



Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: Sub. H.B. 3 of the 128th G.A. (LSC 128 0274-3) **Date:** March 11, 2009

Status: In House Housing & Urban Revitalization **Sponsor:** Reps. Foley and Driehaus

Local Impact Statement Procedure Required: No — No local cost

Contents: Declares a six-month moratorium on foreclosures and creates various mortgage regulation provisions

State Fiscal Highlights

STATE FUND	FY 2010	FY 2011	FUTURE YEARS
General Revenue Fund			
Revenues	Potential minimal gain from state court costs		
Expenditures	Potential increase for Attorney General legal expenses		
Foreclosure Prevention Revolving Trust Fund (New Fund) – Department of Commerce			
Revenues	Gain of up to \$128.7 million annually from filing fees, potential gain from loan repayments		
Expenditures	Distribution of up to \$12.9 million annually to Department of Commerce for administrative costs		
	Distribution of up to \$6.4 million annually to the Ohio Supreme Court		
	Distribution of up to \$109.4 million annually, divided between the Housing Trust Fund (Fund 6460) and counties		
Consumer Finance Fund (Fund 5530) – Department of Commerce			
Revenues	Gain in revenue from mortgage servicer registration fees and fines		
Expenditures	Increase in administrative and enforcement costs to regulate mortgage servicers		
Consumer Protection Enforcement Fund (Fund 6310) – Office of the Attorney General			
Revenues	Potential gain from civil penalties		
Expenditures	Potential increase for legal expenses		
General Reimbursement Fund (Fund 1060) – Office of the Attorney General			
Revenues	Gain from records check fees		
Expenditures	Corresponding increase to conduct additional records checks		
Victims of Crime/Reparations Fund (Fund 4020)			
Revenues	Potential minimal gain from court costs		
Expenditures	- 0 -		

Note: The state fiscal year is July 1 through June 30. For example, FY 2010 is July 1, 2009 – June 30, 2010.

Foreclosure Prevention Revolving Trust Fund

- The filing fee of \$1,500 on each new foreclosure action would generate up to \$128.7 million annually to the Foreclosure Prevention Revolving Trust Fund, the proceeds of which are distributed to the Department of Commerce, the Ohio Supreme Court, the Housing Trust Fund (Fund 6460), and counties. There may also be additional revenue generated through loan repayments.
- The new \$1,500 fee is significantly larger than current fees to file a civil case complaint involving foreclosure, which may discourage the filing of some foreclosure actions, thus lowering the revenue that the Foreclosure Prevention Trust Fund receives.
- The six-month moratorium on residential foreclosures may affect the timing of when Foreclosure Prevention Revolving Trust Fund revenue is received. The total amount received may also be affected to the extent that the moratorium results in borrowers becoming current on mortgages or developing workout plans to avoid foreclosure.

State Foreclosure Database – Department of Commerce and Ohio Supreme Court

- The bill requires the Department of Commerce, in consultation with the Ohio Supreme Court to implement a state foreclosure prevention database by October 1, 2009. The cost of this database would be paid from amounts available in the Foreclosure Prevention Revolving Trust Fund. The six-month moratorium on foreclosures may have a bearing on the amounts available for this purpose in the near term.

Mortgage Servicer Registration – Department of Commerce

- There would be a gain in revenue to the Consumer Finance Fund (Fund 5530) from any registration fee and fine revenue received from mortgage servicers, although this amount is uncertain. There would be a corresponding increase in expenses to regulate mortgage servicers.

Consumer Sales Practices Act – Attorney General

- The bill applies the Consumer Sales Practices Act (CSPA) to transactions between mortgage servicers and their customers. As a result, the number of transactions handled by the Office of the Attorney General's Consumer Protection Section, funded out of the GRF and the Consumer Protection Enforcement Fund (Fund 6310) is likely to increase. However, the number and magnitude of complaints filed, investigations performed, and enforcement actions that would be taken as a result of the bill is unknown. Thus, whether the bill will create additional ongoing operating expenses to the Consumer Protection Section, as well as the amount of those potential costs, is uncertain. It is also uncertain how much civil penalty revenue may be collected annually from persons in violation of the bill's requirements and subsequently deposited to the credit of Fund 6310.

