



**Colorado
Legislative
Council
Staff**

HB16-1090

**REVISED
FISCAL NOTE**

(replaces fiscal note dated February 2, 2016)

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

Drafting Number: LLS 16-0532
Prime Sponsor(s): Rep. McCann
Sen. Jahn

Date: March 7, 2016
Bill Status: Senate Business, Labor, & Technology
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><\$10,000</u> <10,000	<u><\$10,000</u> <10,000
State Expenditures	Minimal workload increase.	
TABOR Impact	<\$10,000	<\$10,000
Appropriation Required: None.		
Future Year Impacts: Ongoing revenue increase and minimal workload increase.		

Summary of Legislation

The *reengrossed* bill limits the premium (commonly referred to as a "finder's fee") that a person may charge for offering assistance in recovering the balance of the purchase price of a foreclosed property after all liens and claims against the property have been satisfied. It reduces the period during which the public trustee must hold these funds before transferring the funds to the Unclaimed Property Division of the State Treasurer's office from five years to two years.

Any contract for finder's fee payments during the first six months of the public trustee's custody of the funds and during the first two years of the State Treasurer's custody of the funds is voided, and the finder's fee is capped at 20 percent of the amount recovered once these periods expire. For amounts that have been in the custody of the State Treasurer for three years or more, the finder's fee is capped at 30 percent. The bill also imposes additional contract requirements for finders, such as disclosing that the owner of the funds may obtain the funds free of charge without a finder's assistance.

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 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.

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.

State Revenue

Beginning in FY 2016-17, the bill is expected to increase state cash fund revenue from fines in the Judicial Department and interest in the Office of the State Treasurer.

Judicial Department. 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. 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 two years; three 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 a TABOR impact.

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.

State Expenditures

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

Judicial Department. Workload will minimally increase in the Judicial Department to modify the court's ICON/Eclipse 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 absorb this workload impact within existing appropriations.

Local Government Impact

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 three years earlier than under current law.

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.

Effective Date

The bill takes effect August 10, 2016, if the General Assembly adjourns on May 11, 2016, as scheduled, and no referendum petition is filed. Sections 2 and 3 of the bill apply to proceeds of foreclosure sales conducted on or after the bill's effective date. Section 1 of the bill applies to proceeds of foreclosure sales on, after, or up to five years before the bill's effective date.

State and Local Government Contacts

Judicial
Regulatory Agencies

Local Affairs
Secretary of State

Public Trustees
Treasury