



**Colorado
Legislative
Council
Staff**

HB16-1090

**FINAL
FISCAL NOTE**

FISCAL IMPACT: State Local Statutory Public Entity Conditional No Fiscal Impact

Drafting Number: LLS 16-0532

Date: June 23, 2016

Prime Sponsor(s): Rep. McCann

Bill Status: Signed into Law

Sen. Jahn

Fiscal Analyst: Erin Reynolds (303-866-4146)

BILL TOPIC: EXCESS FORECLOSURE PROCEEDS LIMIT FINDER'S FEES

Fiscal Impact Summary	FY 2016-2017	FY 2017-2018
State Revenue	<u>at least \$15,000</u>	<u>at least \$15,000</u>
General Fund	<5,000	<5,000
Fines Collection Cash Fund	10,000	10,000
Unclaimed Property Trust Fund	Potential minimal increase.	
State Expenditures	Minimal workload increase.	
TABOR Impact		at least \$15,000
Appropriation Required:	None.	
Future Year Impacts:	Ongoing revenue increase and minimal workload increase.	

Summary of Legislation

The bill reduces the period during which the public trustee must hold the balance of the purchase price of a foreclosed property after all liens and claims against the property have been satisfied (the overbid amount) before transferring these funds to the Unclaimed Property Division of the State Treasurer's office from five years to six months.

Additionally, the bill creates new requirements for agreements related to and premiums (finder's fees) assessed by persons offering assistance in recovering overbid amounts. Under the bill, an agreement to pay compensation to recover or assist in recovering an unclaimed overbid is enforceable only if it:

- is entered into at least two years after the date of transfer;
- is in writing and signed by the owner;
- describes the property and the date of the foreclosure sale;
- sets forth the nature of services to be provided; and
- caps compensation to be paid to the finder at 20 percent of the overbid amount if the contract is entered into between the second and third year after the transfer, or 30 percent of the overbid amount if the contract is entered into more than three years after the date of transfer.

Inducing or attempting to induce a person to enter into a contract that violates these requirements is punishable as an unclassified misdemeanor with penalties of up to six months in county jail, a fine of up to \$10,000, or both, and is designated as a deceptive trade practice under the state's consumer protection laws. This restriction does not apply to an agreement to pay compensation to recover or assist in recovering an overbid of less than \$1,000.

Background

The Unclaimed Property Division of the State Treasurer's office holds lost or forgotten assets of individuals and businesses in Colorado in perpetuity or until claimed. The Unclaimed Property Trust Fund consists of all moneys collected under the Unclaimed Property Act and interest earned on the account; it is also TABOR-exempt. Up until recent years, the division has not received a notable amount of money from unclaimed foreclosure balances.

Comparable Crime

Pursuant to Section 2-2-322 (2.5), C.R.S., Legislative Council Staff is required to include certain information in the fiscal note for any bill that creates a new crime, changes the classification of an existing crime, or changes an element of the existing crime that creates a new factual basis for the offense. The bill makes it both an unclassified misdemeanor and a deceptive trade practice to induce or attempt to induce a person into a contract that violates the bill's requirements. There have been no filings or convictions in the past three years for either category of crime.

State Revenue

Beginning in FY 2016-17, the bill is expected to increase state cash fund revenue by less than \$15,000 from fines to the General Fund and the Fines Collection Cash Fund, and potentially increase state revenue from interest to the Unclaimed Property Trust Fund.

Department of Law — Deceptive trade practice. To the extent that the Attorney General or district attorneys pursue actions related to the deceptive trade practice, fine revenue to the General Fund may increase beginning in FY 2016-17. Fines for violations range from \$500 to \$5,000. Additional fines may be levied for violations of a court order or injunction related to the deceptive trade practice. The fiscal note assumes a high level of compliance and any fine revenue is assumed to be less than \$5,000 per year.

