

Legislative Analysis



REQUIRE AFFIDAVIT THAT NO TAXES OWED WHEN BUYING TAX-DELINQUENT PROPERTY AT AUCTION

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House Bill 5724 (Substitute H-3)

Sponsor: Rep. Gabe Leland

Committee: Intergovernmental and Regional Affairs

First Analysis (4-23-10)

BRIEF SUMMARY: The bill would allow a foreclosing governmental unit to require a person who wants to bid on an auctioned tax delinquent property to first submit an affidavit (filed with the county register of deeds) attesting that neither he or she nor any entity controlled by or associated with that person, owed any delinquent taxes on any property located in Michigan. The requirement would take effect January 1, 2011.

FISCAL IMPACT: As written, the bill would not have any direct state fiscal impact. Any local fiscal impact is likely to be small.

THE APPARENT PROBLEM:

Tax-forfeited properties refer to real estate parcels which are forfeited to the state, county, city, or other taxing jurisdictions for non-payment of real estate property taxes.

In Michigan, the General Property Tax Act provides for the forfeiture and foreclosure of tax-delinquent real property. Under the act, 71 counties have opted to act as their own foreclosing governmental unit (sometimes called an FGU), while 12 counties have opted to have the State of Michigan assume that responsibility. (Those 12 counties are Branch, Clinton, Dickinson, Eaton, Iosco, Iron, Kalkaska, Keweenaw, Livingston, Luce, Mecosta, and Shiawassee.)

As a result of the state and national housing and mortgage crisis, many tax-forfeited properties have been identified by the Department of Treasury Property Services Division and county treasurers. Generally, the property taxes are unpaid because the owners of the properties have had their mortgages foreclosed by their lenders. For example, in Genesee County about 9,000 parcels with delinquent property taxes have been tax-foreclosed since 2002. Following foreclosure, the tax-forfeited properties are sold at auctions that are conducted by the foreclosing governmental unit. See **Background Information**.

State law mandates that the foreclosing governmental unit conduct two tax-foreclosed real property auctions at least 28 days apart between the third Tuesday in July and the first Tuesday in November. At the first auction, tax-forfeited parcels are sold for a minimum bid that includes all outstanding costs (including taxes and special assessments). Parcels not sold at the first minimum-bid auction are offered at the second auction at which no minimum-bid is required.

At the second fall auction, the tax-forfeited properties are sometimes sold for as little as \$50 or \$100. Land speculators buy-up many of these low-cost tax-forfeited properties--according to testimony, sometimes hundreds--with the sole intention of trading them to make a profit. Once the speculators have the property deeds--made available by the FGU within 30 days--they do not improve the properties. Instead, they "flip" the properties quickly, selling them to buyers who are willing to pay more than the seller paid at the second auction. But, reportedly, when the properties cannot be resold by the successful bidders, they grow increasingly blighted and the taxes on them remain unpaid by their owners.

Legislation has been introduced to allow foreclosing governmental units to set a policy that would require those who bid at auction on tax-delinquent parcels to have paid all of their Michigan property tax.

THE CONTENT OF THE BILL:

House Bill 5724 (H-3) would amend the General Property Tax Act to allow a foreclosing governmental unit to require that, before a person was eligible to bid on an auctioned tax delinquent property, that person submit an affidavit attesting that neither he or she nor any entity controlled by or associated with that person, owed any delinquent taxes on any property located in Michigan. The requirement would take effect January 1, 2011.

Under the bill, if a local tax collecting unit required an affidavit for eligibility to bid on property, then an affidavit would be required of all people bidding on property, unless that property was that person's principal residence. The bill specifies that an affidavit would not be required if the property subject to the bid was the principal residence of the person bidding on the property. If the foreclosing governmental unit required an affidavit, the affidavits would be recorded with the Register of Deeds for the county in which the property was located.

If it were determined that a person who had submitted an affidavit owed delinquent property taxes in Michigan, then the foreclosing governmental unit would be required to place a *lis pendens* on the property sold to that person, under Chapter 27 of the Revised Judicature Act. Further, that person would be guilty of perjury, a misdemeanor punishable by imprisonment for not more than one year or by a fine of not more than \$5,000, or both.

In addition, the bill would extend to 60 days the time the foreclosing governmental unit had to convey the property by deed to the person bidding the highest amount above the minimum bid. Currently the time limit is 30 days.

Finally, the bill updates all references to the Department of Environmental Quality, changing them to the Department of Natural Resources and Environment.

[Note: *Lis pendens*, a Latin term meaning "a suit pending," is a written notice that a lawsuit has been filed which concerns the title to real property or some interest in that

real property. It gives notice that there is a claim on the property, and the recording informs the general public (and particularly anyone interested in buying or financing the property) that there is a potential claim against it.]

MCL 211.78m

BACKGROUND INFORMATION:

For further information about the state tax-forfeited property, visit the Michigan Department of Treasury's website at <http://www.michigan.gov/treasury> and from the left menu select "Local Government Services"; then click on "Property Tax Foreclosures."

For more information about state auctions of tax-forfeited property, visit http://www.michign.gov/documents/Auction_FAQs_105827_7.pdf

ARGUMENTS:

For:

According to the director of the National Center for Community Progress (who served until December 2009 as Genesee County Treasurer), this bill is designed to promote more responsible home ownership, and slow the proliferation of blighted properties. In counties that choose to adopt a tax-forfeiture affidavit auction policy as proposed by this legislation, those who bid on tax-forfeited property must themselves have paid all of the Michigan property tax they owe on parcels whose deeds they hold.

In addition, the bill would allow the foreclosing governmental unit 60 days (rather than 30 days) to investigate those who successfully bid at tax-forfeiture auctions, in order to ensure their property taxes are paid.

The bill would discourage the scores of unscrupulous speculators--most of whom reside outside of the community--who buy many tax-forfeited properties for as little as \$50 or \$100 a piece at the second auction, at which no minimum bid is required, intending to flip them quickly for unearned profits. Without this bill, these speculators' unimproved parcels will continue to languish on the tax rolls, and blight communities throughout the state.

POSITIONS:

The Michigan Townships Association supports the bill. (4-13-10)

The Center for Community Progress supports the bill. (4-13-10)

The Department of Treasury is neutral on the bill. (4-13-10)

The Michigan Land Title Association is neutral on the bill. (4-20-10)

The Michigan Association of County Treasurers is neutral on the bill. (4-20-10)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.