

Legislative Analysis



MODIFY CONVEYANCE AFFIDAVIT & INDEXING REQUIREMENTS

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House Bills 4638 & 4640
Sponsor: Rep. Peter Pettalia

House Bill 4639
Sponsor: Rep. Marilyn Lane

Committee: Local Government
Complete to 6-5-13

A SUMMARY OF HOUSE BILLS 4638 - 4640 AS INTRODUCED 4-30-13

The bills would amend various acts to modify the rules under which real estate conveyances and affidavits are recorded and indexed with the county register of deeds.

House Bills 4638 and 4640 are tie-barred so that neither could go into effect unless the other also was enacted into law. Further, House Bill 4639 is tie-barred to both House Bill 3638 and House Bill 4640, so that it could not go into effect unless both of those bills were also enacted into law. A description of each bill follows.

House Bill 4640

The bill would amend Public Act 123 of 1915, which provides for the recording of affidavits affecting real property (MCL 565.451a). Under that act, an affidavit stating facts relating to certain specified matters that could affect the title to real property and made by any person with knowledge of those facts and competent to testify about those facts in open court can be recorded in the office of the Register of Deeds in the county where the property is located.

The bill would add to the list of "matters" so as to include "knowledge of a person with respect to an unrecorded conveyance, accompanied by a copy of the unrecorded conveyance."

The bill further specifies that this provision would apply to any affidavit regarding conveyances within its scope even if the affidavit was recorded before the effective date of House Bill 4640 (meaning, the provision would be retroactive).

However, under the bill, a copy of an original instrument and affidavit could not be received and recorded by the register of deeds after the effective date of the bill unless the affidavit stated that the original instrument had been lost or destroyed and that, to the best of the affiant's knowledge, the original instrument was delivered from the grantor to the grantee or from the mortgagor to the mortgagee, as applicable.

Finally, the bill specifies that an affidavit recorded on or after the bill's effective date would have to be indexed under the names of the parties to the unrecorded conveyance, and would not need to be indexed under the name of the affiant (person signing the affidavit).

House Bill 4638

The bill would amend Public Act 103 of 1937, which concerns the documents filed with the office of the register of deeds (MCL 565.201). It would specify that if a copy of an instrument meeting all other requirements under the act, other than the requirement of original signatures, was affixed to an affidavit that met the requirements proposed by House Bill 4640 (see above), then the affidavit (together with a copy of the instrument) would be received for recording by the register of deeds. Upon recording, the instrument would be duly recorded, as of the date of recording the affidavit.

The bill further specifies that to the extent the instrument validly creates a lien on the property, the lien would be perfected as of the date of recording the affidavit.

Under the bill, this subsection of the law would be retroactive and would apply to all copies of original instruments verified by affidavit, regardless of whether they were recorded on, before, or after the effective date of this bill, should it be enacted into law.

House Bill 4639

The bill would amend RS 65 of 1846, which concerns the recording of conveyances (MCL 565.28). The act requires that the names of all parties be included in a computerized index to allow for an alphabetical search of the names of each party to each instrument recorded by the register of deeds. The bill would allow an exception so that it would not apply to an instrument cited in Section 1a(g) of Public Act 123 of 1915, which is the new section of the law that is proposed by House Bill 4640.

FISCAL IMPACT:

A fiscal analysis is in process.

Legislative Analyst: J. Hunault

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.