

Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

SFA



BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 776 (as enrolled)
Senate Bill 778 (as enrolled)
Sponsor: Senator Virgil C. Smith, Jr.
Senate Committee: Finance
House Committee: Tax Policy

PUBLIC ACT 378 of 1998
PUBLIC ACT 379 of 1998

Date Completed: 1-11-99

CONTENT

Senate Bill 778 created the "Michigan Tax Lien Sale and Collateralized Securities Act" to allow a municipality (the City of Detroit) to sell tax liens that are placed on property for which taxes, special assessments, and/or other levies or charges are delinquent; allow the city to create a "tax lien entity" or entities to purchase the city's tax liens; allow the city's tax lien entity to issue bonds, notes, or other obligations ("tax lien collateralized securities") whose repayment is secured by tax liens and any other funds, property, or security pledged for repayment; and exempt tax lien collateralized securities from all State taxation except inheritance and transfer taxes, and exempt from all State taxation the interest on tax lien collateralized securities. **Senate Bill 776** amended the General Property Tax Act to specify procedures whereby a person holding a tax lien from the City of Detroit, pursuant to the Michigan Tax Lien Sale and Collateralized Securities Act, also may purchase a county tax lien.

Under Senate Bill 778, a "tax lien" is an interest in or encumbrance on real property, or certain personal property (described below), that is imposed pursuant to law or judgment and that relates to unpaid ad valorem property taxes, unpaid special assessments, or other levies or charges returned as delinquent that are authorized to be collected in the same manner as ad valorem taxes. A tax lien includes interest and penalties that accrue to these taxes, assessments, or levies. (Personal property under the bill includes only buildings and improvements located upon leased lands, except where the value of the real property is also assessed to the lessee or owner; and interests owned by individuals in lands.) "Tax lien entity" of the municipality (Detroit) is an authority,

trust, or other single purpose entity created by the municipality, or in which the municipality holds a beneficial ownership interest, to purchase tax liens from the city or to issue "tax lien collateralized securities" in anticipation of the collection of tax liens. "Tax lien collateralized securities" are bonds, notes, or other obligations issued by a tax lien entity, the repayment of which is secured by tax liens and any other funds, property, or security pledged by the tax lien entity for repayment.

Following is a detailed description of each bill.

Senate Bill 778

Detroit Authority

The bill allows the City of Detroit to incorporate one or more authorities to serve as and to exercise the powers of a tax lien entity. An authority is incorporated by the adoption of articles of incorporation by the city's governing body. The articles of incorporation must be executed for and on behalf of the city by its mayor and city clerk. The articles of incorporation must state the following: the authority's name and the name of the city that incorporated it; the purpose or purposes for which the authority is created; the number, terms, and manner of selection of the authority's officers, including its governing body, which will be known as the board of commissioners; the powers and duties of the authority and of its officers; the date upon which the authority becomes effective; the name of the newspaper in which the articles of incorporation are published; and any other matters to be incorporated in the articles. Members of the city's governing body are eligible for membership in or appointment to an authority.

An authority must be directed and governed by a three-member board of commissioners selected by the city's chief executive officer. A commissioner will serve for a four-year term. The city's chief executive officer must select a commissioner to serve as chairperson of the authority. The commissioners must designate one member as secretary and adopt bylaws and rules of procedure. The board's business must be conducted at a public meeting held in compliance with the Open Meetings Act. Members of the board of commissioners may be reimbursed for reasonable actual expenses and mileage for attending meetings, as provided by the board of commissioners with the approval of the city.

An officer designated in the articles of incorporation must publish a copy of the articles once in a newspaper circulating within the city, accompanied by a statement of the right to question the incorporation of the authority in court as provided in the bill. The authority will be effective at the time provided in the articles. The validity of the incorporation of the authority will be conclusively presumed unless questioned in a court of competent jurisdiction within 60 days after the articles of incorporation are filed with the Secretary of State or published, whichever is later.

An authority has all of the powers necessary to carry out the purpose of its incorporation and those incident to its incorporation. The enumeration of any powers in the bill does not limit the general powers of the authority. An authority is not authorized to be a debtor under Chapter 9 of Title 11 of the United States Code (which provides for the adjustment of debts of a municipality under Federal laws relating to bankruptcy).

