



# Ohio Legislative Service Commission

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## Fiscal Note & Local Impact Statement

**Bill:** Sub. H.B. 306 of the 128th G.A. **Date:** November 17, 2009

**Status:** As Introduced **Sponsor:** Rep. Dolan

**Local Impact Statement Procedure Required:** No — Offsetting revenues

**Contents:** Foreclosure mediation programs

### State Fiscal Highlights

- No direct fiscal effect on the state.

### Local Fiscal Highlights

#### LOCAL GOVERNMENT

#### FY 2010 – FUTURE YEARS

##### Residential Foreclosure Mediation Fund (New Fund)

Revenues	Likely gain in additional foreclosure filing fees, with annual magnitude varying by county and level of foreclosure activity
Expenditures	Potential increase up to available revenues, with annual magnitude varying by county and level of foreclosure activity

##### Courts of Common Pleas/Clerks of Courts

Revenues	- 0 -
Expenditures	Potential annual increase, more or less offset by Residential Foreclosure Mediation Fund reimbursements

##### County Treasurers

Revenues	- 0 -
Expenditures	Potential, likely no more than minimal, annual increase to administer Residential Foreclosure Mediation Fund

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

- **Residential Foreclosure Mediation Fund.** The bill creates this new fund in the county treasury to receive the required additional foreclosure filing fees that are to be used to offset any expenses the court/clerk of court incurs to establish the mandatory foreclosure mediation programs. The annual magnitude of the fund's cash flow activity will vary over time and from place to place.
- **Courts of common pleas/clerks of courts.** The bill essentially requires courts of common pleas and their affiliated clerks of courts to establish foreclosure mediation programs. Counties that have already implemented similar programs would presumably incur little to no additional expense in order to comply with the bill's requirements. The costs for courts of common pleas and clerks of courts that have

not already done so are uncertain, but the stated purpose of the bill's required additional foreclosure filing fees is that they be established at an amount that would reimburse the court for any foreclosure mediation costs.

- **County treasurers.** The bill requires the county treasurer to: (1) establish the Residential Foreclosure Mediation Fund and (2) disburse moneys from the fund to reimburse the court for foreclosure mediation costs. The additional annual operating expenses, if any, for a county treasurer to administer the Residential Foreclosure Mediation Fund are unlikely to exceed minimal.
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## Detailed Fiscal Analysis

### Overview

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

- Requires a court of common pleas to establish a mediation program for foreclosure actions on residential properties.
- Requires a court of common pleas to establish training requirements for court-appointed mediators.
- Pays the costs of mediation by imposing additional foreclosure filing fees in amounts up to \$500 and directs the clerk of courts to pay the collected fees to the county treasurer for deposit in a county Residential Foreclosure Mediation Fund.
- Requires mediation only if the homeowner responds to the court's summons and provides that the filing party may continue with the foreclosure action if the homeowner fails to respond.

### Local fiscal effects

In preparing this analysis, LSC fiscal staff spoke with members of the Judicial Conference, the Ohio Supreme Court, and the Ohio Clerk of Courts Association, as well as judges of the courts of common pleas. What follows is a distillation of those conversations.

#### Clerks of courts

The bill directs clerks of courts to collect the additional foreclosure filing fee and then forward the collected moneys to the county treasurer for deposit in the county Residential Foreclosure Mediation Fund, which the bill creates.

Beyond collecting the new filing fee, the bill requires that the clerk provide written notice of mediation to parties in a foreclosure action,<sup>1</sup> and allows the

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<sup>1</sup> The clerk of court currently sends a summons to parties involved in a foreclosure filing, so the written notice will be an additional document that accompanies the summons.

homeowner 28 days to respond. After the clerk receives a response from the homeowner, another notice must be sent out within 60 days specifying the date, time, and place of the mediation proceeding.

LSC fiscal staff has learned that some counties currently have mediation programs up and running. In those counties, the bill would generally codify current practices. The Ohio Clerks of Courts Association indicated that many clerks across the state are already mailing out information that comports with or exceeds the bill's notification requirements.<sup>2</sup> Perhaps more significantly, our research indicates that the clerks of courts in counties that currently operate mediation programs usually do not receive any response to a vast majority of the notifications sent to homeowners involved in a foreclosure action. As such and according to the bill, when the homeowner fails to respond to notification of mediation, the mediation is not conducted, and the court proceeds with the foreclosure action.