Criminal Background Checks – Attorney General

- This bill requires criminal background checks to be conducted on mortgage servicers. Applicants would be required to pay the associated fees. The Attorney General's General Reimbursement Fund (Fund 1060) may realize a gain in revenue corresponding to the number of background checks conducted in order to offset the additional costs such additional background checks would present for BCII.

State Court Cost Revenue

- As a result of the bill, it is possible that some persons, who may not have been prosecuted and convicted under existing law, will be prosecuted and convicted. This creates the possibility that the state may gain locally collected court cost revenues that are deposited to the credit of the GRF and the Victims of Crime/Reparations Fund (Fund 4020).

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2010	FY 2011	FUTURE YEARS
Counties and Municipalities			
Revenues	Potential gain from court costs, filing fees, and fines		
	Gain to counties from Foreclosure Prevention Revolving Trust Fund distributions		
Expenditures	Potential increase from new civil and criminal cases		

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

Local Criminal Justice System Revenues and Expenditures

- As a result of the new penalties this bill contains, some persons, who may not have been successfully prosecuted and convicted under existing law, could be prosecuted and sanctioned. These effects could in turn increase local criminal justice expenditures related to investigating, prosecuting, adjudicating, and sanctioning offenders who violate the provisions of the bill. It is uncertain how many new cases will result from these penalties, but the bill creates the potential for additional court cost, filing fee, and fine revenues to be collected by county and municipal criminal justice systems statewide, which may offset some of the additional cost.

Courts of Common Pleas

- It is unclear how the bill will affect the Courts of Common Pleas across the state. It is possible that the authority granted judges to revise or modify existing mortgage loans could potentially create more work for the judges and court personnel. The bill also provides for a six month moratorium on foreclosure actions beginning at the time of the bill's enactment, so any fees generally collected from foreclosure filings would presumably not be collected during that time.

Foreclosure Prevention Revolving Trust Fund

- Counties would gain revenues from the portion of the Foreclosure Prevention Revolving Trust Fund that is required to be distributed to boards of county commissioners.

Detailed Fiscal Analysis

State Foreclosure Prevention Project

The bill creates the State Foreclosure Prevention Project in the Department of Commerce to (1) collect residential mortgage foreclosure information, (2) track loss mitigation efforts, (3) encourage viable loan modifications, and (4) seek solutions to avoid foreclosures for residential mortgage loans. As part of the project, the bill requires the creation of a foreclosure database, the creation of a new fund to provide assistance meant to reduce the number of foreclosures, and a comprehensive loan modification program. These initiatives are discussed in greater detail below.

State Foreclosure Database – Department of Commerce and Ohio Supreme Court

The bill requires the Director of Commerce to design and develop, in consultation with the administrative section of the Ohio Supreme Court, a state foreclosure database to track residential mortgage foreclosure information.¹ The database is to be implemented by October 1, 2009. Only the Administrative Director of the Ohio Supreme Court, the Director of Commerce, the Superintendent of Financial Institutions, the Ohio Attorney General, and the clerks of court for county courts of common pleas would have access to this information. Although the cost of the database, which is currently uncertain, would be funded by the Foreclosure Prevention Revolving Trust Fund, the six-month moratorium on foreclosure filings would presumably affect the amounts available for design and implementation in the short term.

Currently, the Supreme Court is working on the Ohio Courts Network (OCN), a project funded by the Ohio Courts Technology Initiative. OCN is essentially a database warehouse of case information from courts across the state. It will allow for connectivity of all courts, and it is largely completed. Presumably, much of the information required for the state foreclosure database provided for in this bill is or could be stored in the OCN. Other fiscal issues that may impact the Court and are currently under review involve the potential moneys collected in the newly created fund to be made available to the Court as well as the total and ongoing costs of designing, implementing, and maintaining the state foreclosure database.

