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BILL ANALYSIS

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Senate Bills 582 and 583 (as enacted)

PUBLIC ACTS 82 & 83 of 2016

Sponsor: Senator Jack Brandenburg
Senate Committee: Finance
House Committee: Tax Policy

Date Completed: 6-20-16

RATIONALE

Some counties in Michigan, such as Wayne, are experiencing serious financial difficulties that might have a negative impact on the local tax collecting units within the counties. As explained below, this relates to the ability of a local unit to "borrow" money from a county's delinquent tax revolving fund.

The General Property Tax Act allows the county board of commissioners of any county to create a delinquent tax revolving fund. The county-operated fund is used to pay a local tax collecting unit the amount of delinquent taxes that are owed to the local unit. In exchange, all delinquent taxes, including interest, are payable to the county. The county is protected from losses because the local tax units remain obligated to repay the money borrowed from the fund to the county treasurer if the delinquent taxes are totally uncollectable.

A county is allowed to issue bonds to keep its delinquent tax fund healthy. If a situation jeopardized the soundness of the fund and investors would not buy bonds, however, the fund could become insolvent and, consequently, leave local units without the capacity to borrow from the county. This is of particular concern if a county is in financial distress and considered a potential candidate for bankruptcy, even if that is an unlikely possibility. To address these concerns, some proposed permitting counties to sell notes under the Revenue Bond Act, and revising the procedures and processes for counties to borrow money, issue notes, and administer a delinquent tax revolving fund.

CONTENT

Senate Bill 582 amended the General Property Tax Act to do the following:

-- **Require a county treasurer to keep any money or assets in a delinquent tax revolving fund separate from any other money, property, or assets in the custody of the county treasurer.**
-- **Prohibit the county from using the money in the fund for any purpose except paying specific local units, as outlined in the Act.**
-- **Provide that payment from the fund surplus to the county treasurer may not commence until after payment of the principal of and interest on issued notes and the expenses of borrowing to establish or continue the fund.**
-- **Provide that notes issued and sold are secured by a statutory lien on the delinquent taxes.**
-- **Create a new Section 87f under which counties may, for the period delinquent tax revenue notes secured by delinquent taxes pledged from a delinquent tax revolving fund remain outstanding, continue a delinquent tax revolving fund created under the existing provisions, and issue delinquent tax revolving notes under the Revenue Bond Act.**

Senate Bill 583 amended the Revenue Bond Act to address the process and procedures for borrowing money and issuing notes secured by delinquent tax revenue

to be collected in connection with a delinquent tax system (a delinquent tax revolving fund continued under Section 87f of the General Property Tax Act). The bill also regulates the organization of accounts of a delinquent tax system.

The bills took effect on April 12, 2016.

Senate Bill 582

Delinquent Tax Revolving Fund Creation & Administration

Section 87b of the General Property Tax Act allows a county board of commissioners to create a delinquent tax revolving fund. When the fund is established, all delinquent taxes, except taxes on personal property, due and payable to the taxing units in the county, except those that collect their own delinquent taxes after March 1, are due and payable to the county. The local taxing units are obligated to pay to the county the amount of taxes and the interest on them, and the State is obligated to pay the State Education Tax to the county. If the county does not receive the delinquent taxes for any reason, it has full right of recourse against the taxing unit or the State, as applicable, to recover the amount of the taxes and interest. After sufficient funds have been deposited into the delinquent tax revolving fund, the county treasurer is required to pay from the fund any or all delinquent taxes that are due to the county and any school district, intermediate school district, community college district, city, township, or special assessment district, the State, or any other political unit for which delinquent tax payments are due, within the time frame specified in the Act.

Any amount that is due from a local taxing unit or the State for a prior year's uncollected delinquent tax is a lien against future delinquent tax payments that may be payable to a local taxing unit or the State. The lien must be satisfied by offsetting the amount due to the county from the local taxing unit or the State when the county makes distributions from the delinquent tax revolving fund to the local taxing unit or the State in a subsequent year.

