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BILL ANALYSIS

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House Bill 4480 (Substitute H-2 as passed by the House)
House Bill 4481 (Substitute H-2 as passed by the House)
House Bill 4482 (Substitute H-2 as passed by the House)
House Bill 4483 (Substitute H-3 as passed by the House)
House Bill 4484 (Substitute H-4 as passed by the House)
House Bill 4488 (Substitute H-2 as passed by the House)
Sponsor: Representative David Robertson (H.B. 4480)
Representative Alma Stallworth (H.B. 4481)
Representative Gene DeRossett (H.B. 4482)
Representative Chris Kolb (H.B. 4483)
Representative Edward Gaffney (H.B. 4484)
Representative Ruth Ann Jamnick (H.B. 4488)
House Committee: Land Use and Environment
Senate Committee: Finance

Date Completed: 11-12-03

CONTENT

House Bill 4483 (H-3) would enact the "Land Bank Fast Track Act" to do the following:

-- Create the State Land Bank Fast Track Authority, and provide for the creation of county and local land bank fast track authorities.
-- Establish procedures for an expedited quiet title and foreclosure action by an authority.
-- Allow an authority to acquire, buy, own, lease as lessor, convey, demolish, or rehabilitate real or personal property.
-- Authorize an authority to issue notes and bonds.
-- Allow a county or qualified city that formed an authority to make a limited tax pledge to support its bonds or notes or, with voter approval, an unlimited tax full faith and credit pledge.
-- Create the "Land Bank Fast Track Authority Fund".
-- Require the State Administrative Board to convey specific parcels of surplus State land to the State Authority.
-- Repeal the Tax Reverted Property Emergency Disposal Act.

House Bill 4480 (H-2) would amend the Brownfield Redevelopment Financing Act to include assistance to a land bank fast track authority among eligible activities authorized by the Act; include tax reverted property held by an authority as eligible property; and permit the use of tax increment revenues for assistance attributable to authority property.

House Bill 4481 (H-2) would amend the General Property Tax Act to exempt from the tax property owned by a land bank fast track authority; and create a five-year tax exemption for property sold or otherwise conveyed by an authority.

House Bill 4482 (H-2) would create the "Tax Reverted Clean Title Act" to impose a specific tax (equal to the property tax) on property sold by a land bank fast track authority; and dedicate 50% of the proceeds to the authority that sold the property.

House Bill 4484 (H-4) would amend the General Property Tax Act to permit a foreclosing governmental unit to request a title product other than a title search, in order to identify the owners of a property interest in forfeited property; and

describe actions that would be considered reasonable steps to ascertain the address of a person entitled to notice of a show cause hearing and foreclosure hearing.

House Bill 4488 (H-2) would amend Public Act 105 of 1855 (which governs the disposition of surplus State funds) to allow the State Treasurer to invest surplus funds in loans to a land bank fast track authority or a brownfield redevelopment authority for the purpose of clearing or quieting title to tax reverted property held or controlled by a land bank fast track authority.

All of the bills are tie-barred to each other.

(In the following description of the bills, "authority" refers to a land bank fast track authority, unless otherwise indicated.)

House Bill 4483 (H-3)

Creation of Authority; General Powers

Under the bill, "authority" would refer to the State Land Bank Fast Track Authority or a land bank fast track authority created by a county foreclosing governmental unit, or by a qualified city.

The bill would create the State Authority within the Department of Consumer and Industry Services (DCIS). A county foreclosing governmental unit, with the approval of the board of commissioners of the county and, if the county had an elected county executive, with the concurrence of the executive, could enter into an intergovernmental agreement with the State Authority providing for the exercise of the powers and duties of a land bank fast track authority, and for the creation of a county authority to exercise those functions. If a county authority were created, the treasurer of the county would have to be a member of the authority board. A qualified city could enter into an intergovernmental agreement with the State Authority providing for the exercise of the powers and duties of a land bank fast track authority, and for the creation of a local authority to exercise those functions.

(A "qualified city" would be a city that collected delinquent real property taxes pursuant to a city ordinance and that was located in a county that collected nondelinquent county real property taxes for the county. An "intergovernmental agreement" would be a contractual agreement between one or more governmental agencies, including an interlocal agreement to exercise jointly any power, privilege, or authority that the agencies shared in common and that each might exercise separately under the Urban Cooperation Act.)

Except as otherwise provided, an authority could do all things necessary or convenient to implement the proposed Act and the purposes and powers delegated to the State authority's board of directors by other laws or executive orders. Among other things, an authority could borrow money and issue bonds and notes; enter into interlocal agreements under the Urban Cooperation Act; invest money of the authority; and enter into contracts for the management of, the collection of rent from, or the sale of real property held by the authority.

An authority also could acquire (by gift, devise, foreclosure, purchase, or otherwise) and own real or personal property, or rights or interests in real or personal property. The property of an authority and its income and operations would be exempt from all State and local taxation.

An authority could not do any of the following:

-- Condemn property or exercise the power of eminent domain.
-- Levy any tax or special assessment.
-- Assist or spend any funds for, or related to, the development of a casino.

For purposes of Part 201 (Environmental Response) of the Natural Resources and Environmental Protection Act (NREPA), an authority would be considered a local unit of government. The acquisition or control of property through bankruptcy, tax delinquent forfeiture, foreclosure, sale, abandonment, transfer from a lender, court order, circumstances in which the authority had acquired title or control by virtue of performing any permitted function, or transfer by the State or a local unit, would not subject an authority to liability under NREPA unless the authority were responsible for an activity causing a release on the property.

Property Acquisition; Tax Liens

An authority could purchase real property for any purpose it considered necessary, including the following:

-- To use or develop property the authority otherwise acquired.
-- To facilitate the assembly of property for sale or lease to any other public or private person, including a nonprofit corporation.
-- To protect or prevent the extinguishing of any lien, including a tax lien, held by the authority or imposed on its property.

