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SUMMARY

Treasurer of State

Authority of the Treasurer of State

- Specifies that custodial funds do not include items held in safekeeping by the Treasurer of State, including collateral pledged to a state agency.
- Provides that the term “warrant” includes an order drawn upon the Treasurer of State by an authorized person at a state entity holding a custodial account.
- Requires the Treasurer of State to provide the Director of Budget and Management electronic records of all paid warrants on a daily basis, instead of providing this information on a monthly basis, as required under current law.
- Creates the Treasurer’s Information Technology Reserve Fund, consisting of unexpended amounts transferred from the Securities Lending Program Fund and an account for a program the Treasurer uses to service student loans, for the purpose of acquiring or maintaining hardware, software, or contract services for the efficient operation of the Treasurer of State’s office.
- Requires requests for bids for contracts with financial institutions relating to financial transaction devices to be published on a publicly available state agency website for two consecutive weeks, instead of in a newspaper as under current law.
- Authorizes the Board to contract with additional nonwinning bidders or other financial institutions relating to financial transaction devices if such contracts are in the best interest of the state.
- Expands the Treasurer’s rule-making authority regarding the Pay for Success Contracting Program.

Uniform Depository Act

- Modifies the classification of state moneys for purposes of deposits with public depositories and investments made under the Uniform Depository Act.
- Modifies eligibility of financial institutions that may hold warrant clearance accounts with active deposits (i.e., public funds needed to meet current demands), as well as corresponding reporting requirements.
- Expands the purposes of warrant clearance accounts to include funding electronic benefit transfer cards, issuing stored value cards (i.e., prepaid cards), or otherwise facilitating the settlement of state obligations.
- Eliminates the State Board of Deposit's requirement to publish the governing board of a subdivision's resolution and notice of the meeting to designate a depository for its inactive funds, but retains the requirement that the governing board of the subdivision publish the information.
- Extends, from 30 days to 120 days before the selection date, for a financial institution to apply to the proper governing board to become a public depository and hold interim or active deposits.
- Requires, beginning in 2025, the State Board of Deposit to designate public depositories every four years, rather than every two years as under current law, and makes the designations made in 2022 continue for three years, rather than two.
- Authorizes the Treasurer of State, in accordance with the requirements of the Uniform Depository Act, to invest interim moneys in written repurchase agreements with any counterparty with certain specified ratings.
- Changes the timeline and method of when and how the Treasurer of State must notify the Board of Deposit about the classification of interim moneys, from notifying the Board 30 days of the classification to on or before the 10th day of each month the Treasurer will notify the Board that specified reports with the relevant information have been posted to the Treasurer's website.
- Requires that whenever the State Board of Deposit believes the amount of active deposits is insufficient to meet the anticipated demands, it must direct the Treasurer of State to sell interim money investments or to redeem negotiated deposits to meet the demands, and the Treasurer has discretion in selecting the instruments to be sold or redeemed.
- Excludes moneys of metropolitan housing authorities from the Ohio Pooled Collateral Program.
- Authorizes the Petroleum Underground Storage Tank Release Compensation Board to allow the Treasurer to invest surplus funds pursuant to the Uniform Depository Act.

Social Security

- Repeals the ability for certain county-related corporations or cities to opt into Social Security and the Treasurer's involvement in the payment of contributions to the U.S. Treasury.

Contract with financial intuitions for collection of taxes

- Repeals a provision authorizing contracts with financial institutions for the collection of taxes and fees at a P.O. Box.

Recorded documents and electronic modernization

- Requires counties to provide an electronic means of recording instruments and of accessing recorded instruments by June 30, 2025.
- Allows county recorders to charge a document preservation surcharge.
- Increases the recording fee for living wills, health care powers of attorney, and instruments related to personal property.
- Appropriates \$8 million for use by the Office of the Treasurer to distribute grants to reimburse counties to implement the bill's provisions.
- Extends dates related to county recorders' requests for funds for imaging and other technological equipment.

Powers of attorney

- Modifies requirements regarding powers of attorney utilized for the execution of real property instruments.

Mortgage subrogation

- Allows a mortgage that was used to satisfy a previous mortgage to be subrogated to the priority of (have the same priority as) the previous mortgage if certain conditions are met.
- Prohibits a mortgage lender seeking subrogation from being denied subrogation for specifically enumerated reasons.
- Provides that the holder of a subordinate mortgage or lien retains the same subordinate position had the previous mortgage or lien not been satisfied.

Rental property owner's agent

- Allows a rental property owner's agent to file the owner's contact information with the county auditor.

Stock state banks

- Expands the list of reasons a stock state bank can amend its articles of incorporation to include reasons permitted under Ohio Corporation Law.

Law enforcement tows

- Expands the type of law enforcement agencies that may tow and take title to a motor vehicle, after certain conditions are met, to include a university campus police department and a park district police force.
- Clarifies that a sheriff or chief of police, after a motor vehicle is towed by law enforcement, must send notice of the tow to both the owner and any lienholder of the motor vehicle.

