered for sale by May 1, 2001.**
- Provide that the State would have 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 would have to be contained in a published notice of foreclosure.**
- Repeal various sections pertaining to the old tax reversion process as of December 31, 2003.**

House Bill 4708

The General Property Tax Act requires the State Treasurer to prescribe the form of the notice and proof of service of show cause and foreclosure hearings. The bill would delete 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 would delete a requirement that the State Treasurer prescribe the form of the affidavit of publication.

House Bill 4709 (H-1)

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

House Bill 4710 (H-1)

Under the 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 would require that a county treasurer withhold from forfeiture property that was the subject of an appeal of the denial of a homestead exemption under the Act, if the property owner claiming the exemption had not previously appealed the denial of the exemption for that property. A county treasurer also could withhold from forfeiture property that was the subject of an appeal of the denial of a homestead exemption, regardless of whether the property owner had previously appealed a denial of the exemption, or for any other reason determined by the State Tax 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 were recorded in error, the county treasurer would have to 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 were redeemed by a person with a

legal interest, any unpaid taxes that were not returned to the county treasurer as delinquent would not be extinguished.

The Act requires a county treasurer to make a note of a 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 accepted partial redemption payments, he or she would have to 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.

House Bill 4711 (S-2)

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 a petition with the clerk of the circuit court of that county 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 would have to 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 could withhold property whose title was held by persons unable to manage their affairs due to age or infirmity. In addition, financial hardship would be as determined under a written policy developed by the foreclosing governmental unit.

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

House Bill 4712 (H-1)

Section 124 of the Act requires 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, would require 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 would apply only to taxes levied before 1999 and property offered for sale pursuant to Section 60. Effective December 31, 2003, the bill would repeal Section 124 and several other sections that pertain to the old tax reversion process.

House Bill 4713 (H-1)

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 would have to be made at any time before the property was 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 was 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 would apply for taxes levied on real property before January 1, 1999, and for taxes levied on personal property.

House Bill 4714 (S-2)

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 any notice, service, or publication required under the Act. The bill, instead, would require the governmental unit to file 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.

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 would apply if a property owner were 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 order or judgment could be appealed.

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

House Bill 4715 (H-1)

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

House Bill 4716 (H-1)

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 the current uses of proceeds, a county whose treasurer acted as its foreclosure agent could use the proceeds for any of the following: sale or foreclosure costs for a subsequent year if the

costs were 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 would require a foreclosing governmental unit to record a deed with the county register of deeds for any transfer of foreclosed property. The foreclosing governmental unit could charge a fee, in excess of the minimum bid and any sale proceeds, for the cost of recording a deed.

House Bill 4717 (H-1)

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 were not offered at a tax sale on or before May 1, 2001, the property would be 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 would apply to the forfeiture, foreclosure, and sale of property for delinquent taxes under the new tax reversion process.

House Bill 4718 (S-1)

The Act provides that, by May 1 immediately following the forfeiture of property, the foreclosing governmental unit must conduct 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 bill would require the foreclosing governmental unit to initiate, rather than conduct, 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 would allow a foreclosing governmental unit, instead, to enter into a contract with one or more "authorized representatives" to perform the title search. (That term would include 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 requires the foreclosing governmental unit or its authorized representative to record certain documents with the register of deeds in the county in which the property is located. Specifically, the foreclosing governmental unit must 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 would delete this provision.

The bill also would delete 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 discovered any deficiency in the provision of notice, the foreclosing governmental unit would have to 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 published notice would have to 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 had not been notified; the date and time of the show cause hearing; the date and time of the hearing on the petition of foreclosure; a statement that, unless all forfeited unpaid delinquent taxes, interest, penalties, and fees were paid within 21 days after judgment was entered in the foreclosure proceeding, the title to the property would vest absolutely in the foreclosing governmental unit; and a statement that a person with an interest in the property could lose his or her interest as a result of the foreclosure proceeding.

MCL 211.78o (H.B. 4708)
211.78f (H.B. 4709)
211.78g (H.B. 4710)
211.78h (H.B. 4711)
211.124 (H.B. 4712)
211.59 (H.B. 4713)
211.78k (H.B. 4714)
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 have begun to arise, or to be anticipated, with regard to the tax reversion procedures enacted in 1999. For instance, it has become apparent that several notice, reporting, and recording requirements are unnecessary, cumbersome, or duplicative. In order to help implement a more streamlined tax reversion process, as the 1999 legislation envisioned, the bills would eliminate or consolidate some of those requirements. This could lead to more efficient administration of the law.

Also, House Bills 4713 (H-1) and 4715 (H-1) would 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 currently provides that a person may pay delinquent taxes at any time before tax-delinquent property is sold. The bills would clarify that, for property subject to forfeiture, foreclosure, and sale under the new tax reversion process, payment would have to be made before the property was 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 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 nonhomestead property. House Bill 4710 (H-1) would address this situation by requiring that a county treasurer withhold from forfeiture property that was the subject of an appeal of the denial of a homestead exemption, if the property owner had not previously appealed the denial for that property, and allowing a county treasurer to do so regardless of whether the property owner had previously appealed a denial of the exemption.

In addition, the bill specifies that, even if forfeited abandoned or tax-delinquent property were 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 were not returned as delinquent still would be due on that property.

Supporting Argument

House Bill 4718 (S-1) would address concerns pertaining to the Act's requirement that a foreclosing governmental unit conduct or contract for a title search on forfeited property. The Act requires that, by May 1 immediately following the forfeiture of property, a title search be conducted to identify the owners of a property interest in the forfeited property who are entitled to notice of a show cause hearing and foreclosure hearing. Often, a foreclosing governmental unit may not have the information necessary to initiate a title search until April 15, so the May 1 deadline may leave it with insufficient time in which to complete the title search. The bill would alleviate this problem by requiring that a title search be initiated, rather than completed, by May 1.

In addition, the Act allows a foreclosing governmental unit to enter into a contract with a licensed title insurance company or agent to perform a title search on forfeited property. Limiting this contractual authority to an insurance company may be too restrictive, especially when other professionals are fully qualified to perform the title search task. The bill would give 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 acted 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 were not paid or reimbursed from that subsequent year's delinquent tax property sales proceeds, 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 (H-1) would allow 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 would be included in this protection under House Bill 4711 (S-2).

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 have contacted the Department of

Treasury seeking a determination of what constitutes substantial financial hardship. Under House Bill 4711 (S-2), qualification for that designation would have to be determined under a written policy developed by the foreclosing governmental unit.

Legislative Analyst: P. Affholter

FISCAL IMPACT

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

Fiscal Analyst: D. Zin

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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.