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Office

S.B. 49
134th General Assembly

Fiscal Note & Local Impact Statement

[Click here for S.B. 49's Bill Analysis](#)

Version: As Introduced

Primary Sponsors: Sens. Hottinger and Sykes

Local Impact Statement Procedure Required: No

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Highlights

- The lien procedures applying to work performed by architects, landscape architects, professional engineers, and professional surveyors working on commercial projects could result in an increase in costs to county recorders and county courts of common pleas. These costs would largely be offset through the filing and recordation fees associated with taking the actions permitted in the bill.

Detailed Analysis

The overall fiscal impact of the procedures pertaining to liens on commercial real estate will depend on how often architects, landscape architects, professional engineers, and professional surveyors invoke their lien rights and the complexity of the circumstances surrounding the work on the commercial project. There could be additional costs to the applicable county recorders and county courts of common pleas. However, these costs would be offset by filing fee revenues collected by recorders and the courts hearing these civil cases.

Perfection and satisfaction of a professional's lien

The bill requires the filing, recording, and serving of an affidavit in order for a professional to perfect a lien on a property interest. To perfect the professional's lien, the individual must file the lien with the county recorder of the county in which the commercial real estate is located. The bill also requires the professional to record a written release of the lien when the lien is satisfied, and submit the release to the appropriate county recorder within 30 days. These requirements will result in some additional recordation costs for county recorders, which would be offset by the recording fees collected with these filings.

The fiscal impact of this provision will primarily depend on the number of such liens filed. It is unclear how many professional liens would result from the bill. As a point of comparison,

LBO examined mechanic lien filings in Franklin County. In calendar year 2020, there were 477¹ filings related to mechanics' liens in Franklin County. A cursory search of these filings shows that most of these filings are between three and five pages in length. This means that the recordation fees for the professional liens under the bill would likely range from \$42 for a three-page document (\$34 for the first two pages plus \$8 for an additional page) to \$58 for a five-page document (\$34 for the first two pages plus \$24 for the three additional pages). It is not clear if those fees would offset any additional costs associated with the bill, but it would seem as though there would not be any cost increases to county recorders associated with establishing professional liens.

In addition to the perfection and satisfaction of a professional's lien, the bill also provides procedures for the substitution of financial security. A professional's lien may be released through the substitution of financial security. This allows any person with interest in commercial real estate on which a professional's lien has been perfected to substitute financial security for the lien. To do so, the person must apply to the applicable court of common pleas, must provide a substitute security in an amount equal to the professional's claim, and in a form determined adequate by the court. The bill also requires the person substituting the security to file the entry and release, once granted, to file it for recording with the applicable county recorder. It would appear as though this procedure would not be commonly used. However, any additional costs for these filings would ultimately be offset through the applicable filing and recordation fees.

Lien enforcement

The bill specifies that a perfected lien has a two-year life. To enforce these liens, the professional must file a complaint in the common pleas court of the county in which the commercial real estate is located. This would require the professional to also pay the applicable civil suit filing fee required by the county court of common pleas. In Franklin County, the standard civil suit filing fee is \$225.² The number of cases in which a professional lien would result in an enforcement action in a county court of common pleas is not clear. In 2019, the civil branch of the Franklin County Court of Common Pleas heard over 51,596 civil cases.³ Therefore, it would appear as though any additional costs from an increase in caseload would likely be minimal.

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¹ <https://countyfusion5.kofiletech.us/countyweb/login.do?countyname=Franklin>.

² <https://clerk.franklincountyohio.gov/CLCT-website/media/Docs/general/civilFees.pdf>.

³ http://www.fcmcclerk.com/documents/annual-reports/FCMC_AR_2019_Clerk.pdf.