

Legislative Analysis



TAX-DELINQUENT FORECLOSED PROPERTIES

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

Senate Bill 676 (S-3) as passed by the Senate
Sponsor: Sen. Peter J. Lucido

Analysis available at
<http://www.legislature.mi.gov>

Senate Bill 1137 (S-4) as passed by the Senate
Sponsor: Sen. Jim Runestad

House Committee: [Discharged]
Senate Committee: Finance
Complete to 12-17-20

BRIEF SUMMARY:

Senate Bills 676 and 1137 would amend the General Property Tax Act to modify the provisions regarding foreclosure on tax-delinquent property by a governmental unit, the reporting requirements, and the procedures by which a person with an interest in that property could pursue an interest in proceeds from the sale or transfer, among other things.

The enacting language for SB 1137 states that it is intended to codify the rights of a former holder of a legal interest in property to any remaining proceeds resulting from the foreclosure or sale of the property to satisfy delinquent property taxes. This right was recognized in a 2020 Michigan Supreme Court decision.¹

The bills are tie-barred together, which means that neither could take effect unless the other were also enacted.

DETAILED SUMMARY

Senate Bill 676 would modify the rules regarding tax delinquent property foreclosed upon by a governmental unit, amend the order of priority in which proceeds of a sale must be used, and introduce reporting requirements on those properties.

Currently, if a judgment vests absolute title over a tax delinquent property in the foreclosing government unit, the state has the right of first refusal to buy the foreclosed property. The act then lists, in order, the other entities that may purchase the property: if the state declines, then the city, village, or township in which the property is located, and then the county in which the property is located. The state can buy the foreclosed property at the greater of the minimum bid or its fair market value, and the other entities can purchase the property by paying the minimum bid.

Under the bill, a city authority would be added to the list of entities that could purchase the property if the state declined and if it were within the city's boundaries, and a county authority could purchase the property if the city, township, city authority, or county did not purchase it and if it were within county authority boundaries. Each of these entities would be able to purchase for the greater of the minimum bid or the fair market value of the property.

¹ *Rafaeli, LLC v Oakland County*, docket no 156849 (Decided July 17, 2020)
<https://law.justia.com/cases/michigan/supreme-court/2020/156849.html>

The bill would also remove the provision that states that the excess amount from a subsequent sale of the property by the purchasing municipal entity be returned to the delinquent tax property sales proceeds account (or to the Land Reutilization Fund if the state foreclosed on the property).

Under the bill, if the property is not transferred to the city, village, or township, the foreclosing governmental unit would retain possession of it. If the governmental unit is the state, title would vest in the Land Bank Fast Track Authority. If the governmental unit is not the state, it could transfer the property to a land bank fast track authority, convey the property, or offer it for sale.

The bill would also modify the order of priority which the proceeds of the sale could be used, with the delinquent tax revolving fund reimbursed and costs incurred by the foreclosing governmental unit paid in a specified order.

Report if the state was the foreclosing governmental unit

If the foreclosing governmental unit for a county was the state of Michigan, the bill would require the Department of Treasury to submit a report on those properties to the House and Senate committees with jurisdiction over taxation by September 30 of the second calendar year after foreclosure. The report would have to include the total number of properties ordered foreclosed at the judicial hearing for that foreclosure and not redeemed, as well as the sum of minimum bids for specified properties, total number of properties sold within certain categories, and other information. This reporting requirement would sunset (cease to have effect) after December 31, 2025.

Report if the state was not the foreclosing governmental unit

The bill would also modify the reporting requirements if the foreclosing governmental unit was not the state. It would move the report date from June 30 to September 30 of the second year after foreclosure, and require the unit to submit the report to the state treasurer. The report would have to include environmental remediation in addition to other topics currently required, such as any remaining balance, contingent costs of title, or other legal claims.

Any remaining balance would have to be used for costs incurred by the foreclosing governmental unit in connection with the forfeiture, foreclosure, sale, maintenance, repair, or remediation of the foreclosed property, the defense of title actions and other legal expenses, or the administration of the act, or for the payment of claims for remaining proceeds or other amounts ordered under SB 1137.

The report would have to include the same information as required for the report by the state, and the reporting requirement would also sunset after December 31, 2025.

Additional provisions

The bill would provide that property transferred in the ways described by the bill or retained by the foreclosing governmental unit would be exempt from the collection of taxes while held by the city, village, township, city authority, county, county authority, or foreclosing governmental unit.

Finally, the bill would expand the definition of “minimum bid” to allow the inclusion of additional expenses incurred by the foreclosing governmental unit.

MCL 211.78m

Senate Bill 1137 would specify that fees added to property for which delinquent taxes, interest, and penalties are owed would have to be used by the foreclosing governmental unit for the administration and sale process.

Additionally, the property's county treasurer must currently record a certificate with the county register of deeds for every property forfeited and not redeemed. The bill would require that the certificate include an explanation of the right of a person with an interest in the property to claim that interest in remaining proceeds after a foreclosure sale or transfer.

Under the bill, a foreclosure notice that is placed on the property and a show cause and foreclosure hearing would have to include contact information for State Bar of Michigan referral resources for legal assistance. It would also have to include an explanation of the rights of a person with an interest in the property to claim that interest in remaining proceeds after a foreclosure sale or transfer.

A person with a property interest who was properly served with notice could not assert that he or she did not receive the notice of the show cause hearing or the foreclosure hearing.

