

**Local Government Mandate Statement
Kentucky Legislative Research Commission
2022 Regular Session**

Part I: Measure Information

Bill Request #: 1693

Bill #: SB 135 SCS 1

Document ID #: 5974

Bill Subject/Title: AN ACT relating to county clerks and making an appropriation therefor.

Sponsor: Senator Jason Howell

Unit of Government: City County Urban-County
Unified Local
 Charter County Consolidated Local Government

Office(s) Impacted: County Clerks

Requirement: Mandatory Optional

Effect on
Powers & Duties: Modifies Existing Adds New Eliminates Existing

Part II: Bill Provisions and the Estimated Fiscal Impact Relating to Local Government

Section 1:

SB 135 creates a new section of KRS Chapter 67 to define “recorded instrument” and “portal” and to detail what the portal must contain and have available for public access.

Recorded instrument is defined as any document relating to real or personal property, and any property for which a certificate of title has been issued, including but not limited to deeds and mortgages.

Portal is defined as a Web site or online database allowing the public to access recorded instruments, is part of a secured network, and is capable of providing backup copies of recorded instruments to be securely stored.

County clerks are charged with having the portal up and running and available for electronic filing of any recorded instrument by June 30, 2023.

By June 30, 2024, the county clerks shall ensure that the portal contains;

- the following recorded instruments filed on or after June 30, 1994:
 - o Deeds;
 - o Mortgages;
 - o Fixture filings under the Uniform Commercial Code
 - o Plats of subdivided property
 - o All covenants, conditions, and restrictions that relate to real property;
 - o Easements;
 - o Leases or memorandum of leases;
 - o Powers of attorney;
 - o Land contracts;
 - o Wills, and
 - o Affidavits that affect or clarify the title to property.
- Child support liens filed on or after June 30, 2004
- The following instruments file on or after June 30, 2009:
 - o Judgement liens
 - o Recoupment and unemployment liens; and
 - o Lis pendens notices
- The following recorded instruments filed on or after June 30, 2019:
 - o Homeowner's association or condominium liens; and
 - o Bail bonds.

By June 30, 2026, the county clerks shall ensure that the portal contains the following recorded instruments filed on or after June 30, 1966, but before June 30, 1994:

- Deeds;
- Mortgages;
- Fixture filings under the Uniform Commercial Code
- Plats of subdivided property
- All covenants, conditions, and restrictions that relate to real property;
- Easements;
- Leases or memorandum of leases;
- Powers of attorney;
- Land contracts;
- Wills, and
- Affidavits that affect or clarify the title to property.

All fees charged by the county clerk for access to electronic copies of recorded instruments shall not exceed the actual cost of providing and maintaining the portal.

The actual cost of a contracted vendor to provide and maintain the portal may include development and maintenance, personnel cost, maintenance of cybersecurity credentials, and insurance premiums.

County clerks may redact social security numbers and other personal information from recorded instruments upon request from a law enforcement agency or judicial officer.

Section 2:

Amends KRS 64.012 regarding the fees paid to the county clerks for services related to the permanent storage of the following records:

- \$33.00 for real or personal property, and any property for which a certificate of title has been issued, including but not limited to deeds and mortgages and itemized in KRS 64.012 (1)(a)1, \$3.00 for each additional page over 5, and \$4.00 for each additional reference;
- \$40.00 for plats, maps, and surveys, not exceeding 24 inches by 36 inches, per page;
- \$26.50 for marriage license, indexing, recording, and issuing certificate thereof;
- \$63.00 for filing and indexing a real estate mortgage, and \$3 for each additional page over 30.

