



# Ohio Legislative Service Commission

## Bill Analysis

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### Am. H.B. 72

130th General Assembly  
(As Passed by the House)

**Reps.** Brenner and Gerberry, R. Adams, Anielski, Antonio, Baker, Barborak, Beck, Blair, Blessing, Boose, Buchy, Burkley, Carney, Celebrezze, Conditt, Damschroder, Derickson, Driehaus, Duffey, Fedor, Green, Grossman, Hackett, Hayes, Letson, Lundy, Lynch, Mallory, Milkovich, O'Brien, Patterson, Pillich, Ramos, Retherford, Rogers, Ruhl, Sprague, Stebelton, Stinziano, Strahorn, Thompson, Wachtmann, Batchelder

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## BILL SUMMARY

- Modernizes terminology in the Revised Code to accurately reflect how the county recorder records and keeps instruments today, for example, by computer and on other media, rather than in record books and on paper.
- Requires that instruments presented for recording be kept in the county recorder's general record series known as the "official records," rather than in six separate sets of records.
- Consolidates separate indexes of instruments into the direct and reverse indexes and repeals the requirement to maintain the "notice index."
- Eliminates obsolete fees for recording certain instruments manually or by typewriter, and requires a fee to be charged for recording notices of possessory interests in land.
- Eliminates a fine on any county recorder who records plats contrary to a municipal corporation's platting laws.
- Makes general recording changes.
- Requires the lessor of natural gas and oil lands, and the owner of surface lands to file with the county recorder, a notice of a lessee's or mineral interest holder's failure to file a notice that the lease has not been forfeited or the mineral interest has not been abandoned.

- Allows the county recorder to dispose of paper versions of notices of recognizance liens and of their discharge if the county records commission revises the records retention and disposal schedule accordingly.
- Requires the county recorder to be included when the county auditor and county engineer adopt by written agreement standards governing conveyances of real property.
- Makes changes regarding instruments affecting registered land.
- Eliminates the recording of certain instruments as chattel mortgages and instead requires them to be recorded in the official records.
- Makes other technical changes to the county recorder laws.

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## CONTENT AND OPERATION

### County recorder's "official records"

In general, the bill updates the Revised Code to accurately reflect how the county recorder records and maintains instruments filed in the county recorder's office. The bill changes archaic terminology to indicate how the county recorder records and keeps instruments today, for example, by computer and on other media, rather than in record books and on paper, and requires the county recorder to record all instruments and maintain them in one general record series known as the "official records."<sup>1</sup> In addition to the official records, the county recorder may keep a separate set of records that contains plats and maps of town lots and their subdivision, and of other divisions or surveys of land, as allowed under continuing law.<sup>2</sup>

The bill eliminates the current requirement for the county recorder to keep the following six separate sets of records, and expunges any terminology in the law that is related to those records:

(1) A record of deeds;<sup>3</sup>

(2) A record of mortgages;<sup>4</sup>

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<sup>1</sup> R.C. 317.08(A).

<sup>2</sup> R.C. 317.08(C).

<sup>3</sup> R.C. 149.52, 317.08, 317.10, 317.22, 961.02, 961.05, 1701.73, 1701.81, 1701.811, 1702.38, 1702.43, 1702.462, 1705.38, 1705.381, 1729.38, 1776.70, 1776.74, 1782.433, 1782.4310, 2113.62, 5301.14, 5301.255, 5301.52, 5302.17, 5302.171, 5302.222, and 5309.13.

(3) A record of powers of attorney and memoranda of trust;<sup>5</sup>

(4) A record of plats;<sup>6</sup>

(5) A record of leases;<sup>7</sup> and

(6) A record of declarations relating to the use of life-sustaining treatment and durable powers of attorney for health care.<sup>8</sup>

Instead, all of these instruments must be recorded and maintained in the county recorder's official records.<sup>9</sup>

The bill also requires the county recorder to record unemployment compensation liens, federal tax liens, and other types of liens, for example, personal tax liens and mechanic's liens, in the official records. Current law allows, but does not require, the county recorder to index, keep, and record all of these types of liens in one volume

Current law requires the county recorder to keep a separate set of records containing all corrupt activity or Medicaid fraud lien notices. Under the bill, these notices, too, must be recorded in the official records.<sup>10</sup>

Similarly, any notices of payment of workers' compensation contributions by an employer against whom a lien has been filed must be recorded in the official records.<sup>11</sup>

The bill requires the county recorder to keep in the official records, assignments of tangible or intangible personal property presented for recording. Current law requires the county recorder to keep a separate set of records of those assignments.<sup>12</sup>

As part of requiring all instruments to be kept in the county recorder's official records, the bill eliminates the book known as the "partition fence record,"<sup>13</sup> and

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<sup>4</sup> R.C. 135.807, 317.08, 5301.28, 5301.32, 5301.331, 5301.34, 5301.35, 5302.15, and 5721.35.

