



**House
Legislative
Analysis
Section**

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TAX REVERSION AMENDMENTS

House Bill 4708 as introduced
Sponsor: Rep. Artina Tinsley Hardman

House Bill 4709 (Substitute H-1)
Sponsor: Rep. Randy Richardville

House Bill 4710 (Substitute H-1)
Sponsor: Rep. Robert Gosselin

House Bill 4711 (Substitute H-1)
Sponsor: Rep. Lauren Hager

House Bill 4712 (Substitute H-1)
Sponsor: Rep. Julie Dennis

House Bill 4713 (Substitute H-1)
Sponsor: Rep. Alan Sanborn

House Bill 4714 (Substitute H-1)
Sponsor: Rep. Leon Drolet

House Bill 4715 (Substitute H-1)
Sponsor: Rep. Bill McConico

House Bill 4716 (Substitute H-1)
Sponsor: Rep. Patricia Birkholz

House Bill 4717 (Substitute H-1)
Sponsor: Rep. Judson Gilbert II

House Bill 4718 (Substitute H-1)
Sponsor: Rep. Ruth Ann Jamnick

**Committee: Local Government and
Urban Policy**

First Analysis (5-9-01)

THE APPARENT PROBLEM:

Public Act 123 of 1999 amended the General Property Tax Act to establish a new tax reversion process, which provides that property that is delinquent for taxes levied after December 31, 1998 is subject to forfeiture, foreclosure, and sale over a three-year period. Under the law, the "old tax reversion process" takes up to six years and is being phased out as the new tax reversion process takes full effect. The old tax reversion process will fully expire on December 31, 2003.

People involved with the implementation of the law have begun to confront and to anticipate certain technical details that they believe will limit the law's effectiveness, including: cases where it is unclear whether the old or the new tax reversion process applies; potential misreadings of (and/or ambiguities in) specific provisions; and cumbersome requirements.

THE CONTENT OF THE BILLS:

The bills would amend the General Property Tax Act (MCL 211.7u et al.) to make a number of amendments to the provisions of Public Act 123 of 1999.

House Bill 4713 would amend section 59 of the General Property Tax Act in two ways. First, it would ensure its consistency with the new process of forfeiture, foreclosure, and sale of tax delinquent property as established by sections 78 to 79a. Currently, section 59 appears to allow a person, under certain conditions, to redeem tax delinquent property after the redemption period has expired under section 78g. House Bill 4713 would clarify that the redemption period expires when the tax delinquent property is sold at a tax sale or bid off to the state, if it is subject to the old tax reversion process. The redemption period would expire 21 days after a judgment of foreclosure has been entered by the circuit court if it is subject to the new tax reversion process.

House Bills 4708-4718 (5-9-01)

The bill would also authorize county treasurers to collect interest computed from the March 1 after the taxes were assessed at the rate of 1 percent per month or fraction of a month and 4 percent of the delinquent taxes as a county property tax administration fee for taxes levied on delinquent real property before January 1, 1999 and for all taxes levied on delinquent personal property. Currently, the law does not give the county treasurer authority to collect interest and fees on delinquent personal property taxes levied after December 31, 1998. (This amendment is not specific to the tax reversion process; rather, it appears to correct an inadvertent change in the authority of the county treasurer that was made when the new tax reversion process was established.)

House Bill 4717 would amend section 60 of the General Property Tax Act to expedite the transition from the old tax reversion process to the new process. Currently the law requires county treasurers to hold tax sales each May, except for May 2000 and May 2001, for taxes levied before January 1, 1999. (Effectively, this means that county treasurers must hold tax sales during May 2002 and May 2003. The law permits county treasurers to cancel the tax sales in May 2000 and May 2001.) At the tax sale, property that is delinquent for taxes assessed in the third year preceding the sale or in a prior year is to be offered for sale. The bill would prohibit counties from holding tax sales after May 1, 2001. It would also apply the new tax reversion process to any property that has been returned for delinquent taxes and that was not offered at a tax sale on or before May 1, 2001. Any tax delinquent property that was not sold on or before May 1, 2001 would be subject to forfeiture, foreclosure, and sale as provided in the new tax reversion process.