What all of this means is that any additional administrative work that the bill may generate for the clerks of courts – either in counties currently operating foreclosure mediation programs or those that would be required to establish such programs – is unlikely to generate a more than minimal increase in their annual operating expenses.

#### **County treasurers**

The additional annual operating expenses, if any, for a county treasurer to administer the Residential Foreclosure Mediation Fund, are unlikely to exceed minimal.

#### **Courts of common pleas**

##### **New filing fee**

The bill requires courts of common pleas to impose an additional filing fee of up to \$500 for residential foreclosure actions on occupied properties.<sup>3</sup> The stated purpose of these fees is to pay for the costs of mediation. A court of common pleas judge, who is also a member of the Judicial Conference's Civil Law and Procedure Committee, conveyed to LSC fiscal staff that the amount of the additional fee established by any given court would likely be representative of the fiscal situation of that court's county. Presumably, a court will establish the fee at a level commensurate with its anticipated costs to establish and maintain the required mediation program.<sup>4</sup>

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<sup>2</sup> At the time of this writing, the Ohio Clerks of Courts Association had not yet convened its Legislative Committee and intensively discussed the bill's provisions. After they meet, a more detailed position may be available.

<sup>3</sup> The new filing fee does not apply to foreclosure filings based on liens for delinquent taxes.

<sup>4</sup> In the event the court collects an amount that exceeds the costs of mediation and is thus left with a surplus of funds, the bill directs the court to use the remaining moneys for other foreclosure-related initiatives.

### **Foreclosure mediation programs**

The bill requires that courts of common pleas establish foreclosure mediation programs for parties involved with a foreclosure action on an occupied residential property. If a homeowner responds to a notification of mediation, the clerk of court is required to appoint a volunteer or paid mediator who meets certain training requirements established by the court and to schedule a mediation meeting.

Currently, the Supreme Court's Dispute Resolution Section provides a list of approved mediators in each county. In addition, the Court has already established an 11-step foreclosure mediation program model that each court of common pleas may refer to when developing its own mediation program.

### **Paid versus volunteer mediators**

The bill permits either a volunteer or paid mediator to be appointed. Presumably, the provision of such services is potentially a mediation program's most costly component. Currently, it appears that the use of volunteer and paid mediators varies widely from county to county, and as a result, we cannot reliably estimate the statewide annual cost for all affected counties (courts of common pleas/clerks of courts).

Ultimately, however, the intent of the bill is for the additional foreclosure filing fees deposited in the Residential Foreclosure Mediation Fund to offset the costs a court/clerk of courts incurs in order to establish and maintain a mandatory mediation program. As was cited previously in this analysis, LSC fiscal staff received feedback that suggests most courts of common pleas would attempt to set the additional filing fee at a level that offsets any anticipated increases in any foreclosure mediation expenditures.

### **Estimated revenue potential for select counties**

In an effort to provide some frame of reference for the maximum amount of money that could be deposited in a county's Residential Foreclosure Mediation Fund, we have built Table 1 below that depicts the number of calendar year 2008 foreclosure filings in a sampling of various-sized counties across the state and the potential amount of revenue that could have been generated if the additional foreclosure filing fee had been in effect at that time. It is important to note that in each county we assume the court of common pleas would establish the maximum \$500 additional foreclosure filing fee. As annual foreclosure activity increases and decreases, there would be commensurate changes in the amount of additional foreclosure filing fees generated.

<b>Table 1. Estimated Maximum Potential Revenue Gain for Select Counties</b>			
<b>County</b>	<b>Census 2000 Population</b>	<b>2008 New Foreclosure Filings</b>	<b>Maximum Potential Revenue</b>
Cuyahoga	1,393,978	13,858	\$6,929,000
Franklin	1,068,978	9,305	\$4,652,500
Hamilton	845,303	6,673	\$3,336,500
Lucas	455,054	4,359	\$2,179,500
Butler	332,807	2,987	\$1,493,599
Lorain	284,664	2,442	\$1,221,000
Monroe	15,180	38	\$19,000
Noble	14,058	38	\$19,000
Vinton	12,806	43	\$21,500

### **State fiscal effects**

The bill's provisions will have no direct effect on state revenues and expenditures.