TABLE OF CONTENTS

Authority of the Treasurer of State	5
Custodial funds.....	5
Warrants.....	5
Record of payments	6
Account balances	6
Treasurer’s Information Technology Reserve Fund	6
Requests for proposals on financial transaction devices.....	7
Pay for Success Contracting Program	7
Contract with financial institutions for the collection of taxes.....	8
Uniform Depository Act	8
Classification of interim moneys.....	8
State money classifications	9
Active deposits and warrant clearing accounts	9
Designating public depositories	10
Investment of interim funds	10
Transferring funds from one classification to another	11
Ohio Pooled Collateral Program	12
Investment of the Petroleum Underground Storage Tank	
Release Compensation Board funds.....	12
Social Security for employees of political subdivisions	12
Recorded documents and electronic modernization	13
Electronic recording for real property and other instruments.....	13
Indexes and instruments available online.....	14
County Recorder Electronic Record Modernization Program	14
Document preservation surcharge	14
Fees for recording personal property transactions	15
Fee for recording living wills and health care powers of attorney	15
Funds for imaging and other technological equipment.....	16

Electronic transmission fee	16
Power of attorney pertaining to real property.....	16
Mortgage subrogation	18
Judgment liens	19
Rental property owner’s agent.....	19
Stock state banks	19
Law enforcement tows	20

DETAILED ANALYSIS

Authority of the Treasurer of State

The bill makes several changes to the law as it relates to the Treasurer of State.

Custodial funds

Under existing law, a custodial account is an account that is in the custody of the Treasurer of the State but that is not part of the state treasury and must be kept separately, not commingled, with state treasury assets. The bill specifies that custodial funds do not include items held in safekeeping by the Treasurer, including collateral pledged to a state agency.¹

Existing law stipulates that no money may be paid out of a custodial fund except on proper order to the Treasurer by the officer authorized to pay money out of the fund. The bill removes reference to the Treasurer and, thereby, allows for payment out of custodial funds whenever ordered by the officer, regardless of where that order is directed.²

Warrants

Under existing law, a “warrant” is an order drawn upon the Treasurer of State by the Director of Budget and Management (OBM Director) directing the Treasurer of State to pay a specified amount. The bill expands this definition to include an order drawn by an authorized person at a state entity holding a custodial account and clarifies that warrants may have multiple payees.

Existing law includes as examples of warrants: (1) an order to make a lump-sum payment to a financial institution for the transfer of funds by direct deposit or the drawdown of funds by electronic benefit transfer, and (2) the resulting electronic transfer to or by the ultimate payees. The bill revises the examples to state that a variety of payment instruments may be used, including paper warrants, stored value cards, direct deposit to the payee’s bank account, or the drawdown of funds by electronic benefit transfer, and the resulting electronic transfer to or by the ultimate payees. Under the bill, a stored value card is a payment card that may have money loaded and stored on the card and accessed through automated teller

¹ R.C. 113.05.

² R.C. 113.11.

machines, point of sale terminals, or other electronic media. The term does not include any payment card linked to, and that can access money in, an external account maintained by a financial institution.³

Existing law prohibits money from being paid out of, or transferred from, the state treasury without a warrant issued by the OBM Director. The bill largely retains this prohibition, but specifies that money may be paid out or transferred upon an order of the OBM Director, rather than a warrant.⁴

Record of payments

Under existing law, the Treasurer must pay all warrants drawn on the Treasurer by the OBM Director. At least once each month, the Treasurer must surrender to the OBM Director all warrants the Treasurer has paid and must accept the receipt of the OBM Director and hold it as evidence of payment until an audit of the state treasury and the custodial funds is completed.

The bill revises this process in three ways. First, it specifies that the warrant must be a “valid warrant,” which it defines as a warrant that is not stopped, stale dated for age, voided, canceled, altered, or fictitious. Second, instead of providing the OBM Director all warrants paid on a monthly basis, the bill requires the Treasurer, on a daily basis, to provide the OBM Director the electronic records of all the warrants paid, adjusted, or returned. Third, the bill eliminates the requirement that the OBM Director provide, and the Treasurer retain, paper receipts.⁵

Account balances

Under existing law, the Treasurer must have available and, as requested, transmit to the OBM Director and to the Governor information concerning the amount in the inactive account, the amount in the active account, and the amount of cash on hand. The bill instead requires the Treasurer to make available the daily ledger report of state funds addressed to the Governor. The Treasurer must ensure that (1) the report provides the beginning fund balance, revenue, disbursements, and ending fund balance, and that (2) the amount of the active deposits is captioned as total cash and cash equivalents and interim deposits as total investments.⁶

Treasurer’s Information Technology Reserve Fund

The bill creates the Treasurer’s Information Technology Reserve Fund in the state treasury, which will consist of unexpended amounts transferred from either or both of (1) the Securities Lending Program Fund and (2) the custodial account created under an existing program that allows the Treasurer to act as an eligible not-for-profit servicer of student loans owned by the federal government. Moneys credited to this new fund must be expended only to acquire or maintain hardware, software, or contract services for the efficient operation of the

³ R.C. 131.01 and 4749.01.

⁴ R.C. 113.11.

⁵ R.C. 113.12.