The bill would also clarify that the state has authority to enforce its lien for unpaid taxes under the new process for the collection of delinquent taxes. Currently section 60 specifies only that the state has this authority in the sale of liens on property for delinquent taxes, which may appear to apply only to the old process.

House Bill 4715, in conjunction with House Bill 4717, would subject to the new tax reversion process any property that is delinquent for taxes levied before January 1, 1999 and that was not sold on or before May 1, 2001.

House Bill 4712 would amend section 124 of the General Property Tax Act to transfer from the auditor general to the Department of Treasury all duties in relation to taxes levied, assessed, collected, returned

as delinquent, and sold or to be sold as required under the old tax reversion process. Thus, the section would only apply to property that is delinquent for taxes levied before January 1, 1999 and that is offered for sale at a May tax sale as established by section 60. The bill would provide for the repeal of section 124 effective December 31, 2003. House Bill 4712 would also repeal sections 61a, 62, 63, 64, 65, 66, 88, 95, 104, 106, 115, 130, and 140 of the act effective December 31, 2003. These sections concern the old tax reversion process.

House Bill 4716. Section 78 of the General Property Tax Act gives each county the option of having its treasurer act as the agent of the foreclosure process or electing for the state to foreclose tax delinquent property that has been forfeited to the county treasurer. Counties that exercise the first option are referred to as “opt-in” counties because they have opted to participate in the foreclosure process, whereas counties that elect to have the state foreclose such property are referred to as “opt-out” counties. Thus, the term “foreclosing governmental unit” can refer to either the county treasurer or to the state, depending on whether the county has “opted in” to or “opted out” of the foreclosure process.

House Bill 4716 would amend section 78m in two ways. First, it would add a provision to section 78m that applies to “opt-in” counties only. It would allow such counties to use the proceeds from the sale of a property that it has foreclosed for any of the following: future year foreclosure costs, in the event that the proceeds from a future year’s sales do not cover the costs; costs for the defense of title actions; and any costs of administering the foreclosure and disposition of property forfeited for delinquent taxes.

Further, House Bill 4716 would add language requiring a foreclosing governmental unit to record a deed for any transfer of foreclosed property, and would allow the unit to charge a fee for the cost of recording the deed.

House Bill 4709 would amend the General Property Tax Act in two ways. Section 78f requires a county treasurer to serve notice when property will be forfeited if the unpaid taxes, interest, penalties, and fees are not paid. Notices must be sent to: the person to whom a tax bill for property returned for delinquent taxes was last sent; if different, the owner of tax delinquent property; and, other parties as specified elsewhere in the act. Currently, each notice must contain the name of all persons—in the event that the notice is being sent to more than one person—to whom the notice is sent. House Bill 4709

would specify that each notice must contain only the name of the person to whom that specific notice is addressed.

Section 78f also authorizes the county treasurer to publish a newspaper notice concerning the tax delinquent property that is to be forfeited. Section 65 establishes a maximum cost for publishing such notices and certain specifications that published notices must meet. House Bill 4709 would eliminate all references to section 65 in section 78f.

House Bill 4710 would amend section 78g of the General Property Tax Act. First, it would require a county treasurer to withhold from forfeiture property that has been denied a homestead exemption under section 7cc if the property is the subject of an appeal of the denial on the March 1 forfeiture date and the owner claiming the homestead exemption has not previously appealed the denial of a homestead exemption for that property. The bill would allow a county treasurer to withhold from forfeiture property that is the subject of an appeal of the denial of a homestead exemption on the March 1 forfeiture date, whether or not the property owner has previously appealed the denial of a homestead exemption for that property or for any other reason determined by the state tax commission. The bill would authorize the state tax commission to determine the procedures for withholding such a property from forfeiture.

