



**Senate Fiscal Agency**  
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House Bill 4638 (Substitute S-3 as reported by the Committee of the Whole)  
House Bill 4639 (as reported without amendment)  
House Bill 4640 (Substitute S-2 as reported by the Committee of the Whole)  
Sponsor: Representative Peter Pettalia (H.B. 4638 & 4640)  
Representative Marilyn Lane (H.B. 4639)  
House Committee: Local Government  
Senate Committee: Banking and Financial Institutions

### **CONTENT**

House Bill 4640 (S-2) would amend Public Act 123 of 1915, which provides for the recording and use of affidavits affecting real property, to allow an affidavit stating facts related to the knowledge of a person with respect to an unrecorded mortgage to be recorded if the affidavit recited the names of the parties to that mortgage and a copy of it accompanied the affidavit. The affidavit would have to be indexed under the name of the affiant and, if the affidavit were recorded on or after the bill's effective date, under the names of the parties to the mortgage.

This provision would apply to any affidavit regarding a mortgage within its scope, and would apply even if the affidavit were recorded before the bill's effective date. However, a copy of an unrecorded mortgage and affidavit could not be received and recorded on or after that date unless the affidavit and the copy of the mortgage were legible and the affidavit stated all of the following:

- The names of the mortgagor and the mortgagee.
- A legal description of the property, the property tax identification number, and, if applicable, the address of the property.
- That the original mortgage had been lost or destroyed.
- That the original mortgage was signed by the parties to the unrecorded mortgage.
- That, to the best of the affiant's knowledge, the original mortgage was delivered from the mortgagor to the mortgagee.

The affidavit also would have to state that the affiant either mailed a copy of the affidavit and unrecorded mortgage by first-class certified or registered mail, return receipt requested, to the mortgagor at the mortgagor's last known address, or personally served a copy of those documents on the mortgagor. Actual delivery of the mail or a signed return receipt would not be required.

House Bill 4638 (S-3) would amend Public Act 103 of 1937, which prescribes conditions relative to the execution of instruments to be recorded with the register of deeds, to specify that if a mortgage instrument met all of the requirements for recording under the Act, and an affidavit were recordable under Section 1a(g) of Public Act 123 of 1915, then the affidavit and the mortgage instrument would have to be received for recording by the register of deeds and would be considered recorded on the date the affidavit was recorded. (Section 1a(g) contains the language proposed by House Bill 4640 (S-2).)

To the extent that the mortgage instrument validly created a lien, the lien would be perfected on the date the affidavit was recorded.

The bill would apply retroactively to all copies of mortgage instruments verified by affidavit, regardless of whether they were recorded before, on, or after the bill's effective date. An affidavit and mortgage instrument could not be received for recording on or after that date, however, if more than one mortgage instrument were attached to the affidavit.

The bill would prohibit a register of deeds from recording an instrument executed after April 1, 1997, if statement described by Section 1(1)(f)(ii) purported to evidence more than one recordable event. (The statement required by Section 1(1)(f)(ii) is a statement on the first page of the instrument identifying the recordable event that the instrument evidences.)

House Bill 4639 would amend Chapter 65 of the Revised Statutes of 1846, which pertains to the recording of conveyances and canceling of mortgages, to make an exception to the indexing requirements for alphabetical searches, for a person described in House Bill 4640 (S-2). (As noted above, an affidavit recorded under that bill would have to be indexed under the name of the affiant and the names of the parties to the mortgage.)

MCL 565.201 (H.B. 4638)  
565.25 (H.B. 4639)  
565.451a (H.B. 4640)

Legislative Analyst: Jeff Mann

### **FISCAL IMPACT**

The bills would have a minimal fiscal impact on local government and no fiscal impact on the State. If previously unrecorded mortgages were recorded with affidavits pursuant to the bills, procedures at the local register of deeds offices would be modified somewhat to determine whether the new affidavit and mortgage met the requirements of the bills, including that the affidavit and unrecorded mortgage had been sent to the mortgagor by certified or registered mail, or that the mortgagor had personally served a copy of the affidavit and unrecorded mortgage instrument on the mortgagor, and to record and index the records as required. If the bills resulted in increased filings, local registers of deeds would receive the document recording fee of \$14 for the first page (of which \$4 goes to the State Survey and Remonumentation Fund for grants to counties for remonumentation) and \$3 for each subsequent page of the document recorded.

Date Completed: 10-1-14

Fiscal Analyst: Elizabeth Pratt

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.