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Bill Analysis

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Primary Sponsor: Rep. Hillyer

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SUMMARY

Recorded documents and electronic modernization

- Requires counties to provide an electronic means of recording instruments and of accessing recorded instruments by January 1, 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 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.

* This analysis was prepared before the report of the House Finance Committee appeared in the House Journal. Note that the legislative history may be incomplete.

- 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.

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.

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

Recorded documents and electronic modernization	5
Electronic recording for real property and other instruments	5
Indexes and instruments available online.....	6
County Recorder Electronic Record Modernization Program	6
Document preservation surcharge	6
Fees for recording personal property transactions	7
Fee for recording living wills and health care powers of attorney	7
Funds for imaging and other technological equipment.....	7
Power of attorney pertaining to real property.....	8
Mortgage subrogation	9
Judgment liens	10
Rental property owner’s agent.....	10
Stock state banks	10
Treasurer of State	11
Authority of the Treasurer of State.....	11
Custodial funds	11
Record of payments made for the state	11
Treasurer’s Information Technology Reserve Fund	12
Publication relating to requests for proposals on financial transaction devices	12
Pay for Success Contracting Program.....	13
Uniform Depository Act	13
State Board of Deposit	13
Public depositories and state money classifications.....	14
Active deposits and warrant clearing accounts	14
Inactive deposits of a subdivision.....	14

Interim and active deposits	15
Investment of interim funds.....	15
Transferring funds from one classification to another	16
Ohio Pooled Collateral Program.....	17
Investment of the Petroleum Underground Storage Tank Release Compensation Board funds	17
Social Security for employees of political subdivisions.....	17
Contract with financial intuitions for the collection of taxes	18
Law enforcement tows	18

DETAILED ANALYSIS

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 January 1, 2025, and must adhere to the county's standards governing conveyances (adopted by the county auditor and county engineer).¹ The bill also requires county recorders to provide an electronic method for recording certain instruments not related to the conveyance of real property.² For instance, this would include instruments regarding personal property transactions.³ 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.⁴ 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.⁵

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.⁶

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

² R.C. 317.13(E)(2).

³ R.C. 317.08(D), not in the bill.

⁴ R.C. 317.08, not in the bill.

⁵ 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.

⁶ R.C. 317.32.

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, 2025, and must include all instruments recorded on or after January 1, 1980.⁷ 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.⁸

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.⁹

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 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.¹⁰

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 \$10. Of the \$10, \$5 is placed in the county's general fund and \$5 is a Housing Trust Fund fee).¹¹ 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,

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

⁸ R.C. 317.13(F).

⁹ Section 6.

¹⁰ Sections 4 and 5.

¹¹ R.C. 317.32(A)(1)(b) and R.C. 317.36.

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.”¹²

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.¹³ 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.¹⁴

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 2019,¹⁵ 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”

¹² R.C. 317.32(A)(3).

¹³ R.C. 317.32(A)(2).

¹⁴ R.C. 317.32(I).

¹⁵ H.B. 59 of the 130th General Assembly and H.B. 166 of the 133rd General Assembly.

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.¹⁶

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.

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.

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 the following about these changes:

¹⁶ R.C. 317.321.

- 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.
- 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.¹⁷

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.¹⁸

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.

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.

¹⁷ 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.

¹⁸ R.C. 317.32(H).

- 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.

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.¹⁹

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.²⁰

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.²¹

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. This includes:

1. At certain times to authorize the shares necessary to meet conversion or option rights;
2. 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;

¹⁹ R.C. 5301.234.

²⁰ R.C. 2329.02.

²¹ R.C. 5323.02.

3. 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.

The bill adds that the board of directors can also amend the articles of incorporation for any purpose authorized by the Ohio Corporation Law.²²

Treasurer of State

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

Authority of 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 to 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.²³

Under existing law, “warrant” means 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 provision 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 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.²⁴

Record of payments made for the state

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, which must be held by the Treasurer as evidence of their payment until an audit of the state treasury and the

²² R.C. 1113.13; R.C. 1701.70, not in the bill.