Judicial Department — Unclassified misdemeanor. The bill is anticipated to increase state revenue by less than \$10,000 per year, credited to the Fines Collection Cash Fund in the Judicial Department. The penalty for the unclassified misdemeanor in the bill is up to six months in jail, a fine of \$10,000, or both. Because the courts have the discretion of imposing a fine, incarceration, or both, the precise impact to state revenue cannot be determined. However, based on data that no comparable crimes occurred in the past three years and the low number of fines imposed in 2015, the fiscal note estimates that any revenue generated is likely to be less than \$10,000 per year. Probation revenue from misdemeanor convictions may also increase by \$50 per month, per person sentenced to probation under the bill.

Office of the State Treasurer — Interest earnings. The bill is expected to minimally increase state revenue from interest in the Unclaimed Property Trust Fund in the State Treasurer's office. Under the bill, unclaimed foreclosure balances are transferred from public trustee offices to the fund after six months; four and a half years earlier than under current law, which stipulates a transfer after five years. Earlier transfer of these moneys may increase total interest earnings in the fund. Because the fund is TABOR-exempt, this potential state revenue increase from interest will not have an impact on TABOR refunds.

TABOR Impact

This bill increases state revenue from fines, which will increase the amount of money required to be refunded under TABOR. TABOR refunds are paid out of the General Fund. No TABOR refund is expected in FY 2016-17.

State Expenditures

The bill will minimally increase workload in the Department of Law, the Judicial Department, and the Office of the State Treasurer beginning in FY 2016-17.

Department of Law. Workload in the Attorney General's office will minimally increase to the extent that deceptive trade practice complaints are filed under the bill. The office will review complaints under the bill and assess which complaints to investigate.

Judicial Department. Workload will minimally increase in the Judicial Department to modify the court's information technology system and to hear any new cases under the bill. Probation services in the Judicial Department may also experience a minimal increase in workload to supervise any offenders convicted under the bill. Finally, the bill may increase workload or costs for the Office of the State Public Defender and Office of Alternate Defense Counsel, to provide representation for any persons deemed to be indigent. The fiscal note assumes any such increases are minimal and will not require an increase in appropriations for any agency within the Judicial Department.

Office of the State Treasurer. Workload in the Unclaimed Property Division of the State Treasurer's office may increase in FY 2016-17 and by a minimal amount each year thereafter. Because of the bill's enacting clause, which retroactively applies to proceeds of all foreclosure sales up to five years before the bill's effective date, it is expected that a large amount of unclaimed foreclosure balances will immediately transfer from the state's public trustees to the division, causing an initial increase in workload to account for these moneys in FY 2016-17. Minimal workload increases will continue in subsequent years due to the earlier possession of unclaimed foreclosure balances. The division is expected to accomplish this workload increase within existing appropriations.

Local Government Impact

The bill will affect local governments in the following ways, as discussed below.

Public trustees. Public trustee offices will experience minimal workload increases in FY 2016-17 only to incorporate the bill's policy into current business practice. The bill may also minimally decrease county revenue from interest, because unclaimed foreclosure balances are transferred to the State Treasurer four and a half years earlier than under current law.

Misdemeanor offenses in county courts. First, the bill may increase workload for district attorneys to prosecute any new offenses. Second, to the extent that this bill increases misdemeanor convictions and offenders are sentenced to jail, costs will increase. Under the bill, a court may sentence an offender to jail for an unclassified misdemeanor for a period of up to six months. Because the courts have the discretion of incarceration or imposing a fine, the precise impact at the local level cannot be determined. The cost to house an offender in county jails varies from about \$53 to \$114 per day. For the current fiscal year, the state reimburses county jails at a daily rate of \$52.74 to house state inmates. It is assumed that the impact on county jails will be minimal.

Denver County Court. The bill results in an increase in workload for the Denver County Court, managed and funded by the City and County of Denver. The court will try misdemeanor cases where a person induces or attempts to induce a person into a contract that violates the bill's requirements. Probation services in the Denver County Courts may also experience a minimal increase in workload and revenue to supervise convicted persons.

Effective Date

The bill was signed into law by the Governor on April 15, 2016, and takes effect August 10, 2016, assuming no referendum petition is filed. Sections 5 and 6 of the bill apply to proceeds of foreclosure sales conducted on or after the bill's effective date.

State and Local Government Contacts

Judicial Public Trustees Treasury	Law Regulatory Agencies	Local Affairs Secretary of State
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