⁶ R.C. 113.13.

Treasurer of State's office. Unexpended amounts must be retained in the fund and reserved for future technology needs.⁷

Requests for proposals on financial transaction devices

Existing law allows the State Board of Deposit to adopt a resolution authorizing the acceptance of payment by financial transaction devices (credit, debit, and stored value cards, for example) to pay for state expenses. The Board's resolution must designate the Treasurer of State as the administrative agent. In this role, the Treasurer must follow certain statutory procedures whenever the Treasurer plans to contract with financial institutions, issuers of financial transaction devices, or processors of financial transaction devices. One of these procedures requires the Treasurer, prior to sending any financial institution, issuer, or processor a copy of a request for proposal, to advertise the Treasurer's intent to request proposals in a newspaper of general circulation in Ohio once a week for two consecutive weeks. The bill instead requires that such advertising be provided by electronic publication on a state agency website made available to the general public. In addition, the request for proposals must be electronically mailed.⁸

Also, the bill authorizes the Board of Deposit to contract with one or more additional entities subsequent to the award if the Board determines that it is necessary and in the state's best interest.⁹

Pay for Success Contracting Program

The Pay for Success Contracting Program allows the Treasurer of State to contract with service intermediaries for delivery of specified services that benefit the state, a political subdivision, or a group of political subdivisions, such as programs addressing education, public health, criminal justice, or natural resource management. Under the existing program, the upfront costs for projects are funded by private investors, rather than the government. Government repayment only occurs if verifiable results are achieved during a project or by its conclusion.

The law authorizes the Treasurer to adopt rules to administer the program. The rules may include the procedure for a state agency, political subdivision, or group of them to request the Treasurer and, in some cases, the Director of Administrative Services to enter into a contract and to deposit the cost of the contract with the Treasurer. The rules also may address the types of services that are appropriate for a service intermediary to provide under a pay for success contract. The bill adds that the Treasurer may adopt any other rules necessary for the implementation and administration of the program.

⁷ R.C. 113.22, 135.47, and 3366.05.

⁸ R.C. 113.40(C).

⁹ R.C. 113.40(J).

The bill eliminates the requirement that the Treasurer adopt a rule that requires at least 75% of the contracts under the Pay For Success Contracting Program specify performance targets that, based on available regional or national data, require the improvement in the status of Ohio or the relevant area, with respect to the issue the contract addresses, to exceed the average improvement in other geographical areas during the period of the contract. The bill also eliminates the requirement that the Treasurer adopt by rule a process to ensure that any regional or national data used to determine whether a service provider has met its performance targets are scientifically valid.¹⁰

Contract with financial institutions for the collection of taxes

Under existing law, the Treasurer may enter into a contract with a financial institution under which the financial institution receives tax and fee payments at a post office box, opens the mail delivered to that box, processes the checks and other payments and deposits them into the Treasurer of State's account, and provides the Treasurer a daily receipt information with the payments that were received. The bill eliminates the law authorizing such a contract.¹¹

Uniform Depository Act

The Uniform Depository Act governs the deposit and investment authority of public moneys of the state and Ohio's political subdivisions, including active deposits (i.e., public funds needed to meet current demands) and inactive or interim deposits (i.e., public funds not needed to meet current demands). The bill makes various changes to the Act.

Classification of interim moneys

Existing law requires that whenever, during a period of designation, the Treasurer of State classifies public moneys as interim moneys, the Treasurer must notify the State Board of Deposit within 30 days of the classification. The bill instead requires that on or before the 10th day of each month, the Treasurer must notify the Board that the following reports pertaining to the immediately preceding month have been posted to the Treasurer's website:

- The daily ledger report of the state funds;
- The monthly portfolio report detailing the current inventory of all investments and deposits held within the classification of interim moneys;
- The monthly activity report within the classification of interim moneys summarized by type of investment or deposit.¹²

Existing law requires the chairperson of the Board to provide a monthly report to the Board on classification of public moneys as interim moneys, and to post that report monthly to

¹⁰ R.C. 113.60(C) and (D); [Results Ohio](https://www.tos.ohio.gov/), which is available on the Treasurer of State's website: <https://www.tos.ohio.gov/>.

¹¹ R.C. 113.07, with conforming changes in R.C. 113.05.

¹² R.C. 135.143(B).

a website maintained by the Treasurer of State. The bill instead requires that the chairperson provide a notification to the Board that the reports described above have been posted on the website.¹³

State money classifications

The bill specifies that, in the context of the state treasury, interim moneys are public moneys that are not active deposits and may be invested in accordance with the Uniform Depository Act interim funds investment provisions. It also eliminates references to inactive deposits in the context of state moneys throughout the Uniform Depository Act. For example, under existing law, public depositories, i.e., financial institutions authorized to hold public deposits, are permitted to hold active deposits, inactive deposits, and interim deposits of public moneys of the state. The bill eliminates the eligibility of the public depositories from holding inactive deposits of the state. In other words, under the bill, it seems that state money will only have two classifications: active deposits and interim deposits. The subdivisions of the state will retain the three classifications: active, inactive, and interim deposits.¹⁴

Active deposits and warrant clearing accounts

Under existing law, to facilitate payments from the state treasury, the Treasurer of State may establish warrant clearance accounts in public depositories that are located in areas where the volume of warrant clearances justifies the establishment of an account. The bill eliminates the qualifier and, therefore, allows the Treasurer to establish warrant clearance accounts in any public depository regardless of the volume of clearances in the area.