An authority could purchase property, or rights or interest in property, from the Department of Natural Resources (DNR) under Section 2101 or 2102 of NREPA, a foreclosing governmental unit, and the Michigan State Housing Development Authority. (Sections 2101 and 2102 of NREPA allow the DNR to sell or convey tax reverted State land under the Department's control to State agencies and other public entities.)

Without the approval of a local unit of government where property held by an authority was located, an authority could control, manage, maintain, repair, lease as lessor, prevent the waste or deterioration of, demolish, and take all other actions necessary to preserve the value of the property it held or owned. An authority could do the following with respect to property it held or owned:

-- Grant or acquire a license, easement, or option.
-- Fix, charge, and collect rent, fees, and charges for use of the property or for services provided by the authority.
-- Pay any tax or special assessment due.
-- Take any action or institute any proceeding required to clear or quiet title in order to establish ownership by and vest title in the authority, including an expedited quiet title and foreclosure action (described below).
-- Remediate environmental contamination.

If an authority held a tax deed to abandoned property, it could quiet title to the property under the General Property Tax Act.

An authority could accept a deed conveying a person's interest in tax delinquent property or tax reverted property in lieu of foreclosure or sale of the property for delinquent taxes, penalties, and interest levied under the General Property Tax Act or delinquent specific taxes levied under another law of the State against the property by a local unit of government or other taxing jurisdiction. An authority could not accept a deed in lieu of foreclosure or sale of the tax lien attributable to taxes levied by a local unit or other taxing jurisdiction, however, without the written approval of all taxing jurisdictions and the foreclosing governmental unit that would be affected. Upon their approval, all of the unpaid property taxes and specific taxes would be extinguished.

An authority could convey, sell, transfer, exchange, lease as lessor, or otherwise dispose of property or rights or interests in property in which the authority held a legal interest, to any public or private person for value determined by the authority, on terms and conditions, and in a manner and for an amount of consideration the authority considered proper, including no monetary consideration.

Money received as payment of taxes, penalties, or interest, or from the redemption or sale of property subject to a tax lien of any taxing unit, would have to be returned to the local tax collecting unit where the property was located for distribution on a pro rata basis to the appropriate taxing units, in an amount equal to delinquent taxes, penalties, and interest owed on the property, if any. The authority would retain any money in excess of delinquent taxes, interest, and penalties and could use it for purposes authorized by the proposed Act. Except as otherwise provided in the bill, as required by other law, as required by the provisions of a deed, or as an authority otherwise agreed, an authority could retain any proceeds it received for the purposes of the proposed Act.

A tax lien against property held by or under the control of an authority could be released at any time by the governing body of a local unit of government with respect to a lien held by the local unit; the governing body of any other taxing jurisdiction other than the State with respect to a lien held by the taxing jurisdiction; a foreclosing governmental unit with respect to a tax lien or right to collect a tax held by the foreclosing governmental unit; or the State Treasurer with respect to a tax lien securing the State education tax under the State Education Tax Act.

A foreclosing governmental unit could not transfer property subject to forfeiture, foreclosure, and sale under Sections 78 to 78p of the General Property Tax Act until after the property was offered for sale or other transfer under Section 78m of that Act, and the foreclosing governmental unit retained possession of the property under Section

78m(7). (Sections 78 to 78p include the "new" tax reversion process enacted by Public Act 123 of 1999. Section 78m grants the State the right of first refusal to purchase tax delinquent property from a foreclosing governmental unit in which title has vested after the entry of a judgment. If the State does not purchase the property, a city, village, or township in which the property is located may purchase it from the foreclosing governmental unit. If a city, village, or township does not purchase the property, the county may do so. Subject to these provisions, the foreclosing governmental unit may offer the property at auction. The local units then have an opportunity to purchase property not sold. If the property is not sold, the foreclosing governmental unit must offer or reoffer it for sale. Property that still remains unsold must be transferred to the city, village, or township in which it is located (unless the local unit objects). Under Section 78m(7), if unsold property is not transferred to the local unit, the foreclosing governmental unit must retain possession of it.)

"Tax reverted property" would mean property that met one or more of the following criteria:

-- The property was conveyed to the State under Section 67a of the General Property Tax Act and subsequently was not sold at a public auction under Section 131 of that Act.
-- The property was conveyed to the State under Section 67a and subsequently was either redeemed by a local unit of government or transferred to a local unit under Section 2101 or 2102 of NREPA, except property transferred to a local unit that was subject to a reverter clause under which the property reverts to the State upon transfer by the local unit.
-- The property was subject to forfeiture, foreclosure, and sale for the collection of delinquent taxes as provided in Sections 78 to 79a of the General Property Tax Act and 1) title to the property vested in a foreclosing governmental unit, and 2) the property was offered for sale at an auction but not sold.
-- The property was obtained by or transferred to a local unit of government under Section 78m.
-- Pursuant to the requirements of a city charter, the property was deeded to the city for unpaid delinquent real property taxes.

(Section 67a of the General Property Tax Act provides for the conveyance of tax reverted property to the State under the "old" tax reversion process. Under Section 131, the DNR Director may withhold from sale land that is suitable for State forests, parks, game refuges, public hunting, or recreational grounds, and may sell land that is not withheld.)

Expedited Quiet Title & Foreclosure

An authority could initiate an expedited quiet title and foreclosure action to quiet title to real property or interests in tax reverted property held by the authority, by recording a notice of pending expedited title and foreclosure action with the register of deeds in the county where the property was located. Property would not be subject to an expedited action if it were forfeited under Section 78g of the General Property Tax Act and remained subject to foreclosure under Section 78k of that Act (that is, if forfeiture and foreclosure were under way pursuant to the new tax reversion process). (Section 78g provides that, on March 1 in each tax year, certified abandoned property and property that has been tax delinquent for the preceding 12 months or more, is forfeited to the county treasurer. Section 78k provides for a circuit court to enter judgment on a foreclosure petition.)

