

Act No. 379
Public Acts of 1998
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STATE OF MICHIGAN
89TH LEGISLATURE
REGULAR SESSION OF 1998

Introduced by Senators V. Smith, O'Brien, Vaughn and Peters

ENROLLED SENATE BILL No. 778

AN ACT to authorize municipalities to collect delinquent property taxes and other delinquent assessments and charges by selling the liens related to delinquent property taxes and other delinquent assessments and charges; to authorize municipalities to establish procedures for collecting delinquent taxes and enforcing tax liens; to authorize the imposition of fees, charges, interest, and penalties upon delinquent property taxes and other delinquent assessments and charges; to authorize municipalities to create certain entities or to utilize certain existing entities to facilitate the sale and purchase of liens related to delinquent property taxes and other delinquent assessments and charges; to authorize municipalities to issue certain obligations secured by liens related to delinquent property taxes and other delinquent assessments and charges; to provide for the issuance of, and terms and conditions for, obligations secured by liens related to delinquent property taxes and other delinquent assessments and charges; and to exempt the property, income, bonds, notes, and interest on bonds and notes of certain entities from certain taxes.

The People of the State of Michigan enact:

Sec. 1. This act shall be known and may be cited as the "Michigan tax lien sale and collateralized securities act".

Sec. 2. As used in this act:

(a) "Authority" means an authority created under section 9.

(b) "Incorporating unit" or "municipality" means a home rule city under the home rule city act, 1909 PA 279, MCL 117.1 to 117.38, that collects ad valorem taxes on behalf of a first class school district whose boundaries are coterminous with the boundaries of the home rule city and that does not return delinquent ad valorem taxes to the county treasurer in the county in which the home rule city is situated.

(c) "Purchase and sale agreement" means an agreement between a municipality and a tax lien entity or third party pursuant to section 4.

(d) "Tax lien" means an interest in or encumbrance on real property or personal property under section 8(c) or (d) of the general property tax act, 1893 PA 206, MCL 211.8, that is imposed pursuant to law or judgment and that relates to 1 or more of the following taxes, assessments, or levies, or that relates to interest and penalties accrued on 1 or more of the following taxes, assessments, or levies:

(i) Unpaid ad valorem property taxes.

(ii) Unpaid special assessments.

(iii) Other levies or charges that are returned as delinquent and are authorized to be collected in the same manner as provided for ad valorem taxes under the general property tax act, 1893 PA 206, MCL 211.1 to 211.157.

(e) "Tax lien collateralized securities" means bonds, notes, or other obligations issued by a tax lien entity of the municipality, the repayment of which is secured by tax liens and any other funds, property, or security pledged by the tax lien entity for repayment. Tax lien collateralized securities include certificates of participation or similar securities evidencing an ownership in the tax liens.

(f) "Tax lien entity of the municipality" means an authority, trust, or other single purpose entity created by a municipality or in which a municipality holds a beneficial ownership interest, to purchase tax liens from the municipality or to issue tax lien collateralized securities in anticipation of the collection of tax liens.

(g) "True sale" means a transfer of property of the municipality by which, following the transfer, the property transferred would not be considered to be property of the municipality's estate in the event the municipality were to become a debtor in a case under title 11 of the United States Code, 11 U.S.C. 101 to 1330.

Sec. 3. A municipality may do any of the following:

(a) Make and execute contracts and any other instruments necessary or convenient for the purposes of this act, including a purchase and sale agreement entered into pursuant to section 4.

(b) By charter, ordinance, or resolution establish procedures for collecting delinquent taxes and enforcing tax liens and establish, revise, charge, and collect fees, charges, interest, and penalties, including, but not limited to, reimbursement of all costs of financing and collection by a municipality or a tax lien entity of the municipality, including attorney's fees and service charges.

(c) Establish, create, form, control, or own a beneficial ownership interest in 1 or more trusts or other single purpose entities to facilitate the purchase of tax liens and the issuance of tax lien collateralized securities.

(d) 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 of the municipality or third party for the sale of tax liens pursuant to section 4 for any portion of the amount owed with respect to the tax liens.