Ten dollars (\$10) of the above fees shall not be paid to the fiscal court or the Finance and Administration Cabinet, but be accumulated and transferred to the fiscal court of the legislative body of a consolidated local government or an urban-county government on a monthly basis within ten days following the end of the month. The moneys shall be accounted for separately, in a separate bank account, and not lapse to the general fund of the county, consolidated local government, or urban-county government, but be held in perpetuity and used exclusively for equipment, hardware, software, and personnel costs for the permanent storage and access to records. Notwithstanding KRS 68.275, claims by a county clerk that are for the preceding expenditures shall be paid by the county judge/executive or the chief executive officer of a consolidated local government or an urban-county government by a warrant drawn on the fund and co-signed by the treasurer of the county, consolidated local government, or urban-county government.

No later than July 1 of each year, a county fiscal court or legislative body of a consolidated local government or an urban-county government shall submit a report to the Legislative Research Commission detailing the receipts, expenditures, and any amount remaining in the fund.

Section 3:

Currently, the following taxes are paid to the county clerks:

- \$4.50 on each marriage license;
- \$4.00 on each power of attorney;
- \$4.00 on each mortgage, financing statement, or security agreement and on each notation of a security interest on a certificate of title;
- \$4.00 on each lien or conveyance of coal, oil, gas, or other mineral right or privilege.

One dollar of each of these taxes is earmarked for the Department of Libraries and Archives. SB 135 provides that 90% of these funds shall be set aside for grants to county clerks and distributed annually, except when there is insufficient grant applications to distribute the entire amount. In those cases, the Department of Libraries and Archive may grant those funds to other agencies.

Section 4:

Provides that for a county with a population of less than 70,000, the county clerk may be entitled an advancement to defray official expenses and to supplement the salaries of the county clerk or the clerk's deputies and assistants. On the first day of each month, the amount of the advance shall be determined by the Secretary of the Finance and Administration Cabinet and shall be 1/12 of the total fees collected by the county clerk for the preceding year or \$60,000, whichever is less.

Funds that were advanced shall be repaid by the county clerk, to whom the funds were advanced to, by the end of the calendar year in which the funds were advanced. If not repaid timely, then the county clerk, in his or her official capacity or the surety for the county clerk, shall be liable to the Commonwealth.

If a county clerk requests funds from the State Treasurer to defray official expenses, the clerk shall not be required to submit a statement of his or her personal assets and liabilities as a condition of the application process.

Since SB 135 provides for an appropriation, reimbursement of the \$10 fee (Section 2), and grants from the Department of Libraries and Archives (Section 3), **the fiscal impact of SB 135 on local governments is expected to be minimal.** For those reasons and a phase one implementation date of June 30, 2023, for allowing for the electronic filing of recorded instruments, **the Kentucky County Clerks Association supports SB 135.** Prior legislation required a January 1 implementation date.

Part III: Differences to Local Government Mandate Statement from Prior Versions

Part II refers to SB 135 SCS 1.

SB 135 SCS 1 keeps the provisions of SB 135 as introduced with the following changes:

- Fees charged for accessing electronic copies shall not exceed the actual cost of providing (as well as maintaining) the portal.
- The actual cost of a contracted vendor to provide and maintain the portal may include development and maintenance, personnel cost, maintenance of cybersecurity credentials, and insurance premiums.
- County clerks may redact social security numbers and other personal information from recorded instruments upon request from a law enforcement agency or judicial officer.
- Requires that funds transferred to the fiscal court or legislative body of a consolidated local government or urban-county government not only be accounted for separately, but be held in a separate bank account.
- Provides that the process of paying an approved expenditure by the county judge/executive or the chief executive officer of a consolidated local government or an urban-county government does not need to follow the guidelines set forth in (KRS 68.275).

- Funds advanced shall be repaid by the county clerk to whom the funds were advanced by the end of the calendar year in which the funds were advanced. If not repaid timely, then the county clerk in his or her official capacity or the surety for the county clerk shall be liable to the Commonwealth.
- Deletes Section 5.

Data Source(s): LRC Staff, Kentucky County Clerks Association

Preparer: Wendell F. Butler **Reviewer:** KHC **Date:** 2/25/22
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