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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
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Office

H.B. 237  
134<sup>th</sup> General Assembly

## Bill Analysis

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**Version:** As Reported by House State and Local Government

**Primary Sponsor:** Rep. Hillyer

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### SUMMARY

- Requires counties to provide an electronic means of recording instruments and of accessing recorded instruments by January 1, 2024.
- 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 \$10 million for use by the Department of Development to distribute grants to counties to implement the bill's provisions.
- Modifies requirements regarding powers of attorney utilized for the execution of real property instruments.

### DETAILED ANALYSIS

#### 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 January 1, 2024, and must adhere to the county's standards governing conveyances (adopted by the county auditor and county engineer).<sup>1</sup> The bill also requires county recorders to provide an electronic method for recording certain instruments not related to the conveyance of real property.<sup>2</sup> For instance, this

<sup>1</sup> R.C. 319.203, not in the bill, and R.C. 317.13(D)(1).

<sup>2</sup> R.C. 317.13(D)(2).

would include instruments regarding personal property transactions.<sup>3</sup> 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.<sup>4</sup> Neither electronic recording method (for real property conveyances or for other conveyances) needs to 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.<sup>5</sup>

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.<sup>6</sup>

## **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 January 1, 2024, and must include all instruments recorded on or after January 1, 1980.<sup>7</sup> 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.<sup>8</sup>

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.<sup>9</sup>

## **County Recorder Electronic Record Modernization Program**

The bill creates the County Recorder Electronic Record Modernization Program, administered by the Department of Development, to distribute grants to 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

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<sup>3</sup> R.C. 317.08(D), not in the bill.

<sup>4</sup> R.C. 317.08, not in the bill.

<sup>5</sup> R.C. 317.13(D)(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.

<sup>6</sup> R.C. 317.32.

<sup>7</sup> The website does not include veteran discharge papers or any instrument or portion thereof prohibited from being disclosed under federal or state law.

<sup>8</sup> R.C. 317.13(E).

<sup>9</sup> Section 5.

requirements. The bill appropriates \$10 million from American Rescue Plan Act funds to fund the program.<sup>10</sup>

## **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:

- 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.<sup>11</sup> The bill specifies the document preservation 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."<sup>12</sup>

## **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.<sup>13</sup> 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.

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<sup>10</sup> Sections 3 and 4.

<sup>11</sup> R.C. 317.32(A)(1)(b). The bill specifies the surcharge is not a base fee under R.C. 317.36, which requires an equal Housing Trust Fund fee to be collected when a base fee is collected.

<sup>12</sup> R.C. 317.32(A)(3).

<sup>13</sup> R.C. 317.32(A)(2).

## **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.<sup>14</sup>

## **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 recorded on the same date, the presumption is the power of attorney was executed or recorded before the real property instrument.

When a power of attorney is not recorded before the real property instrument, the bill allows the subsequent recording of the power of attorney accompanied by an affidavit. 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 current title holder of the property described in the real property instrument executed by virtue of the power of attorney;
- 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.

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.

Finally, the bill specifies these 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.<sup>15</sup>

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<sup>14</sup> R.C. 317.32(l).

<sup>15</sup> R.C. 1337.04.

## Miscellaneous

The bill requires a county recorder to charge a fee for certifying a *copy or electronic record* from a previously recorded record, replacing the current fee for certifying a *photocopy* from a previously recorded record.<sup>16</sup>

The bill modifies the county recorder fee charged for *entering any marginal reference* by a separate recorded instrument. Instead, the bill requires that the fee be charged when *entering or indexing any reference* by a separate recorded instrument.<sup>17</sup>

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.<sup>18</sup>

Finally, under current law, a land reutilization corporation – and its wholly owned subsidiary or electing subdivision – is exempt from county recorder fees. 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*.<sup>19</sup>

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## HISTORY

Action	Date
Introduced	03-31-21
Reported, H. State & Local Government	06-15-21

H0237-RH-134/ts

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<sup>16</sup> R.C. 317.32(B).

<sup>17</sup> R.C. 317.32(C).

<sup>18</sup> R.C. 317.32(H).

<sup>19</sup> R.C. 317.32(I).