Under existing law, any financial institution in Ohio that has a warrant clearance account established by the Treasurer must, not more than ten days after the close of each quarter, prepare and transmit to the Treasurer an analysis statement of the account for the quarter. The statement must contain information required by the State Board of Deposit and must be used by the Treasurer in determining the level of balances to be maintained in the account. The bill instead requires such financial institutions to provide the statement on a monthly basis, 15 days after the close of each month. The bill also eliminates the requirement that the Treasurer use the information in the statement to determine the level of balances in each account.¹⁵

The bill also expands the purposes of the warrant clearance accounts to include funding electronic benefit transfer cards, issuing stored value cards (i.e., prepaid cards), or otherwise facilitating the settlement of state obligations.¹⁶

¹³ R.C. 135.02.

¹⁴ R.C. 135.01, 135.04, 135.05, and 135.06.

¹⁵ R.C. 135.04.

¹⁶ R.C. 131.01(R) and 135.01(H).

Designating public depositories

The bill changes the timeline and processes for designating public depositories of state funds but retains existing law as it applies to the funds of local governments, school districts, and other subdivisions. Existing law requires that, at least three weeks prior to the statutory deadline for designating public depositories, the State Board of Deposit and all other governing boards, by resolution, estimate the aggregate maximum amount of public money subject to its control to be awarded and be on deposit as inactive deposits. The resolution and notice of the date of the meeting to designate the depository must be published in a newspaper once a week for two consecutive weeks. The bill exempts the State Board of Deposit from the newspaper publication requirements but retains the requirement for other governing boards.¹⁷

Also, under existing law, each eligible institution desiring to be a public depository of inactive deposits of the public moneys of the state or a subdivision must, not more than 30 days prior to the deadline, make application of this to the proper governing board. The bill specifies that this provision only applies to inactive public moneys of a subdivision.¹⁸ The bill allows eligible institutions to apply to the State Board of Deposit earlier; not more than 120 days prior to the selection date.¹⁹

Under existing law, the State Board of Deposit meets on the third Monday of March in every even-numbered year to designate public depositories for the public moneys of the state. Public depositories that are selected hold that designation for two years. The bill changes the state timeline for designating public depositories to a four-year cycle, starting in 2025. Accordingly, public depositories designated by the state will have a term of four years instead of two. The bill specifies that public depositories of state funds designated in 2022 will retain that designation for three years, instead of two, until the bill's new timeline is implemented in 2025. The bill retains the five-year cycle prescribed by existing law for governing boards other than the state.

The bill adds that, during the designation period, whenever a statute authorizes a new custodial fund to be created, the State Board of Deposit will meet to award the public moneys associated with the new custodial fund to a designated public depository. During a designation period, whenever a state agency requests to change its public depository, the State Board of Deposit must meet to consider the request.²⁰

Investment of interim funds

Existing law authorizes the Treasurer of State to invest all or any part of the interim moneys of the state in specified investments. One permissible investment is in written repurchase agreements, i.e., a form of short-term borrowing through which a dealer sells

¹⁷ R.C. 135.05.

¹⁸ R.C. 135.06.

¹⁹ R.C. 135.08 and 135.10.

²⁰ R.C. 135.12(A), (F), and (G); Section 4.

government securities to investors and then buys them back (usually the next day) at a slightly higher price. Currently, the Treasurer may invest in repurchase agreements with any eligible Ohio financial institution that is a member of the Federal Reserve System or federal home loan bank, or any registered U.S. government securities dealer. The bill adds that the Treasurer may invest in repurchase agreements with any counterparty rated in one of the three highest categories by at least one nationally recognized standard rating service, or otherwise determined by the Treasurer to have adequate capital and liquidity. The bill specifies that, for purposes of repurchase agreement investments: (1) the Treasurer of State may only buy or sell securities that consist of debt interests currently authorized under the law, (2) the securities must be issued by entities organized under the laws of Ohio, any other state, or the U.S., and (3) the investment is subject to the existing law cap of 25% of the state's portfolio which may be invested in debt interests other than commercial paper.