Second, if a certificate of forfeiture or a certificate of redemption is recorded in error, the bill would require a county treasurer to record with the county register of deeds a certificate of error, in a form prescribed by the Department of Treasury. A copy of a certificate of error would have to be transferred to the Department of Treasury if the state is the foreclosing governmental unit.

Third, the bill would specify that certificates of forfeiture and redemption payment, which are required by section 78g, would not have to be notarized and that they could be authenticated by a digital signature of the county treasurer or by other electronic means.

Fourth, the bill would clarify that if someone with a legal interest redeems a property, any unpaid taxes that have not been returned as delinquent would still have to be paid.

Fifth, section 78g currently specifies that a person with a legal interest who redeems a forfeited property does not acquire a title or interest in the property greater than that person would have had if the

property had not been forfeited to the county treasurer. Instead, the person redeeming (other than the owner) is entitled to a lien for the amount paid to redeem the property in addition to any other lien or interest the person may have, which must be recorded within 30 days with the county register of deeds. The bill would clarify that persons redeeming forfeited property other than the owner are responsible for recording the lien.

Sixth, the bill would specify that if forfeited property is redeemed, the county treasurer must issue a redemption certificate in quadruplicate in a form prescribed by the Department of Treasury. The bill would establish procedures for delivering, filing and recording each of the quadruplicate certificates if the state is the foreclosing governmental unit.

Seventh, the bill would clarify certain procedures for a county treasurer accepting partial redemption payments. It would also clarify that the redemption certificate must contain the name of the person making the final redemption payment.

House Bill 4711 would amend section 78h. It would clarify that, on or before June 15 of each tax year, a foreclosing governmental unit (i.e., the county treasurer or the state) would file a *single* petition of foreclosure with the clerk of the circuit court listing *all* property forfeited and not redeemed to the county treasurer.

Further, the law contains a provision that allows the foreclosing governmental unit to exclude from the petition of foreclosure property that is owned by a person undergoing substantial financial hardship. The bill would specify that “substantial financial hardship” would include but would not be limited to a person satisfying existing standards set forth in section 7u (which allows local officials to grant a poverty exemption to homestead property tax payers who meet certain criteria).

In addition, the bill would delete a provision requiring the foreclosing governmental unit to file certain proofs of service with the circuit court (this provision duplicates a requirement in Section 78k).

House Bill 4714 would amend section 78k. First, it would reduce the number of documents that the foreclosing governmental unit must file with the circuit court prior the date of the foreclosure hearing. Currently, the law states that if a petition for foreclosure is filed, the foreclosing governmental unit must file proof of any notice, service, or publication required under the act. The bill would require the

foreclosing governmental unit to file the following documents only: proof of service of the notice of the show cause hearing; proof of service of the notice of the foreclosure hearing; and proof of the personal visit to the property and publication.

Second, the law currently states that if the court determines that the owner of property subject to foreclosure is a minor heir, is incompetent or is without means of support, the court may withhold that property from foreclosure for one year or it may enter an order extending the redemption period as the court determines to be equitable. The bill would further allow the court to withhold property from foreclosure if the property owner is undergoing a substantial financial hardship, including, but not limited to, an owner satisfying the standards set forth in section 7u. The bill would also require the court to enter an order extending the redemption period as it determines to be equitable if it does not withhold the property from foreclosure for one year.

Third, the bill would clarify that, following foreclosure, fee simple title would vest in the foreclosing governmental unit, and all redemption rights would expire, subject to certain restrictions.

Fourth, the bill would clarify that all liens against the property, including any lien for unpaid taxes or special assessment, except future installments of special assessments and liens recorded by the state or the foreclosing governmental unit under the Natural Resources and Environmental Protection Act, are extinguished, if the property is not redeemed within 21 days after entry of a judgment for foreclosure.

