

Colorado Legislative Council Staff Fiscal Note
**FINAL STATE and LOCAL
 FISCAL IMPACT**

Drafting Number: LLS 08-0875
Prime Sponsor(s): Rep. Bruce

Date: February 19, 2008
Bill Status: Postponed Indefinitely
Fiscal Analyst: Natalie Mullis (303-866-4778)

TITLE: CONCERNING THE PROHIBITION OF IMPROPER USES OF PROPERTY TO ENFORCE COLLECTIONS.

Fiscal Impact Summary	FY 2008-2009	FY 2009-2010
State Revenue	\$0	\$0
State Expenditures General Fund	Cannot be Quantified	
FTE Position Change	0.0 FTE	0.0 FTE
Effective Date: This bill was postponed indefinitely by the House Finance Committee on February 19, 2008.		
Appropriation Summary for FY 2008-2009:		
Local Government Impact: The bill is estimated to have a significant decrease in local government revenue and a significant increase in local government expenditures. Neither revenue nor expenditure changes can be quantified at this time.		

Summary of Legislation

HB08-1277 prohibits public and private entities from placing monetary liens on a property until a party goes to court and gets a judgment and until all rights of appeal are exhausted. A public notice of a potential lien may be recorded, subject to annual renewal, if the title to or equity in a property is in dispute. HB08-1277 invalidates any lien recorded prior to the effective date of the bill that was not recorded as a result of a final court judgment and that was not a result of a dispute on title to or equity in the property. A statute of limitations is imposed that requires public and private entities to file a lawsuit to place a property tax lien within one year from the date on which the taxes were due. Except for liens resulting from charges prohibited by the bill, all liens are prioritized based on the recording date of the lien.

Retroactive to all property tax bills mailed after 1992, HB08-1277 prohibits the collection of charges on property tax bills other than current and delinquent property taxes, penalties and interest, and provides for their refund and enforcement of the refund as described below. For example, local governments will no longer be able to recover unpaid water and sanitation fees and the cost of cleaning up and landscaping unkept, abandoned, or foreclosed property in a property tax bill. Property tax collection fees and improvement district charges are exempt from the requirements of the bill.

Any public or private entity that benefitted from charges not authorized by the bill is required to make a good faith effort to refund, with interest compounded annually, such charges to property owners that still own the home for which the tax bill was paid before January 1, 2010. The refund is allowed to be provided as a credit against the taxpayer's property tax bill for the 2009 tax year. Any property owner may request a refund and sue public and private entities on or before December 31, 2011, if a requested refund is not made within 30 days. County treasurers are required to notify each taxpayer in 2009 and 2010 of their right to sue and, upon request of the taxpayer, provide without charge copies of past property tax bills mailed after 1992.

HB08-1277 stipulates that a property owner who sues a public or private entity shall not be required to comply with the provisions of the "Colorado Governmental Immunity Act" in Article 10 of Title 24, C.R.S. If the court finds in favor of a property owner in a suit against a government, the property owner is required to be awarded costs and attorney fees. The property owner shall not be liable for the government's costs and attorney fees irregardless of the outcome of the suit. If the court finds in favor of a property owner in a suit against a private entity, the property owner is required to be awarded costs but not attorney fees.

Public and private entities may sue to recover refunded charges as long as the event that gave rise to the charges did not occur prior to a year before the effective date of HB08-1277. A statute of limitations is imposed on these lawsuits equal to one year after the date of the event that gave rise to the charges if no statute of limitations exists or if the statute of limitations has not yet expired. If the statute of limitations has expired the public or private entity is prohibited from filing suit to retain the charges.

The bill suspends and deems null and void any state statute or rule and any local law, ordinance, rule, regulation, or other provision that is contrary to the provisions in the bill.

State Expenditures

Judicial Branch. Under current law a public or private creditor can record liens, including tax and mechanics' liens, without a court action. The bill establishes new rights of action. It requires that no monetary lien can be placed on a property unless a final judgment from a state or federal court of competent jurisdiction is obtained and all rights of appeal are exhausted. Liens recorded prior to the effective date of the bill are invalidated. Numerous new liens will have to be created since old ones will be invalid under the bill. Counties with liens will be required to file suit to re-lien a property. The increase to the courts' workload is contingent upon the number of increased filings driven by the requirement to obtain a pre-lien filing final court judgment. Although the number of filings resulting from the bill is difficult to quantify, increased litigation is anticipated. Once the bill's impact is fully realized in the courts, the fiscal note assumes that additional funding will be sought through the annual budget process.

Local Government Impact

The bill would have a significant and unquantifiable impact on the revenues and expenditures of local governments.

The bill will increase county **expenditures** by requiring county assessors to provide past property tax bills at no cost to taxpayers who request the information. County assessors are also required to notify taxpayers in 2009 and 2010 of their right to file suit against past recipients of prohibited charges. In addition, legal expenditures will increase for counties that choose to file a lawsuit to re-lien a property whose previous lien was invalidated by the bill.

Revenue to local governments that have charged fees not authorized by the bill at any time since 1992 would be reduced. The size of the reduction is conditional on the amount of revenue required to be refunded by the bill. Charges not authorized by the bill include unpaid water and sanitation fees and the cost of cleaning up and landscaping unkept, abandoned, or foreclosed property.

Because the bill is retroactive to changes made since 1992, it is possible that there exists an entity that benefitted from these charges in the past but that is no longer in operation or no longer has any revenue. In that case, it is unclear how that entity will be able to make the refunds.

Departments Contacted

Local Affairs

Judicial

Secretary of State