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H.B. 237
134th General Assembly

Fiscal Note & Local Impact Statement

Click here for H.B. 237's Bill Analysis

Version: As Reported by House Finance

Primary Sponsor: Rep. Hillyer

Local Impact Statement Procedure Required: Yes

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Highlights

County recorder electronic record modernization

- The bill requires county recorders to make electronic indexes and electronic versions of instruments available to the public via the county recorder's website not later than January 1, 2025. The bill specifies that, with certain exceptions, all instruments recorded on or after January 1, 1980, must be included. Counties that do not already provide these documents on the recorder's website may incur tens of thousands of dollars to digitize the required records.
- The bill requires counties to provide an electronic method of recording instruments, including instruments related to the conveyance of property, by January 1, 2025. This could be achieved by adopting solutions provided by outside vendors that offer this service to counties at little or no cost.
- Costs that counties could incur in implementing record digitization and electronic recording could be offset by grants that will be allocated through a new County Recorder Electronic Record Modernization Program, to be housed under the Treasurer of State and funded in FY 2023 using $8 million under a new GRF appropriation item 090409, County Recorder Electronic Record Modernization Program, a new line item under the Treasurer's budget.
- The bill creates a document preservation surcharge of $10 to be collected by county recorders. The bill specifies that one-half of the surcharge (i.e., $5 fee) must be used to support the preservation and digitization of documents and ongoing costs incurred by a county recorder's office and proceeds of the surcharge must be deposited into the county general fund. The remaining one-half of the surcharge (i.e., the remaining $5 fee) must

be deposited in the county treasury as housing trust fund fees and to be paid to the Treasurer of State. The proceeds from the surcharge may partially offset potential revenue loss and costs associated with the bill's requirements to counties and potential revenue loss to the trust fund.

- The bill extends certain provision dates that apply to the diversion of recordation fees from the county general fund to the county recorder technology fund. This would provide an additional uncertain amount of fee revenue from certain county general funds to the corresponding county recorder's technology fund.

Treasurer of State

- Requirements related to the County Recorder Electronic Record Modernization Program may increase the Treasurer of State's administrative costs. Any increase in such costs would be paid from the following Treasurer's operations and administration line items: GRF line item 09321, Operating Expenses and dedicated purpose appropriation line items 090603, Securities Lending Income (Fund 4390) and 090609, Treasurer of State Administrative Fund (Fund 6050).
- The bill creates a new fund in the state treasury, the Treasurer's Information Technology Reserve Fund. The bill specifies that the Fund must consist of unexpended amounts transferred from either or both of the following: (1) the Securities Lending Program Fund (Fund 4E90), and (2) the account under section 3366.05 of the Revised Code that is in the custody of the Treasurer of State and not part of the state treasury. The proposed transfer of funds from the lending program to the new fund may decrease GRF funding that may be used for other state programs and purposes.
- The bill's provisions related to the Treasurer's administrative duties and responsibilities associated with the Uniform Depository Act may increase the Treasurer's administrative costs. Any increase in such costs would be paid from Treasurer's operations and administration line items above.

Detailed Analysis

County recorder electronic record modernization program

Counties affected by the bill could incur initial costs totaling tens of thousands of dollars to comply with the bill's requirements to provide an electronic method of recording specified instruments and to make specified indexes and documents available on the county recorder's website. Under the bill, these costs could be offset via a new GRF appropriation item 090409, County Recorder Electronic Record Modernization Program that will be distributed to eligible counties and increased fees for recording instruments. The bill requires counties to provide an electronic method for recording instruments, including instruments related to the conveyance of property, not later than January 1, 2025. County recorders must also make electronic indexes and electronic instruments recorded on or after January 1, 1980, available on the county recorder's website by January 1, 2025. A discussion of the potential costs of these changes and offsetting revenue sources is provided under the headings below.