Another category of permissible investment is certificates of deposit in eligible institutions applying for interim moneys, including linked deposits, agricultural linked deposits, business linked deposits, adoption linked deposits, and housing linked deposits. The bill expands this category to include savings accounts and deposit accounts. It also explicitly references eligible institutions applying for interim money in the form of adoption linked deposits.²¹

A third type of permissible investment under existing law is investment in obligations issued by the state, any political subdivision thereof, or by or on behalf of certain nonprofit corporations or associations. To qualify, the nonprofit corporation or association must do business in Ohio, be rated in the four highest categories by at least one nationally recognized standard rating service, and be identified in an agreement that provides for (1) the purchase of the obligations by the Treasurer, and (2) payment to the treasurer of a fee as consideration for the Treasurer's agreement to purchase the obligations. Under current law, such an agreement is permissible only if the obligations have a demand feature, by which the purchaser may require the Treasurer to purchase the obligations at par value plus accrued interest. The bill instead requires the obligation to include a conditional liquidity requirement.²²

Transferring funds from one classification to another

Under continuing law, changed in part by the bill, whenever a governing board is of the opinion that the actual amount of active deposits is insufficient to meet the anticipated demands on such active deposits, it must direct the Treasurer of State to sell interim money investments or transfer from inactive deposits to active deposits an amount sufficient to meet the demands. The governing board must designate the depositories from which the withdrawals will be made and the amount to be withdrawn from each such depository.

²¹ R.C. 135.143(A); see also, [Repurchase Agreement \(Repo\): Definition, Examples, and Risks](#), Nathan Reiff, June 18, 2022, which is available on Investopedia's website: [Investopedia.com](https://www.investopedia.com).

²² R.C. 135.143(A)(14) and (K).

The bill modifies this process when state funds are involved. First, it allows the State Board of Deposit and the Treasurer of State to generate the needed funds by redeeming negotiated deposits. Second, the bill gives the Treasurer, rather than the Board, discretion in selecting the instruments to be sold or redeemed.²³

Ohio Pooled Collateral Program

The bill specifies for purposes of the Ohio Pooled Collateral Program, metropolitan housing authority moneys are not considered public deposits and, therefore, are not subject to the program's provisions. Under continuing law, the Ohio Pooled Collateral Program allows a public depository to secure all of its public deposits collectively by pledging a single pool of collateral to the Treasurer of State. Otherwise the depository must secure each public deposit separately, at 105% of par value.²⁴

Investment of the Petroleum Underground Storage Tank Release Compensation Board funds

The Ohio Petroleum Underground Storage Tank Release Compensation Board consists of government and industry representatives and has the primary responsibility of administering the Petroleum Underground Storage Tank Financial Assurance Fund. The fund provides a mechanism for all underground storage owners and operators to meet U.S. Environmental Protection Agency regulations requiring them to demonstrate financial capability to pay for potential damages caused by releases from their underground storage tanks. Existing law requires that moneys in the funds of the Board, in excess of current needs, can be invested by the Board in notes, bonds, or other obligations of the U.S., or of Ohio, or any political subdivision. The bill adds that investments can be made with the investment pool managed and administered by the Treasurer.²⁵

Social Security for employees of political subdivisions

With few exceptions, Ohio public employees do not participate in Social Security for their government service. The federal Social Security Act did not allow for coverage of state and local government employees until 1950, when Congress amended the Act to allow a state to elect coverage for its government employees through an agreement with the federal government. Ohio's agreement exempts members of the state's retirement systems and the Cincinnati Retirement System from contributing to Social Security for government service covered by those systems.²⁶ This agreement is known as Ohio's "Section 218 Agreement."

²³ R.C. 135.15.

²⁴ R.C. 135.182(A)(3); Ohio Administrative Code (O.A.C.) 135-3-01, not in the bill.

²⁵ R.C. 3737.945.

²⁶ 42 United States Code (U.S.C.) 418 and [Social Security and Government Employers \(PDF\)](#), which may be accessed by conducting a keyword "Publication 963" search on the Internal Revenue Service (IRS) website: [irs.gov](https://www.irs.gov).

The bill repeals the ability for certain political subdivisions to elect Social Security coverage. The following subdivisions may make this election:

- A city that has its own retirement system and includes any municipal university belonging to the city (currently, only Cincinnati has its own retirement system); or
- A county-related corporation (i.e., a nonprofit corporation that carries out county-related recreational functions).

To make the election, such a city or county-related corporation must first submit a plan for approval by the state. Payment of contributions are made from the Social Security Contribution Fund from payments made by such a city or county-related corporation to the fund.²⁷

Ohio's Section 218 Agreement provides Social Security coverage for three groups of local employees: certain Cincinnati employees who are members of the Teachers Insurance and Annuity Association, Lucas County Recreation Inc., and Toledo Mud Hens Baseball Club, Inc.²⁸ It appears these groups are covered by the process eliminated by the bill to obtain Social Security coverage, but it is not clear whether any of these groups are currently using the process.²⁹

Recorded documents and electronic modernization

Electronic recording for real property and other instruments

The bill requires each county recorder, county auditor, and county engineer to provide an electronic method for recording instruments related to the conveyance of real property. The electronic method must be available not later than June 30, 2025, and must adhere to the county's standards governing conveyances (adopted by the county auditor and county engineer).³⁰ The bill also requires county recorders to provide an electronic method for recording certain instruments not related to the conveyance of real property.³¹ For instance, this would include instruments regarding personal property transactions.³² Various instruments both related to and not related to the conveyance of real property are recorded with the county recorder under continuing law, including deeds, easements, and mortgages.³³ Neither electronic recording method (for real property conveyances or for other conveyances) needs to

²⁷ R.C. Chapter 144, repealed.

²⁸ Ohio Section 218 agreement.

