

Fiscal Note & Local Impact Statement

123rd General Assembly of Ohio

BILL: Sub. S.B. 30 DATE: May 12, 1999

STATUS: As Reported by House Civil and Commercial Law SPONSOR: Sen. Latta

LOCAL IMPACT STATEMENT REQUIRED: No — Offsetting revenues

CONTENTS: Requires notice to be given to specified parties prior to an execution sale and specifies consequences of execution sales after such notice has been given and changes the procedure by which service is affected in an eviction action

State Fiscal Highlights

- No direct fiscal effect on the state.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 1999	FY 2000	FUTURE YEARS
Counties			
Revenues	Minimal gain	Minimal gain	Minimal gain
Expenditures	Minimal effect	Minimal effect	Minimal effect
Municipalities			
Revenues	Minimal gain	Minimal gain	Minimal gain
Expenditures	Minimal effect	Minimal effect	Minimal effect

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

- **Execution Sales.** A minimal gain in filing fee revenues may accrue to municipal, county, and common pleas courts statewide as a result of creditors' attorneys filing with clerks of courts copies of notices given to affected parties in execution sales. It is expected that, in most cases, these filing fees will be added to the total court costs collected from the sale of the property. There will be at most a minimal annual expenditure effect on clerks of court and courts statewide. Clerks of court will have to handle copies of notices given to affected parties, but will presumably recover the administrative burden created through the collection of filing fees. And in certain instances around the state, some municipal, county, and common pleas courts may be relieved of the burden of taking additional judicial actions on some execution sales.
- **Execution Sales.** In addition, municipal, county and common pleas courts will experience increased postage, personnel, and administrative costs associated with the provisions of the bill concerning the procedure by which notice of an eviction action is issued. However, these additional costs will be offset by increased court cost revenues.



Detailed Fiscal Analysis

Provisions of the Bill

This bill requires the judgement creditor or the judgement creditor's attorney to serve a written notice of the date, time, and place of the sale upon the debtor and serve such notice to any other parties to the action. The creditor or the creditor's attorney is to file with the clerk of court that rendered the execution judgement a copy of the written notice with accompanying proof of service. Parties who are in default for failure to appear in the execution action are not entitled to be served such notices. These same written notice requirements apply to subsequent execution sales if the property remains unsold after the first execution sale, and to the sale of lands and tenements.

The bill specifies consequences for failure to comply with written or public notice requirements. The sale of property or lands and tenements made without compliance with the written notice requirements stated in the bill would result in the sale being set aside by the original court, on motion. Proper filing of written and public notice requirements constitutes a judicial finding barring further motions to set aside the execution sale.

The bill also changes the procedure by which notice of an eviction action is served. The bill requires the clerk of court, at the request of the plaintiff, serve process evictions by certified mail and/or to serve process evictions at the subject premises (as required in current law), in addition to service by ordinary mail, as required in current law.

Fiscal Effects on Local Government

Execution Sales. The majority of the provisions of this bill concerning execution sales have no fiscal effect, as many of the provisions deal with actions that must be taken by the judgement creditor or the judgement creditor's attorney.

In general, common pleas courts are responsible for execution sales of real property, while municipal and county courts are responsible for sales of goods and chattels. There are two potential sources of fiscal impact to these courts. First, creditors' attorneys would be required to file notices to involved parties with the clerks of court. LBO assumes that, in the majority of cases, that the cost of filing these notices (\$1 per page in Franklin County) would be added to the total court costs. These court costs generally are assessed against the property at the time of the sale. Therefore, county, municipal, and common pleas courts will experience at most a minimal annual gain in revenues.

Second, as this bill is in response to holdings by the Ohio Supreme Court and other courts concerning notice given to parties involved in execution sales, the provisions of this bill may eliminate the need for certain courts to take additional judicial actions on certain execution sales. It is assumed that this bill will clarify the law concerning execution sales, and would prevent unnecessary court action by barring the filing of further motions by debtors to set aside sales of property.

Eviction Actions. The provisions of the bill concerning the procedure by which notice of an eviction action must be made will have no fiscal impact on local governments because any additional expenditures will be offset by increased court cost revenues. These changes essentially clarify the procedure as revised by Am. Sub. S.B. 83 of the 122nd General Assembly.

Effective March 30, 1999, Am. Sub. S.B. 83 required the clerk of court to serve notice by ordinary mail *and* by either 1) personal service (delivering the notice directly to the tenant); 2) residence service (leaving a copy of the complaint and related papers with some person at the residence to be served); or—if necessary—3) by posting a copy of the notice in a conspicuous place on the premises. (Prior to Am. Sub. S.B. 83, the clerk of court in an eviction action had to serve notice by certified or express mail with return receipt, *and* by either personal service or residence service.)

The bill continues the requirement for the clerk of court to serve notice by ordinary mail, but clarifies that additionally the clerk shall cause service to be made by one of the three procedures listed above as in current law, *and/or* by certified mail, *as requested by the plaintiff*. In addition, the bill also requires that service be completed at least five days before the date set for trial, which was the requirement prior to the passage of Am. Sub. S.B. 83. Because Am. Sub. S.B. 83 specified that any person who is 18 years or older, is not a party to the action and is designated by the court as a process server, could serve the summons, as well as the county sheriff or court bailiff, there is confusion as to whether this language in existing law permits the clerk of court to complete process service by certified mail alone as a court could designate a letter carrier as process server. The bill clarifies this issue. The bill also addresses concerns expressed by some landlords that posting the notice on the premises, without obtaining written receipt of delivery, might not meet the standards for completion of the service of the process on second cause for money judgement.

Any additional postage, personnel, or administrative costs associated with process service in an eviction action as outlined in the bill will be offset by additional revenues from increased filing fees and/or additional or increased stand-alone court cost fees. Amended Substitute S.B. 83 caused a number of courts to fold the costs associated with process serving by sheriffs and bailiffs into their filing fee and to raise that filing fee, while maintaining stand alone fees for certified mail service; it is unclear whether the bill will cause courts similarly to fold certified mailing costs into the filing fee or whether those costs will be offset by stand-alone fees as is current practice.

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