

Fiscal Note & Local Impact Statement

127th General Assembly of Ohio

Ohio Legislative Service Commission
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BILL: **Sub. H.B. 138** DATE: **May 21, 2008**

STATUS: **As Reported by Senate Committee on Civil Justice** SPONSOR: **Rep. Foley**

LOCAL IMPACT STATEMENT REQUIRED: **Yes** **Local cost in As Introduced version; Substitute version likely offsets sheriffs' costs with revenue recovery mechanism**

CONTENTS: **Judicial sales**

State Fiscal Highlights

STATE FUND	FY 2009 – FUTURE YEARS
Low- and Moderate-Income Housing Trust Fund (Fund 646)	
Revenues	Potential increased efficiency in fee collection
Expenditures	- 0 -

Note: The state fiscal year is July 1 through June 30. For example, FY 2009 is July 1, 2008 – June 30, 2009.

- **Low- and Moderate-Income Housing Trust Fund.** The requirement that a deed be delivered to, and recorded by, the county recorder within 14 days may decrease the average time between the property being purchased at a judicial sale and the date the deed is filed with the county recorder. As a result, in some counties, the county recorder may collect housing trust fees more promptly than might otherwise have been the case under current law and practice. There would not, in all likelihood, be an increase in the amount of housing trust fees collected by the county recorder, but rather those fees may be collected in a more efficient manner.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2008 – FUTURE YEARS
County Sheriffs	
Revenues	Gain in filing fees and associated costs collected from purchaser, likely to exceed minimal annually in some jurisdictions
Expenditures	Increase, exceeding minimal annually in some jurisdictions, for filing fees and deed processing, with revenues collected at time of purchase likely to cover expenditure increase
Municipal and County Courts	
Revenues	- 0 -
Expenditures	Potential annual savings relative to foreclosure and housing enforcement cases
Counties, Municipalities, and Townships generally	
Revenues	Potential annual gain in fines and enforcement cost recovery
Expenditures	Potential annual decrease in enforcement costs

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- **Sheriffs and deed filing fees.** The bill requires the sheriff's department to file the deed with the county recorder within 14 days of confirmation at a judicial sale. In order to record the deed with the county recorder, the county engineer, and the county auditor must first examine and approve the information contained in the deed. Based on LSC fiscal staff's research to date, it does not appear that the county engineer charges a fee for their services, while the county auditor and the county recorder do charge a fee for their services. The bill requires officers who sell real property at a judicial sale to collect the recording fee and any associated costs to cover the recording from the purchaser or transferee at the time of the sale or transfer. As a result, the sheriff will need to develop and maintain a mechanism to accurately assess, collect, and disburse these moneys.

- **Sheriffs and deed filing process.** The process of physically filing a deed can be time consuming, as it involves stops at the offices of the county engineer, county auditor, and the county recorder, which concerns the Buckeye Sheriffs' Association, as well as individual sheriff's offices contacted for this analysis. Their concern is that existing staffing levels in some sheriffs' offices may not be sufficient to handle the additional deed filing-related workload. In many urban counties, the number of foreclosures subject to judicial sales can be quite large. For example, the Franklin County Sheriff's Office estimates that they process approximately 150 to 200 foreclosures per week, and the Mahoning County Sheriff's Office estimates that they process approximately 40 to 50 foreclosures per week. According to estimates from several county recorders' offices, the processing time for a deed, provided the information contained on the paperwork is complete and accurate, is approximately 20 to 30 minutes. This represents an average increase in workload of up to approximately 73 hours per week for the Franklin County Sheriff's Office and up to approximately 19 hours per week for the Mahoning County Sheriff's Office. According to the Buckeye State Sheriffs' Association, the bill will allow the sheriff to charge and collect from purchasers or transferees all of the fees and costs associated with filing the deed, including any increase in labor costs.

- **Municipal and county courts handling housing enforcement cases.** By ensuring that purchaser information is filed in a more-timely manner than might otherwise have been the case under current law and practice, the bill increases the likelihood that building, housing, health, or safety code violation charges are filed against the correct defendant. Presumably, the bill may decrease the number of cases that are being filed against the wrong party and subsequently dismissed by the court. It does not appear that such a result will generate any readily discernible fiscal effect on the prosecutors and courts handling these matters, other

than the potential for a difficult to measure savings in the time it might otherwise have taken to identify the legally responsible party and impose a remedy.

- **County, municipal, and township code enforcement generally.** The bill's various provisions appear to be aimed at increasing a local jurisdiction's ability to: (1) ensure a property is safe and secure, (2) conserve public building, housing, health, and safety code enforcement resources, and (3) minimize the amount of time that a property may be left unoccupied or idle.
- **Mediation services.** The bill permits a lender and borrower to seek mediation services in foreclosure cases from the Supreme Court's Foreclosure Mediation Program Model, which is currently being used in 24 courts across the state. The expansion of this program is expected to reduce the number of foreclosure cases that come before the court.

