

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE

House Bill 1404 (Delegates Oaks and Carter)
Environmental Matters

Water and Sewer Liens - Forced Sale - Requirements

This bill prohibits a water and sewer authority from forcing a sale of real property affected by a lien for a fee, rent, or charge by judicial foreclosure, judgment, execution, or any other court order unless the value of the lien (or the cumulative value of liens held by an authority) is equal to or greater than the value of the property. A purchaser of the real property at a forced sale must remit any profit from a subsequent sale of the property to the previous owner up to the property's fair market value at the time of sale. The fair market value must be based on an independent appraisal, an independent consultant's report, or any other method considered appropriate by the authority.

Fiscal Summary

State Effect: The bill would not materially affect the overall workload of the Judiciary.

Local Effect: Local water and sewer authorities could experience increased costs related to collecting payments from their customers. Any revenue decreases stemming from particular customers would likely be passed on to all customers in the form of higher rates. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: Minimal.

Analysis

Current Law: A water and sewer authority has a lien on real property for the amount of any fee, rent, or charge, including a tapping fee, imposed on an owner, tenant, or occupant of the property for the use and services of a project of the authority. The lien

includes any accrued interest and begins at the time when the fee, rent, or charge becomes due and payable. The lien is superior to any interest of an owner, tenant, or occupant of the affected property.

A water and sewer authority lien binds or affects a subsequent bona fide purchaser of the property who purchases for valuable consideration and without actual notice of the lien only after the amount of the lien is entered in a lien register that is furnished for this purpose by and at the expense of the authority and kept among the county land records. The clerk of the circuit court is required to keep the lien register and record and index any entry certified by the authority. The recording fee for the registry is \$0.05.

To discharge a water and sewer authority lien, a person must pay the total amount of the lien along with any interest that has accrued. When the lien is discharged, the authority is required to deliver a certificate of payment. When a person presents a certificate of payment to the clerk of the circuit court, the clerk has to record the discharge in the lien register without a fee.

Generally, liens against real property take priority in the order in which they are recorded. When a lien is foreclosed, lienholders are paid in the order of priority, with the balance going to the property owner.

Background: The provisions authorizing the creation of local water and sewer authorities require that the authorities register with the State Department of Assessments and Taxation. The requirements do not apply in Montgomery County or Prince George's County. Baltimore City does not have an authority established under these provisions; its water and sewer services are provided by the Bureau of Water and Wastewater in the Baltimore City Department of Public Works.

Local Fiscal Effect: There are 82 registered water and sewer authorities throughout the State. The number of liens that each authority has or the number in aggregate is unknown. These authorities could face increased difficulty in enforcing payments by their customers. This could lead to increased enforcement costs as well as decreased revenues from these customers. It is assumed that any shortfall would be made up by increasing rates generally. The bill's requirement that a purchaser at a sale remit any profit to the previous owner could retard bidding at a foreclosure or judicial sale and make the property harder to sell at close to market rates. These costs cannot be accurately estimated but could be significant in the aggregate, especially for smaller authorities.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore City, Judiciary (Administrative Office of the Courts), Office of the Attorney General (Consumer Protection Division), State Department of Assessments and Taxation, Washington Suburban Sanitary Commission, Department of Legislative Services

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