



Colorado *Legislative Council Staff Fiscal Note*
NO FISCAL IMPACT

Drafting Number: LLS 11-1006 **Date:** April 29, 2011
Prime Sponsor(s): Sen. Newell **Bill Status:** Senate Judiciary
Rep. Gardner B.; Lee **Fiscal Analyst:** Alex Schatz (303-866-4375)

TITLE: CONCERNING A CLARIFICATION OF STATE LAW GOVERNING THE CIRCUMSTANCES UNDER WHICH A NOTICE OF LIS PENDENS MUST BE RECORDED IN CONNECTION WITH THE FILING OF A DEBT SECURITY INSTRUMENT AS A SUBSTITUTE FOR THE FILING OF CERTAIN LIENS.

Summary of Legislation

Under current law, a party against whom a mechanic's lien or real estate broker's lien has been filed may file a bond (or similar instrument of obligation) as a substitute for the property to which the lien is attached. This bill provides that the lien is immediately and forever discharged upon the effective filing of such a bond. The bill eliminates any requirement for a mechanic's lien or real estate broker's lien claimant to file a lis pendens or notice of a lis pendens when a bond has been substituted.

Background

A lis pendens is a legal document filed and recorded in county real property record to provide notice of a claim affecting title to real property. In June 2010, the Colorado Court of Appeals issued a decision in the case of *Weize Company v. Colorado Regional Construction*. Early in the litigation between the lien claimant subcontractor and defendant general contractor, the defendant filed bond substitutes and obtained a release of the subcontractor's lien claims. According to the court's holding, the subcontractor lien claimant was unable to foreclose against the bonds because it failed to file a lis pendens.

Assessment

The bill is assessed as having no fiscal impact. Clarification that a lis pendens is not needed following bond substitution will expedite adjudication concerning this point of law in a limited number of cases and as a result could potentially require additional consideration of the merits of some subset of these lien foreclosure cases, with negligible overall effect on the workload of the courts. State and local agencies are not parties to mechanic's lien cases, as construction disputes involving public projects are subject to a separate statutory process.

The bill will not significantly affect the number of lis pendens filed with county clerks and recorders. Bond substitutes are employed in a fraction of lien foreclosure cases, where, as the *Weize* case illustrates, lis pendens are not always recorded under current practice by the foreclosing party.

Departments Contacted

Judicial
Transportation

Regulatory Agencies
Law

Personnel and Administration