(e) Make and execute contracts for professional services to service or collect tax liens sold by the municipality or acquired by a tax lien entity of the municipality or to service tax lien purchase and sale agreements, including, but not limited to, attorneys, financial advisors, accountants, or due diligence providers.

(f) 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 of the municipality, or of any other contract or agreement to which the municipality is a party.

(g) Establish terms and provisions for the sale of tax liens by the municipality to a tax lien entity of the municipality or to a third party including, but not limited to, all of the following:

(i) The price for tax liens, which may be at par, premium, or discount and payable in cash, noncash consideration, or no consideration.

(ii) The classes of property determined by the municipality to be sold to a tax lien entity of the municipality.

(iii) The covenants, representations, and warranties to be made by the municipality with respect to the tax liens.

(iv) The determination of rights of substitution and removal of tax liens previously sold, which rights of substitution shall require substitution of tax liens of not less than equivalent value.

(v) The establishment of the sale date.

(vi) Subject to the terms of the tax liens purchased, provisions regarding redemption or payment prior to the stated redemption date.

(vii) Any other matters that the municipality determines to be necessary, desirable, or advisable.

(h) Establish terms and provisions for a tax lien purchase and sale agreement, including any terms for payment and any other matters that the municipality determines to be necessary, desirable, or advisable.

Sec. 4. (1) A municipality or a tax lien entity of the municipality by resolution of the governing body of the municipality or the tax lien entity of the municipality may enter into 1 or more purchase and sale agreements for the sale of tax liens by the municipality and the purchase of the tax liens by a tax lien entity of the municipality or a third party. A purchase and sale agreement shall contain, consistent with this act, those terms, provisions, and conditions that the municipality or a tax lien entity of the municipality considers necessary or desirable. A resolution authorizing 1 or more purchase and sale agreements may delegate to the chief financial officer of the municipality the power to enter into purchase and sale agreements and fix the details of any purchase and sale agreement by an appropriate certificate of the authorized chief financial officer. Each sale of tax liens by a municipality pursuant to a purchase and sale agreement is a true sale for all purposes of state law, without recourse to the municipality for uncollectible tax liens. Each purchase and sale agreement shall specify the amount to be made available to the municipality from the sale, which may be more or less than the face amount of the tax liens purchased by a tax lien entity of the municipality or a third party, and any other amounts that may be made available to the municipality on a contingent basis under the terms of the purchase and sale agreement. A purchase and sale agreement may require a municipality, subject to

appropriation by the governing body of the municipality, to provide for the payment of other fees, charges, costs, or other amounts that the municipality determines to be necessary or desirable to facilitate the transaction. A purchase and sale agreement shall not require a municipality to pay the costs of collection of the amounts subject to a tax lien sold by the municipality or the principal or interest on tax lien collateralized securities issued by a tax lien entity of the municipality.

(2) A purchase and sale agreement entered into pursuant to subsection (1) shall provide that any obligation of the municipality to fund or pay the amounts provided in the purchase and sale agreement is not a debt of the municipality within the meaning of any constitutional, statutory, or charter provision and is executory only to the extent of money available, that the municipality incurs no liability beyond the money available for that purpose, and that any payment obligation of a municipality, other than the timely payment of any money collected by it and due to the municipality or a tax lien entity of the municipality as a result of the redemption of tax liens that are the subject of the purchase and sale agreement, is subject to appropriation by the governing body of the municipality.

(3) A resolution authorizing a purchase and sale agreement may require that the municipality 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 may also establish separate funds for the deposit of portions of the proceeds of the sale of tax liens, which 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 governing body of the municipality.

(4) A municipality may enter into a purchase and sale agreement pursuant to this section or sell tax liens pursuant to section 5 only with respect to the following tax liens:

(a) A tax lien for a levy or charge imposed prior to January 1, 1998.

(b) A tax lien for a levy or charge imposed after December 31, 1997 on property for which the tax lien entity of the municipality or third party holds a tax lien from the municipality.

(5) A municipality that sells tax liens related to a levy by a governmental unit other than the municipality shall 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 municipality, 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 municipality 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.