An authority and the city may enter into a contract under which the authority may acquire, sell, or otherwise dispose of property as provided under the bill. The bill states that the acquisition or sale of any building, lot, or structure, and the necessary site for the property, together with any appurtenant properties and facilities by an authority or the city is a benefit to and a legitimate public purpose of the authority and the city. An authority may acquire property by purchase, foreclosure, construction, lease, gift, or devise from a public or private entity and may hold, control, manage, sell, exchange, or lease acquired property. The governing body of the city, by a majority vote of its members, may transfer to an authority any real property, except cemetery property, owned or taken by the city. The bill specifies that the transfer and use of real property under this provision is to be considered a necessary public purpose and for the benefit of the

public.

An authority's articles of incorporation may be amended if the amendments are adopted by the governing body of the city. No amendment may impair the obligation of any bond or other contract. An amendment must be adopted, executed, and published and certified copies filed, in the same manner as provided for the original articles of incorporation.

All property owned by an authority is exempt from taxation by the State or any political subdivision of the State. An authority may contract with the city and with third parties to accomplish the objectives of the bill, and may contract with any person, firm, or corporation to service, administer, collect, and foreclose on tax liens and to maintain or sell foreclosed property.

The powers granted under the bill are in addition to those granted by any other statute or charter.

Purchase and Sale Agreement

The bill allows the City of Detroit or its tax lien entity, by resolution of the city's or the entity's governing board, to enter into one or more purchase and sale agreements for the sale of tax liens by the city and the purchase of the tax liens by the tax lien entity or a third party. A purchase and sale agreement must contain those terms, provisions, and conditions that the city or entity considered necessary or desirable. A resolution authorizing one or more purchase and sale agreements may delegate to the city's chief financial officer the power to enter into the agreements and fix the details of any agreement. The bill specifies that each sale of tax liens by the city pursuant to a purchase and sale agreement is considered a "true sale" for all purposes of State law, without recourse to the city for uncollectible tax liens. (Under the bill, "true sale" means a transfer of the city's property by which, following the transfer, the property would not be considered to be property of the city's estate in the event the city were to become a debtor under Chapter 9 of the U.S. Code (relating to bankruptcy).)

Each agreement must specify the amount to be made available to the city from the sale, which may be more or less than the face amount of the tax liens purchased by the tax lien entity or a third party, and any other amounts that may be made available to the city on a contingent basis under the terms of the agreement. An agreement may require a municipality, subject to appropriation by the city's governing body, to provide for the

payment of other fees, charges, costs, or other amounts that the city determines to be necessary or desirable to facilitate the transaction. An agreement must not require the city to pay the costs of collection of the amounts subject to a tax lien sold by the city, or the principal and interest on tax lien collateralized securities issued by the city's tax lien entity.

An agreement must provide that any obligation of the city to fund or pay the amounts provided in the agreement is not a debt of the city within the meaning of any constitutional, statutory, or charter provision, and is executory only to the extent of money available; that the city incurs no liability beyond the money available for that purpose; and that any payment obligation of the city, other than the timely payment of any money collected by it and due to it or the tax lien entity, as a result of the redemption of tax liens that are the subject of the agreement, is subject to appropriation by the city's governing body.

A resolution authorizing an agreement may require that the city establish reserves from the proceeds of the sale of tax liens, to the extent that a portion of the proceeds represents future general fund receipts necessary for future general fund purposes. A resolution also may establish separate funds for the deposit of portions of the proceeds of the sale of tax liens. The funds may be specifically designated for capital improvements, economic development, infrastructure improvements, technology improvements, collection of delinquent taxes, enforcement of tax liens, or deposit into the home rule city's rainy day fund, subject to appropriation of the city's governing body.

The city may enter into an agreement, or sell tax liens, only with respect to a tax lien for a levy or charge imposed prior to January 1, 1998; or a tax lien for a levy or charge imposed after December 31, 1997, on property for which the tax lien entity of the city or third party holds a tax lien from the city.

If the city sells tax liens related to a levy by a governmental unit other than the city, it must use the proceeds of those tax liens as payment of the taxes due from the levy by the other governmental unit or, to the extent authorized by an agreement with the city, to fund costs of collecting delinquent taxes in excess of any property tax collection fee imposed pursuant to law or charter. A school district and a city may enter into any agreement relating to the allocation of costs of collecting delinquent taxes in excess of any property tax collection fee imposed pursuant to law or charter.

