Michigan Association
OF County Treasurers

MEMORANDUM

To: Senate Committee on Local Government

From: Mary Balkema, Kalamazoo County Treasurer
Andy Meisner, Oakland County Treasurer

Date: February 17, 2015

Re: **Senate Bill No. 17**

The Michigan Association of County Treasurers ("**MACT**"), which represents elected treasurers in each of Michigan's 83 counties, opposes Senate Bill No. 17 ("**SB 17**"). This legislation, as introduced, would return any excess sale proceeds from principle residences foreclosed for non-payment of property taxes to a prior owner that failed to pay taxes owed.

The use of excess sale proceeds to satisfy the payment of tax obligations is long-standing in Michigan and elsewhere and is constitutional—not a violation of due process or other rights. According to the United States Supreme Court:

> "[N]othing in the Federal Constitution prevents [foreclosing on a property and retaining a surplus from a tax auction] where the record shows adequate steps were taken to notify the owners of the charges due and the foreclosure proceedings."[1]

When collecting delinquent property taxes and conducting tax foreclosure proceedings, county treasurers have adopted extensive measures and procedures to assure that owners of tax-delinquent property are aware of charges due and foreclosure proceedings. County treasurers don't take these measures lightly. They are elected officials and state law requires them to initiate tax foreclosure proceedings against their constituents.

Despite these measures and the efforts of county treasurers to protect homeowners whenever possible, SB 17 would return sale proceeds to delinquent property owners who failed to pay taxes due and did not act in response to multiple notices and outreach efforts. MACT opposes these changes because SB 17 would give rise to the following significant issues:

(1) ***Negative Cash Flow for Schools and Locals.*** Undermine the ability of county treasurers to assure that 100% of property taxes levied are paid to local

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[1] *Nelson v New York City*, 352 US 103, 110; 77 S Ct 195; 1 L Ed 2d 171 (1956), quoted favorably in *Miner v Clinton County*, 541 F 3d 464, 475 (2nd Cir 2008).

governments, school districts, libraries, the state school aid fund, and other taxing jurisdictions through the use of delinquent tax revolving funds. For this reason, SB 17 would create significant cash flow issues for local governments in maintaining services at current levels, including law enforcement, fire protection, services for veterans, and school operations.

(2) ***Unjust Enrichment of Delinquent Taxpayers.*** Unjustly enrich owners of principal residences that fail pay their taxes by allowing the owners to reap a financial benefit from a foreclosure. The same foreclosure process also extinguishes obligations under mortgages, land contracts, contractor's liens, and other interests recorded in the property before foreclosure. Property owners who pay their taxes on time and in full would receive no similar benefit.

(3) ***New Moral Hazard.*** Shifts risk away from property owners, creating a new moral hazard by providing a financial benefit to a prior owner when a foreclosed property sells for more than the unpaid taxes, penalties, interest, and fees without a corresponding financial obligation when the a property sells for less than the amounts owed.

(4) ***Legal Uncertainty.*** Generates legal confusion as to who is entitled to excess sale proceeds. A property often does not have a single "owner" and county treasurers have no way of knowing what share of a legal interest any individual owner may hold in a property.

(5) ***Schizophrenic State Policy.*** Stands diametrically opposed to legislation passed just last December restricting the ability of a person with a legal interest in tax foreclosed property from purchasing the property back at an auction of foreclosed property. In December, the state legislature passed a new law prohibiting the former owner of tax foreclosed property from purchasing the property back at a reduced price. It's two months later and SB 17 would do the opposite, rewarding an owner in the same position with a financial payment for doing nothing while taxes remain unpaid and their property is foreclosed.

Simply put, SB 17 would open the door to potential fraud and financial windfalls for persons who don't pay their taxes—subsidized by the responsible taxpayers who do. That's bad public policy.

County treasurers have worked hard to create new and creative ways to help owners of principle residences avoid foreclosure of their homes, including new laws signed into law by the governor just last month. There are exemptions for disabled veterans and provisions to assist senior citizens. Financial hardship exemptions and payment plan options are available. County treasurers would welcome legislation to encourage these efforts, not undermine them as SB 17 would do.

MACT urges the Senate Local Government Committee to reject the misguided policy changes proposed in this legislation and vote no on SB 17.