The database is to be used in a number of ways specified by the bill. First, based on a review of the information in the database, the Director of Commerce is to prepare an annual report to the General Assembly describing the operation of the state foreclosure prevention project, including the number of borrowers helped, the

¹ The Supreme Court documents foreclosures through the *Ohio Courts Summary* publication. To collect the data for that publication, the Ohio Supreme Court's Case Management Section receives monthly reports from common pleas court judges regarding foreclosures and many other types of cases.

effectiveness of the funds in preventing foreclosure, recommendations for further efforts needed to reduce foreclosures, and so forth.

The database is also to be used by the Department of Commerce to determine whether any mortgage servicer has failed to provide required disclosures or information or if servicers are not acting in good faith to provide borrowers with an effective method to discuss payment options for past due amounts and alternatives to foreclosure. If the servicer has violated any such requirements, those violations may be considered when the Department determines the character and general fitness of the mortgage servicer to be licensed or registered.

Finally, the database is to be used by clerks of court to confirm that a mortgage servicer has provided all required notices to the borrower before a foreclosure action may be filed. Clerks of court entering writs of execution in a residential foreclosure action must file that information about that action with the Administrative Director of the Ohio Supreme Court so that it may be included in the database.

Foreclosure Prevention Revolving Trust Fund

Eligible Assistance

The bill creates the Foreclosure Prevention Revolving Trust Fund to provide funding for the following five purposes:

1. To provide grants to counseling foreclosure prevention entities to maintain or expand foreclosure prevention efforts;
2. To offer grants to individuals or counseling entities to provide emergency foreclosure prevention assistance loans;
3. To provide loans and grants to nonprofit or local government entities to provide relocation assistance or acquire mortgage loans or properties from creditors in order to restructure the loans or restore the properties to productive use;
4. To establish and maintain the state foreclosure database; and
5. To cover the costs of the state foreclosure prevention project and the associated regulatory costs the Department of Commerce's Division of Financial Institutions incurs in ensuring mortgage servicer compliance and mortgage lender and mortgage broker compliance with the their associated laws.

Revenue Distribution

The funding source for the Trust Fund is a \$1,500 filing fee on foreclosure actions involving any residential mortgage loan submitted to the Department of Commerce. However, no foreclosure judgment can be granted until the creditor provides evidence that the fee has been paid. The bill distributes the proceeds in the fund in the following manner:

- Up to 10% to the Division of Financial Institutions for administrative costs;
- Up to 5% to the Administrative Director of the Ohio Supreme Court; and
- The remainder divided between the Ohio Housing Trust Fund (Fund 6460) and boards of county commissioners. The amount awarded to county commissioners must be distributed on a pro rata basis (perhaps by population) to provide loan assistance to qualified counseling and foreclosure prevention entities, nonprofit entities, and individuals.

In CY 2008, the Ohio Supreme Court reported 85,773 new foreclosure filings. If the number of new foreclosure filings would remain steady in future years, the filing fee would generate approximately \$128.7 million per year to the Foreclosure Prevention Revolving Trust Fund. If so, the fee would generate \$12.9 million to DFI for administration of the database, the operations of the State Foreclosure Prevention Project, and mortgage servicer regulation; \$6.4 million to the Supreme Court and \$54.7 million each to the Ohio Housing Trust Fund and boards of county commissioners (assuming the remainder is divided equally).

The proposed fee is significantly larger than current fees to file a civil case complaint involving foreclosure, which generally appears to range anywhere from \$250 to \$700. It may be that the size of this fee, which would be in addition to the fees charged by clerks of court, may discourage the filing of some foreclosure actions, thus lowering the revenue that recipients of Foreclosure Prevention Trust Fund moneys may actually receive.