<sup>5</sup> R.C. 317.08, 1337.08, 5301.255, and 5815.15.

<sup>6</sup> R.C. 317.08, 503.13, and 709.38.

<sup>7</sup> R.C. 317.08, 4961.39, 5301.33, and 5301.332.

<sup>8</sup> R.C. 317.08; R.C. 1337.12 and 2133.02, not in the bill.

<sup>9</sup> R.C. 317.08.

<sup>10</sup> R.C. 317.08(B) and (D), 317.09, 1513.33, 4141.23, 5715.701, 5719.04, and 5747.451.

<sup>11</sup> R.C. 4141.23.

<sup>12</sup> R.C. 317.08(E).



removes terminology relating to recording an instrument in the "office of the county recorder," in a "book," in a "suitable book," "on paper," in the "proper records," or recording instruments in two sets of record books.<sup>14</sup>

## Indexes

The bill does not affect the current requirement that the county recorder "make and keep up" direct and reverse indexes of all the names of both parties to all instruments received for record, with the name of each grantor entered in the direct index and the name of each grantee entered in the reverse index. But the bill eliminates the requirement that the indexes be made up at the beginning of each day's business, that grantors and grantees be entered on the same line, and that the indexes be kept alphabetically with names entered under the appropriate letter. The bill also eliminates the requirements that deeds, mortgages, or other instruments made by a sheriff or other officers for the sale or encumbrance of lands, tenements, or hereditaments be indexed under their appropriate letters in a particular manner, and that instruments regarding condominiums be indexed alphabetically and entered in the direct and reverse indexes in a specific manner.<sup>15</sup>

The bill eliminates the following indexes, the manner for recording instruments in them, and any references in law to these indexes, and instead generally requires the instruments to be indexed in the county recorder's direct and reverse indexes:

- Indexes of notices of liens and notices of discharges.<sup>16</sup>
- The "federal tax and other federal lien index."<sup>17</sup>
- The general index of deeds.<sup>18</sup>
- The index of powers of attorney.<sup>19</sup>

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<sup>13</sup> R.C. 971.15.

<sup>14</sup> R.C. 317.09, 317.112, 317.13, 317.15, 317.17, 323.43, 503.13, 703.16, 707.09, 709.06, 709.32, 709.39, 1311.06, 1311.35, 1311.42, 1513.37, 2505.13, 2937.27, 5301.21, 5715.701, and 5747.451.

<sup>15</sup> R.C. 317.18.

<sup>16</sup> R.C. 1513.37, 2505.13, 2937.27, 3929.18, 4141.23.

<sup>17</sup> R.C. 317.09.

<sup>18</sup> R.C. 317.22, 2113.62, 5302.17, 5302.171, 5302.222, and 5309.13.

<sup>19</sup> R.C. 1337.08.



➤ Grantee deed index and grantor deed index.<sup>20</sup>

The bill repeals a law that requires the county recorder to maintain a book known as the "Notice Index" that contains separate pages headed by the original survey sections or surveys or parts or subdivisions thereof, or the permanent parcel numbers or lots. The book also contains notices for preservation of claims presented for recording, and has designated columns with claimant names, the names of each owner of title, the deed book number and page where the instrument containing the claim has been recorded, and the type of claim asserted designated on the left-hand page, and on the opposite page on the corresponding line, a pertinent description of the property affected as it appears in the notice.<sup>21</sup>

## **Recording fees**

The bill eliminates the fees for two methods of recording instruments that appear to be obsolete: The \$4 base fee and \$4 housing trust fund fee for manual or typewritten recording of an assignment or satisfaction of a mortgage or lease or any other marginal entry, and the \$2 base fee and \$2 housing trust fund fee for recording manually any plat not exceeding six lines, and a base fee of 10¢ and a housing trust fund fee of 10¢ for each additional line.<sup>22</sup>

The bill requires the county recorder to charge fees for recording notices of a possessory interest in land. Current law provides that charging a fee for recording the notices is permissive.<sup>23</sup>

## **Elimination of fine**

The bill repeals a law that requires a county recorder who records a plat contrary to the platting laws of municipal corporations to forfeit and pay not less than \$100 nor more than \$500, to be recovered with costs in a civil action by the prosecuting attorney in the name and for the use of the county.<sup>24</sup>

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<sup>20</sup> R.C. 5301.52 and 5302.15.

<sup>21</sup> Repeal of R.C. 317.201; R.C. 5301.52 and 5301.56.

<sup>22</sup> R.C. 317.32.