²⁹ See Ohio Atty.Gen.Ops. No. 72-019.

³⁰ R.C. 319.203, not in the bill, and R.C. 317.13(E)(1).

³¹ R.C. 317.13(E)(2).

³² R.C. 317.08(D), not in the bill.

³³ R.C. 317.08, not in the bill.

provide for the recording of instruments that are exempt from recording under the county's standards (discussed above) or under the minimum standards for boundary surveys.³⁴

Continuing law requires the payment of certain fees for recording instruments with the county recorder's office. The bill specifies that payments of fees for electronically recording an instrument may be made by electronic funds transfer, automated clearing house, or other electronic means.³⁵

Indexes and instruments available online

A county recorder also is required to make electronic indexes and electronic versions of instruments available to the public via the county recorder's website. The indexes and instruments must be available not later than June 30, 2025, and must include all instruments recorded on or after January 1, 1980.³⁶ The bill allows a county recorder to require a username and password to access the electronic indexes and instruments, but a county recorder cannot require a fee to create a username and password or to otherwise access the electronic indexes and instruments.³⁷

If a county recorder utilizes American Rescue Plan funds to satisfy this requirement or the electronic recording requirement discussed above, the bill specifies a county recorder has discretion to either hire staff or enter into a contract to satisfy these requirements.³⁸

County Recorder Electronic Record Modernization Program

The bill creates the County Recorder Electronic Record Modernization Program, administered by the Office of the Treasurer, to distribute grants to reimburse counties to assist the county recorder in satisfying the requirement that the county recorder provide an electronic means of recording instruments and of accessing recorded instruments. A county is only eligible to receive a grant under the program if the county recorder does not currently satisfy the bill's requirements. The bill appropriates \$8 million from American Rescue Plan Act funds to fund the program. A county that receives funds must reimburse the county recorder's technology fund to the extent costs have been incurred from the fund.³⁹

Document preservation surcharge

Under current law, a county recorder charges the following fees for recording and indexing most instruments using a photocopy or similar process:

³⁴ R.C. 317.13(E)(3). The minimum standards for boundary surveys are promulgated by the Board of Registration for Professional Engineers and Surveyors. See Ohio Administrative Code Chapter 4733-37.

³⁵ R.C. 317.32.

³⁶ The website does not include veteran discharge papers or any instrument or portion thereof prohibited from being disclosed under federal or state law.

³⁷ R.C. 317.13(F).

³⁸ Section 6.

³⁹ Sections 4 and 5.

- For the first two pages, a base fee of \$17 and a Housing Trust Fund fee of \$17;
- For each subsequent page, a base fee of \$4 and a Housing Trust Fund fee of \$4.

The bill maintains these fees, and also allows a county recorder to charge a document preservation surcharge of \$5, to be placed in the county's general fund.⁴⁰ The bill specifies the surcharge is intended to "support the preservation and digitization of documents and ongoing costs incurred by a county recorder's office to make available to the public a web site with appropriate security features, electronic document hosting, online viewing, print and download features that enable an individual to print or download a copy of a public record from the web site."⁴¹

Fees for recording personal property transactions

Under current law, a county recorder charges the following fees for recording and indexing instruments related to tangible or intangible personal property transactions using a photocopy or similar process:

- For the first two pages, a base fee of \$14 and a Technology Fund fee of \$14, except the full \$28 is a base fee if the county recorder does not have a Technology Fund.
- For each subsequent page, a base fee of \$4 and a Technology Fund fee of \$4, except the full \$8 is a base fee if the county recorder does not have a Technology Fund.

The bill increases the total fee for the first two pages from \$28 to \$34 (and maintains the equal split at \$17 and \$17 in the case of a county recorder who has a Technology Fund) but does not modify the fee for subsequent pages.⁴² This makes the fees charged for recording and indexing instruments related to personal property transactions match the fees charged for recording and indexing most other documents. The bill does not impose a document preservation surcharge for recording and indexing instruments related to personal property transactions.

Fee for recording living wills and health care powers of attorney

The bill increases the minimum amount a county recorder charges for recording living wills and health care powers of attorney. Currently a recorder charges between \$14 and \$20 as a base fee and between \$14 and \$20 as a Housing Trust Fund fee. The bill changes these to between \$17 and \$20, thus increasing the minimum amount the county recorder charges for each type of fee.⁴³

⁴⁰ R.C. 317.32(A)(1)(b).

⁴¹ R.C. 317.32(A)(3). The bill also specifies the surcharge is not a base fee, which would require an equal amount to be collected as a Housing Trust Fund fee. R.C. 317.36(C).

⁴² R.C. 317.32(A)(2).

⁴³ R.C. 317.32(I).