Indexes and instruments available online

Counties may incur initial costs totaling tens of thousands of dollars to comply with the bill's requirements 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 January 1, 2025, and must include all instruments recorded on or after January 1, 1980, with certain exceptions. Digitizing these records is a labor intensive process and may require counties to incur additional payroll and overtime or to contract with outside services to meet the bill's requirements. According to the Ohio Recorder's Association, 39 counties have not fully digitized the required documents. The Association estimates these counties have a combined total of approximately seven million documents that must be digitized in order to meet the bill's requirements. Costs to fully digitize the remaining documents are estimated to total approximately $2.8 million, or 40¢ per document.

Electronic recording of instruments

In contrast to the costly nature of digitizing documents for inclusion on the county recorders' websites, compliance with the bill's requirements to provide an electronic method for recording specified instruments, including instruments related to the conveyance of property, may be achieved at little or no cost. This is because software and web-based solutions that use existing county computer systems are available through vendors who provide their services to counties at little or no cost. Rather than charging counties for the services, these vendors receive revenue through fees charged to banks, title agents, and others submitting documents for recording. It is possible that counties may incur a slight uptick in payroll costs for initial set up of these software and web-based solutions. Under the bill, counties must provide an electronic method for recording these instruments not later than January 1, 2025. As of May 11, 2021, the Ohio Recorder's Association had estimated that one-half of Ohio's counties have implemented electronic recording methods for nonconveyance-related instruments, and that one-quarter of Ohio's counties are in full compliance with the bill's electronic recording requirements.

Funding for county recorder electronic record modernization program

Costs incurred by counties to meet the bill's electronic recording and document retrieval requirements could be offset by GRF appropriations under the County Recorder Electronic Record Modernization Program established by the bill. The bill houses the program under the Treasurer of State and funds it using $8 million in FY 2023 under a new GRF appropriation item 090409, County Recorder Electronic Record Modernization Program. Any county that receives funding under the program must credit the money into the corresponding county recorder's technology fund at least to the extent necessary to reimburse the fund for money the county recorder had spent to implement the bill's requirements. Counties that meet the bill's requirements on the bill's effective date however, are ineligible for the funding under the program.

Document preservation surcharge

The bill creates a $10 document preservation surcharge that will be collected by county recorders. The bill specifies that one-half of the surcharge amount (i.e., $5) must be used to support the preservation and digitization of documents and ongoing costs incurred by a county recorder's office; the proceeds of the $5 surcharge must be deposited into the county general fund. The remaining one-half of the surcharge amount (i.e., the remaining $5) must be deposited in the county treasury as housing trust fund fees and to be paid to the Treasurer of State. Under existing law, at the beginning of each calendar quarter a county auditor is required to pay to the Treasurer of State all amounts that a county recorder collected as housing trust fund fees minus up to 1% of administrative fee that may be retained by the county auditor; the administrative fee must be deposited in the county general fund. Housing trust fund fees paid to the Treasurer are deposited into the Low- and Moderate-Income Housing Trust Fund (Fund 6460), a fund in the Department of Development's budget. Fund 6460 is also referred to as the state Housing Trust Fund, and is used by the Department to award homelessness and affordable housing grants under a variety of subprograms.

The document preservation surcharge could make up for some or all of the potential loss in recording fees that would happen by electronic recordation of instruments as required under the bill. Recordation fees support county recorder operations and provide revenue to Fund 6460. Under current law, a county recorder charges the following fees for recording and indexing most instruments using *a photocopy or similar process*: (1) for the first two pages, a base fee of $17 and a state Housing Trust Fund fee of $17, and (2) for each subsequent page, a base fee of $4 and a Housing Trust Fund fee of $4.

Offsetting recording fee changes

The bill makes other fee changes that may to some degree offset costs and revenue losses as a result of the adoption of electronic recording methods. Specifically, the bill increases the minimum amount a county recorder charges for recording living wills and health care powers of attorney. Under current law, a recorder charges a base fee of between $14 and $20 and a state Housing Trust Fund fee of between $14 and $20. The bill changes these fees to between $17 and $20.

