



# Ohio Legislative Service Commission

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## Fiscal Note & Local Impact Statement

**Bill:** Sub. H.B. 323 of the 128th G.A. (LSC 128 0703-6) **Date:** December 9, 2009

**Status:** In House Housing and Urban Revitalization **Sponsor:** Rep. Murray

**Local Impact Statement Procedure Required:** No — Permissive

**Contents:** Foreclosure and nuisance abatement procedures

### State Fiscal Highlights

- No direct fiscal effect on the state.

### Local Fiscal Highlights

#### LOCAL GOVERNMENT

#### FY 2010 – FUTURE YEARS

#### Courts/Clerks of Courts (courts of common pleas, municipal courts, and county courts)

Revenues - 0 -

Expenditures Potential annual increase due to notification and hearing procedures related to foreclosure and nuisance abatement properties, magnitude uncertain

#### County Recorders

Revenues - 0 -

Expenditures Potential annual increase due to additional foreclosure related responsibilities, magnitude uncertain

#### Boards of County Commissioners

Revenues - 0 -

Expenditures Potential, likely negligible, annual increase due to administrative procedures regarding land banks

#### County Prosecutors

Revenues - 0 -

Expenditures Potential, likely minimal, annual increase due to deed preparations

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

- **Courts/clerks of courts.** The bill contains certain provisions that codify procedures and practices currently undertaken by the courts and the clerks of courts. Other provisions permit the courts and, by extension, the clerks, to take certain actions related to foreclosure proceedings and nuisance properties. These permissive actions, if taken, could increase litigation-related expenditures for the courts and the clerks, the amount of which is uncertain and would vary from county to county.

- **County recorders.** The bill requires that if no lien holders to a property file a writ of execution, and the property owner does not redeem the property, then the title of such a property vests in the name of the county recorder. The recorder may then dispose of the property according to rules set forth by the board of county commissioners. The bill also prohibits the recorder from recording a deed from the sale or transfer of a property sold pursuant to a foreclosure action if the property carries delinquent property taxes. These new responsibilities could generate additional administrative work for the recorder, the amount of which is uncertain and would vary from county to county.
- **Boards of county commissioners.** The bill requires that the board of county commissioners have rules in place to direct the county recorder to place any properties vested in the recorder's name in a land bank, in counties where one is available. If a county does not have a land bank, the board may direct the county recorder to dispose of the properties at its discretion. This provision could create some additional administrative work for the board of commissioners, though it is unlikely to notably increase expenditures.
- **County prosecutor.** If the courts take certain foreclosure-related actions, the bill requires the prosecutor prepare a deed vesting certain properties in the name of the county recorder. This could create some additional administrative work for the prosecutor, though it is difficult to predict how frequently all of the necessary actions that would trigger this provision might occur. It is unlikely that any related expenditures would exceed minimal.

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## Detailed Fiscal Analysis

### Overview

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

- Provides general procedures governing residential mortgage foreclosure actions and, specifically, the role of the clerks of courts.
- Permits the court to hold a probable cause hearing on a property that may be a public nuisance.
- Vests the title of a property that, if certain conditions remain unmet is considered abandoned, in the name of the county recorder who may dispose of the property according to rules adopted by the board of county commissioners.

### Local fiscal effects

In researching the bill's fiscal implications, LSC fiscal staff spoke with multiple staff members of the Ohio Recorder's Association, Ohio Clerks of Courts Association, and the Ohio Judicial Conference as well as one staff member from the County Commissioner's Association of Ohio, and then a judge from the Judicial Conference's Civil Law and Procedure Committee. The analysis that follows is based on our conversations with those individuals.

#### Courts/clerks of court

The bill appears to, in some instances, codify the court's current procedures regarding foreclosure actions. Many of the provisions allow for the filing parties to take certain actions that may trigger responses from the clerks but nonetheless do not facilitate a measurable or direct impact on the clerk or the court.

#### Probable cause hearing

LSC's research indicates that the bill's greatest potential fiscal impact on the courts lies in the "probable cause" provision. The bill specifically permits the court to hold a hearing to determine if there is probable cause<sup>1</sup> that a property constitutes a public nuisance. If the court chooses to hold a probable cause hearing, what may follow involves a mix of options and potential triggering mechanisms that dictate actions the filing party and courts must or may undertake.

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<sup>1</sup> The judge consulted in this research expressed concern with applying "probable cause" - a term more often found in criminal law - to a civil action. The judge further noted that a definition of "probable cause" is not clearly provided in the bill and thus could present interpretive disparities from court to court.

It is unclear how many, if any, courts would choose to hold a probable cause hearing. It is worth noting, however, that our discussions with practitioners in the field began with an assumption that the intent of holding this optional hearing is to ultimately facilitate that a nuisance property be brought up to code. Operating under that assumption, the feedback we received suggests that a court opting to hold a probable cause hearing would probably not achieve the aforementioned intent. Instead, what is occurring now and would likely continue to occur even with the bill's passage is as follows: if during a foreclosure proceeding, a court finds a property constitutes a public nuisance and stays a foreclosure action so that the nuisance may be abated, a mortgage holder (usually a bank) will probably maintain a lawsuit against the debtor in lieu of abating the nuisance property and pursuing a foreclosure action.

That said, if the court indeed opts for a public nuisance hearing, such a decision could increase the court's workload and any related expenditures. Without knowing how many courts, if any, would opt for a hearing, we cannot predict the magnitude of any increased expenditures for the clerks and courts.

### **County recorders/county commissioners**

#### **Assuming title to a property**

The bill provides for the recorders to take on a new role. 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.<sup>2</sup>

In talking with representatives of the County Recorder's Association, it became readily apparent that the county 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?
- 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?
- If the recorder takes title to a nuisance property, is it required to abate that nuisance?

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<sup>2</sup> 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.

It appears as though some county recorders may lack the staff, both in number and in skill set, to adequately address this provision. Thus, it appears that 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 fiscal impact on the recorder is uncertain and may vary from county to county.

### **Recording deeds**

The bill requires that the recorder not record a deed for the sale or transfer of any residential property that is sold pursuant to a foreclosure action if the auditor's records indicate that property taxes for the property are delinquent. After speaking with a member of the County Recorder's Association, it is unclear what if any fiscal effect this provision may have. Most notably, it is unclear exactly what list of delinquent property taxes the recorder should consult and what kind of deed the recorder should consider in applying the provision. Without knowing the answer to each of these questions for certain, it is difficult to accurately determine the specific costs the bill would create for the county recorder.

### **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 according to the terms of the bill. It is unlikely that any related expenditures would exceed minimal.

### **State fiscal effects**

The bill has no apparent fiscal impact on the state.