Fifth, the law states that a property owner has the right to appeal a judgment of foreclosure. The appellant must file a notice of appeal with the county treasurer and pay the amount that the circuit court determined to be due to the county treasurer in the judgment of foreclosure. The law currently states that if the circuit court's judgment foreclosing property is upheld on appeal—that is, if the person who appealed the judgment loses the appeal—the amount determined to be due is to be refunded to the appellant. House Bill 4714 would provide that if the judgment foreclosing the property was affirmed on appeal, the amount that the appellant paid to the county treasurer when filing the notice of appeal would be applied automatically to the outstanding delinquent taxes, interest, penalties, and fees due on the property. Thus, the property would be considered redeemed.

Sixth, the bill would require that the foreclosing governmental unit record with the register of deeds in the county in which the property is located a notice of judgment—rather than the judgment itself—for each parcel of property. It would authorize the Department of Treasury to determine how the notice of judgment is to be recorded.

House Bill 4718. Under current law, a foreclosing governmental unit is required to conduct a title search to identify any owner of a property interest in a tax delinquent property that has been forfeited and is to be foreclosed. The foreclosing governmental unit is then required, among other things, to serve notice of a show cause hearing and foreclosure hearing for each property that is to be foreclosed to each property owner. The foreclosing governmental unit must also visit personally each such property to determine whether or not it is occupied. The law also allows a foreclosing governmental unit to contract with a title insurance company or an agent licensed to conduct business in the state to perform the title search and the other functions set forth in section 78i.

House Bill 4718 would amend section 78i of the General Property Tax Act in several ways. First, it would specify that the title search must be initiated before, rather than completed by, May 1 immediately succeeding the date that the property was forfeited. Second, the bill would eliminate the restrictions on the agent that a foreclosing governmental unit may choose; the agent would not need to be a title insurance company or a licensed agent.

Third, the law currently states that if the owner of a property interest's address cannot be ascertained or the property owner cannot be served notice, notice of the show cause hearing and the foreclosure hearing must be published and circulated in the county in which the forfeited property is located. If no paper is published in that county, publication must be made in a newspaper published and circulated in an adjoining county, and proof of publication, by affidavit of the printer or publisher of the newspaper, must be recorded with the register of deeds in the county in which the property is located. House Bill 4718 would eliminate the requirement that the foreclosing governmental unit record this proof of publication. It would also eliminate references to section 65, which establishes a maximum cost for publishing such notices and certain specifications that published notices must meet.

Fourth, currently section 78i states that the foreclosing governmental unit (or its authorized representative) must record certain documents with

the register of deeds in which the property is located. Specifically, the foreclosing governmental unit must record with the register of deeds proof of service of the notice of the show cause hearing, proof of service of the notice of the foreclosure hearing, and proof of the personal visit to the property. House Bill 4718 would eliminate this subsection. (Note that House Bill 4714 would require file proof of service of these documents with the circuit court as part of the foreclosure process.)

Fifth, House Bill 4718 would eliminate the requirement that the foreclosing governmental unit provide the title insurance company or agent with proof of the service of notice of the show cause and foreclosure hearings and proof of the personal visit to the property. In so doing, it would also eliminate the company's or agent's corresponding obligation to notify the foreclosing governmental unit in writing of any deficiency in service. Instead, it would require a foreclosing governmental unit (or the agent with which it has contracted) to take reasonable steps in good faith to correct any deficiency that it does discover at least 30 days before the show cause hearing.

Sixth, it would eliminate the requirement that each notice of the show cause and foreclosure hearings for a forfeited property must include the names of all of the persons who are entitled to receive notice of the show cause and foreclosure hearings for that property. Instead, each notice would only have to include the name of the person to whom that specific notice is addressed.