The bill also increases the fee for recording and indexing the first two pages of various documents related to personal property that are specified in continuing law from $28 to $34. The bill maintains the current law requirement that this fee be deposited to the county general fund or, if a county has established a county recorder's technology fund, that the fee be split evenly between the county recorder's technology fund and the county general fund. Note that the new document preservation surcharge would not be applied when these documents are recorded.

The bill makes additional changes to other fees collected by county recorders including fees for certifying previously recorded records, fees indexing any reference by a separate recorded instrument, and fees for transmitting recorded instruments. Although the bill does not change the amount of the fees, the bill does provide for collection of these fees when dealing with electronic records. Please see the LSC bill analysis for additional details.

County recorder technology fund

By extending certain provision dates, the bill diverts an additional uncertain amount of fee revenue from certain county general funds to the corresponding county recorder's technology fund. This provision extends the duration that certain county recorders, with approved applications by their county board of commissioners, can receive up to $8 of total base recording fees to the county recorder's technology fund. This fee revenue would otherwise go to the corresponding county general fund. The duration of approved proposals is extended from January 1, 2025, to January 1, 2030, unless otherwise limited in an approved proposal.

Additionally, the provision extends the period during which a county recorder may submit a second proposal for additional funds from October 1, 2023, to October 1, 2028, similarly enabling a diversion of fee revenue for the same purpose.

Land reutilization corporations – clarification of recorder fee exemptions

The bill specifies that a subsidiary or electing subdivision is only exempt from county recorder fees when it is acting in a capacity consistent with the purpose of the land reutilization program.

Treasurer of State

The bill makes various changes to the authority of the Treasurer of State. The bill also specifies various definitions for the purposes of sections 113.05 to 113.40 of the Revised Code; specifically, the bill defines "assets" as resources owned, controlled, or otherwise used or held by the state which have monetary value, but does not include items held in safekeeping by the Treasurer of State including, but not limited to, collateral pledged to a state agency. The bill specifies that "custodial funds" do not include items held in safekeeping by the Treasurer of State including, but not limited to, collateral pledged to a state agency. The bill updates the Treasurer's operations and administration associated with warrants drawn on the state treasury and statements and reports related to state funds, including requiring the Treasurer to provide certain electronic records and reports. The bill also authorizes the Treasurer of State to use a variety of payment instruments, including stored value cards in disbursing funds in the state accounting to certain payees, upon an authorization from the Director of Budget and Management or an authorized person at a state entity holding a custodial account.

The bill modifies the Treasurer of State's authority to invest inactive or interim deposits in the state treasury (i.e., public funds not needed to meet current demands), as well as corresponding reporting requirements. The bill also makes changes to 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. The bill requires the State Board of Deposit, whenever the Board views that the actual amount of active deposits is insufficient to meet the anticipated demands on such active deposits, to direct the Treasurer to sell interim money investments or to redeem negotiated deposits in an amount sufficient to meet such demands. The bill provides that the Treasurer has the discretion in selecting the instruments to be sold or redeemed.

The bill extends, from 30 days to 120 days before the State Board of Deposit designates public depositories, the deadline for a financial institution to apply to be a public depository. The bill requires, beginning in 2025, the Board 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. The bill also requires the Board to meet to award new custodial funds and to consider requests by state agencies to change public depositories. The bill removes the Board's newspaper publication requirement that is currently a part of the process of a political subdivision designating public depositories. The bill authorizes the Board to contract with nonwinning bidders or other financial institutions relating to financial transaction devices if such contracts are in the best interest of the state. The bill modifies the Board's requirement related to its required reports.

The bill's provisions related to the Treasurer of State's operations and administrative duties may increase the Treasurer's administrative costs. Any increase in such costs would be paid from the following Treasurer's operations and administration line items: GRF line item 09321, Operating Expenses and dedicated purpose line items 090603, Securities Lending Income (Fund 4390) and 090609, Treasurer of State Administrative Fund (Fund 6050). The provisions related to the Treasurer's investment authority may increase or decrease the state's investment income by an undetermined amount.

