Legislative Analysis

TAX FORECLOSURE AND POVERTY EXEMPTION UNDER THE GENERAL PROPERTY TAX ACT

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Senate Bill 808 (S-1) as passed by the Senate
Sponsor: Sen. Jim Runestad

Senate Bill 809 (S-1) as passed by Senate
Sponsor: Sen. Ruth Johnson

Senate Bill 881 (S-2) as passed by the Senate
Sponsor: Sen. Stephanie Chang

House Committee: Local Government and Municipal Finance
Senate Committee: Finance
Complete to 9-21-22

SUMMARY:

Senate Bills 808, 809, and 881 would amend the General Property Tax Act to require warnings that delinquent payments submitted to the local tax collecting unit instead of the county treasurer will not prevent foreclosure, to allow foreclosing governmental units to withhold certain properties from a foreclosure petition, and to allow some poverty tax exemptions to be automatically extended, respectively.

Senate Bill 808 would require notices of delinquent taxes to include a warning that a delinquent tax payment submitted to a local tax collecting unit rather than the county treasurer cannot be applied to the delinquent amount and will not prevent foreclosure.

Under the General Property Tax Act, county treasurers are generally required to send notices of delinquent taxes to specified parties no more than 60 days before the June 1 following the date that the unpaid taxes are returned to the county treasurer as delinquent and no more than 60 days before the following September 1. Notices must include the following information:

- The person(s) to whom the notice is addressed.
- The date that property on which unpaid taxes were returned as delinquent will be forfeited to the county treasurer.
- A statement that a person who holds legal interest in the property may lose that interest as a result of the forfeiture and subsequent foreclosure proceeding.
- A legal description or parcel number of the property and street address, if available.
- The unpaid delinquent taxes, interest, penalties, and fees due on the property.
    - For the second notice, a schedule of the additional fees that will accrue on the succeeding October 1 if the unpaid delinquent taxes, interest, penalties, and fees due on the property are not paid.
- A statement that, unless those unpaid delinquent taxes, interest, penalties, and fees are paid by the March 31 after a foreclosure judgment is entered in an uncontested case, absolute title to the property will vest in the foreclosing governmental unit.

- A statement of the person's rights of redemption and notice that those rights will expire on the March 31 after a foreclosure judgment is entered in an uncontested case.

By the February 1 following the date that the unpaid taxes were returned to the county treasurer for forfeiture, foreclosure, and sale, or returned to the county treasurer as delinquent, the county treasurer must send a notice to the person to whom the most recent tax bill for the property was sent and, if different, the owner of that property. This notice must include generally the same information as listed above, except that it must specify the fees that will accrue beginning on March 1 rather than October 1.

The bill would require that all three notices also provide a warning that a delinquent tax payment submitted to a local tax collecting unit rather than the county treasurer will not be applied to the delinquent amount and will not prevent foreclosure.

MCL 211.78b, 211.78c, and 211.78f

Senate Bill 809 would also amend the General Property Tax Act to generally allow a property to be withheld from a petition from foreclosure if a payment made to the local taxing unit for taxes levied after the property was subject to foreclosure is greater than the amount needed to redeem the property, a receipt for the payment is provided, and the property had not been removed from a previous year's petition for foreclosure. The bill would also allow a foreclosing governmental unit to cancel a foreclosure if those conditions were met.

Currently, foreclosing governmental units are required to file a yearly petition with the clerk of the circuit court of the appropriate county that lists all property to be foreclosed. The petition must seek a judgment in favor of that foreclosing governmental unit that vests it absolute title in each of the properties. Foreclosing governmental units can withhold some property from the petition, such as property held by minors or incompetent heirs, property held by individuals undergoing substantial financial hardship, and property held by a person subject to a delinquent property tax installment payment plan.

Foreclosing governmental units can also cancel a foreclosure after an entry of judgment has been issued, as long as that property has not been transferred to another individual, by filing a certificate of error with the appropriate county's register of deeds. Certain conditions must be met to prompt a foreclosing governmental unit to file a certificate of error, such as the foreclosed property not being subject to taxation on the date of the assessment of the unpaid taxes for which the property was foreclosed, an erroneous or indefinite description of the property that would void a forfeiture, or an owner not being provided sufficient notice to satisfy the minimum requirements of due process.