The bill specifies that a county may establish a delinquent tax revolving fund "on behalf of the taxing units in the county and, for purposes of the state education tax under the state education tax act…, the state".

The bill requires money and other property and assets held in a delinquent tax revolving fund to be kept separate from and not be commingled with any other money, property, or assets in the custody of the county treasurer. All money, property, and assets acquired by the county treasurer, whether as revenue or otherwise, must be held by it in trust for the taxing units in the county for which the taxes are levied. The county has no right, title, or interest in the delinquent tax revolving fund except for the right to payment provided for in Sections 87b(7) and 87c(3). If the county determines to borrow as outlined in the Act, that borrowing must be done on behalf of the county and its taxing units.

(Section 87b allows a county to borrow money to create a delinquent tax revolving fund under Section 87c or 87d. Section 87b(7) states that any surplus in the fund may be transferred to the county general fund by appropriate action of the county board of commissioners. Section 87c is discussed below. Section 87d allows a county to submit to its voters the question of establishing a delinquent tax revolving fund and issuing revolving fund notes.)

The Act previously required a delinquent tax revolving fund to be segregated into separate funds or accounts for each year's delinquent taxes. The bill deleted that provision. Instead, the bill requires a separate delinquent tax revolving fund to be established for each year's delinquent taxes.

Under the bill, the provisions described above do not restrict a foreclosing governmental unit from selling or transferring property under Section 78m or 78r of the Act. (Section 78m contains provisions regarding, among other things, the sale or purchase of foreclosed tax-delinquent property by a city, village, township or county. Section 78r pertains to the acquisition and conveyance of such property by a foreclosing governmental unit.)

The bill also provides that, except for Section 87b(7), Section 87b may be superseded by Section 87f.

Borrowing & Issuance of Notes

Section 87c allows a county that has created a delinquent tax revolving fund to borrow money and issue notes to establish or continue the fund and to pay the expenses of the borrowing. If provided by separate resolution of the county board of commissioners for any year in which the county opts to borrow, there is payable from the fund surplus to the county treasurer an amount equal to the following for delinquent tax administration expenses:

-- For any delinquent tax on which the interest rate before sale exceeds 1% per month, 1/27 of the monthly interest.
-- For any delinquent tax on which the interest rate before sale is 1% per month or less, 3/64 of the monthly interest.

Under the bill, payment from the fund surplus to the county treasurer must follow payment of the principal of and interest on the notes and the expenses of the borrowing.

Previously, the Act stated that in the resolution authorizing the borrowing and issuance of notes, the delinquent taxes from which the borrowing was to be repaid had to be pledged to the payment of the principal and interest of the notes, and the proceeds of the collection of the delinquent taxes pledged and the interest on the proceeds had to be placed in a segregated fund or account and could not be used for any other purpose until the notes were paid in full, including interest.

The bill deleted that provision. Instead, if a county determines to borrow under Section 87c, the delinquent taxes from which the borrowing is to be repaid and, to the extent held in the delinquent tax revolving fund, any money and other property and assets received in connection with those delinquent taxes and revenue derived from the delinquent taxes and money and other property and assets, including any money in a note reserve fund, must be pledged as security for, and used for the payment of, the principal and interest of the notes until the notes are paid in full, including interest. Money and other property held in the delinquent tax revolving fund must be kept separate from and may not be commingled with any other money in the custody of the county treasurer.

The bill provides that Section 87c may be superseded Section 87f.

Optional Administration & Regulation of Fund

The bill added Section 87f to allow the county board of commissions of any county that has created a delinquent tax revolving fund under Section 87b, by resolution, to elect to continue the delinquent tax revolving fund under Section 87f. Except for Section 87b(7), Section 87f supersedes Sections 87b and 87c as to a delinquent tax revolving fund continued under Section 87f. A resolution passed under these provisions must authorize the county treasurer to do the following:

-- Operate the delinquent tax revolving fund for delinquent taxes returned for collection for the period during which delinquent tax revenue notes secured by delinquent taxes pledged from the fund remain outstanding.
-- In that year, issue the county's delinquent tax revenue notes pursuant to the Revenue Bond Act in an amount not to exceed that described below.

