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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 Enacted

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 design professionals – 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. Although there could be additional costs to the applicable county recorders and county courts of common pleas, 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's lien filings in Franklin County. In calendar year 2020, there were 477¹ filings related to mechanic's 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). Presumably, these fees would offset much if not all of the additional costs that county recorders would incur under the bill.

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's lien would result in an enforcement action in a county court of common pleas is not clear. Overall, the number of judgement liens increased to 126,132 in 2020 from 57,167 in 2019.³

Substitute financial security

For the commercial property owner who is the subject of the lien, the bill allows for the substitution of financial security such as an escrow account or surety bond in the amount of the design professional's claim. This requires the commercial property owner to apply to the applicable court of common pleas and provide a substitute security in an amount equal to the professional's claim. This information must also be filed with the county recorder. If approved by the court, the professional's lien is released. In some cases, both parties to a dispute for payment may find this alternative to be a more effective way of settling a claim for work on a commercial project, but it would depend on the circumstances. Any additional costs that courts of common pleas or county recorders might bear for handling filings under this substitute process would ultimately be offset through the applicable filing and recordation fees.

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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 <https://clerk.franklincountyohio.gov/CLCT-website/media/Docs/annualreports/Annual-Report-2021.pdf>.