After notice of the pending action was recorded, the land bank would have to initiate a search of records to identify the owners of a property interest in the property who would be entitled to notice of the foreclosure hearing. The owner of a property interest would be entitled to notice if the interest were identifiable by reference to any of the following sources before the date that the authority recorded the required notice: land title records in the office of the county register of deeds, or tax records in the office of the county or local treasurer or in the office of the local assessor.

The authority could file with the circuit court clerk a single petition listing all property subject to expedited foreclosure and for which the authority sought to quiet title. The petition would have to seek a judgment in the authority's favor against each listed property, and include a date, within 90 days, on which the authority requested a hearing on the petition. The court clerk immediately would have to schedule the hearing, which could not be more than 10 days after the date

requested by the land bank. The clerk could not, in any event, schedule the hearing later than 90 days after the petition was filed.

After completing the records search, the authority would have to determine the address reasonably calculated to inform the owners of a property interest about the pending foreclosure hearing. At least 30 days before the hearing, the authority would have to send by certified mail, return receipt requested, notice of the hearing to the people with an interest in property subject to expedited foreclosure. If the authority could not determine an address reasonably calculated to inform the owners, or if the notice of the hearing were returned as undeliverable, the following would be deemed reasonable steps by the authority to ascertain the addresses:

-- For an individual, a search of the county probate court records.
-- For an individual, a search of the qualified voter file.
-- A search of partnership records filed with the county clerk, for a partnership.
-- A search of business entity records filed with the DCIS, for a business entity other than a partnership.
-- A search of the current telephone directory for the area in which the property was located.
-- A letter of inquiry to the last seller of the property or the seller's attorney, if ascertainable.

At least 30 days before the hearing, the authority or its authorized representative would have to visit each parcel of property subject to expedited foreclosure and conspicuously post notice of the hearing on the property. ("Authorized representative" would mean a title insurance company or agent licensed to conduct business in Michigan; an attorney licensed to practice in this State; a person accredited in land title search procedures by a nationally recognized organization in that field; or a person with demonstrated experience in the field of searching land title records, as determined by the authority.)

If the authority could not ascertain the address reasonably calculated to inform the owners of a property interest entitled to notice, or could not provide notice by certified mail or posting, the authority would have to provide notice by publication.

Before the hearing, the authority would have to file with the court clerk proof of service of notice by certified mail, proof of notice by posting, and proof of notice by publication, if applicable. A person claiming an interest in a parcel set forth in the foreclosure petition who desired to contest the petition, would have to file written objections with the clerk and serve them on the authority before the hearing. The court could appoint and use a special master for the resolution of any objections to the foreclosure or questions regarding the title to property subject to foreclosure. If the court withheld property from foreclosure, the authority's ability to include the property in a subsequent petition for expedited quiet title and foreclosure would not be prejudiced. No injunction could be issued to stay an expedited action.

The circuit court would have to enter judgment on the petition within 10 days after the hearing concluded. The judgment would have to specify all of the following:

-- The legal description and, if known, the street address of the property foreclosed.
-- That fee simple title to property foreclosed by the judgment was vested absolutely in the authority (except as provided below), without any further rights of redemption.
-- That all liens against the property, including any lien for unpaid taxes or special assessments, other than future installments of special assessments and liens recorded by the State or the authority under NREPA, were extinguished.
-- That, except as otherwise provided, the authority had good and marketable fee simple title to the property.
-- That all existing recorded and unrecorded interests in the property were extinguished, except a visible or recorded easement or right-of-way, private deed restrictions, plat restrictions, or restrictions or other governmental interests imposed under NREPA.

The judgment also would have to include a finding that all persons entitled to notice and an opportunity to be heard had been provided that notice and opportunity. A person would be deemed to have been provided notice and opportunity to be heard if any of the following applied: the person had constructive notice of a hearing by acquiring an interest in the property after the date the notice of pending expedited quiet title and foreclosure action was recorded with the register of deeds; the

person appeared at a hearing or submitted written objections to the circuit court clerk before the hearing; or, before the hearing, the person had actual notice of it.

Within 21 days of the entry of judgment, an authority or a person claiming to have an interest in foreclosed property could appeal the circuit court's order or the court's foreclosure judgment to the Michigan Court of Appeals. A foreclosure judgment would be stayed (as to the property that was the subject of the appeal) until the Court of Appeals had reversed, modified, or affirmed it.

A person appealing the circuit court's judgment foreclosing property would have to pay to the authority any taxes, interest, penalties, and fees due on the property and give notice of the appeal to the authority within 21 days after the judgment was entered. If the judgment were affirmed on appeal, the amount determined to be due would have to be refunded to the person who appealed the judgment. If the judgment were reversed or modified on appeal, the authority would have to refund the amount determined to be due to the person who appealed the judgment, if any, and forward the balance to the appropriate taxing jurisdictions in accordance with the order of the Court of Appeals.

For each parcel of foreclosed property, the authority would have to record a notice of judgment in the office of the register of deeds for the county in which the property was located.

If a foreclosure judgment were entered, the owner of any extinguished interest who claimed that he or she did not receive notice of the expedited action could not bring an action for possession of the property against any subsequent owner, but could bring only an action in the Court of Claims to recover monetary damages. The action would have to be brought within two years after the judgment was entered. Any monetary damages could not exceed the fair market value of the property on the date of judgment.

The owner of a property interest with notice of the foreclosure hearing could not assert either that notice to the owner was inadequate, or that any right to redeem tax reverted property was extended in any way, because some other owner of a property interest was not notified.

State Land Bank Fast Track Authority

The Land Bank Fast Track Authority would be created within the DCIS. The State Authority would exercise its powers and duties independently of the DCIS Director, although the authority's budgeting, procurement, and related administrative functions would have to be performed under the Director's supervision. The State Authority also could contract with the DCIS for the purpose of maintaining its rights and interests. Subject to available appropriations, the DCIS would have to provide staff and other support to the State authority, if requested.