<sup>23</sup> R.C. 5301.52.

<sup>24</sup> Repeal of R.C. 711.12.



## General recording changes

The bill eliminates a requirement that an instrument regarding real estate or personal property be of a quality of paper that permits the legible reproduction of the instrument by photographic or microphotographic processes. Under the bill, the instrument must be of a quality that permits its legible reproduction.<sup>25</sup>

The bill refers to recording "instruments" rather than "papers." The bill allows a county recorder to transcribe defaced or injured records not only into new books, as allowed by current law, but also in other media.<sup>26</sup>

The bill eliminates requirements to record the name of a person who prepared an instrument at the conclusion of the instrument (upon the instrument is sufficient), and to enter the fee charged on the margin of the folio upon which the filing or recording of an instrument is entered.<sup>27</sup> The bill also eliminates requirements that each instrument must have a separate series of file numbers and be filed separately, must be kept on file in the same numerical order for easy reference, and that the county recorder, if required, must give to a person presenting a deed or other written instrument for recording, without charging a fee, a receipt naming the parties thereto, the date thereof, and a brief description of the premises.<sup>28</sup>

## Notices of failure to file

Any time a lessee of natural gas and oil lands fails to give notice to the lessor that the lease has not been forfeited by the lessee for failure to abide by the lease's terms, the bill requires the lessor to file with the county recorder a notice of the lessee's failure to file. The bill requires that the notice of failure to file contain a statement that the person filing the notice is the lessor or the lessor's successors or assigns, the document number or volume and page of the lease record where the oil or gas lease is recorded, a general description of the land, and a statement on the notice that the lease is cancelled pursuant to an affidavit of forfeiture recorded as a specific document number or in the official record/lease volume, indicating the page. Current law requires only that the lessor cause the county recorder to note upon the margin of the record of the lease a statement that the lease is cancelled pursuant to an affidavit of forfeiture recorded in a lease volume, indicating the page. The bill eliminates the requirement that certain notations be entered on affidavits of forfeiture in a county in which the county recorder

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<sup>25</sup> R.C. 317.112.

<sup>26</sup> R.C. 317.07 and 317.29.

<sup>27</sup> R.C. 317.111, and 317.26.

<sup>28</sup> R.C. 317.12.



uses the microfilm process and the requirement that the affidavit be recorded in the record of leases. The bill also eliminates the county recorder's authority to charge a fee for recording these notations, and a provision stating that the record of the lease cannot be received in evidence in any Ohio court.<sup>29</sup>

Likewise, if the holder of a mineral interest fails to notify the owner of surface lands that the mineral interest has not been abandoned, the bill requires the owner of the surface lands who is seeking to have the mineral interest deemed abandoned and vested in the owner to file in the office of the county recorder a notice of failure to file. The notice must contain a statement that the person filing the notice is the owner of the surface of the lands subject to the mineral interest, a description of the surface of the land that is subject to the mineral interest, and a statement that the mineral interest is abandoned pursuant to an affidavit of abandonment, referring to the volume and page wherein the affidavit is recorded. Current law requires only that the owner cause the county recorder to memorialize the record on which the severed mineral interest is based with a statement that the mineral interest is abandoned pursuant to an affidavit of abandonment, referring to the volume and page wherein the affidavit is recorded. The bill eliminates the requirement for memorials to appear on affidavits of abandonment in a county in which the county recorder uses the microfilm process, instead of on the record on which the severed mineral interest is based.<sup>30</sup>

### **Notices or discharges of recognizance liens; disposal of paper versions**

The bill authorizes the county recorder to use any nonpaper electronic or magnetic medium specified in existing law<sup>31</sup> to record notices of recognizance liens (bail) and notices of their discharge. If the county recorder wishes to dispose of paper versions of the notices because they are no longer needed in that format, the county recorder must request the county records commission to revise the county's schedule of records retention and disposal to provide for the disposal of the paper records. Current law requires the county recorder to record the notices in a book or record in which the notices are indexed, and does not address disposal of the paper version of the notices.<sup>32</sup>

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<sup>29</sup> R.C. 5301.332.

<sup>30</sup> R.C. 5301.56.

<sup>31</sup> R.C. 9.01. The media specified are any photostatic, photographic, miniature photographic, film, microfilm, or microphotographic process; perforated tape, magnetic tape, other magnetic means, electronic data processing, or machine readable means; graphic or video display; or any combination of those processes, means, or displays.

<sup>32</sup> R.C. 2937.27.