House Bill 4708 would amend section 78o of the General Property Tax Act in two ways. First, section 78i of the act requires the foreclosing governmental unit to attempt to ascertain the address of each owner of a property interest in a parcel of property forfeited to the county treasurer. Section 78o requires the state treasurer to prescribe the form in which the notice and proof of service of the show cause and foreclosure hearings are to be recorded with the register of deeds. Currently, this document is required to describe all steps taken to identify the addresses of the persons entitled to notices. The bill would eliminate the requirement that all steps taken to identify the addresses of persons entitled to notices be included on the required form.

Section 78i currently requires the foreclosing governmental unit to record with the register of deeds proof, by affidavit of the printer or publisher of the newspaper, that a newspaper notice has been published, in the event that a property owner cannot

be located or contacted. House Bill 4718 would eliminate this requirement, and House Bill 4708 would relieve the state treasurer of the duty to prescribe the form of the affidavit of publication.

MCL 211.78i and 211.78o

BACKGROUND INFORMATION:

According to the Citizens Research Council, in its report entitled "Delinquent Property Taxes as an Impediment to Development in Michigan" issued in April 1999, two barriers to redevelopment loom especially high as urban pioneers seek a renaissance of reinvestment and resettlement in Michigan's cities: environmental contamination and "tax delinquent and reverted properties which are subject to lengthy and sometimes interminable stretches of time before they are restored to productive status." The report points out that "at its barest essence, the debate over the delinquent property tax process is one of property rights vs. a community's ability to return properties to the tax rolls." The report called for some degree of reform of the old tax reversion process, which took up to six years.

Public Act 123 of 1999 established a new tax reversion process, which provides for the forfeiture, foreclosure, and sale of property that is returned for delinquent taxes over a three-year period. The new tax reversion process works roughly as follows: summer and winter property tax payments are due on July 1 and December 1 in most Michigan communities. If property tax payments are not made by March 1 of the following year, they become delinquent. On the following June 1, September 1, and February 1, the county treasurer must send notices of delinquent taxes to the property owner and other interested parties, as specified by the act. On the following March 1, if the tax delinquent property has not been redeemed, it is forfeited to the county treasurer for the total of the unpaid taxes, interest, fees, and penalties. At this point, new interest rates, fees, and penalties apply. By May 1, the foreclosing governmental unit—i.e., the county treasurer or the state, if the county has decided to "opt-out" of the foreclosure process—must conduct a title search to identify all owners of property interests. Each owner of a property interest is entitled to subsequent notices informing them of the various steps in the foreclosure process.

On June 15 of that year the foreclosing governmental unit must file a petition of foreclosure with the circuit court listing the properties that have been forfeited and that have not been redeemed. It may exclude

from the petition of foreclosure properties held by minor heirs or persons who are incompetent or without means of support until a guardian is appointed. It may also exclude from the petition properties held by persons undergoing substantial financial hardship. The petition of foreclosure must seek a judgment in favor of the foreclosing governmental unit for the unpaid delinquent taxes, interest, fees, and penalties. It must also request that the tax delinquent property be vested in the foreclosing governmental unit without right of redemption. All property owners (as well as others with an interest in the property as specified by the act) must be served notice of a show cause hearing and a foreclosure hearing, where they have the right to contest the validity or correctness of the forfeited unpaid delinquent taxes, interest, penalties, and fees. If the petition of foreclosure goes uncontested, the circuit court must enter a judgment on the petition no later than ten days after March 1 of the following year. If the petition of foreclosure is contested, the circuit court must enter a judgment on the petition no later than ten days after the conclusion of the hearing for the contested case.

Once a judgment has been entered, it may be appealed by either the foreclosing governmental unit or the person claiming to have a property interest in the property foreclosed. The circuit court's judgment foreclosing property is to be stayed until the court of appeals has reversed, modified, or affirmed that judgment. To appeal the circuit court's judgment foreclosing property, a person appealing the judgment must pay to the county treasurer the amount determined to be due to the county treasurer under the judgment within 21 days after the circuit court's judgment is entered, together with a notice of appeal. If the circuit court's judgment is affirmed on appeal, the amount determined to be due is to be refunded to the person who appealed the judgment. If the circuit court's judgment is reversed or modified on appeal, the county treasurer must refund the amount determined to be due to the appellant, if any, and retain the balance in accordance with the order of the court of appeals.

