



**Remarks of Pat Moore  
First Assistant Attorney General  
Office of the Attorney General  
Joint Committee on Revenue  
As Prepared for Delivery  
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Good afternoon, Chair Moran, Chair Cusack, and members of the Committee. My name is Pat Moore, First Assistant Attorney General. It is my honor to appear before you on behalf of Attorney General Andrea Joy Campbell.

A handful of bills before you today seek to modify Massachusetts' municipal tax lien foreclosure process. That process is in urgent need of modification in the wake of last month's unanimous Supreme Court decision in *Tyler v. Hennepin County*, which has rendered unconstitutional the current municipal tax lien foreclosure process set forth in Chapter 60 of the General Laws. As our own SJC explained three years ago, in a case known as *Tallage Lincoln LLC v. Williams*, after a tax lien foreclosure, "the taxpayer loses any equity he or she has accrued in the property, no matter how small the amount of taxes due or how large the amount of equity." In *Tyler*, the Supreme Court held that a Minnesota statute that similarly purported to "use the toehold of the

tax debt to confiscate more property than was due” [slip op. at 6] had effected a “classic” unconstitutional taking.

In recent weeks we have become aware of suggestions that the unconstitutional provisions of Chapter 60 can be severed from the remainder of the statute, or even that Chapter 60 in its current form is constitutional despite *Tyler*. In our view, that simply is not the case. To collect unpaid real estate taxes, Chapter 60 envisions two types of foreclosures: (1) the municipality conducts a tax sale, conveying a collectors deed to a private party, which may then proceed in Land Court to foreclose on the former property owner’s right to regain the property by paying back taxes; or, more commonly according to the SJC in *Williams*, (2) the municipality effects a tax taking and owns the property in full subject only to the former owner’s right to regain it by the payment of back taxes, which, again, the municipality may foreclose in Land Court.

In either scenario, once the foreclosure occurs, the former owner’s equity is extinguished. This essential feature of Massachusetts’ tax lien foreclosure process cannot be distinguished from the one the Supreme Court struck down. This is because Chapter 60, like Minnesota’s statute, “provides no opportunity for the taxpayer to recover the excess value” [*Tyler*, slip op. at 11]. Because the existing statutory scheme depends on this “strict foreclosure” mechanism, Chapter 60’s constitutional defects are not severable.

We are likely to see a decision striking down the pertinent parts of Chapter 60 in the near future. Whether the Land Court — or another court where the issue has been raised — will rule on the issue in days, weeks, or a few months is not clear, but the *Tyler* decision ensures that time is near. So, the time is now to fix the statute.

With me is Amber Villa, Chief of our office's Neighborhood Renewal Division, to suggest how that may be done.

Before I turn it over to Amber, let me say again, and plainly: The tax lien foreclosure process set forth in Chapter 60 of the General Laws is unconstitutional.