Sec. 5. (1) A municipality may agree to any of the following in a purchase and sale agreement entered into pursuant to section 4:

(a) To make all covenants, representations, and warranties with respect to the tax liens sold necessary to effectuate the sale of those tax liens and to facilitate the marketing of tax lien collateralized securities issued by the tax lien entity of the municipality.

(b) To accept a note or other instrument issued by a tax lien entity of the municipality or a third party evidencing any contingent amounts payable under the terms of the purchase and sale agreement.

(2) In connection with the sale or proposed sale of tax liens to a tax lien entity of the municipality, a municipality may pay 1 or more of the following charges:

(a) Fixed or annual charges prescribed by the municipality for or with respect to the purchase of tax liens by a tax lien entity of the municipality. A purchase and sale agreement shall not require a municipality to pay the costs of collection of the amounts subject to a tax lien sold by the municipality or the principal or interest on tax lien collateralized securities issued by a tax lien entity of the municipality.

(b) All charges or expenses necessary to convert or reconvert any tax lien into a form required by the municipality in connection with any sale or other disposition of the tax lien.

(3) A tax lien entity of a municipality or a third party has all of the rights provided by law to the municipality to enforce and collect amounts secured by a tax lien purchased by the tax lien entity of the municipality or the third party from the municipality. A tax lien held by a tax lien entity of a municipality or a third party is a preferred or first claim upon the property in the same manner as if the tax lien were held by the municipality. The right of a tax lien entity to enforce and collect the tax lien purchased does not authorize the tax lien entity to take any action to enforce or collect the tax lien that the municipality is not authorized to take.

(4) 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 interests and penalties on delinquent taxes, charges, and assessments subject to collection by the municipality. However, the maximum amount of penalties charged before and after the purchase of the tax lien shall not exceed the maximum amount of penalties that may be imposed by the municipality for delinquent taxes, charges, and assessments subject to collection by the municipality. 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.

Sec. 6. (1) A tax lien entity of a municipality may by resolution of its governing body, without a vote of the electors in the municipality, authorize and issue tax lien collateralized securities in anticipation of the collection on tax liens for any of the following purposes:

(a) To purchase tax liens, including tax liens purchased pursuant to section 107 of the general property tax act, 1893 PA 206, MCL 211.107.

(b) To refund outstanding tax lien collateralized securities of the tax lien entity of the municipality.

(c) Establish reserves to secure tax lien collateralized securities.

(d) Payment of capitalized interest, if any.

(e) Payment of any of the following:

(i) A letter of credit, bond insurance, or other credit and liquidity support facility fees, premiums, reimbursements, and expenses.

(ii) Fees and expenses of trustees and paying agents.

(iii) Other financing and issuance costs.

(iv) All other expenditures of the tax lien entity of the municipality incident to and necessary or convenient to the sale and purchase of tax liens and the issuance of the tax lien collateralized securities.

(2) Tax lien collateralized securities issued by a tax lien entity of the municipality are special limited obligations of the tax lien entity of the municipality, 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 tax lien collateralized securities, subject to any agreements pledging any particular money, assets, or revenues of the tax lien entity of the municipality. The tax lien collateralized securities may be secured by past, present, and future tax liens as designated by the tax lien entity of the municipality issuing the tax lien collateralized securities.

(3) Tax lien collateralized securities shall be authorized without a vote of the electors of the municipality by resolution of the governing body of the tax lien entity of the municipality as provided in this act. A resolution authorizing the issuance of tax lien collateralized securities may delegate to the chief financial officer of the municipality the power to establish, within parameters established by the resolution, the details of any issue of tax lien collateralized securities by an appropriate certificate of the authorized chief financial officer.

(4) A resolution authorizing the issuance of tax lien collateralized securities or the certificate of the authorized chief financial officer of the municipality shall establish all of the following:

(a) The date or dates of issue.

(b) The maturity date or dates.

(c) The interest rate or rates, which may be on a fixed or variable rate basis.

(d) The denominations.

(e) The form and registration privileges.

(f) Manner of execution.

(g) That the tax lien collateralized securities are payable in lawful money of the United States at a place or places within or without the state.

(h) Terms of redemption prior to maturity.