The State Administrative Board would have to convey to the State authority the surplus State real property described in the bill, including all options, easements, rights-of-way, and improvements. (The bill contains legal descriptions of six parcels, or groupings of parcels, that would be conveyed.)

The State Authority's board would consist of seven members: four residents of the State appointed by the Governor; the DCIS Director; the chief executive officer of the Michigan Economic Development Corporation (MEDC); and the executive director of the Michigan State Housing Development Authority (MSHDA). The Governor also would have to appoint a person (other than a board member) to serve as the executive director of the Authority. The executive director would be responsible for the performance of the Authority's functions.

The Land Bank Fast Track Fund would be created under the jurisdiction and control of the State Authority and could be administered to secure any notes and bonds of the Authority. The Authority would have to deposit into the Fund all money it received from the sale or transfer of property, as well as the proceeds of the sale of notes or bonds to the extent provided in its authorizing resolution.

The Authority could spend money from the Fund only for one or more of the following:

-- Costs to clear or quiet title to property held by the Authority.
-- To repay a loan made to the Authority by the State (under House Bill 4488 (H-2)).
-- Any other purposes provided in the proposed Act.

The Authority could borrow money and issue notes for the purposes identified in the bill. The bonds and notes could be sold at public or private sale, and would have to mature within 50 years from the date of issuance. Except as expressly provided by the Authority, every issue of its notes or bonds would be general obligations of the Authority payable out of revenues, property, or money of the Authority, subject only to agreements with the holders of particular notes or bonds pledging particular receipts, revenues, properties, or money as security.

Bonds or notes issued by the Authority would not be subject to the Revised Municipal Finance Act but would be subject to the Agency Financing Reporting Act.

If the Authority had completed the purposes for which it was organized, the board, by a vote of at least five directors and the written consent of the Governor, could provide for the dissolution of the Authority, and for the transfer of any property held by it to another authority or State agency.

The Authority would have to report biennially to the Legislature on its activities.

County and Local Authorities

A county foreclosing governmental unit and a qualified city could enter into an intergovernmental agreement with the State Authority for the creation of a county authority or a local authority. An intergovernmental agreement would have to provide for the incorporation of a county or local authority as a public body corporate; the name of the authority; the size of the initial governing body of the county or local authority, which would have to be composed of an odd number of the members; the qualifications, method of selection, and terms of office of the initial board members; and a method for the adoption of articles of incorporation by the governing body of the county or local authority. An agreement also would have to provide a method for the distribution of proceeds from the activities of the county or local authority; a method for the dissolution of the authority and for the withdrawal from the authority of any governmental agencies involved; and any other matters considered advisable by the participating governmental agencies, consistent with the proposed Act.

If a qualified city, under its charter, collected delinquent city real property taxes and did not return the delinquent taxes to the treasurer of the county in which the city was located, any of the following property held by the city could be transferred to a local authority:

-- Tax delinquent real property for which a lien had been deemed sold to a city department director under the charter or ordinances of the city, except for property that was deeded to a department director less than two years before the proposed transfer to the local authority.
-- Tax delinquent real property held by the city that had been foreclosed by the city and for which title had vested in the city pursuant to procedures established under the city charter or ordinances.
-- Any tax reverted property owned or under the control of the city.

A qualified city could authorize a transfer to a local authority, with or without consideration, of any real property, including tax reverted property, or interests in tax reverted property, held or acquired after the creation of the local authority by the qualified city, with the consent of the local authority.

A qualified city and any agency or department of the city, or any other official public body, could do anything necessary or convenient to aid a local authority in fulfilling its purposes under the proposed Act; lend, grant, transfer, or convey to a local authority funds that were received from the Federal government or the State; or form any nongovernmental entity in aid of the purposes of the proposed Act.

A local authority could reimburse advances made by a qualified city or by any other person for costs eligible to be incurred by the local authority with any source of revenue available for its use, and enter into agreements related to these reimbursements. A reimbursement agreement would not be subject to the Revised Municipal Finance Act.

A local authority could enter into agreements with the county treasurer for the collection of property taxes or the enforcement and consolidation of tax liens within that qualified city for any property or interest in property transferred to the local authority.

Unless specifically reserved or conditioned upon the approval of the governing body of a qualified city, a local authority could exercise

all powers granted to it under the proposed Act without the approval of the city's governing body, notwithstanding any charter, ordinance, or resolution to the contrary.

By resolution of its board, a local or county authority could issue bonds and notes to carry out the purposes and objectives of the authority, including necessary administrative and operational costs.

A qualified city or county that authorized the formation of an authority could, by a majority vote of its governing body, make a limited tax pledge to support the authority's bonds or notes, or if authorized by the voters, pledge its unlimited tax full faith and credit for the payment of principal of and interest on the authority's bonds or notes.

Bonds and notes issued by a county or local authority, and the interest on the bonds and notes, would be exempt from State and local taxes.

Provisions of the bill concerning bonds and notes issued by a county or local authority would not apply to a loan issued under House Bill 4488 (H-2).

Repealer

The bill would repeal the Tax Reverted Property Emergency Disposal Act, which allows a local unit to obtain clear title to tax reverted property whose title vested in the local unit before January 1, 2000, and dispose of that property if a declaration of emergency backlog is made and approved.

Construction of Act

The bill provides that, in the exercise of its powers and duties under the proposed Act and its powers relating to property it held, an authority would have complete control as fully and completely as if it represented a private property owner, and would not be subject to restrictions imposed on the authority by the charter, ordinances, or resolutions of a local unit of government. Unless permitted by the proposed Act or approved by an authority, any restrictions, standards, conditions, or prerequisites of a city, village, township, or county otherwise applicable to an authority and enacted after the bill's effective date would not apply to an authority. The bill provides that this provision "is intended to prohibit special local legislation or ordinances applicable exclusively or primarily to an authority and not to exempt an authority from laws generally applicable to other persons or entities".