The bill would prohibit a person with an extinguished interest in foreclosed property from bringing an action for possession or recovery of the foreclosed property or for any violations of the act or any other state law, or the state or federal Constitution, more than two years after the judgment of foreclosure was effective.

The bill would allow a *claimant* to submit a notice of intention to claim an interest in any applicable remaining proceeds from the sale or transfer of property foreclosed for delinquent taxes, subject to the following:

- For foreclosed property transferred or sold as described in SB 676 after July 17, 2020, the notice of intention would have to be submitted by the July 1 following the foreclosure, and include specified identifying information.
- For foreclosed property transferred or sold as described in SB 676 before July 18, 2020, a claim could only be made if the Michigan Supreme Court ordered that its *Rafaeli* decision applied retroactively and the notice of intention would have to be submitted by the March 31 at least 180 days after any qualified order, and include specified identifying information.

Claimant would mean a person with a legal interest in property immediately before the effectiveness of a judgment of foreclosure of the property under section 78k who seeks pursuant to this section recognition of its interest in any remaining proceeds associated with the property.

By the January 31 immediately after the sale or transfer of a property foreclosed for delinquent taxes, the foreclosing governmental unit would have to send by certified mail a notice to each claimant who had notified the unit of an intention to claim an interest in remaining proceeds. The notice would have to include specified identifying information.

A claimant seeking remaining proceeds from a sale or transfer after July 17, 2020, could then file a motion with the circuit court between the February 1 following the sale or transfer date and the immediately succeeding May 15. The motion would have to indicate whether the claimant or an entity in which the claimant had an interest purchased the property under the

sale or transfer of property foreclosed for delinquent taxes and whether the claimant holds an interest in the property at the time the motion was filed. After May 15, the foreclosing governmental unit could file with the circuit court proof of service of the required notice, and specified identifying information.

A claimant seeking remaining proceeds from a sale or transfer of a property foreclosed for delinquent taxes would have to notify the foreclosing governmental unit by the March 31 at least 180 days after any qualified order. By the following July 1, the foreclosing unit would have to provide each of those claimants with a notice described above. Then, to claim any applicable remaining proceeds to which the claimant is entitled, he or she would have to file a motion with the circuit court by the following October 1, and include specified identifying information.

At the end of the claim period ending May 15 or after the receipt of a motion, the foreclosing governmental unit would have to file with the circuit court proof of service of the required notice and, for each property for which a claimant provided notice of intent to seek remaining proceeds or filed a motion, would have to list specified identifying information.

A motion by a claimant would have to provide the specific basis for the claimant's asserted interest in some or all of the remaining proceeds, and specify the status of the interest.

After the foreclosing governmental unit responds to the claimant's motion, the court would hold a hearing to determine the relative priority and value of the interest of each claimant, with the burden of proof resting on the claimant. The court would allocate remaining proceeds according to that determination, but a claimant could not be unjustly enriched at the expense of the public.

The bill states that these provisions are the exclusive mechanism for a claimant to claim and receive any applicable remaining proceeds under state law. A right to claim these remaining proceeds would not be transferable except by testate or intestate succession.

Sections 78g and 78i as amended by the bill would take effect January 1, 2021.

MCL 211.78g, 211.78i, and 211.78l and proposed MCL 211.78t

FISCAL IMPACT:

Senate Bill 1137 would extend by two years a provision allowing for the reduction of delinquent taxes owed on forfeited property under certain conditions. The extension of the delinquent tax reduction program would reduce potential local government revenues from delinquent taxes. However, for entities participating in the payment reduction program, the effective fiscal impact would depend on assumptions about the payment of delinquent property taxes both with and without the availability of the property tax reduction program. For example, if it is assumed that the property taxes would not have been collected but for the reduced payment program, the extension of the program could increase revenues for participating local governments during the two year extension. Insufficient data exist to provide an estimate, and any fiscal impact would vary by local unit.

Further, the bills would reduce local unit of government revenues by an unknown amount that would vary by jurisdiction due to the revisions in the distribution of proceeds from the sale of foreclosed property. Under current law, proceeds from the sale of foreclosed property are deposited in a statutorily specified restricted account. These proceeds are required to be used for certain purposes delineated in statute, including reimbursement of the delinquent tax revolving fund for taxes, interest, and fees and other costs related to sale, foreclosure proceedings, and maintenance of the property incurred by the foreclosing unit. After costs are paid, the remaining balance of the fund may be transferred to the county general fund. Under the bill, the remaining revenue would not be allowed to be deposited in the county general fund, but rather would be required to be used for costs incurred for the foreclosing unit in connection with the forfeiture, foreclosure, sale, maintenance, repair, or remediation of foreclosed property; the defense of title actions or other legal expenses; administration of the act; or for payment of claims for remaining proceeds or other amounts ordered under the codification of the Michigan Supreme Court ruling in *Rafaeli, LLC v. Oakland County*, docket no. 156849. There are insufficient data to estimate a statewide revenue loss for local units at this time. It is also unclear whether the *Rafaeli, LLC* order applies retroactively.

The bills would increase administrative costs for the Department of Treasury by an unknown amount. Specifically, the department would be required to generate forms for claimants making a claim for proceeds under the provisions of the bills. The department would also be required to generate and distribute the legislative reports on foreclosed properties as required under the act. It is estimated that these costs would not be significant and likely could be absorbed under current appropriations.

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