Detailed Fiscal Analysis

Fiscally notable provisions of the bill

For the purposes of this fiscal analysis, the bill most notably:

- Requires purchasers of real property at a judicial sale to provide certain identifying information, including the purchaser's name, address, telephone number, and a statement of whether the purchaser will occupy the lands and tenements.
- Allows municipalities and townships to conduct inspections of property subject to a writ of execution.
- Requires judicial sales to be confirmed within 30 days of sale.
- Requires officers who sell real property at a judicial sale to collect the recording fee and any associated costs to cover the recording from the purchaser or transferee at the time of the sale or transfer and file the deed within 14 days of confirmation.
- Authorizes courts and county boards of revision to transfer certain tax delinquent lands subject to judicial foreclosure without appraisal or sale.
- Permits summary property descriptions to be read at a judicial sale.
- Allows the lender and borrower to seek the services of the Supreme Court's Foreclosure Mediation Program Model.
- Offers property that did not sell at a judicial sale to a political subdivision before forfeiture to the state.

Local fiscal effects

From a local perspective, the bill may directly affect in varying degrees a host of public entities, largely associated with counties and municipalities, including, but not limited to, the sheriff, the county treasurer, the county auditor, the county engineer, the court of common pleas, the county board of revision, the municipal or county court, and the municipal and township building and zoning enforcement unit.

County sheriffs

This bill contains several provisions that increase the sheriff's administrative responsibilities pertaining to judicial sales as discussed in more detail immediately below.

Purchaser information. The bill requires that personal information of the purchaser be collected by the sheriff and included as part of the sheriff's record of proceedings and as part of the court of common pleas record. LSC fiscal staff contacted several sheriffs' departments to discuss this requirement and discerned that: (1) the required purchaser information is already collected in those jurisdictions, and (2) that practice was believed to be widespread across the state. Assuming that were true, then the collection and inclusion of this information in sheriff

and court records will not create any significant additional work or related operating expenses, as this requirement appears to largely codify current practice in many, if not all, counties.

Property description reading. The bill permits a reading of a summary property description to be read at a judicial sale, which clarifies the sheriff's responsibility with regard to this specific aspect of the judicial sale process. It allows the sheriff to save significant time by reading abbreviated property descriptions and foregoing the more cumbersome process of reading the property's legal description. Several sheriffs' departments reported to LSC fiscal staff that they used some type of shortened property description when addressing properties at judicial sales. It does not appear that this provision will generate any readily discernible fiscal effect, other than the potential for a difficult to measure savings if the time it takes to execute a particular judicial sale is expedited.

Deed filing fees. The bill requires the sheriff's department to file the deed with the county recorder within 14 days of confirmation at a judicial sale. In order to record the deed with the county recorder, the county engineer and the county auditor must first examine and approve the information contained in the deed. Based on LSC fiscal staff's research to date, it does not appear that the county engineer charges a fee for their services, while the county auditor and the county recorder do charge a fee for their services. The bill requires officers who sell real property at a judicial sale to collect the recording fee and any associated costs to cover the recording from the purchaser or transferee at the time of the sale or transfer. As a result, the sheriff will need to develop and maintain a mechanism to accurately assess, collect, and disburse these moneys.

Through conversations with the offices of several county auditors, LSC fiscal staff has learned that they may charge up to \$4 per \$1,000 of the sale price and \$0.50 per parcel for conveyance and transfer fees. Additional conversations with the offices of several county recorders revealed a fee structure of \$28 for the first two pages and \$8 for each additional page to record the deed.

Deed filing process. The process of physically filing a deed can be time consuming, as it involves stops at the offices of the county engineer, county auditor, and the county recorder. In many urban counties, the number of foreclosures subject to judicial sales can be quite large. For example, the Franklin County Sheriff's Office estimates that they process approximately 150 to 200 foreclosures per week, and the Mahoning County Sheriff's Office estimates that they process approximately 40 to 50 foreclosures per week. Available information also indicates that foreclosure activity in Ohio is relatively high and continues to increase.

According to estimates from several county auditors' offices, the processing time for a deed, provided the information contained on the paperwork is complete and accurate, is approximately 20 to 30 minutes. Based on the estimates in the immediately preceding paragraph, this represents an average increase in workload of up to approximately 73 hours per week for the Franklin County Sheriff's Office and up to approximately 19 hours per week for the Mahoning County Sheriff's Office. According to the Buckeye State Sheriffs' Association, the bill will allow the sheriff to charge and collect from purchasers or transferees all of the fees and costs associated with filing the deed, including any increase in labor costs.