The six-month moratorium on mortgage foreclosure actions on residential properties occupied by the owner or the tenant of an owner may also have an effect on revenue to the Foreclosure Prevention Revolving Trust Fund, at least initially. While the bill does not specifically prohibit the filing of a foreclosure complaint during the moratorium, these filings could drop significantly during the moratorium. If so, borrowers could use the time provided by the moratorium to become current on their mortgages or develop a workout plan to avoid foreclosure. For those unable to avoid foreclosure, the effect of the moratorium would appear to simply put off initial filing fee revenue to the Foreclosure Prevention Revolving Trust Fund until the moratorium expires, which would be the latter portion of FY 2010.

Comprehensive Loan Modification Program – Department of Commerce

The bill requires the Director of Commerce to adopt rules to implement a comprehensive loan modification program involving mortgage servicers that is intended to keep a borrower whose principal residence is a home in Ohio in that home under certain circumstances. The program is to include certain features, such as interest rate reductions, extension of the loan term, and deferral or reduction of principal. The program must be in compliance with federal loan modification programs.

Mortgage Servicer Registration

The bill requires mortgage servicers or those persons offering accelerated residential mortgage payment plans to be registered with the Department of Commerce's Division of Financial Institutions (DFI) and to abide by certain standards of practice (discussed in detail below). Mortgage servicers servicing second mortgages are currently required to be registered under the Ohio Mortgage Loan Act, however, the Department of Commerce does not track registrants based on whether they are exclusively servicers or lenders. Mortgage servicers operating without a registration would be prohibited from collecting any interest or charges on loans they are servicing. Applicants for registration must pay a \$200 investigation fee, a \$1,000 annual registration fee, and any additional fee required by law. As a result, there would be a gain in revenue to the Consumer Finance Fund (Fund 5530) from these fees, depending on the number of servicers who register.

Applicants for a mortgage servicer registration would be required to undergo civil and criminal records checks and pay for these costs. Mortgage servicers must also be bonded or otherwise meet certain net worth requirements. If a mortgage servicer changes its place of business outside of the original municipal corporation where the servicer was originally registered, the servicer would be required to submit a new application and pay the required investigation and registration fees.

All of these new requirements are likely to increase costs for DFI. It could be that additional staff is needed to handle new registrations, investigations, provide legal counsel, and provide program support. Ultimately, the scope of DFI's regulation of mortgage servicers would depend on the revenue generated from mortgage servicer registration fees.

Mortgage Servicer Requirements and Prohibitions

The bill places a number of requirements on mortgage servicers generally geared toward protecting borrowers. These include a 60-day notification to the borrower before filing a foreclosure action, requiring negotiations with a borrower under certain conditions if the borrower is delinquent or in default, providing payoff information concerning a loan if requested by the borrower, correcting erroneous information submitted to a credit reporting agency, and various DFI reporting requirements.

The bill would also prohibit servicers from engaging in a number of actions, such as collecting unreasonable fees, initiating a foreclosure without proof of ownership, failing to provide written notice to the borrower before placing certain insurance on property subject to a loan, failing to refund unearned premiums paid or charged to the borrower for that insurance if the borrower provides evidence that the forced placement of insurance is no longer necessary, and using various unfair, deceptive, or unconscionable means to collect any claim on a residential mortgage loan.

DFI Disciplinary Actions

The Superintendent of Financial Institutions is authorized to revoke, suspend, or refuse to renew any mortgage servicer registration if, pursuant to an administrative hearing, (1) a violation is found, (2) a mortgage servicer fails to comply with the provisions of the bill, the Consumer Sales Practices Act, federal debt collection laws, or any other applicable law, (3) the registrant has been convicted of or pleads guilty to a felony or certain other offenses involving theft, stolen property, forgery, fraud, money laundering, and so forth, or (4) if the registrant's comparable registration or license in any other state has been revoked.

