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FISCAL IMPACT REPORT

ORIGINAL DATE 02/10/13
 LAST UPDATED 03/13/13 HB 365/HJCS

SPONSOR HJC

SHORT TITLE Commercial Real Estate Broker Lien Act SB _____

ANALYST Martinez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Minimal				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Regulation and Licensing Department (RLD)

SUMMARY

Synopsis of Bill

The House Judiciary Committee substitute for House Bill 365 (HB 365) rewords the Section 2 Definitions (“commercial real estate” means any real estate other than) to clarify that real estate containing one or more single-family residential units may not be considered commercial real estate when these units are sold or leased on a unit-by-unit basis. Also, to Section 9 Priority of Lien, the language “liens that have priority pursuant to law” has been added as another condition that has priority over a broker’s lien.

HB 365 creates the Commercial Real Estate Broker Lien Act (CREBLA), to permit a broker to place a lien upon commercial real estate or any interest in commercial real estate in the amount that the broker is due for licensed services connected with the leasing of the commercial real estate, including brokerage fees and consulting fees if the broker is entitled to a stated fee or commission.

This bill states that a lien must be recorded in the county clerk’s office in which the commercial real estate is located and must be filed within ninety days following the date on which payment was due. The broker must also mail a copy of the notice of lien by certified mail to the last

known address of the owner of the commercial real estate or the owners authorized agent within ten days of recording the notice of lien. And within two years of recording the notice of lien a broker must bring suit to enforce the lien in the district court in the county where the commercial real estate is located. Failure to do so shall extinguish the lien.

FISCAL IMPLICATIONS

There will be a minimal increase in administrative costs for statewide district courts. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this new law, and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

SIGNIFICANT ISSUES

As noted by the Certified Commercial Investment Member (CCIM) Institute

Many states have been exploring, or have already enacted, a commercial real estate broker's commission lien law. These laws allow for a commercial real estate broker to obtain and foreclose upon a lien as a legal remedy against a property if the buyer/seller or lessee/lessor fails to pay the broker the agreed upon commission, as their interests in the real property may apply. Litigation to recover fees often consumes the entire fee the broker earned and would have been paid, and is not always swift, to the detriment of the real estate brokerages and commissioned agents involved in the transaction. These laws have been enacted to solve the problem of brokers going into a closing of a sale and, without mutual consent, receiving a fee lower than previously agreed, upon, or in some cases, no fee at all.

Although the language in each law varies from state to state, most laws state that the lien language must be placed in the written agreement signed by both the party the broker represents, and the real estate brokerage agency. This agreement is only typically valid with the principal broker, thus those working under the broker have no authority to place a lien.

“Commercial Broker Lien Law”. 06,21,2011. Certified Commercial Investment Member (CCIM) Institute. [“http://www.ccim.com/newscenter/commercial-broker-lien-laws”](http://www.ccim.com/newscenter/commercial-broker-lien-laws).

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Commercial Real Estate Brokers would continue to have no means of insuring payment of the agreed upon fee for their services, other than costly legal battles.

RM/svb