The county's delinquent tax revenue notes issued during that year may not exceed the aggregate amount of the following:

-- The delinquent taxes pledged to secure each borrowing.
-- At the option of the county treasurer and to the extent authorized in the resolution, a note reserve fund in an amount not exceeding 15% of each borrowing.
-- The cost of issuance.

The resolution authorizing the county treasurer to issue delinquent tax revenue notes pursuant to the Revenue Bond Act must be approved by the county board of commissioners and, in a charter or unified county, the chief executive officer of the county in the manner authorized under the charter or by law. The resolution must specify the following:

-- The existence of a note reserve, if any, to meet any possible future deficiencies in the note and interest redemption account created for a note.
-- The reasonable excess amount of the reserve authorized to be created to secure the delinquent tax revenue notes and the maximum size of the reserve, which may not exceed 15% of the principal amount of the notes to be issued.
-- The amount of any excess delinquent taxes, if any, that may be set to fund or provide for a reserve for future deficiencies in amounts available to repay the county's delinquent tax revenue notes.
-- Any additional security under the Revenue Bond Act (as provided in Senate Bill 583).

Upon the board of commissioners' passage of the resolution, the delinquent tax revolving fund will be continued, and the fund may be designated by the county treasurer as the "100% tax payment fund". Subsequently, all delinquent taxes, except taxes on personal property, due and payable to the taxing units in the county, except those units that collect their own delinquent taxes after March 1 by charter or otherwise, are due and payable to the county treasurer, on behalf of the taxing units in the county and the State. Money and other property and assets held in the delinquent tax revolving fund must be kept separate from and not be commingled with any other money, property, or assets in the custody of the county treasurer. All money, property, and assets acquired by the county treasurer, whether as revenue or otherwise, must be held by it in trust for the taxing units in the county for which the taxes are levied. The county has no right, title, or interest in the delinquent tax revolving fund except for the right to payment provided for in Section 87b(7) and Section 87c(3), and under Section 22a(2) of the Revenue Bond Act. (Under Section 87c(3), a fraction of the interest collected is payable to the county for delinquent tax administration expenses, if the county has borrowed for the purpose of Section 87c. Under Section 22a(2) of the Revenue Bond Act, added by Senate Bill 583, after the payment of the principal of and interest on notes payable with delinquent tax revenue, the remaining revenue may be transferred to the county general fund.)

If the county determines to borrow pursuant to Section 87c or 87d, the borrowing must be done on behalf of the county and its taxing units, and the primary obligation to pay to the county treasurer the amount of taxes and the interest on the taxes rests with the local taxing units and the State for the State Education Tax. If, for any reason, the county treasurer does not receive the delinquent taxes that are due and payable to the county treasurer on behalf of the taxing units in the county and the State, the county treasurer has full right of recourse against the taxing unit or the State for the State Education Tax to recover the amount of the delinquent taxes and interest at the rate of 1% per month, or fraction of a month, or a lower rate as established by resolution of the board of commissioners until repaid to the county treasurer by the taxing unit.

If the county treasurer borrows to provide funds for those payments, however, the interest rate may not exceed the highest interest rate paid on that borrowing. If the board of commissioners reduces the interest rate on the recovery of uncollected delinquent taxes as provided above, that decrease does not apply to any year's delinquent taxes when borrowing against that year's delinquent taxes occurred before the board of commissioners adopted the resolution. Any amount that is due from a local taxing unit or the State for a prior year's uncollected delinquent tax is a lien against any future delinquent tax payments that may be payable to a local taxing unit or the State. The lien must be satisfied by offsetting the amount due to the county from the local taxing unit or the State when distributions from the delinquent tax revolving fund are made by the county treasurer to the local taxing unit or the State in a subsequent year. A resolution or agreement previously executed or adopted to that effect is validated and confirmed. For delinquent tax under the State Education Taxes Act, the county may offset uncollectible delinquent taxes against collection of the State Education Tax received by the county and owed to the State under that Act. The fund must be segregated into separate funds or accounts for each year's delinquent taxes.

