Local Government Mandate Statement
Kentucky Legislative Research Commission
2020 Regular Session

Part I: Measure Information

Bill Request #: 52

Bill #: HB 431

Document ID #: 4709

Bill Subject/Title: AN ACT relating to the priority of purchase money deeds of trust or mortgages.

Sponsor: Representative Joseph Fischer

Unit of Government: **X** City **X** County **X** Urban-County
X Charter County **X** Consolidated Local **X** Unified Local Government

Office(s) Impacted: Local Government

Requirement: **x** Mandatory ___ Optional

Effect on
Powers & Duties: **x** Modifies Existing **x** Adds New ___ Eliminates Existing

Part II: Bill Provisions and the Estimated Fiscal Impact Relating to Local Government

The mandate statement deals only with the aspects of this bill that impacts local government.

This legislation establishes a priority for purchase money deeds of trust or mortgages and amends various statutes to conform.

Section 3 creates a new section to KRS Chapter 382 to establish this priority. A purchase money deed of trust or mortgage, whether or not recorded, has priority over any mortgage, lien, or other claim that attaches to the real property, but is created by or arises against the purchaser-mortgagor prior to the purchaser-mortgagor's acquisition of title to the real property.

The fiscal impact of this legislation is indeterminable, but could be substantial.

The bill affects the priority of certain government liens by placing purchase money deeds of trust or mortgages above all other liens or any other claim on the property, the potential fiscal impact on local governments could be substantial.

According to the Kentucky County Attorney Association (KCAA) and the Kentucky League of Cities (KLC), this legislation makes changes to statutes that make the statutory scheme of lien priority confusing. It creates the potential for city and county liens to be subordinate to purchase money deeds of trust or mortgages.

Sections 4 and 5 amend KRS 65.8835 and 65.8836 related to liens placed by local code enforcement boards and notifications to other lien holders. A lien subject to KRS 65.8835 that does not take precedence over previously recorded liens under the circumstances outlined in KRS 65.8836 (3)(c), shall, if the final order remains partially unsatisfied, take precedence over all other liens, except liens for state; county; school board; and city taxes; and purchase money deeds of trust or mortgages granted priority under Section 3.

KCCA and KLC indicate that if purchase money deeds of trust or mortgages are moved above local code enforcement liens, the impact could be great. In 2019, Louisville Metro collected $382,328.71 directly through legal actions based on the priority of their code enforcement liens. This amount does not include payments made by banks or mortgage companies in order to prevent legal action because of the higher priority code enforcement liens had to their lien position. The City of Bowling Green typically has approximately $25,000 a year in outstanding code enforcement balances.

Section 6 amends KRS 91.270 to make state tax liens and purchase money deeds of trust or mortgages granted priority under Section 3, superior to all other liens. KCAA states that in 2019, Louisville Metro established liens on uncollected occupational taxes of $11,700,000 and collected $2,300,000, leaving $7,200,000 still secured by liens. Much of this would be uncollectable under the proposed bill.

Sections 7, 8 and 9 amend priorities of local government's ad valorem real and personal property liens. Currently, all tax liens have the same priority and put together as one tax lien. These liens are sold by each county at their yearly tax sales to third parties who pay the taxes up front and collect later. KCCA and KLC believe the changes this legislation proposes, could move all these liens below mortgages, based on Section 3, or separate them, in which case, state taxes would be above mortgages, but the local taxes below.

According to KCCA, in 2019, the delinquent property taxes collected in Jefferson County totaled $12,969,837.75 of which $1,054,180.99 was distributed to the state. If the changes proposed in this bill allows state taxes to be superior, the effect on Louisville Metro Government and Jefferson County schools could result in a nearly $12,000,000 loss. These lost revenues could be replicated throughout each county and municipality in Kentucky.

Another potential affect raised by KCCA would be the sales of tax bills. If a third party is unsure if their liens are collectable and to what extent, some, if not all, of the sales may end. KCCA reported that according to the Kentucky Department of Revenue, the total tax lien sales to third party purchasers of 2018 tax bills in 2019 was $11,466,018.43. Over the last 10 years, Jefferson County collected nearly 27,000 tax liens totaling over $58,200,000 from third party tax sales. KLC reports that the City of Bowling Green typically has approximately $210,000 a year in delinquent property taxes, not including penalties, interest or costs associated with law suits.

Part III: Differences to Local Government Mandate Statement from Prior Versions

The Part II section above pertains to the bill as introduced.

Data Source(s): Kentucky League of Cities, Kentucky County Attorneys Association, LRC Staff

Preparer: Mark Offerman **Reviewer:** KHC **Date:** 3/2/20