

**STATE and LOCAL
FISCAL IMPACT**

Drafting Number: LLS 12-0186 Prime Sponsor(s): Rep. McCann Sen. Johnston	Date: February 21, 2012 Bill Status: House Economic and Business Development Fiscal Analyst: Harry Zeid (303-866-4753)
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TITLE: CONCERNING MEASURES TO IMPROVE THE RELIABILITY OF INFORMATION PROVIDED IN CONNECTION WITH REAL ESTATE FORECLOSURES.

Fiscal Impact Summary	FY 2012-2013	FY 2013-2014
State Revenue		
State Expenditures		
General Fund	\$906,273	\$725,526
FTE Position Change	10.0 FTE	10.0 FTE
Effective Date: Upon signature of the Governor, or upon becoming law without his signature. The bill applies to foreclosure proceedings in which the notice of election and demand is filed on or after the effective date of the bill.		
Appropriation Summary for FY 2012-2013: See the State Appropriations section.		
Local Government Impact: See the Local Government Impact section.		

Summary of Legislation

Current law allows a "holder of an evidence of debt," a bank or other financial institution, to foreclose on real property under a deed of trust, even if the holder's interest is based on an assignment from the original lender and the assignment or other intermediate documents are not produced, by providing a statement from the holder's attorney that the holder's interest in the property is valid. The bill removes this provision from statutes and requires documentation of an unbroken chain of interests in the debt including the current holder, and present authorization to commence the foreclosure if not by the holder, all of which must be filed with the public trustee before a foreclosure sale is authorized.

Under the bill, provisions governing the court order authorizing sale by a public trustee (Colorado Rule of Civil Procedure 120) are changed. The bill places the burden of proof on the holder in all cases to provide documentation showing that it is entitled to foreclose on the property. The bill also states that the Rule 120 order is not a final judgment and does not prejudice other claims, such as claims involving title to the property. An eviction proceeding must be suspended if the Rule 120 order is challenged until the challenge is resolved.

State Expenditures

Judicial Branch. The Judicial Branch will experience a General Fund expenditure increase of \$906,273 and 10.0 FTE in FY 2012-13, and \$725,526 and 10.0 FTE in FY 2013-14, and each year thereafter.

Increased workload within the trial courts will occur because the judicial review of documentation in a Rule 120 hearing (an order of the court authorizing a property sale) will require the court to make findings related to whether:

- the applicant is the holder of the evidence of debt;
- the applicant is the real party in interest to foreclosure on the debt;
- the applicant has legal standing to foreclose the debt; and
- whether the documents provided by the applicant are authentic and sufficient to resolve the issues identified above.

This review and the required findings do not take place under current law. It is estimated that on average, the findings will require ten additional minutes of court time per case. The number of recent Rule 120 cases filed with the courts was 34,832 in FY 2008-09; 39,404 cases in FY 2009-10; and 32,969 cases in FY 2010-11. For purposes of this fiscal note, it is assumed that 30,000 Rule 120 hearings are held annually in the future.

Based on these assumptions, the Judicial Branch will require 2.5 FTE for magistrate-level judicial officers, and 7.5 FTE for associated staff (including 2.5 FTE each for court reporters, judicial division staff, and law clerks). Table 1 identifies General Fund expenditures for the Judicial Branch required under House Bill 12-1156.

Table 1. Judicial Expenditures Under HB12-1156		
Cost Components	FY 2012-13	FY 2013-14
Personal Services	\$704,151	\$704,151
FTE	10.0 FTE	10.0 FTE
Operating Expenses	21,375	21,375
Capital Outlay	180,747	0
TOTAL	\$906,273	\$725,526

It should be noted that the Judicial Branch must request magistrates through the fiscal note process in lieu of a request for judges. Although the bill will create additional impact to judicial workload, the request is for additional magistrates to assist judges in keeping pace with their workload. Incrementally, the bill creates additional need for district court judges in the system and may trigger a future request for new district court judgeships.

Expenditures Not Included

Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. The centrally appropriated costs for the Judicial Branch subject to this policy are summarized in Table 2.

Table 2. Expenditures for the Judicial Branch Not Included Under SB 12-071*		
Cost Components	FY 2012-13	FY 2013-14
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$99,335	\$99,335
Supplemental Employee Retirement Payments	37,542	37,542
TOTAL	\$136,877	\$136,877

**More information is available at: <http://colorado.gov/fiscalnotes>*

Local Government Impact

Public trustees may be required to assist in determining whether copies of all documents required in the foreclosure process show an unbroken series of intervening indorsements or assignments between the original evidence of debt secured by the deed of trust and the holder filing the notice of election and demand. Although some training of public trustees may be necessary, potential training costs have not been identified. Therefore, no additional local expenditures are anticipated.

State Appropriations

The Judicial Branch requires a General Fund appropriation in the amount of \$906,273 and 10.0 FTE in FY 2012-13 to implement the bill.

Departments Contacted

Judicial Local Affairs