The city may make certain agreements to effectuate the sale of tax liens, and to facilitate the marketing of tax lien collateralized securities issued by the city's tax lien entity; and to accept a note or other instrument issued by the city's tax lien entity or a third party evidencing any contingent amounts payable under the terms of the purchase and sale agreement. In connection with the sale or proposed sale of tax liens to the tax lien entity, the city may pay fixed or annual charges prescribed by the city, and/or all charges or expenses necessary to convert or reconvert any tax lien into a form required by the city in connection with any sale or other disposition of the tax lien. A purchase and sale agreement may not require the city to pay the costs of collecting the amounts subject to a tax lien sold by the city, or the principal or interest on tax lien collateralized securities issued by a tax lien entity of the city.

A tax lien entity or third party has all of the rights provided by law to the city to enforce and collect amounts secured by a tax lien purchased by the entity or third party from the city. Such a tax lien is a preferred or first claim upon the property in the same manner as if the tax lien were held by the city. If a tax lien is purchased, the portion of the tax lien that represents delinquent taxes, charges, and assessments is subject to interest and penalties at the same rate as interest and penalties on delinquent taxes, charges, and assessments subject to collection by the city. The maximum amount of penalties charged before and after the purchase of the tax lien may not exceed the maximum amount of penalties that may be imposed by the city for delinquent taxes, charges, and assessments subject to collection by the city. A tax lien entity or a third party that purchased a tax lien may retain any interest and penalties collected upon delinquent taxes, charges, and assessments subject to the tax lien purchased.

Tax Lien Collateralized Securities

The city's tax lien entity may, by resolution of its governing body and without a vote of the city's electors, authorize and issue tax lien collateralized securities in anticipation of the collection of tax liens for any of the following purposes:

- To purchase tax liens, including county tax liens purchased under the provisions of Senate Bill 776.
- To refund outstanding tax lien collateralized securities of the city or its tax lien entity.
- To establish reserves to secure tax lien collateralized securities.
- To pay capitalized interest, if any.

- To pay a letter of credit, bond insurance, or other credit and liquidity support facility fees, premiums, reimbursements, and expenses; fees and expenses of trustees and paying agents; other financing and issuance costs; and all other expenditures of the city's tax lien entity incident to, and necessary or convenient to, the sale and purchase of tax liens and the issuance of the tax lien collateralized securities.

A further provision in the bill states that the resolution authorizing the securities may delegate to the city's chief financial officer the power to establish, within the parameters of the resolution, the details of any issue of the securities by an appropriate certificate of the officer.

The bill provides that tax lien collateralized securities issued by the city's tax lien entity are special limited obligations of the entity, payable only from the redemption, payment, or other satisfaction of the tax liens purchased or the liquidation of the related real property, other collateral, or credit enhancement agreements pledged to secure the securities, subject to any agreements pledging any particular money, assets, or revenues of the city's tax lien entity. The securities may be secured by past, present, and future tax liens as designated by the entity.

A resolution authorizing the issuance of tax lien collateralized securities or the certificate of the city's authorized chief financial officer must establish the date or dates of issue; the maturity date or dates; the interest rate or rates, which may be on a fixed or variable rate basis; the denominations; the form and registration privileges; the manner of execution; and the terms of redemption prior to maturity. The resolution also must provide that the securities are payable at a place or places within or outside the State.

A resolution authorizing tax lien collateralized securities of the city's tax lien entity may contain the following provisions that may be a part of the contract with the holders of the securities:

- Pledging or creating a lien on all or any part of any money or assets of the city's tax lien entity, or of any money held in trust or by others for the payment of the securities.
- Providing for the custody, collection, securing, investment, and payment of any money of the tax lien entity.
- Setting aside reserves or sinking funds and regulating or disposing of reserves or sinking funds.

- Determining the application of the proceeds of the sale of any issue of securities.
- Applying limitations on the issuance of additional securities on a parity or subordinate basis, the terms upon which additional securities may be issued and secured, and upon the refunding of outstanding or other securities.
- The procedure and criteria, if any, by which the terms of any contract with the holders of tax lien collateralized securities may be amended or abrogated.
- The creation of special funds into which any money of the city or its tax lien entity may be deposited.
- Vesting a trustee with properties, rights, powers, and duties.
- Defining the acts or omissions to act that constitute a default in the obligations and duties of the tax lien entity, and providing the rights and remedies of the holders of the securities in the event of a default.
- Any other matters that affect the security and protection of the securities and the rights of their holders.