The provisions of the proposed Act would apply notwithstanding any resolution, ordinance, or charter to the contrary. The bill also states that this language "is not intended to exempt an authority from local zoning or land use controls, including, but not limited to, those controls authorized under" the City and Village Zoning Act, the Local Historic Districts Act, or Public Act 344 of 1945, which allows local units to issue bonds for the rehabilitation of blighted areas.

The transfer to an authority of tax reverted property, the title to which involuntarily vested in the State under Section 67a of the General Property Tax Act, in a foreclosing governmental unit under Section 78m(7) of that Act, or in a qualified city pursuant to procedures established under its charter or ordinances, would have to be construed as an involuntary transfer of property to the authority. After such a transfer, the authority would be deemed to have assumed any governmental immunity or other legal defenses of the State or the local unit related to the property and the manner in which the State or local unit held title to the property.

House Bill 4480 (H-2)

The Brownfield Redevelopment Financing Act permits a brownfield authority (established by a municipality) to capture property tax revenue based on increases in the assessed value of eligible property, and to use the revenue for the costs of eligible activities on eligible property. Under the bill, for property owned by or under the control of a land bank fast track authority, or over which an authority could exercise its authority, tax increment revenues related to a brownfield plan could be used for the following:

-- Eligible activities attributable to any eligible property owned by or under the control of the authority or over which the authority could exercise its authority.
-- The cost of principal of and interest on any obligation issued by the brownfield authority to pay the costs of eligible

activities.
-- The reasonable costs of preparing a work plan or remedial action plan.
-- The actual cost of the review of the work plan or remedial action plan.

(Under the bill, "owned or under the control of" would mean that an authority had at least one of the following:

-- An ownership interest in the property.
-- A tax lien on the property.
-- A tax deed to the property.
-- A contract with the State or a political subdivision of the State to enforce a lien on the property.
-- A right to collect delinquent taxes, penalties, or interest on the property.
-- The ability to exercise its authority over the property.)

Under the Act, the term "eligible activities" or "eligible activity" includes, on property that was or is used for commercial, industrial, or residential purposes that is in a qualified local governmental unit and is a facility, functionally obsolete, or blighted, infrastructure improvements, demolition of structures, lead or asbestos abatement, and site preparation. The bill would include assistance to a fast track land bank authority in clearing or quieting title to, or selling or otherwise conveying, property under its ownership or control.

"Eligible property" means property for which eligible activities are identified under a brownfield plan that was or is currently used for commercial, industrial, or residential purposes that is either in a qualified local governmental unit and is a facility, functionally obsolete, or blighted or is not in a qualified local governmental unit and is a facility, and includes parcels that are adjacent or contiguous to that property if the development of those parcels is estimated to increase the captured taxable value of that property. Under the bill, the term would include tax reverted property owned or under the control of a land bank fast track authority.

Under the Act, "blighted" means property that meets any of the following criteria:

-- Has been declared a public nuisance in accordance with a local housing, building, plumbing, fire, or other related code or ordinance.
-- Is an attractive nuisance to children because of physical condition, use, or occupancy.
-- Is a fire hazard or is otherwise dangerous to the safety of people or property.
-- Has had the utilities, plumbing, heating, or sewerage permanently disconnected, destroyed, removed, or rendered ineffective so that the property is unfit for its intended use.
-- Is tax reverted property owned by a qualified local governmental unit, by a county, or by the State.

The bill would add to this definition property owned or under the control of an authority under the proposed Land Bank Fast Track Act, whether or not located within a qualified local governmental unit. Property included within a brownfield plan before it met the requirements to be eligible property would have to be considered to become eligible property as of the date the property was determined to have been or became qualified as, or was combined with, other eligible property. The bill specifies that the sale, lease, or transfer of the property by an authority after the property's inclusion in a brownfield plan would not result in the loss of blighted property status.

Under the Act, a brownfield authority must determine the captured taxable value of each parcel of eligible property that is included in a brownfield zone. The calculation of captured taxable value is based on the amount by which the current taxable value of eligible property, including property for which specific taxes are paid in lieu of property taxes, exceeds the property's initial taxable value. The initial taxable value of tax-exempt property is zero, but property for which a specific tax is paid in lieu of property tax is not considered tax exempt. Under the bill, the definition of "specific taxes" would include that portion of the tax levied under the Tax Reverted Property Clean Title Act (proposed by House Bill 4482 (H-2)) that was not required to be distributed to a land bank.

The Act allows the governing board of a brownfield redevelopment authority to implement a brownfield plan applicable to one or more parcels of eligible property. Each plan or amendment to a plan must be approved by the municipality's governing body and must

include, among other information, a description of the costs of the plan intended to be paid for with the tax increment revenues. Under the bill, for a plan for eligible property qualified on the basis that it was owned by or under the control of a land bank fast track authority, the plan would have to list of all eligible activities that could be conducted for any of the eligible property subject to the plan, instead of a description of the costs. A plan also must include a brief summary of the eligible activities that are proposed for each eligible property, and an estimate of the captured taxable value and tax increment revenues for each year of the plan from each parcel of eligible property, and in the aggregate. Under the bill, these provisions also would apply to eligible property qualified on the basis that the property was owned by or under the control of a land bank fast track authority.

For property owned by or under the control of a land bank fast track authority, tax increment revenues related to a brownfield plan could be used for eligible activities attributable to any eligible property owned by or under the control of the authority, the cost of principal and interest on any obligation issued by the authority to pay the costs of eligible activities, the reasonable costs of preparing a work plan or remedial action plan, and the actual cost of the review of the work plan or remedial action plan.

Tax increment revenues captured from taxes levied by the State under the State Education Tax Act or taxes levied by a local school district could not be used for assistance to a land bank fast track authority in clearing or quieting title to, or selling or otherwise conveying, property owned by or under the control of the authority.

A brownfield authority could reimburse advances made by a municipality under Section 7(3), a land bank fast track authority, or any other person or entity for costs of eligible activities with any source of revenue available for use of the brownfield authority, and could enter into agreements related to those reimbursements. A reimbursement agreement and the obligations under it would not be subject to Section 12 or the Revised Municipal Finance Act (RMFA).

