



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

**BILL ANALYSIS**

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

Senate Bills 1408 and 1409 (as introduced 9-5-06)
Sponsor: Senator Patricia L. Birkholz (S.B. 1408)
Senator Liz Brater (S.B. 1409)
Committee: Natural Resources and Environmental Affairs

Date Completed: 9-12-06

CONTENT

Senate Bill 1408 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 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 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.
- Exempt from foreclosure the interests of a lessee or an assignee 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.

The bills are described below in further detail.

House Bill 1408

Under Public Act 42 of 1963, any interest in oil or gas in land owned by a person other than the owner of the surface, that has not been sold, leased, mortgaged, or transferred by instrument recorded with the county register of deeds for a period of 20 years (in the absence of the issuance of a permit to drill an oil or gas well by the Department of Environmental Quality) is deemed abandoned, unless the owner within 20 years of the last sale, lease, mortgage, or transfer of record or the last issuance of a drilling permit or actual production or withdrawal of oil or gas, records a claim of interest under Section 2 (described below).

Under the bill, notwithstanding any other provision of the Act to the contrary, if a judgment of foreclosure were entered under the General Property Tax Act for the nonpayment of delinquent taxes levied on property, an oil or gas interest in the property held by a person other than the owner of the surface would not be preserved from foreclosure unless that

interest were sold, leased, mortgaged, transferred, reserved, or subject to a claim of interest under Section 2 and an instrument evidencing the sale, lease, mortgage, transfer, reservation, or claim of interest were recorded in the office of the register of deeds in the county in which the property was located during the 20-year period immediately preceding the date a foreclosure petition was filed.

Under Section 2, a person may preserve any interest in oil or gas by recording in the county register of deeds office within the 20-year period specified in Public Act 42 a written notice stating that the owner desires to preserve the interest and does not intend to abandon it. A person holding interests in oil or gas in any land for use in underground gas storage operations may preserve the interests, as well as the rights of any lessor, by recording a written notice defining the boundaries of and the formations included in the underground gas storage field or pool within which the interests are located. Recording a written notice of such an interest operates to preserve it from termination under the Act for 20 years after the recording. At the end of the 20-year period, the interest in oil or gas is deemed abandoned if, during that 20-year period, the nondormant character of the interest has not been evidenced by sale, lease, mortgage, or transfer by instrument recorded in the county register of deeds office. In the absence of prior abandonment, an interest in oil or gas in any land may be preserved indefinitely from abandonment by the filing of the notices or the performance of any of the acts specified in the Act evidencing nondormancy of the interest in oil or gas within each succeeding 20-year period.

The bill would amend Section 2 to refer to a person other than the owner of the surface, in the provision that allows a person holding oil or gas interests for use in underground gas storage operations to preserve the interests, and the interests of a lessor, by recording a notice. The bill also would refer to an interest in oil or gas in any land owned by any person other than the owner of the surface, in the provision under which an interest in oil or gas may be preserved indefinitely by the filing of the notices or the performance of the acts specified in the Act.

Senate Bill 1409

Notice of Hearing

The General Property Tax Act sets forth the process for foreclosing on certified abandoned property and property that is delinquent for taxes, interest, penalties, and fees. Under this process, a foreclosing governmental unit must file a petition with the circuit court, seeking a judgment vesting absolute title to the property in the governmental unit. The court clerk must schedule a hearing on the petition.

Annually, immediately after the forfeiture of property to the county treasurer, the foreclosing governmental unit must initiate a search of records to identify the owners of an interest in the property who are entitled to notice of the foreclosure hearing and the show cause hearing under Section 78j. (Under that section, the governmental unit must hold a hearing before the foreclosure hearing; the owner and anyone with a property interest in the forfeited property may appear at the show cause hearing and redeem the property or show cause why absolute title should not vest in the governmental unit.) After the search, the governmental unit must send a notice to the owners and to a person entitled to notice of the return of delinquent taxes.

The required notice must contain specified information, including the date and time of the hearing on the foreclosure petition, and a statement that unless the forfeited unpaid delinquent taxes, interest, penalties, and fees are paid by the March 31 immediately following the entry of a foreclosure judgment, or in a contested case, within 21 days of the entry of a judgment, the title to the property will vest absolutely in the foreclosing governmental unit.

Under the bill, the notice also would have to include a statement that all existing interests in oil or gas in that property would be extinguished, except for the following:

- The interests of a lessee or an assignee of a lessee under an oil or gas lease in effect as to that property or any part of that property if the lease were recorded in the office of the register of deeds in the county in which the property was located before the date the foreclosure petition was filed.
- Interests preserved as provided in Section 1(3) of Public Act 42 of 1963.

(Under Senate Bill 1408, Section 1(3) contains the provision under which an oil or gas interest held by a person other than the owner of the surface would not be preserved from foreclosure, if a foreclosure judgment were entered for the nonpayment of delinquent taxes, unless the interest were sold, leased, etc. and an instrument evidencing that transaction were recorded within 20 years before the foreclosure petition was filed.)

Entry of Judgment

Under the General Property Tax Act, a foreclosure judgment must specify that all existing recorded and unrecorded interests in the property are extinguished, except a visible or recorded easement or right-of-way, private deed restrictions, or restrictions or other governmental interests imposed under the Natural Resources and Environmental Protection Act, if all forfeited delinquent taxes, interest, penalties, and fees are not paid by the March 31 following the entry of a foreclosure judgment, or, in a contested case, within 21 days of the entry of a judgment. The bill would add to the exceptions the interests of a lessee or an assignee of a lessee under a recorded oil or gas lease, and interests in oil or gas in that property that were owned by a person other than the owner of the surface that had been preserved as provided in Section 1(3) of Public Act 42 of 1963.

Title to the Property

Under the General Property Tax Act, fee simple title to property set forth in a foreclosure petition on which forfeited delinquent taxes, interest, penalties, and fees are not paid by the March 31 following entry of a judgment, or in a contested case within 21 days, vest absolutely in the foreclosing governmental unit, and the governmental unit has absolute title to the property. The bill specifies that this would include all interests in oil or gas in that property except those of a lessee or an assignee of a lessee under an oil or gas lease in effect as to that property or any part of that property if the lease were recorded in the office of the register of deeds in the county in which the property was located before the date the foreclosure petition was filed, and interests preserved as provided in Section 1(3) of Public Act 42 of 1963.

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. Historically, the State has argued that such interests are extinguished—even if recorded separately. 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. 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 loss 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.

Fiscal Analyst: David Zin