

Legislative Analysis



AMENDING FEES FOR RECORDING DOCUMENTS

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Senate Bill 599 as enrolled
Public Act 224 of 2016
Sponsor: Sen. Peter MacGregor

Analysis available at
<http://www.legislature.mi.gov>

Senate Bill 600 as enrolled
Public Act 225 of 2016
Sponsor: Sen. Peter MacGregor

Senate Bill 604 as enrolled
Public Act 229 of 2016
Sponsor: Sen. Curtis Hertel, Jr.

Senate Bill 601 as enrolled
Public Act 226 of 2016
Sponsor: Sen. Dale W. Zorn

Senate Bill 737 as enrolled
Public Act 230 of 2016
Sponsor: Sen. Peter MacGregor

Senate Bill 602 as enrolled
Public Act 227 of 2016
Sponsor: Sen. Dale W. Zorn

House Bill 5164 as enrolled
Public Act 231 of 2016
Sponsor: Rep. Lee Chatfield

Senate Bill 603 as enrolled
Public Act 228 of 2016
Sponsor: Sen. Darwin L. Booher

House Bill 5165 as enrolled
Public Act 232 of 2016
Sponsor: Rep. Jeremy Moss

House Committee: Local Government
Senate Committee: Banking and Financial Institutions
Complete to 1-5-17

BRIEF SUMMARY: Senate Bills 599-604 and Senate Bill 737, as well as House Bills 5164-5165, modified the amounts of recording and filing fees in various sections of Michigan law. Many of these fees for filing documents would be changed to follow the fees required for recording a real estate mortgage as found in Senate Bill 599. These changes took effect October 1, 2016.

FISCAL IMPACT: Senate Bills 599 through 604 (and House Bills 5164 and 5165) would impact counties differently based on the volume, size, and type of applicable documents handled locally. Generally, the new \$30 flat fee would increase revenues to counties for certain documents (recording of a real estate mortgage, deed, certified copy of an attachment, notice of the pendency of a suit, lien for labor on oil and gas wells, lien on real estate for federal taxes, and lien on real estate for state taxes, judgment or decree affecting title to real property (HB 5165), or other instrument) containing fewer than eight pages (current fee is \$10 for first page and \$3 for each subsequent page). Revenues would be reduced for documents exceeding seven pages. See ***Fiscal Information*** for more information.

THE APPARENT PROBLEM:

Previously, the cost of recording documents was determined based on the number of pages in the document. This meant that the addition or removal of a page from a file, or a simple miscalculation, could lead to the incorrect amount included for a filing, and the rejection of the document. According to the Michigan Association of Register of Deeds, the payment of incorrect fees was one of the main reasons for rejection. In Berrien County, incorrect fees accounted for at least 70 percent of rejections. In many instances, this delayed real estate closings and unnecessarily complicates proceedings.

For over a year, legislators negotiated with title companies, banks, and registers of deeds, as well as other stakeholders, to simplify the system and create a fair and equitable set of fees. This bill package was the result of that effort.

THE CONTENT OF THE BILL:

Senate Bill 599 would amend Section 2567 of the Revised Judicature Act (RJA) by adjusting certain fees. Currently, the fee owed to a register of deeds for entering and recording a "deed, mortgage, certified copy of an attachment, notice of the pendency of a suit, or other instrument" is based on the number of pages (\$8 for the first page and \$3 for each additional page), with an additional fee collected by the county register of deeds under Section 2567a. This bill would change Section 2567 to require a flat fee of \$30, which would apply to any document entered and recorded. That fee would include the fee required under Section 2567a, with that amount to continue to be remitted to the state treasurer.

This \$30 fee, as well as the additional fee if the document assigns or discharges more than one instrument, must be paid when the document is left for recording, with exceptions for electronic submission, submission by governmental entities, and in the case of tax delinquency or notice of judgement of foreclosure.

The bill also removes the \$1 fee for a seal to exemplification and instead adds a \$5 fee to certify a recorded document.

Senate Bill 603 initially would have allowed the Michigan Talent Investment Agency (which oversees the Unemployment Insurance Agency) to recover the cost of filing a *lien* against an employer, but would have required the TIA to incur the cost of filing the eventual *lien discharge*. Because the fee for filing a lien discharge increased from \$2 to \$30, this would have greatly increased costs to the TIA.