It is possible that, subsequent to the bill's enactment, the involved entities in any affected county – the sheriff, engineer, auditor, and recorder – may develop a procedure to streamline the

deed filing process. That said, the sheriff would still have an increased workload and related costs associated with creating the files to record a deed, gathering accurate and complete information when a file is deficient, traveling to and from the county offices of the engineer, auditor, and recorder, and paying various service fees. By allowing the sheriff to recover these associated costs, the ongoing expenses to the sheriff that would otherwise easily exceed LSC fiscal staff's threshold for a minimal local cost would likely be avoided.

Municipal and county courts handling housing enforcement cases

The provision requiring sheriffs to file a deed with the county recorder within 14 days is designed to ensure that counties, municipalities, and townships can more promptly identify the individual or business that is legally responsible for maintaining a property that was purchased at a judicial sale. By ensuring that such purchaser information is filed in a timelier manner than might otherwise have been the case under current law and practice, the bill increases the likelihood that building, housing, health, or safety code violation charges are filed against the correct defendant.

Apparently, as the pace of foreclosure and judicial sales activity has increased in Ohio, so has the number of instances in which a deed is not being filed, or filed in a timely manner, with the county recorder. The result, in some municipal and county courts, is that the presiding judge is moving to dismiss a larger number of cases related to building, housing, health, or safety code violation charges, as it becomes clear to the judge that the person brought before the court is no longer responsible for the maintenance of the property in question.

Presumably, the bill may decrease the number of cases that are being filed against the wrong party and subsequently dismissed by the court. It does not appear that such a result will generate any readily discernible fiscal effect on the prosecutors and courts handling these matters, other than the potential for a difficult to measure savings in the time it might otherwise have taken to identify the legally responsible party and impose a remedy.

County, municipal, and township code enforcement generally

The bill also contains several provisions, for example, allowing municipalities and townships to conduct inspections of property subject to a writ of execution, authorizing courts and county boards of revision to transfer certain tax delinquent lands subject to judicial foreclosure without appraisal or sale, and offering property that did not sell at a judicial sale to a political subdivision before forfeiture to the state, aimed at increasing a local jurisdiction's ability to: (1) ensure a property is safe and secure, (2) conserve public building, housing, health, and safety code enforcement resources, and (3) minimize the amount of time that a property may be left unoccupied or idle.

Presumably, if a local jurisdiction gains access to, or acquires legal control in some manner of, a property more quickly than might otherwise have been the case under current law and practice, any potential damage to the property and the surrounding neighborhood is contained. Corrective actions may be undertaken sooner, thus ensuring that property values of nearby homes are protected, and that criminal elements are prevented from occupying a vacant property, increasing crime and social problems in the area. As a result, the property tax base is maintained and law enforcement may be able to redirect limited resources, as individuals have

fewer readily available idle or vacant properties from which to engage in or conduct criminal activities.

Additionally, the provisions ensuring the deed is promptly filed with the county recorder following a judicial sale may generate additional revenues and/or decrease enforcement costs for certain local jurisdictions. By ensuring the current legal owner of the property is on file with the county recorder, the local jurisdiction may be able to more easily and readily levy and collect fines for building, housing, health, and safety code violations. It is also the case that, by being able to identify the current owner financially responsible for a property's maintenance, the local jurisdiction may be able to recoup some of its enforcement expenses, including costs incurred to ensure that a property is safe and secure. Moreover, the possible threat of being assessed these costs and penalties may entice some property owners to ensure their properties are properly maintained following a judicial sale, which, theoretically, saves the local jurisdiction property maintenance expenses that might otherwise be incurred.

Supreme Court's Foreclosure Mediation Program Model

The bill permits lenders and borrowers to participate in the Supreme Court's Foreclosure Mediation Program Model prior to, or in lieu of, appearing before a court. Additionally, if the court deems it appropriate the court can place the parties into the mediation program after the case has begun. The model program currently operates in 24 courts in Ohio, with the mediation generally handled by trained court personnel or contractors. The expansion of the program is not expected to increase the operating expenses of any affected court. The intent of the mediation program is to settle these cases before they are brought to trial, and by doing so, decrease the number of foreclosure cases that will ultimately be heard by the court.

State fiscal effects

Low- and Moderate-Income Housing Trust Fund (Fund 646)

Pursuant to section 317.36 of the Revised Code, when certain documents are filed, for example, a deed or certificate, the county recorder collects a fee that is forwarded to the state for deposit to the credit of the Low- and Moderate-Income Housing Trust Fund (Fund 646). Moneys credited to Fund 646 are used to provide grants and loans for qualifying housing projects serving low- and moderate-income persons, involving the construction of new housing, renovation of existing housing, and supportive services.

The requirement that a deed be delivered to, and recorded by, the county recorder within 14 days may decrease the average time between the property being purchased at a judicial sale and the date the deed is filed with the county recorder. As a result, in some counties, the county recorder may collect housing trust fees more promptly than might otherwise have been the case under current law and practice. There would not, in all likelihood, be an increase in the amount of housing trust fees collected the county recorder, but rather those fees may be collected in a more efficient manner.

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