The delinquent taxes returned to the county treasurer will remain the property of the local units of government, and the county treasurer will serve solely as a collection agent for those delinquent taxes, with a county treasurer or other foreclosing governmental unit authorized to perform collection functions under Sections 78 to 78s. (Those sections prescribe the procedures for the return of tax-delinquent property to a county treasurer, the placement of a lien on the property, forfeiture of the property, and the eventual foreclosure and sale of the property.) All of the taxes, interest, fees, and charges required to be collected by the county treasurer by the General property Tax Act related to delinquent taxes will remain in full force and effect in the event Section 87f applies. Subject to the limitations of Section 87f, the county treasurer has the power to borrow money and issue delinquent tax revenue notes as permitted by the Revenue Bond Act, for the purpose of continuing the delinquent tax revolving fund.

Delinquent tax revenue notes issued pursuant to the Revenue Bond Act must be secured by a statutory lien on the delinquent taxes from which the borrowing is to be repaid and all other property and assets and any revenue derived from the delinquent taxes and other property and assets that are held in the delinquent tax revolving fund. The lien will automatically attach without further action or authorization from the county. The lien on the delinquent taxes and all other property and assets that are held in the delinquent tax revolving fund and any revenue derived from those sources will be valid and binding from the time the notes are executed and delivered. The lien will automatically attach and be effective, binding, and enforceable against the county, its successors, transferees, and creditors, and all others asserting rights, regardless of whether those parties have notice of the lien and without the need for any physical delivery, recordation, filing, or further act. In addition, the amounts collected that are subject to the lien must be held in trust for the owners of the notes authorized by these provisions.

Any property eligible to be conveyed and properly conveyed to a land bank fast track authority as tax reverted property, as defined under the Land Bank Fast Track Act, or to the State or a person, city, village, township, or county pursuant to Section 78m or 78r of the General Property Tax Act, must be released from any lien created under Section 87f.

Senate Bill 583

Borrowing, Sale, & Administration of Notes

The Revenue Bond Act allows a public corporation to issue bonds or notes for public improvements.

The bill specifies that a county treasurer in any county that has continued a delinquent tax revolving fund under Section 87b of the General Property Tax Act, and that has authorized the issuance of notes under the Revenue Bond Act pursuant to Section 87f of the General Property Tax Act, may by order of the county treasurer and without a vote of the electors, borrow money and issue its revenue notes on behalf of itself and the local units of government secured by delinquent tax revenue from the county's delinquent tax revolving fund.

(The bill defines "delinquent tax revenues" as the delinquent taxes, interest, penalties and fees, and chargebacks of uncollected delinquent taxes due or to become due to local units of government to be collected by a county treasurer as agent for the local unit in connection with a delinquent tax system and pledged to any borrowing by a county treasurer under the Revenue Bond Act. The term does not include fees, charges, and other amounts due and payable to the county treasurer under Section 87c of the General Property Tax Act. "Delinquent tax system" means the delinquent tax revolving fund in any county created and designated under Section 87b of the General Property Tax Act, and continued under 87f of that Act.)

In the order authorizing the borrowing and issuance of notes, the delinquent tax revenue from which the borrowing is to be repaid must be pledged as security for the payment of the principal and interest on the notes. Money and other property held in the delinquent tax revolving fund, including collections on the delinquent tax revenue, must be kept separate from and may not be commingled with any other money in the custody of the county treasurer. The segregated fund or account must be established as a part of the delinquent tax revolving fund and be accounted for separately on the books of the county treasurer.

The proceeds of the notes must be placed in and used as the whole or part of the delinquent tax revolving fund established under Section 87b of the General Property Tax Act after the expenses of borrowing have been deducted. The notes issued pursuant under these provisions must be in an aggregate principal amount not exceeding the aggregate amount of all of the following:

-- The delinquent tax revenue pledged, exclusive of interest.
-- At the option of the county treasurer, and to the extent authorized under Section 87f of the General Property Tax Act, a note reserve fund in an amount not to exceed 15% of each borrowing.
-- The cost of issuance.

