



Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: Am. Sub. H.B. 323 of the 128th G.A. **Date:** December 13, 2010

Status: As Passed by the House **Sponsor:** Rep. Murray

Local Impact Statement Procedure Required: No — Permissive costs in the introduced version

Contents: Foreclosure procedures

State Fiscal Highlights

- No direct fiscal effect on the state.

Local Fiscal Highlights

LOCAL GOVERNMENT

FY 2011 – FUTURE YEARS

Counties

Revenues	Likely gain in additional foreclosure filing fees deposited in general fund, with annual magnitude varying by county and level of foreclosure activity
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Expenditures	Likely annual increase of uncertain magnitude to perform certain foreclosure duties, degree to which offset by additional foreclosure filing fee revenues uncertain
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Local Taxing Units

Revenues	Potential loss of taxes, assessment charges, penalties, interest, costs, and subordinate liens from forfeited property, annual magnitude uncertain
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Expenditures	Uncertain annual effect resulting from potential revenue lost
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Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- **County general fund revenues.** The required additional fee of \$20 for each filing for a residential mortgage foreclosure action, could, based on the 2009 level of foreclosure activity, generate in excess of \$1.0 million annually for county general funds statewide.
- **Common pleas courts and clerks.** The bill specifies when a plaintiff is required or permitted to file certain motions, which would in turn require the clerk of court to make certain notices and the court of common pleas to make certain findings. The annual cost for clerks and courts to perform these duties is uncertain.
- **County recorders.** The bill specifies the circumstances under which the title of certain properties vests in the name of the county recorder and the manner in which the record can then dispose of the property. This duty will in all likelihood generate additional administrative work for the recorder, the amount and annual cost of which is uncertain and would vary from county to county.

- **County commissioners and prosecutors.** The bill assigns duties to commissioners and prosecutors that could create some additional work for each of those officials, the likely cost of which will not exceed minimal annually.
- **County sheriffs.** Sheriffs may realize an annual savings of uncertain magnitude, as the bill permits notices for the sale of lands and tenements taken to be made electronically after the first attempt to sell.
- **Local taxing units.** The bill could result in a loss of revenue to local taxing units if properties foreclosed due to delinquent taxes are forfeited to a political subdivision, school district, or land bank free of taxes, assessment charges, penalties, interest, costs, and subordinate liens. The frequency and magnitude of such a loss annually will likely vary greatly over time and from place to place, and is thus difficult to predict. Whether the revenue lost for any given local taxing unit would be significant enough to trigger a reduction in expenditures is uncertain.

Detailed Fiscal Analysis

Local fiscal effects¹

Common pleas courts and clerks

In addition to codifying some of the procedures that Ohio courts currently utilize to adjudicate foreclosure actions, the bill: (1) requires the clerk of courts to collect an additional \$20 filing fee and (2) specifies circumstances both requiring and permitting a plaintiff to file certain motions with the clerk of courts. Subsequent to these filings, the clerk has to make certain notices and the court is required to make certain findings. The annual cost for courts and clerks to perform these duties is uncertain. It is likely that annual cost will be a function of the level of foreclosure activity, such that, as the foreclosure rate increases so would the cost to make notices and findings, and, as the foreclosure rate decreases so would the cost to make notices and findings.

County general fund

Estimated revenue potential from additional filing fee

The bill directs the clerk of a court of common pleas to collect an additional fee of \$20 for each filing for a residential mortgage foreclosure action. As noted in Table 1 below, based on the total number of new foreclosure cases filed in 2009 (89,053), this additional fee could have generated in excess of \$1.78 million for counties statewide. The table depicts the number of calendar year 2009 new foreclosure filings in a sampling of various sized counties across the state and the amount of new revenue that would have been generated in those local jurisdictions if the additional foreclosure filing fee had been in effect at that time. These fees would, absent language to the contrary, be deposited in the county's general fund, the chief operating fund of the county. The county general fund supports appropriations for programs and services that support general government, health and human services, and justice and law enforcement.

