



Bill Analysis

Author: Committee on Budget and Fiscal Review Sponsor:

Bill Number: AB 137

Related Bills: See Legislative History

Amended: June 27, 2021

SUBJECT

Budget Trailer Bill – Real Estate Fraud Fee & Lien Release Fee

SUMMARY

This budget trailer bill would, under Government Code (GC), specify that the fee for recording certain full lien releases would be twice the fee charged to record the first page of a lien, encumbrance, or notice. It also would apply the same modification to certain releases of documents relating to an agreement to reimburse a county for public aid and releases of judgments.

This bill would clarify that certain fees applicable to recording or filing an instrument, paper, or notice do not apply to the state or any county, municipality, or other political subdivision of the state.

In addition, this bill adds language to expressly state that the real estate fraud fee does not apply to any real estate instrument, paper, or notice presented for recording for the benefit of the state or any county, municipality, or other political subdivision of the state.

This is the department's first analysis of the bill and only addresses the provisions that impact the department.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The June 27, 2021, amendment replaced budget trailer bill intent language with language that would modify provisions of the Government, the Business and Professions, the Financial, the Health and Safety, the Military and Veterans, the Public Contract, the Public Resources, the Public Utilities, the Welfare and Institutions and Revenue and Taxation Codes (RTC).

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REASON FOR THE BILL

The reason for the bill is to make various statutory changes related to implementing the 2021 Budget Act.

ANALYSIS

This bill would align the fee charged for full releases of liens with in-state addresses under GC section 6103.8 with the fee charged for lien releases under GC section 27361.3. Under both provisions, the fee for recording certain full lien releases would be two times the fee charged to record the first page of a lien, encumbrance, or notice as prescribed in subdivision (a) of GC section 27361. This would make the maximum fee that may be charged to the state for the release of lien with an in-state address twenty dollars (\$20). In addition, this bill would prescribe that the same fee would apply to recordings of full releases for any document relating to an agreement to reimburse a county for public aid granted by the county and releases of any judgment that was in favor of a government agency and recorded without payment of a recording fee.

This bill would also add language to clarify that the additional fees applicable to certain recordings or filings of an instrument, paper, or notice do not apply to those expressly exempt from the payment of recording fees, such as the state.

In addition, this bill adds express language to GC section 27388 to make clear that the real estate fraud fee does not apply to any real estate instrument, paper, or notice presented for recording for the benefit of the state or any county, municipality, or other political subdivision of the state.

This bill also makes several nonsubstantive changes to these provisions.

Effective/Operative Date

This bill, providing for appropriations related to the Budget Bill and identified as a bill related to the budget in the Budget Bill, would be effective and operative immediately upon enactment.

Federal/State Law

Federal Law

No provision comparable in federal law.

State Law

A state tax lien for unpaid state income taxes arises automatically and by operation of law when taxes become due and payable pursuant to RTC section 19221.

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The GC includes two general provisions that exempt the Franchise Tax Board (FTB) and other entities from payment of recording fees. First, section 6103 provides a general exemption for the state from fees for the filing of any paper or document. Second, section 27383, subdivision (a) states that no fee shall be charged by the recorder for services rendered to the State, except for making a copy of a paper or record. These provisions allow the FTB to record liens without payment of fees.

Since 1980, the fee to release a state tax lien pursuant to section 6103.8 has been \$6. Section 27361.3, subdivision (a), also prescribes a fee for the release of liens recorded by the state when the original notice was recorded without payment of fee pursuant to section 27383. Prior to January 1, 2020, the fee prescribed under this statute was \$8. SB 780, which became effective on January 1, 2020, increased the fee to a maximum of "two times the amount charged to record the first page of a lien . . . under subdivision (a) of Section 27361. . . ." The amount charged under GC section 27361 (a) for recording the first page of a lien is \$10, which makes the maximum amount that may be charged to the state to release a lien twenty dollars (\$20).

The exemptions from fees or recording fees under GC sections 6103 and 27383 provide that no fees shall be charged to a state, municipality, county, city, district or other political subdivision. Both GC section 6103.8 and 27361.3 operate as exceptions to those general exemptions. Unless a fee specifically applies to the state, the fee is not applicable under GC sections 6103 and 27383.

Implementation Considerations

None noted.

Technical Considerations

None noted.

Policy Considerations

None noted.

LEGISLATIVE HISTORY

SB 780 (Committee on Governance and Finance, Chapter 329, Statutes of 2019), effective January 1, 2020, increased the fee to release a state tax lien, cumbrance, or notice executed by the state, or any municipality, county, city, district, or other political subdivision from \$8 to a maximum of \$20 (i.e, two times the amount charged to record the first page of a lien).

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PROGRAM BACKGROUND

The FTB records in-state state tax liens against taxpayers pursuant to GC section 7171. For out-of-state tax liens, the FTB currently pays recording fees for both recording the original lien and to record the lien release pursuant to section 7171, subdivision (d).

In general, the FTB may release a lien when, 1) there is another lien that will secure the state tax liability, 2) the liability is legally unenforceable, or 3) the liability has been satisfied in whole. When the FTB records the release of the lien, the FTB may be subject to a fee by the recording county.

FISCAL IMPACT

This bill would not significantly impact the department's costs.

ECONOMIC IMPACT

Revenue Estimate

This bill as amended on June 27, 2021, does not change the way income or franchise tax is calculated under the RTC. However, it could change the amount of real estate lien and fraud fees paid by the state and collected from taxpayers.

LEGAL IMPACT

None noted.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

None noted.

ARGUMENTS

None noted.

LEGISLATIVE CONTACT

FTBLegislativeServices@ftb.ca.gov