Funds for imaging and other technological equipment

The bill allows a county recorder to extend current approved funding requests for the county recorder's technology fund beyond those formerly allowed, and requires a board of county commissioners to approve these extensions, notwithstanding continuing statutory limitations. Under continuing law, a county recorder's funding request for technology fund purposes generally is limited to a five-year period. However, in 2013 and again in 2019,⁴⁴ the General Assembly enacted language that allowed, temporarily, for extensions of funding beyond the five-year period and a mandatory bump of up to \$3 to be directed to the County Recorder's Technology Fund from the county general fund. Absent the extensions, it appears the law would resort to discretionary county commissioner approval, rejection, or modification with a mandatory bump of up to \$3, for a period of up to five years, provided the total of such allocations could not exceed \$8. Essentially, the General Assembly has "grandfathered" allocation of recorder's fees to the technology fund since 2013, notwithstanding the approved proposal agreement provided for the term of the funding.

The bill similarly extends any proposal that was approved by the board of county commissioners before, and is in effect on the bill's effective date, to continue to January 1, 2030, notwithstanding the number of years of funding specified in the approved proposal. The bill also provides that a proposal submitted between October 1, 2019, and October 1, 2028, for the mandatory bump of up to \$3 be credited to the technology fund, in addition to the other funding allocation; if the total of those two amounts does not exceed \$8, the board must approve the proposal.⁴⁵

Electronic transmission fee

The bill allows a county recorder to charge a base fee of \$1 and a Housing Trust Fund fee of \$1, per page, to *electronically* transmit a document. Currently, transmission *via local facsimile* is a \$1 base fee and a \$1 Housing Trust Fund fee, per page, while transmission *via long distance facsimile* is a \$2 base fee and a \$2 Housing Trust Fund fee, per page.⁴⁶

Power of attorney pertaining to real property

The bill requires a power of attorney used for the execution of a real property instrument to be properly executed and acknowledged before the real property instrument is executed and acknowledged. Under continuing law, the power of attorney must be recorded before the real property instrument. Under the bill, if executed or known to have been recorded on the same date, the presumption is the power of attorney was executed or recorded before the real property instrument.⁴⁷

⁴⁴ H.B. 59 of the 130th General Assembly and H.B. 166 of the 133rd General Assembly.

⁴⁵ R.C. 317.321.

⁴⁶ R.C. 317.32(H).

⁴⁷ R.C. 1337.04(B) and (C).

When a power of attorney is not recorded before the real property instrument, but was executed and acknowledged not later than the day the real property instrument was executed, the bill allows the subsequent recording of the power of attorney accompanied by an affidavit. The county record must record the supporting affidavit in the official records, indexed by the name of the current record owner. The affidavit must be made by any person having knowledge of the facts or competent to testify concerning them in open court; the affidavit must include all of the following:

- The name of the person appearing by record to be the owner of the property described in the real property instrument executed by virtue of the power of attorney, at the time of the recording of the affidavit;
- The permanent parcel number of the property;
- The legal description of the property subject to the real property instrument executed by virtue of the power of attorney;
- The official record reference of the real property instrument executed by virtue of the power of attorney;
- If the power of attorney that the affidavit accompanies is a photocopy rather than the original, a statement that the photocopy is a true and accurate copy and a statement regarding why the original is not being recorded.⁴⁸

When a power of attorney is not recorded, but the real property instrument has been recorded for at least ten years, the instrument is presumed valid.⁴⁹

Finally, the bill specifies the following about these changes:

- The changes are retroactive to the extent allowable under Article II, Section 28 of the Ohio Constitution, which prohibits retroactive legislation that would impair a vested substantive right or a contractual obligation.
- The changes have no effect on the rights of a bona fide purchaser for value who acquired those rights without actual knowledge or constructive notice of the power of attorney, the real property instrument executed by virtue of the power of attorney, or a subsequent supporting affidavit.

⁴⁸ R.C. 1337.04(C).

⁴⁹ R.C. 1337.04(E).

- The changes have no effect on the law of constructive notice or chain of title analysis set forth in three cases that hold a purchaser does not have constructive notice of an interest recorded outside the purchaser's chain of title.⁵⁰

Mortgage subrogation

Under the bill, a mortgage that was granted to secure the repayment of funds used to satisfy another mortgage or lien is subrogated to the priority of the mortgage or lien that was satisfied to the extent of the amount satisfied if both of the following apply:

- The intent of the parties to the new mortgage is that the new mortgage would have the priority of the mortgage or lien satisfied.
- The expectation of the holder of a subordinate mortgage or lien at the time that it received its interest was that it would be junior to the mortgage or lien that was satisfied.⁵¹

In other words, as long as the lender and borrower intend the new mortgage to step into the place of the mortgage being satisfied, and as long as any other subordinate lienholders expected their liens to be subordinate to that prior mortgage, a subsequent mortgage that is used to pay off the prior mortgage has the same priority of the prior mortgage. Priority refers to which creditor gets paid first in the event of a foreclosure.

The bill goes on to prohibit a mortgage lender (mortgagee) seeking this type of subrogation from being denied subrogation for any of the following reasons:

- The mortgagee meets any of the following criteria:
 - The mortgagee is engaged in the business of lending.
 - The mortgagee had actual knowledge or constructive notice of the mortgage or lien over which the mortgagee would gain priority through subrogation.
 - The mortgagee or a third party committed a mistake or was negligent.
- The lien for which the mortgagee seeks to be subrogated was released.
- The mortgagee obtained a title insurance policy.⁵²

⁵⁰ R.C. 1337.04. The three cases are: *Spring Lakes Ltd. v. O.F.M. Co.*, 12 Ohio St.3d 333 (1984); *Ohio Turnpike Commission v. Spellman Outdoor Advertising Services, LLC*, 2010-Ohio-1705; and *Spellman Outdoor Advertising Services, LLC v. Ohio Turnpike and Infrastructure Commission*, 2016-Ohio-7152. Note: the bill incorrectly refers to changes being made to the section by H.B. 237 of the 134th General Assembly, instead of S.B. 94 of the 135th General Assembly.

