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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
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Office

S.B. 94\*  
135<sup>th</sup> General Assembly

## Bill Analysis

[Click here for S.B. 94's Fiscal Note](#)

**Version:** As Reported by Senate Financial Institutions and Technology

**Primary Sponsors:** Sens. Brenner and Landis

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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 June 30, 2026.
- 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 \$6 million for use by the Office of the Treasurer to distribute funds to reimburse counties to implement the bill's provisions.

#### 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.

\* This analysis was prepared before the report of the Senate Financial Institutions and Technology Committee appeared in the Senate Journal. Note that the legislative history may be incomplete.

April 23, 2024

## 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 entities that may order the towing of a motor vehicle to include a university campus police department, a park district police force, and natural resources officers and wildlife officers of the Department of Natural Resources (ODNR).
- Grants a university campus police department, a park district police force, and the Department of Natural Resources the authority to dispose of an unclaimed towed motor vehicle or an abandoned junk motor vehicle.

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# 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 June 30, 2026, 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 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

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

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

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

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

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 June 30, 2026, 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>

### **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 funds to reimburse counties to assist the county recorder in satisfying the bill's requirements. A county is only eligible to receive a grant under the program if the county recorder does not currently satisfy the bill's requirements, and the funds can only be used to reimburse expenses that are incurred after the bill's effective date. The bill appropriates \$6 million 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. Finally, a county that receives funds has discretion whether to hire new staff or enter into a contract with a private entity to implement the bill's requirements.<sup>9</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.

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<sup>5</sup> 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.

<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(F).

<sup>9</sup> Sections 3, 4, 5, and 6.

The bill maintains these fees, and also allows a county recorder to charge a document preservation surcharge of up to \$5, to be placed in the county's general fund.<sup>10</sup> 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."<sup>11</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>12</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.

### **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>13</sup>

### **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*

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<sup>10</sup> R.C. 317.32(A)(1)(b).

<sup>11</sup> 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).

<sup>12</sup> R.C. 317.32(A)(2).

<sup>13</sup> R.C. 317.32(I).

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>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 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.<sup>15</sup>

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.<sup>16</sup>

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.<sup>17</sup>

Finally, the bill specifies the following about these changes:

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

<sup>15</sup> R.C. 1337.04(B) and (C).

<sup>16</sup> R.C. 1337.04(C).

<sup>17</sup> R.C. 1337.04(E).

- 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.<sup>18</sup>

## 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.<sup>19</sup>

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.

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<sup>18</sup> 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.

<sup>19</sup> R.C. 5301.234(A).

- 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.<sup>20</sup>

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.<sup>21</sup>

## 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.<sup>22</sup>

## 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.<sup>23</sup>

## 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

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<sup>20</sup> R.C. 5301.234(B).

<sup>21</sup> R.C. 5301.234(C).

<sup>22</sup> R.C. 2329.02.

<sup>23</sup> R.C. 5323.02.

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.

The bill adds that the board of directors can also amend the articles of incorporation for any purpose authorized by the Ohio Corporation Law.<sup>24</sup>

## **Law enforcement tows**

The bill expands the types of law enforcement entities that may order the towing of a motor vehicle to include a university campus police department, a park district police force, and a natural resources officer or wildlife officer of the Department of Natural Resources (ODNR). 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.<sup>25</sup> 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 a university campus police department, a park district police force, and ODNR (via natural resources officers and wildlife officers) within their territorial jurisdiction.<sup>26</sup> 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 after an accident available to these entities within their territorial jurisdiction.<sup>27</sup>

The bill also expands the list of entities that may receive money arising from the disposal of an unclaimed towed motor vehicle or 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, universities, and park districts as entities that may receive that money in their general fund. Furthermore, regarding the disposition of unclaimed towed motor vehicles ordered into

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<sup>24</sup> R.C. 1113.13; R.C. 1701.70, not in the bill.

<sup>25</sup> 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.

<sup>26</sup> R.C. 4513.61 and 4513.62.

<sup>27</sup> R.C. 4513.63, 4513.64, and 4513.66.



storage by ODNR officers and regarding the disposition of abandoned junk motor vehicles within ODNR's jurisdiction, the bill requires any proceeds from the disposition to be deposited as follows:

1. To the Wildlife Fund if the motor vehicle was removed from property under the control or jurisdiction of ODNR's Division of Wildlife; or
2. To the State Park Fund if the motor vehicle was removed from any ODNR property other than property under the control or jurisdiction of the Division of Wildlife.<sup>28</sup>

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 (or ODNR) must send notice of the tow to *both* the owner and any lienholder of the motor vehicle. Current law is unclear if the notice must be sent to *either* the owner or lienholder (just one) or to both individuals/entities.<sup>29</sup>

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## HISTORY

Action	Date
Introduced	03-23-23
Reported, S. Financial Institutions and Technology	---

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ANSB0094RS-135/ts

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<sup>28</sup> R.C. 4513.62 and 4513.63.

<sup>29</sup> R.C. 4513.61(C).