¹ The analysis is based on conversations with multiple staff members of the Ohio Recorder's Association, Ohio Clerks of Courts Association, and the Ohio Judicial Conference as well as staff members of the County Commissioner's Association of Ohio, and a judge from the Judicial Conference's Civil Law and Procedure Committee.

Table 1. Potential Additional Revenue Gain from \$20 Additional Filing Fee for Select Counties and Statewide			
County	Census 2000 Population	2008 New Foreclosure Filings	Potential Additional Revenue
Cuyahoga	1,393,978	14,171	\$283,420
Franklin	1,068,978	9,499	\$189,980
Hamilton	845,303	6,714	\$134,280
Lucas	455,054	4,491	\$89,820
Butler	332,807	3,162	\$63,240
Lorain	284,664	2,696	\$53,920
Monroe	15,180	33	\$660
Noble	14,058	32	\$640
Vinton	12,806	65	\$1,300
Statewide Total*	11,353,140	89,053	\$1,781,060

*Total encompasses all 88 counties, including 9 listed above.

County recorder and county commissioners

Assuming title to a property

The bill provides for the county recorder to take on a new property titling duty. It is likely that some recorders will lack the staff, both in number and in skill set, to adequately address this duty. Thus, the bill could: (1) add to the current duties undertaken by the recorder, (2) increase administrative expenditures and potentially staffing requirements of the recorder, and (3) represent an unfunded mandate for the recorder. Given this information, the potential annual fiscal impact on the recorder is uncertain and would likely vary from county to county.

According to the bill, if during a foreclosure proceeding, no lien holder to the property files a writ of execution, then the title to that property will vest in the name of the county recorder. It is then the duty of the recorder to dispose of the property according to rules adopted by the board of county commissioners.²

In talking with representatives of the County Recorder's Association, it became readily apparent that the recorder does not currently assume the title to any property. As such, there are questions as to the procedural steps the recorder would take in assuming title to the property and then disposing of it. Some of the issues in question could have fiscal ramifications on the recorder and are not answered in the bill's current state. Those questions are:

- If a land bank is unavailable, could the recorder hold a real estate auction?

² The rules established by the board of county commissioners should specify that the property be placed in a land bank. If a land bank is not available, then the property shall be disposed of at the discretion of the board of county commissioners. A representative of the County Commissioners Association of Ohio indicated that the bill effectively has little to no fiscal impact on the board of county commissioners.

- If the answer to the question in the dot point above is yes, and the recorder sells a property, can the recorder recoup a percentage of the sale proceeds?

County prosecuting attorney

If the courts opt to take certain foreclosure related actions which result in the deed to a property vesting in the name of the county recorder, the bill requires that the prosecutor prepare that deed. This would likely create some additional administrative work for the prosecutor, the magnitude and cost of which would vary, but is unlikely to exceed minimal annually.

County sheriff

Under current law, the officer taking the lands and tenements gives public notice of the date, time, and place of the sale for at least three weeks before the day of the sale by advertisement in a newspaper published and in general circulation of the county. The bill allows notices of subsequent sales of the lands and tenements to be made electronically on a web site maintained by the officer. According to the Buckeye State Sheriffs' Association, this provision could result in savings for sheriff departments, the annual magnitude of which is uncertain.

Local taxing units

The bill provides that properties foreclosed due to delinquent taxes that are forfeited to a political subdivision, school district, or land bank are free of taxes, assessment charges, penalties, interest, costs, and subordinate liens. To the extent that this includes property tax liens, this provision could result in a loss of revenue to local taxing units that would otherwise have been entitled to those lien amounts had they been paid. The frequency and magnitude of such a loss annually will likely vary greatly over time and from place to place, and is thus difficult to predict.

Owner's physical harm is vandalism

Under the bill, a person, who is the owner of residential property, has received a summons and complaint in a residential mortgage foreclosure action, and knowingly causes physical harm to that property is guilty of vandalism. As such conduct already constitutes vandalism under current law, this provision will have no fiscal effect on the state or any county criminal justice systems.