In response to concerns by the TIA, both that bill and **House Bill 599** were amended to lessen the costs to the TIA. Essentially, the TIA will pay the \$30 recording fee upon filing a lien. Once the employer resolves the debt, the employer will file for discharge of the lien and will pay both the \$30 recording fee for filing the lien discharge *and* \$30 to reimburse the TIA for the lien filing fee to the register of deeds. The register of deeds will then gather those reimbursements and remit them to the TIA on a quarterly basis if the county has a

population under 750,000, or on a monthly basis if the population is 750,000 or above. Wayne, Oakland, and Macomb counties have populations over 750,000. (MCL 600.2567)

House Bills 5164 would amend the Land Division Act. Currently, the Land Division Act requires a filing and recording fee of \$20 from the proprietor when a final plat is submitted to the clerk of the governing body of a municipality. **House Bill 5164** would change this fee so that it is the same as that required by Section 2567 of the RJA. As defined in the act: (1) a plat is a map or chart of a subdivision of land, and (2) a proprietor is a natural person, firm, association, partnership, corporation, or combination of any of them that holds an ownership interest in land whether recorded or not. (MCL 560.241)

House Bill 5165 would amend Public Act 107 of 1895, which applies to the recording of judgments affecting title to realty. Under Public Act 107, when a court in the state of Michigan issues a final judgment or decree as to the ownership of a piece of land, a copy of the judgement or decree may be recorded in the office of the register of deeds for the applicable county or counties. The register of deeds receives the same fee for recording this certified copy as for recording conveyances. **House Bill 5165** would instead bring this fee in line with the fee for entering and recording a real estate mortgage under Section 2567 of the RJA. The bill would also retain the requirement that if the register of deeds receives an annual salary from the county, all fees collected under this section must be turned over to the county treasurer. (MCL 565.412)

Senate Bill 600 would amend Public Act 146 of 1937, which applies to the rights of contractors and other tradespeople to seek a lien for labor or material provided on oil and gas wells, so that the fees provided in Section 2567 of the RJA for recording a real estate mortgage also apply when recording a lien against oil and gas wells. (MCL 570.254)

Senate Bill 601 would amend the Uniform Federal Lien Registration Act by bringing the filing fee for a lien on tangible and intangible personal property and the fee for all other notices, including a certificate of release or nonattachment, in line with the fee for recording a real estate mortgage under Section 2567 of the RJA. The bill would also allow alternative methods to be established for billing federal officials for documents they filed. (MCL 211.666)

Senate Bill 602 would amend the State Tax Lien Registration Act by bringing the fee for recording or filing a tax lien on tangible and intangible property and the fee for all other notices, including a certificate of release or nonattachment, in line with the fee for recording a real estate mortgage under Section 2567 of the RJA. Additionally, the bill would allow the register of deeds and a state collecting agency to use an alternate payment method for documents filed by the agency. The state collecting agency may recover these fees from the person liable for the unpaid tax as additional costs. (MCL 211.685)

Senate Bill 603 would amend the Michigan Employment Security Act by bringing the fee for recording or discharge of a lien under the act in line with the fee for recording a real estate mortgage under Section 2567 of the RJA.

The bill provides that if the Michigan Talent Investment Agency/Unemployment Insurance Agency does not file the lien discharge (as described in SB 599, above), it must provide the debtor with the lien discharge document and a notice of the fees associated with the filing of the lien and the lien discharge. (MCL 421.15)

Senate Bill 604 would amend Article 9 of the Uniform Commercial Code (UCC) to specify that when the UCC states that the recording fees that would otherwise be applicable to the record of the mortgage apply, those fees may be found under Section 2567 of the RJA. Currently, the UCC provides that with respect to a record of a mortgage that is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut, the mortgage-recording fees apply, but does not refer to Section 2567. (MCL 440.9525)

Senate Bill 737 would amend the Revenue Act to allow the state treasurer or the state treasurer's authorized representative to recover recording or filing fees, along with other costs, when it sells property to satisfy a tax deficiency.