In addition to or in lieu of any revocation, suspension, registration denial, the DFI may impose a monetary fine. Fines are limited to \$1,000 for each violation, or up to \$2,000 per violation per day if a mortgage servicer engages in a pattern of repeated violations. For mortgage servicers that conduct business without being properly registered, DFI may seek civil penalties up to \$5,000 per violation.

Consumer Sales Practices Act – Attorney General

The bill makes certain violations of the requirements and prohibitions an unfair or deceptive trade practice subject to the remedies available in the Consumer Sales Practices Act. Overall, the statute authorizes the Attorney General to investigate alleged violations and to seek civil penalties and remedies for various consumer transactions and provides consumers with a private right of action.

Civil Remedies Available

Under the CSPA, there are two civil remedies available for handling violations of the Consumer Sales Practices Act: one civil remedy would be available to the Attorney General's Office, who can investigate violations, seek a declaratory judgment, an injunction or other equitable relief, or organize and bring a class action, and the other civil remedy would be available to consumers.

The Attorney General's Office may pursue civil remedies and its Consumer Protection Section, funded by both the GRF and the Consumer Protection Enforcement Fund (Fund 6310), would handle the associated legal work. However, it seems likely that the Attorney General's Office would try to settle the issues surrounding violations of these new prohibitions prior to initiating any formal legal action. For example, the violators could simply agree to cease their conduct, and assuming they do so, the Attorney General's Office would stop incurring any related legal expenses. Similar to the procedures taken in existing Consumer Sales Practices Law cases, the Attorney General's Office would seek court action against a person as a last resort if they perceive that the person is receiving a pattern of consumer complaints. Assuming a less formal negotiating strategy does not work, the Attorney General's Office could request that a court of common pleas issue a declaratory judgment, a temporary restraining order, or an injunction in order to persuade violators to cease their offending behavior.

If, on the other hand, the Attorney General's Office successfully pursues a civil remedy under preexisting Consumer Sales Practice Law, the court adjudicating the matter can award the Attorney General all costs and expenses associated with its investigation, in addition to reasonable attorney's fees. The court may also order civil penalties up to \$25,000. Three-quarters of this civil penalty (as much as \$18,750 if the maximum \$25,000 possible fine is assessed), as well as the investigation costs and attorney's fees, would be credited to the state's Consumer Protection Enforcement Fund (Fund 6310). The remaining one-quarter of the civil penalty that violators could be ordered to pay would go to the treasury of the county where the case took place (as much as \$6,250 if the \$25,000 maximum possible fine is assessed).

Potential for New Civil Cases

As a result of the bill, the number of transactions handled by the Consumer Protection Section is likely to increase. However, the actual number of cases filed in county courts would most likely be relatively small as, under its current practice, the Attorney General's Office would seek to use every means available to resolve the complaint before filing in court. The number and magnitude of related complaints filed, investigations performed, and enforcement actions that would be taken as a result of the bill are unknown. Thus, whether the bill will create additional ongoing operating expenses to the Consumer Protection Section, as well as the amount of those potential costs, is uncertain.

As noted above, a consumer injured by a violation of the new sections would also be able to pursue civil remedies, which means that additional civil suits could be filed. The filing of such civil suits would likely generate some additional filing fee and court cost revenue for counties and municipalities and place some additional burdens on the courts that will have to adjudicate these matters. It is uncertain how many consumers will elect to pursue a civil remedy without the assistance of the Attorney General, but the number is assumed to be small as injured persons would, most likely, report a complaint to the Attorney General's Office initially and then allow the Consumer Protection Section to seek a resolution to the complaint.

Background Checks

The bill requires that the Superintendent of the Division of Financial Institutions of the Department of Commerce request that the Superintendent of the Bureau of Criminal Identification and Investigation (BCII), or a vendor approved by the Bureau, conduct criminal records checks of mortgage servicer applicants to determine whether applicants have been convicted of or plead guilty to certain criminal violations of an existing or former law of this state, any other state, or the United States.

