

---

THE GENERAL ASSEMBLY OF PENNSYLVANIA

---

# HOUSE BILL

## No. 1076

Session of  
1995

---

INTRODUCED BY MERRY, SCHRODER, PISTELLA, BARD, HENNESSEY, CURRY,  
SANTONI, WOZNIAK, PETTIT, FEESE AND WALKO, MARCH 8, 1995

---

AS AMENDED ON SECOND CONSIDERATION, IN SENATE, JUNE 28, 1995

---

AN ACT

1 Amending the act of May 16, 1923 (P.L.207, No.153), entitled "An  
2 act providing when, how, upon what property, and to what  
3 extent, liens shall be allowed for taxes and for municipal  
4 improvements, for the removal of nuisances, and for water  
5 rents or rates, sewer rates, and lighting rates; for the  
6 procedure upon claims filed therefor; the methods for  
7 preserving such liens and enforcing payment of such claims;  
8 the effect of judicial sales of the properties liened; the  
9 distribution of the proceeds of such sales, and the  
10 redemption of the property therefrom; for the lien and  
11 collection of certain taxes heretofore assessed, and of  
12 claims for municipal improvements made and nuisances removed,  
13 within six months before the passage of this act; and for the  
14 procedure on tax and municipal claims filed under other and  
15 prior acts of Assembly," providing for attorney fees in  
16 actions involving municipal claims; AND AUTHORIZING CERTIFIED <—  
17 MAIL TO NOTIFY PROPERTY OWNERS OF PETITIONS OR RULES.

18 The General Assembly of the Commonwealth of Pennsylvania  
19 hereby enacts as follows:

20 Section 1. Section 3(a) of the act of May 16, 1923 (P.L.207,  
21 No.153), referred to as the Municipal Claim and Tax Lien Law,  
22 amended December 19, 1990 (P.L.1092, No.199), is amended and the  
23 section is amended by adding subsections to read:

24 Section 3. (a) All municipal claims which may hereafter be

1 lawfully imposed or assessed on any property in this  
2 Commonwealth, and all such claims heretofore lawfully imposed or  
3 assessed within six months before the passage of this act and  
4 not yet liened, in the manner and to the extent hereinafter set  
5 forth, shall be and they are hereby declared to be a lien on  
6 said property, together with all charges, expenses, and fees  
7 incurred in the collection of any delinquent account, including  
8 reasonable attorney fees, added thereto for failure to pay  
9 promptly; and said liens shall arise when lawfully imposed and  
10 assessed and shall have priority to and be fully paid and  
11 satisfied out of the proceeds of any judicial sale of said  
12 property, before any other obligation, judgment, claim, lien, or  
13 estate with which the said property may become charged, or for  
14 which it may become liable, save and except only the costs of  
15 the sale and of the writ upon which it is made, and the taxes  
16 imposed or assessed upon said property.

17 (a.1) IT IS NOT THE INTENT OF THIS SUBSECTION TO REQUIRE <—  
18 OWNERS TO PAY, OR MUNICIPALITIES TO SANCTION, INAPPROPRIATE OR  
19 UNREASONABLE ATTORNEY FEES, CHARGES OR EXPENSES FOR ROUTINE  
20 FUNCTIONS. Attorney fees incurred in the collection of any  
21 delinquent account shall be in an amount sufficient to  
22 compensate attorneys undertaking collection and representation  
23 of a municipality in actions involving claims arising under this  
24 act as provided in subsection (a). In the event a delinquent <—  
25 property owner challenges the amount of the attorney fee, the  
26 ACT AS PROVIDED BY SUBSECTION (A). A MUNICIPALITY BY OFFICIAL <—  
27 ACTION SHALL SEEK COURT APPROVAL OF THE SCHEDULE, PRIOR TO THE  
28 ADOPTION OF THE SCHEDULE, OF THE AMOUNT OF ATTORNEY FEES TO BE  
29 ASSESSED. THE court shall consider, but not be limited to, the  
30 following:

1     (1) The time and labor required, the novelty and difficulty  
2     of the questions involved and the skill requisite to properly  
3     undertake collection and representation of a municipality in  
4     actions arising under subsection (a).

5     (2) The customary charges of the members of the bar for  
6     similar services.

7     (3) The amount involved in the controversy and the benefits  
8     resulting to the client or clients from the services.

9     (4) The contingency or the certainty of the compensation.

10    (a.2) Any time attorney fees are awarded pursuant to any  
11    provision of law, the municipality shall not be entitled to  
12    duplicate recovery of attorney fees under this section.