Any trust indenture or other agreement under which the securities of the city's tax lien entity are authorized to be issued may contain provisions for vesting in a trustee the properties, rights, powers, and duties that the city considers appropriate.

A sale or pledge of tax liens, earnings, revenues, other money, or assets made by the city's tax lien entity is valid and binding from the time the sale or pledge is made without any filing, recording, or other requirement of notice. The tax liens, earnings, revenues, other money, or assets pledged and received by the tax lien entity are immediately subject to the lien of the pledge without physical delivery or further act. The lien of any pledge of tax liens, earnings, revenues, other money, or assets is valid and binding against all parties having claims of any kind in tort, contract, or otherwise against the tax lien entity, whether or not those parties have notice of the lien of the pledge. A resolution or any other instrument by which a pledge is created is not required to be recorded.

Members of the city's governing body, the city's tax lien entity, or any person executing the tax lien collateralized securities is not personally liable for repayment of the securities, or subject to any personal liability or accountability arising from the issuance or nonissuance of the securities.

The city's tax lien entity is subject to the following restrictions in issuing tax lien collateralized

securities:

- The net present value of the principal and interest to be paid on tax lien collateralized securities issued to refund outstanding tax lien collateralized securities of the authority, excluding that portion of the refunding obligation used to pay the costs of issuance, must be less than the net present value of the principal and interest to be paid on the obligation being refunded as calculated using a method approved by the State Treasurer.
- A tax lien collateralized security may not appreciate, in whole or in part, in principal amount, or be sold at a discount of, more than 10%.

Tax lien collateralized securities and other obligations of the city's tax lien entity are not a debt of the State or of any municipality within the meaning of any constitutional, statutory, or charter debt limitation, and neither the State nor any municipality is liable on the securities or obligations. The securities and other obligations of the tax lien entity are not payable out of any funds other than those pledged for payment of the tax liens, and the securities and other obligations must state that fact on their face.

Tax lien collateralized securities and related tax lien purchase and sale agreements may not be required to be reviewed by any State agency, department, or bureau and are not subject to the provisions of the Municipal Finance Act.

A tax lien collateralized security may be sold at public or private sale upon terms and at prices and discounts determined by the city's tax lien entity. The entity may pay all expenses, premiums, and commissions necessary or advantageous in connection with the issuance and sale of the securities.

Whether or not the securities are of a form and character as to be negotiable instruments under the terms of the Uniform Commercial Code, the bill provides that the securities "are hereby made negotiable instruments within the meaning of and for all the purposes of the uniform commercial code...subject only to the provisions of the tax lien collateralized securities for registration."

General Provisions for Detroit

The bill allows the City of Detroit to do any of the following:

- Make and execute contracts and any other instruments necessary or convenient for the purposes of the bill, including a purchase and sale agreement entered into pursuant to the bill.
- By charter, ordinance, or resolution establish procedures for collecting delinquent taxes and enforcing tax liens including, but not limited to, reimbursement of all costs of the financing and collection by the city or its tax lien entity, including attorney's fees and service charges.
- Establish, create, form, control, or own a beneficial ownership interest in one or more trusts or other single purpose entities to facilitate the purchase of tax liens, and the issuance of tax lien collateralized securities.
- Sell or contract to sell at public or private sale tax liens, singly, in bulk, or in groups, and to enter into advance commitments with a tax lien entity or third party for the sale of tax liens for any portion of the amount owed with respect to the liens.
- Make and execute contracts for professional services to service or collect tax liens sold by the city or acquired by its tax lien entity, or to service tax lien purchase and sale agreements, including, but not limited to, attorneys, financial advisors, accountants, or due diligence providers.
- Subject to any agreement with the holders or owners of tax lien collateralized securities, modify the time of payment, interest, penalties, or fees of a tax lien owned by the tax lien entity, or of any other contract or agreement to which the city is a party.
- Establish terms and provisions for the sale of tax liens by the city to its tax lien entity or to a third party including, but not limited to, provisions specified in the bill.
- Establish terms and provisions for a tax lien purchase and sale agreement, including any terms for payment and any other matters that the city determines to be necessary, desirable, or advisable.

