

Legislative Analysis



REVISE NOTICE REQUIREMENTS FOR DELINQUENT PROPERTY TAXES

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House Bill 4298 (reported from committee as Substitute H-2)

Sponsor: Rep. Jon Bumstead

Committee: Local Government

First Analysis (6-18-13)

BRIEF SUMMARY: The bill to allow notices to be published for two weeks (instead of three) concerning delinquent property taxes by county treasurers in a "notice publication" (including newspapers and shopping guides), and allow those published notices to be prepared as inserts. In addition to publishing notices, foreclosing governmental units could also post the tax forfeiture notices on their websites.

FISCAL IMPACT: As written, the bill would have no impact on state revenues or expenditures. To the extent that the options available to the county treasure under the bill are more cost effective than current options, local government expenditures could possibly decline by an unknown, but likely small, amount.

THE APPARENT PROBLEM:

Numerous state statutes require state and local governments and governmental agencies to publish notices and other information in a newspaper. Local governments incur considerable expense—often spending thousands of dollars each year—to comply with the requirement to publish.

Public notices include, for example, government meeting minutes, bid proposals, election notices, and public hearing announcements. In addition, publication of legal notices, such as notice of bankruptcy or foreclosure, also may be required.

For example, under Michigan's General Property Tax Law, county treasurers must publish three notices in print newspapers when property owners fail to pay their property taxes and their property is subject to tax forfeiture, a process that entails eventual sale of the property by county officials if the taxes remain unpaid for several years. (In 13 Michigan counties, the tax forfeiture process is administered by the State of Michigan, at the counties' request.)

Customarily, a statute requires publication in a newspaper of general circulation in the applicable city, township, or county, or, if there is none, then in a newspaper located in an adjoining jurisdiction.

For the purpose of these requirements, the Michigan Compiled Laws contain a definition of the term "newspaper," defining the term to mean to a published newspaper meeting specified criteria. Currently, Senate Bill 8 is under consideration in the Legislature to extend the definition of newspaper so that it includes online versions of newspapers. (The bill has passed the Senate and is awaiting action on the House floor.) Among the

criteria in the proposed definition is the criterion that at least 25 percent of the print media constitute news. Consequently, the definition does not include shopping guides, so legal notices would not be able to be published there.

Legislation has been introduced that would allow county treasurers to publish two (instead of three) notices of the properties within their jurisdictions that are subject to tax forfeiture in print media that include shopping guides. The legislation also would allow the list of properties to be printed as an insert, in all forms of published print media—whether shopping guides or traditional newspapers. Further, the legislation would require that tax forfeiture notices first be published in print publications, but then also allow county treasurers to post their tax forfeiture notices on-line (while maintaining the requirement that the notices be published in print media).

THE CONTENT OF THE BILL:

House Bill 4298 (H-2) would amend the General Property Tax Act (MCL 211.78f & 211.78i) to allow two notices (instead of three) concerning delinquent property taxes to be published by county treasurers in a "notice publication" (including newspapers and shopping guides), and also to be posted on a website maintained by the foreclosing governmental unit. A more detailed description follows.

Currently the law requires that delinquent property tax notices be mailed (first class) to the property owner and also be published in a local newspaper so the public can learn what properties are subject to forfeiture for non-payment of taxes. House Bill 4298 (H-2) would retain the requirement that property owners be notified by first class mail when their property taxes are in arrears.

Further and under the law, if the officials of a governmental unit who are foreclosing a property are unable to ascertain the owner's address, then notice must be made by publication and published for three consecutive weeks. House Bill 4298 (H-2) would require notice for two weeks (instead of three), and also allow a notice to be inserted, once each week, in a "notice publication" circulated in the county where the property is located. Under the bill, if a "notice publication" was not circulated in the county in which the property was located, then the foreclosing governmental unit would be required to insert the notice in a "notice publication" in an adjoining county.

Under the bill, the term "notice publication" is defined to mean *"a print publication for the dissemination of news or other information, including, but not limited to, a newspaper or legal newspaper, to which all of the following apply: (i) The print publication is published and distributed in not less than weekly intervals; (ii) Not less than 25 percent of the words in the print publication are in the English language; (iii) The print publication has a bona fide list of subscribers in 1 or more counties in this state or is available to the public at newsstands or other retail locations in 1 or more counties in this state, or both; (iv) The print publication accepts and publishes official and other notices; (v) The print publication regularly contains information of a public character or*

of interest or value to residents, property owners, or the general public; (vi) The print publication has been published or distributed for not less than 1 year."

Further, in addition to provision of notice in a "notice publication," the bill would allow the foreclosing governmental unit to post the notice for at least 14 days on a website, including but not limited to, a website maintained by the foreclosing governmental unit.

ARGUMENTS:

For:

This bill will allow county treasurers to provide public notice of tax forfeited properties in a more cost-effective manner. Costs would be cut by reducing the number of notices from three to two that must be published, and by allowing the list of tax-forfeited properties to be printed as an insert, for inclusion in a print publication, including a weekly shoppers' guide.

The bill is necessary because traditional news media face a changing environment due to economic conditions and technological advances. In several regions of Michigan, newspapers are no longer published, or their publication schedules have been scaled back; electronic versions have replaced print versions of the news. In other regions, there is no competition in the publishing market, and costs to provide notice are too steep for county treasurers who must curtail public expenditures.

In order to accommodate situations in which no print publication meets the current statutory criteria, or in which publication costs are prohibitive, this bill also would allow for the publication of tax forfeiture notices in all forms of print media, including shopping guides—and then also enable county treasurers to post the tax forfeiture notices online.

Against:

Opponents of the bills say only the publishers of print media who have the responsibility to gather, write, and make public authentic news can ensure that important legal documents—such as property tax forfeiture notices—are permanent and able to be archived. Weekly shopping guides cannot provide this assurance. The spokesperson for the Michigan Press Association argues that legal documents must be permanent and retrievable in the future, "in order to provide due process, especially in cases...when citizens are at-risk of losing their homes".

Opponents of the bill also express concern that citizens' due process rights will be further curtailed because the public notices of tax forfeited property would be reduced from three to two.

POSITIONS:

The Michigan Association of County Treasurers supports the bill. (6-13-13)

The Newago County Treasurer supports the bill. (4-18-13)

The Michigan Townships Association supports the bill. (4-18-13)

The Michigan Bankers Association supports the bill. (4-18-13)

The Michigan Association of Counties is neutral on the bill. (6-13-13)

The Michigan Press Association opposes the bill. (6-13-13)

The Detroit Legal News opposes the bill. (4-18-13)

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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.