13    (a.3) At least thirty days prior to any imposition or  
14    assessment of attorney fees in accordance with this section, the  
15    municipality shall notify the owner by first class mail of: THE <—  
16    MANNER OF SERVICE AS PROVIDED FOR PURSUANT TO PA.R.C.P. NO.402  
17    OR BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED. IF THE CERTIFIED  
18    MAIL IS REFUSED OR UNCLAIMED, THEN NOTIFICATION SHALL BE MADE BY  
19    FIRST CLASS MAIL. THE NOTIFICATION SHALL INCLUDE THE FOLLOWING:

20    (1) The municipality's intent to impose or assess attorney  
21    fees AFTER THE THIRTY-DAY PERIOD HAS EXPIRED. <—

22    (2) The manner in which the imposition or assessment of  
23    attorney fees may be avoided by payment of the delinquent  
24    account AND THE PROCESS BY WHICH THE DELINQUENT PROPERTY OWNER <—  
25    MAY MAKE ARRANGEMENTS FOR INSTALLMENT PAYMENTS WITH THE  
26    MUNICIPALITY PRIOR TO THE IMPOSITION OR ASSESSMENT OF ATTORNEY  
27    FEES.

28    (3) A statement of the fixed fees and hourly rate or rates  
29    to be applied in computing the amount of attorney fees which may  
30    be imposed or assessed.

1       \* \* \*

2       Section 2. Sections 19 and 20 of the act are amended to  
3 read:

4       Section 19. If no affidavit of defense be filed within the  
5 time designated, judgment may be entered and damages assessed by  
6 the prothonotary by default, for want thereof. Such assessment  
7 shall include a [five per cent] fee for collection to  
8 plaintiff's attorney in accordance with section 3.

9       If an affidavit of defense be filed, a rule may be taken for  
10 judgment for want of sufficient affidavit of defense, or for so  
11 much of the claim as is insufficiently denied, with leave to  
12 proceed for the residue.

13       The defendant may, by rule, require the plaintiff to reply,  
14 under oath or affirmation, to the statements set forth in the  
15 affidavit of defense, and after the replication has been filed  
16 may move for judgment on the whole record.

17       Section 20. Tax claims and municipal claims shall be prima  
18 facie evidence of the facts averred therein in all cases; and  
19 the averments in both tax and municipal claims shall be  
20 conclusive evidence of the facts averred therein, except in the  
21 particulars in which those averments shall be specifically  
22 denied by the affidavit of defense, or amendment thereof duly  
23 allowed. A compulsory nonsuit, upon trial, shall be equivalent  
24 to a verdict for defendant, whether the plaintiff appeared or  
25 not. If plaintiff recovers a verdict, upon trial, in excess of  
26 the amount admitted by the defendant in his affidavit of defense  
27 or pleadings, he shall be entitled to [an attorney's fee]  
28 attorney fees for collection[, equal to five per centum of such  
29 excess, but not exceeding fifty dollars] in accordance with  
30 section 3.

1       ~~SECTION 3. THIS ACT SHALL APPLY RETROACTIVELY TO ALL CLAIMS~~ <—  
2       ~~FILED ON OR AFTER DECEMBER 19, 1990.~~

3       SECTION 3. SECTION 39.2 OF THE ACT, ADDED DECEMBER 14, 1992 <—  
4       (P.L.858, NO.135), IS AMENDED TO READ:

5       SECTION 39.2. (A) IN CITIES OF THE FIRST CLASS, NOTICE OF A  
6       RULE TO SHOW CAUSE WHY A PROPERTY SHOULD NOT BE SOLD FREE AND  
7       CLEAR OF ALL ENCUMBRANCES ISSUED BY A COURT PURSUANT TO A  
8       PETITION FILED BY A CLAIMANT UNDER SECTION 31.2 OF THIS ACT  
9       SHALL BE SERVED BY THE CLAIMANT UPON OWNERS, MORTGAGEES, HOLDERS  
10      OF GROUND RENTS, LIENS AND CHARGES OR ESTATES OF WHATSOEVER KIND  
11      AS FOLLOWS:

12      (1) BY POSTING A TRUE AND CORRECT COPY OF THE PETITION AND  
13      RULE ON THE MOST PUBLIC PART OF THE PROPERTY;

14      (2) BY MAILING BY FIRST CLASS MAIL TO THE ADDRESS REGISTERED  
15      BY ANY INTERESTED PARTY PURSUANT TO SECTION 39.1 OF THIS ACT A  
16      TRUE AND CORRECT COPY OF THE PETITION AND RULE; AND