(Section 7(3) of the Brownfield Redevelopment Financing Act allows a municipality to transfer its funds to a brownfield redevelopment authority or to another person on behalf of an authority in anticipation of repayment by the authority. Section 12 of the RMFA allows an authority to borrow money and issue negotiable bonds or notes to finance all or part of the costs of eligible activities. The authority may secure the bonds and notes by mortgage, assignment, or pledge of the property and all money, revenues, or income received in connection with the property.)

If a brownfield plan included the capture of taxes levied for school operating purposes, the bill would require approval of a work plan by the Michigan Economic Growth Authority (MEGA) in the manner required under Section 15(14) to (16) in order for tax increment revenues attributable to taxes levied for school operating purposes to be used for eligible activities for one or more parcels of eligible property. The eligible activities would have to be consistent with the work plan submitted by the authority to MEGA. The Department of Environmental Quality's approval would not be required for the capture of taxes levied for school operating purposes for eligible activities.

(Under Section 15(14) through (16), MEGA must consider specified factors in approving or denying a work plan. Upon receiving a work plan, MEGA has 65 days to provide a written response approving the plan, requiring modifications to the plan, or denying the plan. If MEGA fails to provide a written response within 65 days, the eligible activities are considered approved.)

House Bill 4481 (H-2)

The bill would exempt from the collection of taxes under the General Property Tax Act, property whose title was held by a land bank fast track authority. Also, real property sold or otherwise conveyed by an authority would be exempt beginning on December 31 in the year in which the property was sold or conveyed by the authority until December 31 in the year five years after the first year in which the exemption initially was granted.

The exemption for property sold or conveyed by an authority would not apply to property

included in a brownfield plan under the Brownfield Redevelopment Financing Act, if 1) the brownfield plan for the property included assistance to an authority, and 2) the authority had approved the release of the exemption, if the authority had issued bonds or notes or had entered into a reimbursement agreement pledging or dedicating the specific tax levied under the proposed Tax Reverted Clean Title Act.

Property that was sold by an authority would be subject to the specific tax levied under that proposed Act.

House Bill 4482 (H-2)

The bill would create the Tax Reverted Clean Title Act to levy a specific tax upon every owner of eligible tax reverted property (property sold by a land bank fast track authority and exempt from property taxes). The amount of the specific tax in each year would be the amount of tax that would have been collected on the parcel under the General Property Tax Act if the parcel were not exempt.

An owner of eligible tax reverted property that was a principal residence could claim an exemption for that portion of the specific tax attributable to the tax levied by a local school district for school operating purposes, as provided for an exemption under the Revised School Code, if an owner of that property claimed an exemption from local school operating taxes under the General Property Tax Act.

The specific tax would be an annual tax, payable at the same times, in the same installments, and to the same officers as taxes imposed under the General Property Tax Act. The officers would have to send to the State Tax Commission a copy of the amount of disbursement made to each unit. The officers would have to disburse 50% of the specific tax payments each year to the authority that sold the property, and 50% to and among the State, cities, school districts, counties, other taxing units, and authorities, at the same times and in the same proportions as required by law for the disbursement of property taxes. For an intermediate school district (ISD) receiving State aid under the State School Aid Act, all or a portion of the specific tax that otherwise would be disbursed to the ISD would have to be paid to the State Treasury to the credit of the School Aid Fund. The amount to be credited to the Fund would have to be determined on the basis of the tax rates being used to compute the amount of State aid. In addition, the amount of specific tax that otherwise would be disbursed to a local school district for school operating purposes would have to be paid instead to the State Treasury and credited to the School Aid Fund.

An authority could use specific tax revenue only to repay a loan made to the authority under Public Act 105 of 1855 (pursuant to House Bill 4488 (H-2)), or for the purposes authorized by the proposed Land Bank Fast Track Act, including costs to clear or quiet title to property held by the authority.

Eligible tax reverted property located in a renaissance zone would be exempt from the specific tax to the extent and for the duration provided by the Michigan Renaissance Zone Act, except for that portion of the specific tax attributable to a tax described in Section 7ff(2) of the General Property Tax Act. The specific tax calculated under this provision would have to be disbursed proportionately to the taxing units that levied the tax described in Section 7ff(2). (Under that section, property in a renaissance zone is not exempt from collection of 1) a special assessment levied by the local tax collecting unit; 2) property taxes specifically levied to pay obligations approved by the electors or pledging the unlimited taxing power of the local unit; or 3) a tax levied under provisions of the Revised School Code that permit school districts to levy a regional enhancement property tax for district operations; up to three additional mills for enhanced operating revenue; and up to five mills to create a sinking fund for school sites or building repair or construction.)

Unpaid specific tax would not be subject to return as delinquent tax under the General Property Tax Act. The amount of specific tax applicable to real property, until paid, would be a lien upon that property. Proceedings upon the lien (as provided by law for the foreclosure in circuit court of mortgage liens) could commence when the tax would have been returned as delinquent under the General Property Tax Act, if the property had not been exempt, and when the appropriate collecting officer filed with the register of

deeds a certificate of nonpayment of the specific tax applicable to the property, together with an affidavit of proof of service of the certificate upon the property owner by certified mail.

By December 31 each year, an authority would have to provide a list of all property sold by it in that calendar year to the assessor of each local tax collecting unit in which property sold by the authority was located. The assessor of each local tax collecting unit containing eligible tax reverted property would have to determine annually as of December 31 the value and taxable value of each parcel of eligible tax reverted property, and give that information to the legislative body of the local tax collecting unit.