If all forfeited delinquent taxes, interest, penalties, and fees are not paid within 21 days after a circuit court enters a judgment for foreclosure, the foreclosed property vests absolutely in the foreclosing governmental unit. The law grants the state first right of refusal to purchase the property. If the state elects not to purchase the property, a city, village, or township could purchase for a public purpose any property located within that city, village, or township set forth in judgment and subject to sale

by payment to the foreclosing governmental unit of the minimum bid. If a city, village, or township did not purchase the property the county could do so. Further provisions regarding the sale foreclosed property that vests absolutely in the foreclosing governmental unit apply.

FISCAL IMPLICATIONS:

Fiscal Information is not available.

ARGUMENTS:

For:

When Public Act 123 of 1999 was enacted, those involved with the law knew that some technical issues would eventually arise. They believed that those issues would best be addressed once they could benefit from the experience of those actively involved in implementing the law. House Bills 4708 to 4718 would make the tax reversion process operate more efficiently and effectively.

For:

The bills would help ensure that the old and the new tax reversion processes clearly apply to any given case that might arise. For instance, there is currently some confusion in the law about when redemption rights expire for a person claiming a property interest in a tax delinquent property due to a difference in the relevant provisions outlining the old and the new processes. Also, the law currently provides no mechanism for the collection of delinquent taxes levied before 1999 but not offered at a May tax lien sale under the old process due to bankruptcy, court order, assessment problems, or other reasons. Such confusions may force the state to choose between initiating or risking potentially costly litigation, or forgoing on collection of state, county, and local revenue.

For:

Eliminating excess recording requirements would lead to more efficient administration of the law and would save money for taxpayers, counties, and the state. The proposed changes would not substantially effect the procedures that the foreclosing governmental unit must follow to ensure that property owners are informed of, and involved with, any actions that affect their interests.

For:

It is important to clarify that a foreclosing governmental unit must initiate rather than complete a title search by May 1 following the forfeiture of delinquent property on March 1. A foreclosing governmental unit may not have the information necessary to initiate title searches until April 15 each year, leaving insufficient time to complete the title searches. This will complicate the tax reversion process.

For:

Currently, a foreclosing governmental unit that opts to have a contractor perform the title search and other functions pertaining to the tax reversion process must contract with a title insurance company or an agent of a title insurance company licensed to conduct the business of title insurance in Michigan. Many title insurance companies have been reluctant to participate in the new tax reversion process due to legal concerns with the current language regarding title insurers and agents. Moreover, there is no reason why the title search and other related functions should have to be performed by a contractor who is licensed to issue insurance policies. Eliminating this requirement would increase the greatly limited options that now exist.

For:

Currently only the State of Michigan has the authority to expend proceeds from tax-delinquent land sale proceeds for the defense of title actions and for other costs incurred in administering the foreclosure and disposition of forfeited property. All foreclosing governmental units should have the same authority to expend such proceeds.

For:

“Substantial financial hardship” as used in the law is too vague. This provision was intended to provide a “safety net” ensuring that the state’s interest in a more efficient tax reversion process would respect the rights of property owners who cannot afford to pay their property taxes. County treasurers have contacted the Department of Treasury seeking guidance in determining what constitutes substantial financial hardship. Moreover, fairness requires that a uniform standard be applied throughout the state. By clarifying that substantial financial hardship includes, but is not limited to, the standards for the homestead poverty exemption, the bills provide guidelines without restricting the definition to one criterion.

POSITIONS:

The Department of Treasury supports the bills. (5-8-01)

The Michigan Association of County Treasurers supports the bills. (5-8-01)

The Michigan Municipal League supports the bills. (5-8-01)

Analyst: J. Caver

■ 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.