17      (3) BY REVIEWING A TITLE SEARCH, TITLE INSURANCE POLICY OR  
18      TAX INFORMATION CERTIFICATE THAT IDENTIFIES INTERESTED PARTIES  
19      OF RECORD WHO HAVE NOT REGISTERED THEIR ADDRESSES PURSUANT TO  
20      SECTION 39.1 OF THIS ACT, THE CITY SHALL MAIL BY FIRST CLASS  
21      MAIL AND [BY] EITHER BY CERTIFIED MAIL, RETURN RECEIPT

22      REQUESTED, OR BY REGISTERED MAIL TO SUCH ADDRESSES AS APPEAR ON  
23      THE RESPECTIVE RECORDS RELATING TO THE PREMISES A TRUE AND  
24      CORRECT COPY OF THE PETITION AND RULE.

25      THE CITY SHALL FILE AN AFFIDAVIT OF SERVICE WITH THE COURT PRIOR  
26      TO SEEKING A DECREE ORDERING THE SALE OF THE PREMISES.

27      (B) NO PARTY WHOSE INTEREST DID NOT APPEAR ON A TITLE  
28      SEARCH, TITLE INSURANCE POLICY OR TAX INFORMATION CERTIFICATE OR  
29      WHO FAILED TO ACCURATELY REGISTER HIS INTEREST AND ADDRESS  
30      PURSUANT TO SECTION 39.1 OF THIS ACT SHALL HAVE STANDING TO

1 COMPLAIN OF IMPROPER NOTICE IF THE CITY SHALL HAVE COMPLIED WITH  
2 SUBSECTION (A) OF THIS SECTION. THIS PROVISION SHALL NOT APPLY  
3 IF THE MORTGAGE OR INTEREST WAS OTHERWISE PROPERLY RECORDED IN  
4 THE OFFICE OF THE RECORDER OF DEEDS AND THE DOCUMENT CONTAINS A  
5 CURRENT ADDRESS SUFFICIENT TO SATISFY THE NOTICE REQUIREMENTS OF  
6 THIS SECTION.

7 (C) NOTICE OF THE COURT'S DECREE ORDERING A TAX SALE,  
8 TOGETHER WITH THE TIME, PLACE AND DATE OF THE SALE, SHALL BE  
9 SERVED BY FIRST CLASS MAIL ON ALL PARTIES SERVED WITH THE  
10 PETITION AND RULE, ON ANY PARTIES WHOSE INTEREST APPEARED OF  
11 RECORD AFTER THE FILING OF THE PETITION BUT BEFORE THE COURT'S  
12 DECREE AND ON ANY CREDITOR WHO HAS OBTAINED JUDGMENT AGAINST THE  
13 OWNER OF THE PREMISES PRIOR TO THE DATE OF THE DECREE. THE CITY  
14 SHALL FILE AN AFFIDAVIT OF SERVICE OF THESE NOTICES PRIOR TO THE  
15 DATE OF THE SALE.

16 SECTION 4. (A) THIS ACT SHALL APPLY AS FOLLOWS:

17 (1) EXCEPT AS PROVIDED IN PARAGRAPH (2), THIS ACT SHALL  
18 APPLY RETROACTIVELY TO ALL CLAIMS FILED ON OR AFTER DECEMBER  
19 19, 1990.

20 (2) PARAGRAPH (1) SHALL NOT APPLY TO THE ADDITION OF  
21 SECTION 3(A.1) OF THE ACT PERTAINING TO THE COURT APPROVAL OF  
22 THE SCHEDULE OR TO THE ADDITION OF SECTION 3(A.3) OF THE ACT.

23 (3) NO MUNICIPALITY SHALL BE LIABLE TO ANY ATTORNEY FOR  
24 THE AMOUNT OF ANY ATTORNEY FEES FOUND TO BE UNREASONABLE BY  
25 THE COURT IN CONNECTION WITH THE ADDITION OF SECTION 3(A.1)  
26 OF THE ACT.

27 (B) IN THE EVENT A DELINQUENT PROPERTY OWNER FILES A  
28 CHALLENGE OVER THE AMOUNT OF THE ATTORNEY FEES INCURRED DURING  
29 THE RETROACTIVITY PERIOD, THE COURT SHALL CONSIDER, BUT NOT BE  
30 LIMITED TO, THE PROVISIONS OF SECTION 3(A.1)(1), (2), (3) AND

1 (4) OF THE ACT.

2 Section ~~3-4~~ 5. This act shall take effect in 60 days.

<—