House Bill 4484 (H-4)

The General Property Tax Act provides that, by May 1 immediately following the forfeiture of property to a county treasurer under Section 78g of the Act, the foreclosing governmental unit must initiate a title search to identify the owners of a property interest in the property who are entitled to notice of a show cause hearing and a foreclosure hearing. The bill would delete reference to a title search and require the foreclosing governmental unit to initiate a search of records identified under the Act. These include records in the office of the county register of deeds; tax records in the office of the county treasurer; and records in the office of the local assessor or the local treasurer. The bill would refer to land title records in the office of the county register of deeds, and tax records in the office of the local assessor or local treasurer, as well as tax records in the office of the county treasurer. (Section 78g provides that, on March 1 each tax year, certified abandoned property and property that is delinquent for taxes, interest, penalties, and fees for the immediately preceding 12 months or more are forfeited to the county treasurer.)

Currently, the foreclosing governmental unit may enter into a contract with one or more authorized representatives to perform the title search. The bill provides, instead, that the foreclosing governmental unit could enter into a contract with one or more authorized representatives to perform a title search or could request from one or more authorized representatives another title product to identify the owners of a property interest or to perform other functions required for the collection of delinquent taxes under the Act.

The Act requires the foreclosing governmental unit or its authorized representative to determine the address reasonably calculated to apprise those owners of a property interest of the show cause hearing and the foreclosure hearing, and to send notice of the hearings to them, to a person entitled to notice of the return of delinquent taxes, and to a person to whom a tax deed for property returned for delinquent taxes was issued. The notice must be sent by certified mail, return receipt requested, at least 30 days before the show cause hearing. The bill provides that if the foreclosing governmental unit, after conducting the required search of records, were unable to determine an address reasonably calculated to inform a person with an interest in forfeited property, or if the hearing notice were returned as undeliverable, the following would have to be considered reasonable steps to ascertain the address of a person entitled to notice of a show cause hearing and foreclosure hearing:

-- For an individual, a search of county probate court records.
-- For an individual, a search of the qualified voter file.
-- For a partnership, a search of partnership records filed with the county clerk.
-- For a business entity other than a partnership, a search of business entity records filed with the DCIS.
-- A search of a current telephone directory for the area where the property was located.
-- A letter of inquiry to the last seller of the property or an attorney for the seller, if ascertainable.

The Act requires the foreclosing governmental unit or its authorized representative to make a personal visit to each forfeited parcel of property. If the property appears to be occupied and the foreclosing governmental unit is unable to meet personally with the occupant, the unit must place the notice in a conspicuous manner on the property. The bill would delete a provision that requires the DNR, if the State is the foreclosing governmental unit within a county in such a situation, to perform the personal visit to each parcel of property on behalf of the State.

The bill specifies that the failure of the foreclosing governmental unit to comply with any of the notice provisions would not

invalidate any proceeding under the Act if the owner of a property interest or a person to whom a tax deed was issued was accorded the minimum due process required under the State Constitution of 1963 and the Constitution of the United States. The notice provisions related to the show cause and foreclosure hearings would be exclusive and exhaustive. Other requirements relating to notice or proof of service under other law, rule, or legal requirement would not apply to notice and proof of service under the bill.

Under the Act, the circuit court must enter judgment on a foreclosure petition within 10 days after the March 1 immediately after the date the petition was filed for uncontested cases, or 10 days after the hearing's conclusion for contested cases. Among other information, the court's judgment must specify a finding that all persons entitled to notice and an opportunity to be heard have been provided that notice and opportunity. Under the bill, a person would be deemed to have been provided notice and an opportunity to be heard if any of the following applied:

-- The person had constructive notice of the hearing by acquiring an interest in the property after the date the forfeiture notice was recorded.
-- The person appeared at the hearing or filed written objections with the circuit court clerk before the hearing.
-- Before the hearing, the person had actual notice of the hearing.

The Act allows the owner of any extinguished property interest who claims that he or she did not receive the required notice to bring an action to recover monetary damages. Any recoverable monetary damages must be determined as of the date a judgment for foreclosure is entered and may not exceed the fair market value of the property on that date. Under the bill, monetary damages could not exceed the fair market value on the date judgment was entered, less any taxes, interest, penalties, and fees due on the property as of that date.

The Act permits the foreclosing governmental unit or its authorized agent to hold at least one property sale at one or more convenient locations at which property foreclosed by the judgment is sold by auction sale, beginning on the third Tuesday in July immediately after the entry of judgment. The bill would place an end date of the immediately succeeding November 1 on the property sale, and require the foreclosing governmental unit to hold at least two sales. The bill would allow an auction sale to be conducted via an internet website.

The Act requires a sale to be completed within 15 days. Under the bill, each sale would have to be completed before the November 1 immediately succeeding the entry of judgment vesting absolute title to the tax delinquent property in the foreclosing governmental unit. The foreclosing governmental unit could adopt procedures governing the conduct of the sale and cancel the sale before the issuance of a deed if authorized under the procedures.

Under the Act, the foreclosing governmental unit must convey the property by deed to the person bidding the highest amount above the minimum bid within 30 days after the sale date. The deed must vest fee simple title to the property in the person bidding the highest amount above the minimum bid. Under the bill, this provision would apply unless the foreclosing governmental unit discovered a defect in the property foreclosure. The bill would delete a provision requiring the DNR to conduct the property sale if the foreclosing governmental unit were the State.

The bill would delete a provision under which, beginning on the third Tuesday in November immediately succeeding the property sale, all property not previously sold must be reoffered for sale, without the requirement of the minimum bid. Instead, all property subject to sale would have to be offered for sale at not less than two sales. The final sale would have to be held at least 30 days after the previous sale. At the final sale, the minimum bid would not be required.

Under the Act, a list of all property not previously sold by the foreclosing governmental unit must be transferred to the clerk of the city, village, or township in which the property is located, on December 1. Under the bill, the list would have to be transferred on or before December 1. By December 30 immediately succeeding the sale date, all property not previously sold would have to be transferred to the city, village, or township in which the property was located. Property located in both a village and a

township could be transferred only to a village.

Under the Act, the foreclosing governmental unit retains possession of the property, if it is not previously sold and not transferred to the city, village, or township in which it is located. The bill specifies that, if the foreclosing governmental unit retained possession of the property and the foreclosing governmental unit were the State, title to the property would vest in the State Land Bank Fast Track Authority.

