

# ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Hall Analyst: Deborah Barrett Bill Number: AB 680

Related Bills: See Legislative History Telephone: 845-4301 Amended Date: June 22, 2009

Attorney: Patrick Kusiak Sponsor: \_\_\_\_\_

**SUBJECT:** Tax Levy Administration

## SUMMARY

This bill would do the following:

- Increase fees for serving, executing, and processing court notices, writs, orders, and other services provided by sheriffs and marshals in the civil collection process.
- Establish a process for a judgment creditor to receive payment of fund in the hands of a levying officer if the officer fails or neglects to distribute funds.
- Authorize a levying officer to add accrued interest to the amount specified in a writ.

## SUMMARY OF AMENDMENTS

The June 22, 2009, amendments would allow a judgment creditor to recover damages, interest, and costs from the sheriff if the sheriff refuses or neglects to pay over money due to the judgment creditor and would renumber the sections of the bill. This is the department's first analysis of this bill.

## PURPOSE OF THE BILL

According to the author's staff, the purpose of the bill is to increase the fee structure for civil processes to more closely match actual costs incurred for the services rendered by the sheriff or marshal.

## EFFECTIVE/OPERATIVE DATE

This bill would be effective January 1, 2010, and would be operative for civil proceedings that occur on or after that date. The rate increases specified in this bill are specifically operative beginning on or after January 1, 2011.

## POSITION

Pending.

Board Position:	Department Director	Date
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## **ANALYSIS**

### STATE LAW

In general, the civil process is the means used by a court to acquire or exercise its jurisdiction over a person or specific property. In California, the marshal or the sheriff is charged to serve, execute, or process court notices, writs, orders, or other actions as authorized based on judgments received in the court proceedings. The civil process includes both a notice process, where persons required to receive notice in certain actions are provided that notice, and the enforcement process, where the sheriff or marshal can seize funds belonging to a debtor on behalf of a judgment creditor. Enforcement actions include issuing garnishments, levying bank accounts, or seizing property in the hands of a third party. Fees for services are set by statute.

Franchise Tax Board (FTB) has administrative authority to issue wage garnishments, bank levies, and Notices of State Tax Liens when an amount owed to the state is due and payable, and the taxpayer has not complied with their obligation to pay the amount due. The garnishments and levies issued by FTB are treated like warrants that are issued under the civil process. FTB uses the civil process and avails the services of the sheriff or marshal when seizing personal property such as vehicles, seizing cash receipts of a business through till taps or keeper actions, issuing subpoenas to enforce the tax code, or seizing assets in a safe deposit box. When using the civil process, the rate of interest on the unpaid liability is computed in accordance with the Revenue and Taxation Code.

### THIS BILL

This bill would require a levying officer to adjust and collect the amount of daily interest entered on the writ that is served. The bill would specify the order in which proceeds of sale or collection are distributed for the class of debts owed to a judgment creditor.

The bill would provide a process for a judgment creditor to require a levying officer to turnover proceeds in its possession belonging to the judgment creditor. The creditor would, after filing a demand for payment as prescribed, be able to file an ex parte application for an order directing the levying officer to show cause why relief should not be granted. The bill would specify what information is required on the application and would prescribe the timeframes for the procedure. If the ex parte application filed is knowingly false or made in bad faith, the bill would authorize the award of attorney fees to the levying officer. Claims for the recovery of money from a levying officer are excluded from being filed against local public entities. Provisions for the demand for payment from a levying officer remain in effect until January 1, 2011, and as of that date is repealed unless a later enacted statute that is enacted before January 1, 2011, deletes or extends that date.

The bill would repeal and reenact various provisions of the Government Code related to fees charged for the civil process and beginning January 1, 2011, would increase the following fees:

- Fees for keeping and caring for property under a writ of attachment, execution, possession, or sale.
- Fees for cancellation of services or execution of any process or notice prior to its completion.
- Fees for making not-found return on a summons, affidavits, and orders, orders for appearance, subpoenas, writs of attachment, writs of execution, writs of possession, or orders for delivery of personal property.
- Fees for processing specified warrants.
- Fees for serving or executing any process or notice.
- Fees for service of a summons in an unlawful detainer action.
- Fees for notice of sale of personal property.
- Fees for levying on personal property.
- Fees for execution and delivery of any instrument.
- Fees for subpoena of witnesses.
- Fees for disbursement of money.
- Fees for certification of correction.

### IMPLEMENTATION CONSIDERATIONS

Because the department uses the civil process to seize personal property, the bill would increase costs to the department that would be passed on to the tax debtor.

The rate of interest accruing on an unpaid tax liability is determined under the Revenue and Taxation Code, while the rate of interest the levying officer that would be providing services to collect the unpaid tax liability would be calculated under the Code of Civil Procedure. Additional efforts would be required by field staff to ensure the correct amount of interest is included in the amounts identified in the warrants used by the levying officer.

### **LEGISLATIVE HISTORY**

AB 2137 (Steinberg, Stats. 2004, Ch. 327) increased fees for keeping and caring for property under a writ of attachment, execution, possession, or sale for serving a writ of possession of real property on an occupant or the occupants or for posting and serving a copy on the judgment debtor.

AB 394 (Montanez, Stats. 2003, Ch. 888) revised and increased existing fees for serving, executing, and processing a summons and complaint and related documents, court notices, writs, orders, and other services provided by sheriffs and marshals.

## **FISCAL IMPACT**

The fees that are assessed for actions taken under the civil process are passed on to the taxpayer whose debt is being collected. Costs to change existing processes would be absorbable.

## **ECONOMIC IMPACT**

The provisions of this bill would not impact state income tax revenues.

## **LEGISLATIVE STAFF CONTACT**

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