The notes must bear interest not exceeding 14.5% per annum; and be in those denominations, and mature on the date not exceeding six years after their date of issue, as the county treasurer by order determines. ("Order" means the legislative enactment of a county treasurer's powers under the Revenue Bond Act.)

The sale and award of notes must be conducted and made by the county treasurer at a public or private sale, as described in the bill.

If the county board of commissioners provides by resolution, the notes also may be limited tax full-faith and credit obligations of the county subject to the State Constitution as to the levying of any taxes not authorized by the voters or by law unless the county has held an election pursuant to Section 87d of the General Property Tax Act, permitting the county to pledge its unlimited taxing power for the purpose of providing money for the delinquent tax revolving fund. If the proceeds of the taxes pledged are not sufficient to pay the principal and interest of the notes when due, the county must impose a general ad valorem tax without limitations as to rate or amount on all taxable property in the county to pay the principal and interest, and may reimburse itself from delinquent taxes collected.

The notes may be secured additionally by a pledge of the county's general fund if the county board of commissioners provides by resolution. The notes must be designated general obligation limited tax notes, and will be the full faith and credit obligations of the county issuing them. If the proceeds of the taxes and interest and, when pledged, county property tax administration fees, or note reserve fund are not sufficient to pay the principal and interest, when due, the county must pay the principal and interest from its general funds or any additional tax that may be levied within its constitutional and statutory debt limits, and the county may subsequently reimburse itself from delinquent taxes. The county's obligation to pay from its general funds must be its first budget obligation and provided for in the borrowing resolution, in specific language stated under the bill.

Interest on the notes may be payable at any time provided in the order, and may be set, reset, or calculated as provided in the order.

If the treasurer so authorizes in the order authorizing the notes, any notes issued may be secured in whole or in part under a trust or escrow agreement. That agreement may authorize the trustee or escrow agent to make investments of any type authorized in the agreement.

Notes issued under the Revenue Bond Act are exempt from the Revised Municipal Finance Act.

Delinquent Tax Revenue

The bill requires delinquent tax revenue to be fixed before the issuance of the notes. The revenue must be sufficient to provide for both of the following:

-- The payment of the interest on and the principal of notes payable from the delinquent tax revenue when the notes become due and payable.
-- The creation of any reserve for the notes as required in the order authorizing their issuance.

Statutory Lien

Notes issued and sold under these provisions will be secured by a statutory lien on the delinquent taxes and, to the extent held in the delinquent tax revolving fund, on all other property and assets and any revenue derived from the delinquent taxes and other property or assets. The lien will automatically attach without further action or authorization by the county treasurer. The lien on the delinquent taxes and all other property and assets and any revenue derived from the delinquent taxes and other property or assets that are held in the delinquent tax revolving fund will be valid and binding from the time the notes are executed and delivered. The lien will automatically attach and be effective, binding, and enforceable against the county, the county treasurer, its successors, transferees, and creditors, and all others asserting rights in the secured property, irrespective of whether those parties have notice of the lien and without the need for any physical delivery, recordation, filing, or further act. In addition, the amounts collected that are subject to the lien must be held in trust for the owners of the notes.

Any property eligible to be conveyed and properly conveyed to a land bank fast track authority as tax reverted property, as defined under the Land Bank Fast Track Act, or to the State or a person, city, village, township, or county pursuant to Section 78m or 78r of the General Property Tax Act, must be released from any lien created under these provisions.