The bill also requires that criminal record information from the Federal Bureau of Investigation be obtained as part of the criminal records check. All fees shall be paid by the applicant. Thus, there is no net fiscal effect on the Department of Commerce resulting from this provision. BCII charges \$22 and \$24 for state and national

background checks, respectively. Thus, the Attorney General's General Reimbursement Fund (Fund 1060) may realize a gain in revenue corresponding to the number of background checks conducted in order to offset the additional costs such additional background checks would present for BCII.

State and Local Criminal Justice Effects

The table below lists those criminal prohibitions included in the bill as well as the potential maximum prison sentence and fine. At the state level, the GRF and the Victims of Crime/Reparations Fund (Fund 4020) may experience a minimal gain in the amount of court cost revenue from these penalties. Violators of felonies of the fifth and fourth degrees typically are not sentenced to prison, as there is a preference against such an action unless the offense involves certain drug offenses. As such, it is not likely that the state will incur incarceration expenses.

At the local level, the bill's provisions could increase local criminal justice expenditures related to investigating, prosecuting, adjudicating, and sanctioning offenders. However, it is uncertain how many new cases would result from the bill's new penalties. Any increase in costs related to prosecuting and adjudicating these cases may be at least somewhat offset through court cost and fine revenue, making it likely that any additional cost would not be more than minimal.

Criminal Penalties Associated with Mortgage Servicers				
Offense	ORC Reference	Penalty	Possible Prison Term	Possible fine
Not being registered as a mortgage servicer and engaging in the business of collecting the person's own or another person's money, credit, or chooses in action for residential mortgage loans or otherwise act as a mortgage servicer	1323.21 (A)(1)	Felony of the 5th Degree	6, 7, 8, 9, 10, 11, or 12 months	Not more than \$2,500
Not being registered as a mortgage servicer and operating, arranging, or offering to arrange for compensation or gain a biweekly or other accelerated payment plan in connection with a residential mortgage and collecting those accelerated mortgage payments	1323.21 (A)(2)	Felony of the 5th Degree	6, 7, 8, 9, 10, 11, or 12 months	Not more than \$2,500
Knowingly making, proposing, or soliciting fraudulent, false, or misleading statements on certain documents (by a mortgage servicer)	1323.33(F)	Felony of the 5th Degree	6, 7, 8, 9, 10, 11, or 12 months	Not more than \$2,500
Knowingly instructing, soliciting, proposing, or otherwise causing a borrower to sign in blank a document (by a mortgage servicer)	1323.33(G)	Felony of the 5th Degree	6, 7, 8, 9, 10, 11, or 12 months	Not more than \$2,500
Interfering or obstructing an examination or investigation by the superintendent of financial institutions	1323.31	Felony of the 4th Degree	6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, or 18 months	Not more than \$5,000

Courts of Common Pleas

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

- Provides common pleas judges the discretion to examine or modify existing mortgage loans subject to foreclosure proceedings within three years of the bill's enactment;
- Permits specifically common pleas judges to reduce the principal amount of a loan or the interest rate of the loan;
- Provides a six-month moratorium on all foreclosure proceedings from the date of the bill's enactment.

Given the six-month moratorium, the courts of common pleas would potentially not collect revenue from the fees assigned to foreclosure filings. The amount of lost revenue is unclear at this time, as LSC fiscal staff continues to research the filing fees charged by courts of common pleas across the state. Further, after the six-month moratorium expires, LSC fiscal staff cannot reliably predict at this time the effect on future case filings.

The provision granting judges the discretion to review and modify mortgage loans subject to foreclosure could theoretically create more work for the courts, though it is unclear at this time the fiscal impact of this provision, as the number of future foreclosure filings is uncertain.