The act allows the state treasurer or authorized representative to cause a demand to be made on a taxpayer for the payment of a tax, unpaid account, or amount due the state, or any of its departments or agencies. If the liability remains unpaid for ten days after the demand, the treasurer may issue a warrant and may levy on all property and rights to property belonging to the taxpayer, or on which a lien is provided, for the amount of the deficiency. The property may be sold for the payment of the amount due, the cost of executing the warrant, and additional penalties and interest. The bill adds recording or filing fees as recoverable costs by the sale of property. (MCL 205.25)

HOUSE COMMITTEE ACTION:

The House made one substantive change to the bill package: the Senate called for the state treasurer to adjust the fees described in Senate Bill 599 every five years, by April 1, to account for the cumulative percentage change in the Consumer Price Index (CPI) for the preceding five years or 5%, whichever is less. This CPI-adjusted number would then be rounded up to the nearest \$1 for recording a document or for a document assigning or discharging more than one instrument. For all other fees, the CPI-adjusted number would be rounded up to the nearest 25 cents. This would have ensured that the fees assessed kept pace with inflation. The House removed the requirement to adjust the fees every five years based on the CPI. The House also added an effective date of October 1, 2016.

FISCAL INFORMATION:

The following fee increases would increase revenues to counties:

- For a notice of a federal lien on tangible and intangible personal property and any other notice, including a certificate of release or nonattachment related to the federal lien, the fee would increase from \$3 to \$30 [SB 601(H-1)]

- For a notice of tax lien on tangible and intangible personal property and any other notice, including a certificate of release or nonattachment related to the tax lien, the fee would increase from \$1 to \$30. [SB 602 (H-1)]
- For a lien or discharge of a lien recorded by the Unemployment Insurance Agency the fee would increase from \$2 to \$30. [SB 603 (H-2)]
- For a proprietor filing a final plat the fee would increase from \$20 to \$30 [HB 5164 (H-1)]

In addition, the fee to certify a document would increase from \$1 to \$5, which would result in increased revenues to counties.

Due to the increased fees for filing liens and discharging liens related to taxes and unemployment insurance contributions or benefits overpayments, the bills would increase costs to the Department of Treasury and Unemployment Insurance Agency. In FY 2014-15, the Department of Treasury issued and/or removed approximately 73,000 liens. The Unemployment Insurance Agency issued and/or removed approximately 113,595 liens. Cost increases to the Department of Treasury are unknown because the breakdown of real estate and personal property liens and discharges is unknown.

As noted above, the fee to file or discharge a lien for the UIA would increase from \$2 to \$30. This would result in increased costs of \$3.2 million based on FY 2014-15 liens filed. SBs 602, 603, and 737 would authorize the Department of Treasury and UIA to recover recording or filing fees from the liable person or business. The increased costs to the Department of Treasury and UIA would depend on how much of the increased cost was collected to offset the recording and filing fees incurred. If all cost increases were passed on to liable parties and collected there would be no fiscal impact to the Department of Treasury and UIA.

ARGUMENTS:

For:

Proponents argue that the implementation of a flat fee will simplify the often confusing and overwhelming process of recording documents, and ensure that fewer documents are rejected for insufficient fees. According to testimony from the Michigan Association of Register of Deeds, a flat fee will save people money over the course of their lifetime, as they will more often record lengthy documents, such as deeds and mortgages, than one-page documents.

Against:

While the implementation of a flat fee would lower the cost to record documents over a certain number of a pages, it also represents a substantial increase in cost for people seeking to record only a few pages. Currently, the fee for recording a one-page document ranges from \$1 to \$14; the bill package will raise the fee to \$30.

Response:

The parties negotiating this standardization of fees considered a number of options, including a two- or three-tier system based on the number of pages in a document, but they ultimately decided that a single flat fee was the simplest, easiest option. A \$30 flat fee would be the lowest in any of the states which have implemented a flat fee; in Illinois, the flat fee is \$40.

For:

According to testimony, the current system of charging by the page is based on the system of hand scribing, or manually recording each page of each document. Now that documents are recorded electronically, a register expends the same time and energy for each document, whether it is a few pages or a few hundred. Therefore, say proponents, the fee structure should be standardized to recognize these technological advances.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.