Order of Payment of Delinquent Tax Revenue

The bill requires the county treasurer, in the authorizing order, to provide that all of the delinquent tax revenue of the delinquent tax system is subject to a statutory lien and must be kept separate from and not be commingled with any other money in the custody of the county treasurer. The delinquent tax revenue of the delinquent tax system must be used to provide for the payment of the principal of and the interest on all notes payable from that revenue, as and when the notes become due and payable. This account must be designated note and interest redemption account and will be subject to the statutory lien. In respect to the allocation and use of money in the note and interest redemption account, due recognition must be given as to priority rights, if any, between different issues or series of outstanding notes. If authorized under a resolution adopted by the board of commissioners and, in a charter or unified county, the chief executive officer of the county, the county treasurer may require by order that a reasonable excess amount be set aside in the note and interest redemption account from time to time so as to produce and provide a reserve to meet any possible future deficiencies, which reserve also will be subject to the statutory lien.

Revenue remaining after the priorities are satisfied at the end of any operating year will be part of the surplus in the delinquent tax revolving fund that may be transferred to the county general fund as provided in Section 87b(7) of the General Property Tax Act.

Regulation of Accounts

The bill requires money in the several accounts of a county's delinquent tax system to be deposited as designated by the county board of commissioners of the county. Except money in the note and interest redemption account and money derived from the proceeds of sale of the notes, each of which must be kept in a separate deposit account, money in the accounts of the delinquent tax system may be kept in one deposit account, although only delinquent tax revenue of the delinquent tax system may be held in or credited to that deposit account and those funds and other property may not be commingled with any other money of or in the custody of the county treasurer. In that case, the money in the combined deposit accounts must be allocated on the books and records of the county treasurer to the various accounts in the manner provided in the authorizing order. The county treasurer may provide that the money in the accounts of the delinquent tax system be kept in separate depository accounts. The money in the note and interest redemption account must be accounted for separately.

MCL 211.87b et al. (S.B. 582)
141.103 et al. (S.B. 583)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Recovering delinquent taxes can sometimes take a long time, assuming the taxes can be collected at all. A delinquent fund is beneficial to local tax collecting units because it allows them to continue receiving money on a regular schedule through the use of the fund. However, the fund must remain healthy to support local units and continue lending to them. To achieve this, a county is allowed to borrow money through the sale of bonds.

Potential buyers of bonds and notes often analyze and speculate on the worst possible scenarios before investing. General obligation bonds, which are backed by the full-faith and credit of the county, are usually considered very safe investments. General obligation bonds, however, would not be attractive to buyers if the county were in a financial crisis. The bonds are not secured by or tied to any property interest that could constitute a secured claim in bankruptcy.

Instead, revenue bonds, or notes, become the favored purchase for buyers if bankruptcy is a possibility or occurs. Revenue obligation notes are protected and secured by collateral in a particular income source. Issuing these notes would allow a troubled county, such as Wayne County, to continue receiving funds to support local units if the county were in bankruptcy.

Many local units in Wayne County depend on its delinquent tax revolving fund, and might not have enough money to meet their needs without receiving assistance from the fund. The bills give counties more options to keep a delinquent tax revolving fund healthy even during a financial crisis or bankruptcy.

In addition, other provisions of the bills, such as those creating a statutory lien on delinquent tax collections, enhance the security of investors. This may lessen any reluctance to buy counties' bonds or notes and potentially reduce the counties' interest rates.

Legislative Analyst: Drew Krogulecki

FISCAL IMPACT

The bills will tend to result in lower debt service costs for county delinquent tax systems. The establishment of a statutory lien on delinquent tax collections pledged to repay delinquent tax anticipation notes issued under existing borrowing authority will increase the security of those debt instruments and tend to reduce borrowing costs for a county delinquent tax revolving fund. The new optional method of issuing delinquent tax anticipation notes under the Revenue Bond Act may lower costs for a county with some conditions of financial distress. Typically, revenue bonds have higher interest rates than general obligation bonds or notes; however, when credit market participants perceive a risk of municipal bankruptcy, revenue bonds may carry lower interest rates because the revenue stream dedicated to repay the revenue bonds (in this case, delinquent tax collections) is less likely to be impaired in a bankruptcy proceeding. The decision to issue notes under this method will rest with the county treasurer. The amount of savings will depend on market conditions at the time of debt issuance and the volume and frequency of borrowing.

Fiscal Analyst: Elizabeth Pratt

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.