Senate Bill 776

The bill provides that prior to the expiration of the redemption period (the time allowed under the General Property Tax Act to redeem property that will be deeded to the State for unpaid property taxes), a person who holds a tax lien from the city pursuant to the Michigan Tax Lien Sale and Collateralized Securities Act also may purchase a county tax lien. The county tax lien must be transferred by the county or by the State to the purchaser upon receipt of an amount equal to the

delinquent taxes, charges, assessments, penalties, interest, and fees represented by the county tax lien. The provisions apply only to county tax liens on property for which the purchaser holds a tax lien from the city.

A person who purchased a county tax lien may enforce the lien and collect the amounts secured by the lien, together with any interest and penalties that accrued before or after the purchase, in any manner that the city is authorized to use to enforce and collect a tax lien for taxes collected by the city. A county tax lien sold under these provisions is a preferred or first claim upon the property in the same manner as if the city held the tax lien. A county tax lien purchaser may not take any action to enforce or collect a county tax lien that the city is not authorized to take.

If a county tax lien is purchased, the portion of the lien that represents delinquent taxes, charges, and assessments is subject to interest and penalties at the same rate as interest and penalties on delinquent taxes, charges, and assessments subject to collection by the city. The maximum amount of penalties charged before and after the purchase of the tax lien must not exceed the maximum amount of penalties that may be imposed by the city for delinquent taxes, charges, and assessments subject to collection by the city. A person who purchases a county tax lien may retain any delinquent taxes, interest, and penalties collected for delinquent taxes, charges, and assessments.

A pledge of tax liens or earnings, revenues, other money, or assets from enforcement of purchased county tax liens is valid and binding from the time the pledge is made without any filing, recording, or other requirement of notice. The tax liens, earnings, revenues, other money, or assets pledged by a person who purchased a tax lien are immediately subject to the lien of the pledge without physical delivery or further act. The lien of the pledge of tax liens, earnings, revenues, other money, or assets is valid and binding against all parties having claims of any kind in tort, contract, or otherwise against the purchaser, whether or not those parties have notice of the lien of the pledge. Any instrument by which a pledge is created need not be recorded.

A city that does not return its delinquent taxes to the county for collection pursuant to its charter must commence a civil action to foreclose its lien for any delinquent taxes, assessments, and charges subject to collection by the city on real property for which a prior lien has been obtained from the city,

pursuant to the Michigan Tax Lien Sale and Collateralized Securities Act. Foreclosure proceedings must commence within three years after the date the taxes, assessments, and charges subject to collection by the city become delinquent. Foreclosure proceedings on a lien are not required if the subsequent tax lien on the same property is conveyed; or the prior tax lien conveyed pursuant to the Michigan Tax Lien Sale and Collateralized Securities Act has been satisfied or extinguished.

The bill specifies that in addition to the other methods prescribed in the General Property Tax Act for the disposal of property upon which taxes remain unpaid, a city or village, which by its charter does not return its delinquent taxes to the county for collection, may enforce the tax liens for delinquent taxes, assessments, and charges by foreclosure proceedings or any other method authorized under statute, charter, or ordinance.

MCL 211.107 (S.B. 776)
211.921-211.941 (S.B. 778)

Legislative Analyst: G. Towne

FISCAL IMPACT

Senate Bill 776

The bill allows the City of Detroit or its tax lien entity to purchase any tax lien for delinquent taxes or other charges from the county if the property also is subject to a city tax lien. The City of Detroit then may enforce the tax lien purchased from the county in the same manner as the enforcement of a city tax lien occurs.

Senate Bill 778

The bill allows the City of Detroit to sell tax liens to a tax lien entity. The City of Detroit or its tax lien entity will be able to purchase any tax lien for delinquent taxes or other charges from the county if the property also is subject to a city tax lien. The city or tax lien entity then may enforce the tax lien purchased from the county in the same manner as the enforcement of a city tax lien occurs. In addition, the city or tax lien entity may authorize and issue tax lien collateralized securities in anticipation of the collection of tax liens. Tax lien collateralized securities and other obligations of the city or the tax lien entity will not be a debt of the State or city.

Fiscal Analyst: R. Ross

S9798\S776ES

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.