The bill would allow foreclosing governmental units to withhold certain additional properties from a petition for foreclosure if payment has been made on that property for taxes levied after the property was subjected to foreclosure, as long as the following conditions are met:

- A receipt for the payment is provided to the foreclosing governmental unit.
- The amount paid was at least equal to the amount necessary at the time of payment to redeem the property.
- The property had not been removed from a petition for foreclosure in a prior year.

The bill would include such a payment as grounds for a certificate of error, as long as the above conditions were met. If a foreclosure were canceled under this provision, a taxing unit's lien for taxes due and the foreclosing governmental unit's right to include the property in a subsequent petition for foreclosure would not be prejudiced.

MCL 211.78h and 211.78k

Senate Bill 881 would amend section 7u of the General Property Tax Act, which allows local supervisors and boards of review to grant a "poverty exemption" to qualifying owners of ***principal residences***. A local board of review can grant a 100%, 50%, or 25% exemption, or it can grant any other percentage reduction subject to the State Tax Commission's approval.

> Generally speaking, a ***principal residence*** is an owner-occupied residence that is the owner's primary residence. The term, for purposes of the poverty exemption, also includes qualified agricultural property.

Currently, a principal residence that was exempt in tax year 2019 or 2020 remained exempt through tax year 2021 if, on or before February 25, 2021, the local assessing unit's governing body adopted such a resolution.

The bill would provide that properties that were exempted in tax years 2019, 2020, and 2021 could remain exempt through tax year 2022 if, on or before December 1, 2022, the local assessing unit's governing body adopted such a resolution.

It would grant local boards of review the sole authority in determining whether an applicant qualifies, rather than local boards of review and local supervisors. Additionally, a board of review would be able to grant a 75% exemption in taxable value for the tax year in which the exemption is granted.

If a poverty exemption for an eligible individual's principal residence was not on the assessment roll and was not denied, the July or December board of review would be required to grant either a partial or whole exemption on that residence for the immediately preceding tax year. This would constitute a "qualified error" as defined by section 53b of the General Property Tax Act. In such cases, a claim of exemption would have to be filed with the board of review on a form prescribed by the State Tax Commission and provided by the local assessing unit, accompanied by supporting documentation that establishes eligibility for the poverty exemption for the immediately preceding tax year and any additional documentation as may be required by the State Tax Commission.

MCL 211.7u and 211.53b

Senate Bills 808 and 809 are tie-barred together, which means that neither bill would take effect unless both bills were enacted.

Senate Bill 881 is tie-barred to Senate Bills 808 and 809, which means that it would not take effect unless both SB 808 and SB 809 were also enacted.

FISCAL IMPACT:

Senate Bill 808 would have no fiscal impact on state or local government. The statement requirement would be added to an existing notice requirement.

Senate Bill 809 would generally allow for the continuation of state and local property tax collections on property subject to foreclosure in the identified circumstances. In addition, by forgoing foreclosure proceedings, the local unit would realize administrative and legal savings typically attributable to foreclosure proceedings and subsequent sales. Whether these provisions would allow for temporary foreclosure delay or provide for longer term foreclosure relief cannot be determined or estimated. Moreover, the net impact of these effects cannot be determined in advance with available data. The overall impact would depend on local unit millages and the taxable value of the property.

Senate Bill 881 would reduce state and local property tax revenue by an indeterminate, but likely marginal amount due to the likelihood that there will be more poverty exemptions than there otherwise would have been. This also assumes that the party claiming the exemption would continue to pay property taxes even without the exemption. To the extent that the exemption revisions prevent a foreclosure, any fiscal impact would depend on the interplay between the costs of foreclosure and the continued payment of state and local property taxes. The overall fiscal impact for the local unit of government and state would also depend on the taxable value of the property affected and the millage rates. Because it is unknown how many poverty exemptions would be authorized solely due to the provisions in the bill, what the taxable values of those properties would be, and the appropriate local millage rates, the loss of property tax revenue to local units of government and the School Aid Fund via the state education tax cannot be estimated. While a current estimate does not exist, based on a previously reported estimate in 2019, the poverty exemption is estimated to reduce state and local revenue by approximately $6.0 million per year. The provisions of this bill would affect a small fraction of that amount.

Legislative Analyst: Holly Kuhn
Fiscal Analyst: Ben Gielczyk

■ 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.