The bill also modifies the Treasurer's rulemaking authority related to the Pay for Success Contracting Program. The program provides incentive for businesses and nonprofits to test new social welfare increasing ideas and provide services which align with the state's goal of increasing the public well-being. Funding for the program is appropriated under the Treasurer's dedicated purpose line item 090615, State Pay for Success Contract (Fund 5VZ0).

The bill specifies that moneys of metropolitan housing authorities are excluded from the Ohio Pooled Collateral Program. This program allows local governments to have access to information regarding the collateral pledged by their participating financial institutions on a daily basis.

The Treasurer's Information Technology Reserve Fund

The bill creates a new fund in the state treasury, the Treasurer's Information Technology Reserve Fund. The bill specifies that the fund must consist of unexpended amounts transferred from either or both of the following: (1) the securities lending program fund created under section 135.47 of the Revised Code and (2) the account under section 3366.05 of the Revised Code that is in the custody of the Treasurer of State and not part of the state treasury. Under existing law, the account is created for issuing authority that may act as an eligible not-for-profit servicer of certain student loans owned by the federal government. The bill specifies that moneys credited to the Technology Reserve Fund must be used only to acquire or maintain hardware, software, or contract services for the efficient operation of the Treasurer's Office. Any unexpended amounts must be retained in the Technology Reserve Fund and reserved for such future technology needs.

Currently, net income generated from the securities lending program, not to exceed a rate of one quarter of one percent of the total average daily par value of assets in the securities lending program, is deposited into dedicated purpose fund line item 090603, Securities Lending Income (Fund 4E90), and used for the operations of the Office of the Treasurer. All other such income from the program is credited to the state GRF. In addition, moneys credited to the account that is created for an issuing authority that may act as an eligible not-for-profit servicer must be used to pay for administrative costs incurred by the issuing authority. Unexpended such amounts must be deposited in the state treasury and credited to the Treasurer's Administrative Fund (Fund 6050), a dedicated purpose fund in the Treasurer's budget. The bill specifies that the unexpended amounts that must be deposited to Fund 6050 or the Technology Reserve Fund will be determined by the Treasurer.

The bill's requirement that unexpended amounts must be transferred from the securities lending program fund to the Treasurer's Information Technology Reserve Fund would reduce the amount of such money that may be allocated to the GRF and used for other state programs and purposes.

Petroleum Underground Storage Tank Release Compensation Board

The bill authorizes the Petroleum Underground Storage Tank Release Compensation Board (PUSTRCB) to allow the Treasurer to invest its surplus funds pursuant to the Uniform Depository Act. The authorization may minimally decrease the PUSTRCB's administrative costs and it may also increase or decrease PUSTRCB's future investment income. Currently, PUSTRCB's receives no GRF funding; personal services costs are paid from line item 810632, Petroleum Underground Storage Tank Release Compensation Board – Operating. The line item receives cash transfers from the Petroleum Underground Storage Tank Financial Assurance Fund, an account in the custody of the Treasurer of State, but not part of the state treasury.

Vehicle disposal by university campuses and park districts

The bill generally allows university campus and park district law enforcement officials to dispose of and, in certain circumstances, take title to motor vehicles abandoned on public or private property within their jurisdiction in the same manner that county, municipal, township, and port authority law enforcement officials are authorized to do so under current law. This could create certain efficiencies for universities and park districts. To the extent that such vehicles may be auctioned, some costs for disposal could be recouped.

Other changes

The bill makes other changes with little or no fiscal effect. One of these is a provision specifying that the county recorder has discretion to hire new staff or enter a contract with a private entity in order to meet the bill's requirements if the county uses funding received under the program to implement those requirements. The bill also requires a power of attorney to be recorded if the power of attorney is used for the execution of a real property instrument. Please see the LSC bill analysis for details about these changes.

The bill also 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.

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