For property transferred to the State or a city, village, or township, or retained by the county, all taxes due on the property as of December 31 following the transfer or retention would be canceled effective on that December 31.

Currently, the redemption period on property deeded to the State must be extended until the owners of a recorded property interest have been notified of a hearing before the Department of Treasury. Proof of the notice must be recorded with the register of deeds in the county in which the property is located. Under the bill, if a notice were recorded in error, the Department or a local unit of government could correct the error by recording a certificate of error with the register of deeds. A notice would not need to be notarized and could be authenticated by digital signature or other electronic means.

The bill would allow a local unit of government to conduct a hearing to show cause why the tax sale and tax deed to the State should be canceled, for tax reverted property that was transferred to a local unit of government under NREPA and the local unit of government determined that the owner of a recorded property interest was not properly served with notice of the hearing. Notice of the hearing would have to be given to the Department of Treasury, which could provide evidence why the tax sale and tax deed to the State should not be set aside. The local unit of government could hold combined or separate show case hearings for different owners of a recorded property interest.

For tax reverted property transferred to a local unit of government under NREPA, the local unit of government could initiate an expedited quiet title and foreclosure action to quiet title to the property in the same manner as a land bank fast track authority. A local unit of government could initiate an action as an alternative to a hearing.

House Bill 4488 (H-2)

The bill would amend Public Act 105 of 1855 to allow the State Treasurer to invest surplus funds in loans to a land bank fast track authority or a brownfield redevelopment authority at the market rate of interest, as determined by the Treasurer, for the purpose of clearing or quieting title to tax reverted property held by or under the control of an authority. A loan also could be made for any other purpose that an authority was authorized to undertake with respect to property transferred to a land bank fast track authority or over which such an authority could exercise its authority. A loan to a land bank fast track authority or a brownfield redevelopment authority could not be for a period of more than 10 years, as determined by the State Treasurer. The State Treasurer would have to prescribe all other terms of the loan, including required security, if any.

The bill also specifies that loans made under the Act would not be subject to the Revised Municipal Finance Act, but would be subject to the proposed Agency Financing Reporting Act.

MCL 125.2652 & 125.2663 (H.B. 4480)
Proposed MCL 211.7gg (H.B. 4481)
MCL 211.78i et al. (H.B. 4484)
21.144 et al. (H.B. 4488)

Legislative Analyst: George Towne

FISCAL IMPACT

The bills would have an unknown, but minimally positive, impact on both State and local revenues. The magnitude of the fiscal impact depends upon the success that the proposed land banks would have in both clearing title and making affected property more marketable, as well as the degree to which affected property actually would be sold. Many of these parcels of property are difficult to sell due to the physical location and/or characteristics. As such, neither the State Authority nor a local land bank fast track authority would likely be able to sell a significant number of these parcels and the captured revenue likely would be minimal.

While the bills would authorize the authorities to engage in a variety of activities related to real and personal property, the main focus is

on tax-reverted property. Neither the State nor local units generally receive any revenue from tax-reverted property affected by the bills. To the extent that this property could be sold by an authority and the land would not otherwise be sold, or sold for as much, under the current processes for handling tax-reverted property, the bills would increase State and local tax revenue.

Tax-reverted property generally is not sold or, equivalently, is not purchased, for one of two reasons: 1) its location or other physical characteristics make it undesirable, even for speculators, and/or 2) the title history and other legal circumstances, such as those related to the tax-reversion process, make the property undesirable and/or uninsurable. The expenses involved in addressing the second issue can be significant and potentially difficult to recover through the current process for handling tax-reverted property. The assumption behind the bills is that the tax provisions would improve the ability both to pay for and to recover these expenses. Consequently, under this assumption, the bills would likely result in more tax-reverted property being sold, perhaps for higher prices, and would increase State and local revenues. However, if the authority incurred expenses making the property more marketable and either an insufficient number of parcels were sold or were sold for too little, the authority could lose money. Some individuals who work with this property have indicated concerns that under the new procedures adopted to handled tax-reverted property and given the low desirability of this property, there is a significant chance that the authority would not be able to cover its administrative expenses.

The bills would not address the first reason deterring purchases of tax-reverted property nor would the bills affect property that is not sold because the State or local unit does not wish to sell the property. The State or a local unit might not sell tax reverted property for a variety of reasons, most often because the governmental unit believes the property can be used for a public purpose at some point or for economic development reasons. Even when the property is sold, the low desirability affects the purchase price. On average, the State has sold 3,000 pieces of property per year for an average of approximately $6.0 million, or about $2,000 per property. While many of these parcels also suffer problems under the second issue, such as title difficulties, there is a significant chance that the sale prices would remain very low under the bills.

The bills would provide for the State Authority to sell certain State-owned parcels, whose characteristics vary significantly: many parcels are not contiguous and the types of property include vacant land and industrial, commercial and/or residential property. The value of all of these parcels is unknown. If the property were valued at $5 million and were sold and the specific tax subsequently levied at that price, the captured revenue would be slightly more than $100,000 per year.

The bills also would allow the State Land Bank Fast Track Authority to dissolve itself once its purposes, which are not defined in the bills, were completed. The State Authority could transfer any land it held to a local authority or the State and any funds held by the State Authority when it dissolved would revert to the State General Fund. Until the Authority was dissolved, funds received from captured taxes and/or property sales would be held by the Land Bank Fast Track Fund for use by the State Authority.

The creation of the State Authority would require certain expenditures to cover the staffing and overhead costs associated with the administration of this Authority. Under House Bill 4483 (H-3), the Department of Consumer and Industry Services would be required to support the State Authority administratively, and subject to available appropriations, the Department could have to provide additional staffing and support. The Authority would have bonding capabilities and could cover the initial costs, but if revenue were insufficient to cover the debt service on these bonds and the administrative costs, this bill could have a negative fiscal impact on the Department of Consumer and Industry Services.

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