## Adoption of standards for conveyances

The bill requires the county recorder, county auditor, and county engineer, by written agreement, to adopt standards governing conveyances of real property in the county. The county auditor cannot transfer, and the county recorder is prohibited from recording, any conveyance that does not comply with those standards. Currently, the county auditor and county engineer adopt those standards without input from the county recorder, and the county auditor is prohibited from transferring any conveyance that does not meet those standards.<sup>33</sup>

## Registered land

The bill eliminates the requirement that a certificate of title or any other instrument or memorandum affecting registered land that is canceled be retained by the county recorder and filed in the county recorder's office under its proper file number and carefully preserved.<sup>34</sup>

Under continuing law, whenever registered land is sold to satisfy any judgment or order of a court, or title is transferred by judgment of a court, if the purchaser files a certificate of sale and a certified copy of the order of sale with the county recorder, the purchaser is entitled to have the property transferred to the purchaser and a new certificate of title issued for the land. When registered land is sold by the sheriff under order of a court, the sheriff must file a certificate of sale and a certified copy of the order of sale and return thereof with the county recorder. In this case, the purchaser is entitled to have the property transferred to the purchaser and a new certificate of title issued for the land. The bill provides that this continuing law and its applications are not superseded, negated, or amended, in whole or in part, by a law which provides that in any suit or proceeding in which registered land may be partitioned or sold, or the title to any part thereof, or to any interest in or lien upon the land may be transferred or affected by the order of the court, that no confirmation of the partition, sale, or transfer or decree affecting title can be entered by the court until the title examiner's report is filed, showing that all persons necessary to the suit or proceeding have been made parties and properly brought before the court, and that the proceedings and sale have in all respects been pursuant to law and the court's orders.<sup>35</sup>

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<sup>33</sup> R.C. 319.203.

<sup>34</sup> R.C. 5309.41.

<sup>35</sup> R.C. 5309.64; R.C. 5309.61, not in the bill.



## **Eliminate requirement to record instrument as a mortgage**

Continuing law requires the Bureau of Workers' Compensation to file with the county recorder an affidavit showing when an application for compensation or benefits is filed with the Bureau or the Industrial Commission against an employer who has not complied with the Worker's Compensation Law. The affidavit constitutes a lien upon the employer's real property and tangible personal property. The county recorder must accept and file the affidavit, and the bill requires that it be recorded and indexed in the official records, rather than filing the affidavit as a chattel mortgage and indexing it as a mortgage on real estate and as a chattel mortgage. The bill eliminates the term "tangible" so that the lien is on the employer's real estate and personal property.<sup>36</sup>

The Administrator of Workers' Compensation must file with the county recorder a certificate of the amount of premium due from an employer, and that amount is a lien against the employer's real and personal property in the county. The bill requires the county recorder to record and index the certificate in the official records. Current law requires the county recorder to record the certificate as a mortgage on real estate, file it as a chattel mortgage, and index it as a mortgage on real estate and as a chattel mortgage.<sup>37</sup>

## **Miscellaneous revisions**

Under continuing law, the legislative authority of a municipal corporation may, upon petition of a property owner and following a hearing, by ordinance, declare a street or alley vacated or narrowed, or change its name; if two or more streets, avenues, or alleys have the same name, the municipal corporation, may, by ordinance, and without petition therefore, change their names so as to leave only one to be designated by the original name. The bill requires that the legislative authority's original ordinance, or a certified copy of it, be recorded in the official records of the county recorder.<sup>38</sup>

Continuing law requires the clerk of court to issue a notice of discharge of a supersedeas bond that is issued as a certificate of lien on land. The bill requires the clerk of court to file the notice of discharge in the county recorder's office, rather than merely authorizing the clerk to do so. The bill eliminates language stating that the fee charged

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<sup>36</sup> R.C. 4123.76.

<sup>37</sup> R.C. 4123.78.

<sup>38</sup> R.C. 723.04 and 723.05.



for filing and indexing the certificate covers the filing and indexing of the notice of discharge.<sup>39</sup>

## Technical revisions

The bill amends various Revised Code sections to change division references, to gender neutralize the law, and to eliminate references to the two laws repealed by the bill.<sup>40</sup> The bill also eliminates an obsolete reference to collecting low-and moderate-income housing trust fund fees under a corporation franchise tax provision that has been repealed.<sup>41</sup>

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## HISTORY

| ACTION                                  | DATE     |
|---|----------|
| Introduced                              | 02-20-13 |
| Reported, H. State and Local Government | 05-15-13 |
| Passed House (95-0)                     | 06-05-13 |

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<sup>39</sup> R.C. 2505.13.

<sup>40</sup> R.C. 317.02, 317.04, 317.05, 317.19, 317.28, 317.31, 317.35, 707.09, 1311.06, 1311.35, 5301.01, 5301.25, 5301.332, 5301.56, and 5721.35.

<sup>41</sup> R.C. 317.36.