(i) Any other terms provided by the authorizing resolution.

(5) Tax lien collateralized securities and related tax lien purchase and sale agreements shall 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, 1943 PA 202, MCL 131.1 to 139.3.

(6) A tax lien collateralized security of a tax lien entity of the municipality may be sold at public or private sale upon terms and at prices and discounts determined by the tax lien entity of the municipality. A tax lien entity of the municipality may pay all expenses, premiums, and commissions necessary or advantageous in connection with the issuance and sale of the tax lien collateralized security.

(7) Whether or not tax lien collateralized securities are of a form and character as to be negotiable instruments under the terms of the uniform commercial code, 1962 PA 174, MCL 440.1101 to 440.1102, tax lien collateralized securities are hereby made negotiable instruments within the meaning of and for all the purposes of the uniform commercial code, 1962 PA 174, MCL 440.1101 to 440.1102, subject only to the provisions of the tax lien collateralized securities for registration.

(8) A resolution authorizing tax lien collateralized securities of a tax lien entity of a municipality may contain the following provisions that may be a part of the contract with the holders of tax lien collateralized securities:

(a) Pledging or creating a lien on all or any part of any money or assets of a tax lien entity of the municipality or of any money held in trust or by others for the payment of the tax lien collateralized securities.

(b) Providing for the custody, collection, securing, investment, and payment of any money of a tax lien entity of the municipality.

(c) Setting aside reserves or sinking funds and regulating or disposing of reserves or sinking funds.

(d) Determining the application of the proceeds of the sale of any issue of securities.

(e) 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.

(f) 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.

(g) The creation of special funds into which any money of the tax lien entity of the municipality may be deposited.

(h) Vesting a trustee with properties, rights, powers, and duties.

(i) Defining the acts or omissions to act that constitute a default in the obligations and duties of the tax lien entity of the municipality and providing the rights and remedies of the holders of the tax lien collateralized securities in the event of a default.

(j) Any other matters that affect the security and protection of the tax lien collateralized securities and the rights of the holders of the tax lien collateralized securities.

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

(10) A sale or pledge of tax liens, earnings, revenues, other money, or assets made by a tax lien entity of the municipality 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 a tax lien entity of the municipality 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 a tax lien entity of the municipality 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.

(11) Members of the governing body of the municipality, a tax lien entity of the municipality, or any person executing the tax lien collateralized securities is not personally liable for repayment of the tax lien collateralized securities or subject to any personal liability or accountability arising from the issuance or nonissuance of the tax lien collateralized securities.

(12) A tax lien entity of the municipality that is created pursuant to section 9 is subject to the following restrictions in issuing tax lien collateralized securities under this act:

(a) 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, shall 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.

(b) A tax lien collateralized security shall not appreciate, in whole or in part, in principal amount, or be sold at a discount of, more than 10%.

Sec. 7. Tax lien collateralized securities and other obligations of a tax lien entity of the municipality are not a debt of this state or of any municipality within the meaning of any constitutional, statutory, or charter debt limitation, and neither this state nor any municipality is liable on the tax lien collateralized securities or obligations. Tax lien collateralized securities and other obligations of the tax lien entity of the municipality are not payable out of any funds other than those pledged for payment of the tax liens and the tax lien collateralized securities and other obligations shall state that fact on their face.

Sec. 8. Tax lien collateralized securities issued pursuant to this act are exempt from all taxation in this state, except inheritance and transfer taxes. Interest on tax lien collateralized securities is exempt from all taxation in this state.

Sec. 9. A municipality may incorporate 1 or more authorities to serve as and to exercise the powers of a tax lien entity of the municipality under this act.

Sec. 10. An authority is incorporated by the adoption of articles of incorporation by the governing body of the incorporating unit. Articles of incorporation are adopted by the affirmative vote of a majority of the members of the governing body of the incorporating unit. The articles of incorporation shall be executed for and on behalf of the incorporating unit by its mayor and city clerk. The clerk of the incorporating unit shall also affix to the articles of incorporation a certificate in substantially the following form:

"The foregoing articles of incorporation were adopted by the _____ of the _____ of _____ County, Michigan, at a meeting duly held on the _____ day of _____, 19____.

