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H.B. 237
(1_134_1104-5)
134th General Assembly

Fiscal Note & Local Impact Statement

[Click here for H.B. 237's Bill Analysis](#)

Version: In House State and Local Government

Primary Sponsor: Rep. Hillyer

Local Impact Statement Procedure Required: Yes

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Highlights

- 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, 2024. 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, 2024. 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 incur for record digitization and electronic recording could be offset by grants through a new County Recorder Electronic Record Modernization Program, to be housed under the Department of Development and funded in FY 2022 using \$10.0 million of Ohio's allocation from the American Rescue Plan Act. Specifically, the grant funding is appropriated under Fund 5CV3 appropriation item 195623, County Recorder Electronic Record Modernization Program.
- The bill creates a document preservation surcharge of \$5 to be collected by county recorders to support the preservation and digitization of documents and ongoing costs incurred by a county recorder's office. Under the bill, proceeds of the surcharge would be deposited into the county general fund.

Detailed Analysis

Overview

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 state-funded grants 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, 2024. 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, 2024. The bill also 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. 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, 2024, 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, 2024. As of May 11, 2021, the Ohio Recorder's Association estimates one-half of Ohio's counties have implemented electronic recording methods for nonconveyance-related instruments, and one-quarter of Ohio's counties are in full compliance with the bill's electronic recording requirements.

County Recorder Electronic Record Modernization Program grants

Costs incurred by counties to meet the bill's electronic recording and document retrieval requirements could be offset by grants under the County Recorder Electronic Record Modernization Program established by the bill. The bill houses the program under the Department of Development (DEV) and funds it using \$10.0 million in FY 2022 under State Fiscal Recovery Fund (Fund 5CV3) appropriation item 195623, County Recorder Electronic Record Modernization Program. Fund 5CV3 is capitalized with money received via federal grants under the American Rescue Plan Act (ARPA). Counties that meet the bill's requirements on the bill's effective date, however, are ineligible for the grants. Any of the grant money that was not distributed in FY 2022 is reappropriated for the same purpose in FY 2023.

Document preservation surcharge

Because electronic recording of instruments does not involve photocopying or a similar process, electronic recording of instruments may result in a decrease in recording fees collected by county recorders that support the recorders' operations and provide revenue to the Housing Trust Fund. 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 state Housing Trust Fund fee of \$4.

For counties, this loss of revenue could be at least partially offset by a \$5 document preservation surcharge, which the bill creates. The surcharge would be applied to both electronic recording and traditional recording methods. Under the bill, proceeds would be deposited into the county's general fund.

Offsetting fee increases

The bill makes fee changes that may to some degree offset costs and revenue losses as a result of the adoption of electronic recording methods noted immediately above. 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 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 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.

The bill makes other 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.

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.

Other changes

The bill makes other changes with little or no fiscal effect including specifying that the county recorder has discretion to hire new staff or enter a contract with a private entity to meet the bill's requirements if the county uses funding received under ARPA to implement those requirements, and requiring 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.

Synopsis of Fiscal Effect Changes

The substitute bill (I_134_1104-5) makes the following changes that have fiscal effects. First, it changes the source and amount of funding for grants under the County Recorder Electronic Record Modernization Program to be overseen by the Department of Development. The As Introduced bill used \$15.0 million in GRF funding in FY 2022 for this grant program, whereas the substitute bill uses \$10.0 million from Ohio's allocation of funding under the America Rescue Plan Act of 2021. The substitute bill also reduces the document preservation surcharge for recording and indexing documents from \$10 in the As Introduced to \$5. The substitute also requires this entire amount to be deposited into the county general fund, whereas the As Introduced provided \$5 for the county general fund and \$5 for the state Housing Trust Fund.