²³ R.C. 113.05.

²⁴ R.C. 131.01.

custodial funds of the Treasurer has been completed. The bill revises this provision. 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. The bill eliminates the requirement for the OBM Director to provide paper receipts.²⁵

Also 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, and 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.²⁶

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 Treasurer of State’s office. Unexpended amounts must be retained in this new fund and reserved for future technology needs.²⁷

Publication relating to 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 which the Treasurer must follow the procedures in the law whenever it plans to contract with financial institutions, issuers of financial transaction devices, or processors of financial transaction devices. One of these requirements is for the Treasurer, prior to sending any financial institution, issuer, or processor a copy of the request for a proposal of such a contract, to advertise its intent to request proposals in a newspaper of general circulation in Ohio once a week for two consecutive weeks. The bill instead requires that the advertising of the intent to request proposals must be provided by electronic publication on a state agency website made available to the general public. In addition, the request for proposals

²⁵ R.C. 113.12.

²⁶ R.C. 113.13.

²⁷ R.C. 113.22, 135.47, and 3366.05.

will be electronically mailed.²⁸ 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.²⁹

Pay for Success Contracting Program

Under the existing Pay for Success Contracting Program, the upfront costs for projects aimed at tackling social and public health challenges 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. Under existing law, the Treasurer may enter into pay for success contracts 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. 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, as applicable, 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 provider to provide under a pay for success contract. The bill adds that the Treasurer may also adopt any other rules necessary for the implementation and administration of the program.

The bill eliminates the requirement that the Treasurer adopt a rules that require 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. Lastly, the bill 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.³⁰

Uniform Depository Act

The Uniform Depository Act governs the deposit and investment authority of public moneys of the state and Ohio's political subdivisions, which includes 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.

State Board of Deposit

Existing law provides for the membership of the State Board of Deposit and requires the chairperson to provide a monthly report to the Board and to post that report monthly to a

²⁸ R.C. 113.40(C).

²⁹ R.C. 113.40(J).

³⁰ 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/>.

website maintained by the Treasurer of State. The bill instead requires that the chairperson provide a notification to the Board that the reports have been posted on the website.³¹

Public depositories and state money classifications

Under existing law, public depositories, financial intuitions authorized to hold public deposits, are able 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. The bill specifies that 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.³² 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.

Active deposits and warrant clearing accounts

Under existing law, to facilitate payments from the state treasury, the Treasurer of State can establish warrant clearance accounts in any public depository located in areas where the volume of warrant clearances justifies the establishment of an account. The bill eliminates the qualifier – therefore under the bill the Treasurer is authorized to establish warrant clearance accounts in any public depository regardless of the volume of clearances in a particular 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 requires that instead of the quarterly reports, the financial institution provide the statement 10 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.³³ 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.³⁴

Inactive deposits of a subdivision

Existing law requires that at least three weeks prior to the statutory deadline, each governing board of a subdivision, 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 board must publish the resolution and a notice of the date of the board's meeting to designate the depository in a newspaper once a week for two consecutive weeks. Existing law also requires

³¹ R.C. 135.02.

³² R.C. 135.01, 135.04, 135.05, and 135.06.

³³ R.C. 135.04.

³⁴ R.C. 131.01(R) and 135.01(H).

the State Board of Deposit to publish the same information in a newspaper. The bill eliminates the State Board of Deposit's requirement to publish the resolution and notice and retains the governing board of a subdivisions requirement to do so.³⁵ Also, under existing law, each eligible institution desiring to be a public depository of inactive deposits of the public moneys of the state or the 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.³⁶

Interim and active deposits

Under existing law, eligible institutions desiring to be a public depository of interim deposits or active deposits must not more than 30 days prior to the selection date, apply to the proper governing board. The bill changes this timeframe, so that the institution must apply not more than 120 days prior to the selection date.³⁷

The bill changes the statutory timeline for the selection date for designating public depositories. Under existing law, the State Board of Deposit meets on the third Monday of March in the even numbered years in which the public depositories are selected and hold that designation for two years. The bill changes the timeline so that starting in the year 2025 and every four years after, the Board will meet and the designated public depositories will have a term of four years instead of two. 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.³⁸ The bill specifies that during the period on or around July 4, 2022, the designated public depository will retain that designation for three years, instead of two, until the bill's provisions take effect for the new timeline established in 2025.³⁹

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 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 can 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, the Treasurer of State can only buy or sell securities that consist of debt interests currently authorized under the law that are issued by

³⁵ R.C. 135.05.