Dated: _____, 19____.

Clerk".

Sec. 11. (1) The articles of incorporation shall set forth all of the following:

- (a) The name of the authority.
 - (b) The name of the unit incorporating the authority.
 - (c) The purpose or purposes for which the authority is created.
 - (d) The number, terms, and manner of selection of the authority's officers, including the authority's governing body which shall be known as the board of commissioners.
 - (e) The powers and duties of the authority and of the authority's officers.
 - (f) The date upon which the authority shall become effective.
 - (g) The name of the newspaper in which the articles of incorporation shall be published.
 - (h) Any other matters to be incorporated in the articles of incorporation.
- (2) Members of the governing body of the incorporating unit are not eligible for membership in or appointment to an authority.

Sec. 12. (1) An authority shall be directed and governed by a board of commissioners of 3 members selected by the chief executive officer of the incorporating unit. A commissioner shall serve for a 4-year term.

(2) The chief executive officer of the incorporating unit shall select a commissioner to serve as chairperson of the authority. The commissioners shall designate 1 member as secretary and shall adopt bylaws and rules of procedure.

(3) The business that the board of commissioners may perform shall be conducted at a public meeting of the board of commissioners held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Public notice of the time, date, and place of the meeting shall be given in the manner required by the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

Sec. 13. 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 incorporating unit.

Sec. 14. (1) The articles of incorporation of an authority shall be executed in duplicate and delivered to the county clerk, who shall file 1 copy in his or her office and the other copy with the secretary of the authority. The officer designated in the articles of incorporation shall cause a copy of the articles of incorporation to be published once in a newspaper designated in the articles of incorporation and circulating within the incorporating unit, accompanied by a statement that the right exists to question the incorporation of the authority in court as provided in this section.

(2) The officer designated in the articles of incorporation shall file 1 copy of the articles of incorporation with the secretary of state. Attached to that copy shall be the certificate setting forth that the copy presented is a true and complete copy of the original articles of incorporation and the date and place of the publication.

(3) The authority is effective at the time provided in the articles of incorporation. The validity of the incorporation of the authority is conclusively presumed unless questioned in a court of competent jurisdiction within 60 days after the articles of incorporation are published pursuant to subsection (1) or certified copies of the articles of incorporation are filed with the secretary of state, whichever is later.

Sec. 15. (1) An authority is a public body corporate with the power to sue and be sued in any court of this state. 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 this act does not limit the general powers of the authority.

(2) An authority is not authorized to be a debtor under chapter 9 of title 11 of the United States Code, 11 U.S.C. 901 to 946.

Sec. 16. An authority and its incorporating unit may enter into a contract under which the authority may acquire, sell, or otherwise dispose of property contemplated by the terms of this act. 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 by an incorporating unit is a benefit to and a legitimate public purpose of the authority and the incorporating unit.

Sec. 17. 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 an incorporating unit, by a majority vote of its members, may transfer any real property, except cemetery property, owned or taken by the incorporating unit to an authority established under this act. The transfer and use of real property under this section shall be considered a necessary public purpose and for the benefit of the public.

Sec. 18. The articles of incorporation of an authority may be amended if the amendments are adopted by the governing body of the incorporating unit. No amendment shall impair the obligation of any bond or other contract. An amendment shall be adopted, executed, and published and certified copies filed, in the same manner as provided for the original articles of incorporation.

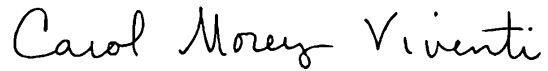
Sec. 19. All property owned by an authority is exempt from taxation by this state or any political subdivision of this state.

Sec. 20. (1) An authority may contract with its incorporating unit and with third parties to accomplish the objectives of this act.

(2) An authority may contract with any person, firm, or corporation to service, administer, collect, and foreclose on tax liens and to maintain or sell the foreclosed property.

Sec. 21. The powers granted under this act are in addition to those granted by any other statute or charter.

This act is ordered to take immediate effect.



Secretary of the Senate.



Clerk of the House of Representatives.

Approved _____

Governor.