



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 1408 (Substitute S-2 as reported)
Senate Bill 1409 (Substitute S-2 as reported)
Sponsor: Senator Patricia L. Birkholz (S.B. 1408)
Senator Liz Brater (S.B. 1409)
Committee: Natural Resources and Environmental Affairs

CONTENT

Senate Bill 1408 (S-2) would amend Public Act 42 of 1963, which governs the termination of oil or gas interests in land, to provide that an oil or gas interest held by a person other than the owner of the surface of property for which a judgment of foreclosure had been entered would not be preserved from foreclosure under the General Property Tax Act unless that interest had been recorded with the county register of deeds within 20 years before the foreclosure petition was filed.

Senate Bill 1409 (S-2) would amend the General Property Tax Act to do the following:

- Require the notice of hearing and a final judgment in a foreclosure proceeding to include a statement that all existing oil and gas interests would be extinguished except for those of a lessee or assignee of an interest of a lessee under an oil or gas lease recorded with the county register of deeds before the foreclosure petition was filed, and interests preserved as provided under Senate Bill 1408 (S-2).
- Exempt from foreclosure the interests of a lessee or an assignee of an interest of a lessee under an oil or gas lease recorded with the county register of deeds before the foreclosure petition was filed, and interests preserved as provided in Senate Bill 1408 (S-2).

MCL 554.291 et al. (S.B. 1408)
211.78i & 211.78k (S.B. 1409)

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The bills would reduce possible future State expenditures and prevent a possible reduction in future State revenue by an unknown amount. The bills would reduce, although not eliminate, a number of claims that could be made against the State with regard to oil and gas interests related to property where a tax foreclosure has occurred. Absent the bills, court decisions have indicated that such interests are not terminated when the government forecloses on the surface property, and depending on which court's reasoning is examined, the interests may not be terminated even if the interests were not severed from the surface property. The bills would eliminate claims where the interests were not recorded during the 20 years prior to the foreclosure. It is unclear how the bills would address issues where the foreclosure had occurred in the past but interests were not recorded—whether the changes would be only prospective and/or whether the courts' decisions would allow claims to be made against foreclosures in the past.

Despite the bills, claims that could result in potentially significant judgments still would be likely. Historically, the State has argued that oil and gas interests are extinguished when a

foreclosure occurs—even if recorded separately. However, because the bills still would allow claims where the interest had been recorded (for instance, if an interest had been recorded in 1915 and the property was foreclosed in 1930), potentially significant claims still could be made.

Any claims successfully made against the State would likely cause the State to compensate individuals or entities for revenue lost as a result of the State's assumption of the oil and gas interests. Similarly, the loss of those interests would reduce future revenue. By limiting the claims, the bills would reduce both the expenses and the loss of revenue.

The State will likely realize some increase in severance tax revenue as a result of successful claims under the recent court decisions. However, the State also will lose royalty income from the oil and gas interests. Because the royalty income would exceed any potential severance tax liability, the net change would be a loss of revenue to the State. As a result, while the bills would cause the State to forego the additional severance tax revenue, the net impact would be that the State would lose less total revenue under the bills than under the current state of the law.

Generally, the bills would have no effect on local units, although local units that have foreclosed on property and retained it would be subject to the same types of fiscal impacts (excluding those related to the severance tax) as the State.

Date Completed: 9-14-06

Fiscal Analyst: David Zin

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