³⁶ R.C. 135.06.

³⁷ R.C. 135.08 and 135.10.

³⁸ R.C. 135.12(A), (F), and (G).

³⁹ Section 7.

entities that are organized under the laws of Ohio, any other state, or the U.S. and subject to the existing law cap of 25% of the state's portfolio.

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 of permissible deposits to include savings accounts and or deposit accounts and explicitly references eligible institutions applying for interim money in the form of adoption linked deposits.⁴⁰ 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 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:

1. The daily ledger report of the state funds;
2. The monthly portfolio report detailing the current inventory of all investments and deposits held within the classification of interim moneys;
3. The monthly activity report within the classification of interim moneys summarized by type of investment or deposit.⁴¹

A third type of permissible investment under existing law is investment in obligations issued by the state of Ohio, any political subdivision thereof, or by or on behalf of any nonprofit corporation or association doing business in Ohio rated in the four highest categories by at least one nationally recognized standard rating service and identified in an agreement described in existing law. Under existing law, the Treasurer of State and any entity issuing obligations of this type, which obligations have a demand feature to tender the obligation at par plus accrued interest may enter into an agreement providing for (1) the purchase of the obligations by the Treasurer on terms set forth in the agreement and (2) payment to the Treasurer a fee as consideration for the agreement of the Treasurer to purchase the obligations. Under the bill, instead of a demand feature that permitting the agreement, the obligation needs to require a conditional liquidity requirement.⁴²

Transferring funds from one classification to another

The bill requires that whenever the State Board of Deposit 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 to redeem

⁴⁰ R.C. 135.143(A).

⁴¹ R.C. 135.143(B).

⁴² R.C. 135.143(A)(14) and (K).

negotiated deposits in an amount sufficient to meet the demands. The Treasurer of State retains the discretion in selecting the instruments to be sold or redeemed.⁴³

Ohio Pooled Collateral Program

The bill specifies for purposes of the Ohio Pooled Collateral Program, money held by a metropolitan housing authority is not considered public deposits subject to the programs provisions.⁴⁴

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 in general 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 investments can also be made with the Treasurer of State's investment pool, an investment pool managed and administered by the Treasurer.⁴⁵

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.⁴⁶ This agreement is known as Ohio's "Section 218 Agreement."

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

⁴³ R.C. 135.15.

⁴⁴ R.C. 135.182(A)(3); Ohio Administrative Code 135-3-01.

⁴⁵ R.C. 3737.945.

⁴⁶ 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).

- 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.⁴⁷

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.⁴⁸ 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.⁴⁹

Contract with financial intuitions for the collection of taxes

Under existing law, the Treasurer may enter into a contract with a financial institution for the financial institution to receive 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 this provision.⁵⁰

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.⁵¹ 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

⁴⁷ R.C. Chapter 144, repealed.

⁴⁸ Ohio Section 218 agreement.

⁴⁹ See Ohio Atty.Gen.Ops. No. 72-019.

⁵⁰ R.C. 113.07, with conforming changes in R.C. 113.05.

⁵¹ 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.

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.⁵²

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.⁵³

HISTORY

Action	Date
Introduced	03-31-21
Reported, H. State & Local Government	06-15-21
Re-Referred, H. Rules and Reference	06-16-21
Reported, H. Finance	---

ANHB0237RH-A-134/tl

⁵² R.C. 4513.61 and 4513.62, not in the bill.

⁵³ R.C. 4513.61(C).