⁵¹ R.C. 5301.234(A).

⁵² R.C. 5301.234(B).

Lastly, the bill states that notwithstanding its subrogation provisions, the holder of any subordinate mortgage or lien retains the same subordinate position they would have had if the prior mortgage had not been satisfied.⁵³

Judgment liens

The bill specifies that, in order for a court's judgment to serve as a lien on land, the judgment certificate must include the last known address, without further inquiry or investigation, of each judgment debtor. The address cannot be a P.O. Box. Continuing law requires other information to be included such as the names of the creditors and debtors, amount of the judgment, and date the judgment is rendered. One item currently required to be included is the volume and page of the journal entry; the bill modifies this to allow, alternatively, the instrument number of the judgment entry.⁵⁴

Rental property owner's agent

Continuing law requires rental property owners to file their contact information with the county auditor, who maintains the information on the tax list or real property record. The bill allows an owner's *agent* to file the owner's information in lieu of the owner.⁵⁵

Stock state banks

The bill expands the list of reasons a stock state bank can amend its articles of incorporation to include reasons permitted under Ohio Corporation Law. Under continuing law, after the subscriptions of shares have been received by the incorporators of the bank, the board of directors may adopt amendments to the bank's articles of incorporation, but only for specific reasons listed in the law, including all of the following:

- At certain times to authorize the shares necessary to meet conversion or option rights;
- To reduce the authorized number of shares of a class by the number of shares of that class that been redeemed, or have been surrendered to or acquired by the bank upon conversion, exchange, purchase, or otherwise, or to eliminate from the articles of incorporation all references to the shares of a class, and to make any other change required, when all of the authorized shares of that class have been redeemed, or surrendered to or acquired by the bank;
- To reduce the authorized number of shares of a class by the number of shares of that class that were canceled for not being issued or reissued and for not being fully paid in within one year after the date they were authorized or otherwise became authorized and unissued shares.

⁵³ R.C. 5301.234(C).

⁵⁴ R.C. 2329.02.

⁵⁵ R.C. 5323.02.

The bill adds that the board of directors can also amend the articles of incorporation for any purpose authorized by the Ohio Corporation Law.⁵⁶

Law enforcement tows

The bill expands the type of law enforcement agencies that may tow and take title to a motor vehicle to include a university campus police department and a park district police force. Under current law, a state highway patrol trooper, the sheriff of a county, or the chief of police of a municipal corporation, township, port authority, or township or joint police district may order into storage a motor vehicle that comes into their possession through their law enforcement duties or that was abandoned on a public street or public property.⁵⁷ After following specified notice procedures, and if a motor vehicle remains unclaimed after ten days, the sheriff or chief may dispose of the motor vehicle either by public auction, to a motor vehicle salvage dealer or similar facility, or to the towing service or storage facility.

The bill makes all of the current law procedures for towing, storage, and disposal of motor vehicles available to the chief of police for a university campus police department and the chief of police of a park district police force for motor vehicles within their territorial jurisdiction.⁵⁸ Furthermore, the bill makes the current law procedures for photographing and recording the information of abandoned junk vehicles, disposing of abandoned junk vehicles, and removing highway obstructions available to the chief of police for a university campus police department and the chief of police of a park district police force for motor vehicles within their territorial jurisdiction.⁵⁹

The bill also expands the list of entities which may receive money arising from the disposal of an abandoned junk motor vehicle. Under current law, that money must be deposited into the general fund of the county, township, conservancy district, or municipal corporation where the vehicle was abandoned. The bill adds port authorities, university campuses, and park districts as entities which may receive that money in their general fund.⁶⁰

Additionally, the bill clarifies that after any authorized law enforcement agency orders the towing and storage of a motor vehicle, the applicable sheriff or chief of police must send notice of the tow to *both* the owner and any lienholder of the motor vehicle. Current law is unclear if the sheriff or chief must send the notice to *either* the owner or lienholder (just one) or to both individuals/entities.⁶¹

⁵⁶ R.C. 1113.13; R.C. 1701.70, not in the bill.

⁵⁷ Depending on the type of motor vehicle, the location of the motor vehicle, and the general circumstances of the situation, the trooper, sheriff, or chief may order the motor vehicle towed immediately, after 48 hours, or after an otherwise specified period of time.

⁵⁸ R.C. 4513.61 and 4513.62.

⁵⁹ R.C. 4513.63, 4513.63, and 4513.66.

⁶⁰ R.C. 4713.63.

⁶¹ R.C. 4513.61(C).

HISTORY

Action	Date
Introduced	03-23-23
