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FISCAL IMPACT REPORT

ORIGINAL DATE 1/25/07

SPONSOR Martinez LAST UPDATED _____ HB _____

Enacting the Uniform Real Property Electronic

SHORT TITLE Recording Act SB 201

ANALYST Propst

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Finance and Administration (DFA)

SUMMARY

Synopsis of Bill

Senate Bill 201 relates to Recording Real Property Documents; Enacting the Uniform Real Property Electronic Recording Act.

SB 201 would enact the Uniform Real Property Electronic Recording Act. This act provides legal authority for the optional acceptance and recording of real estate documents by county clerks in electronic format. The act authorizes clerks, in compliance with standards established by the Information Technology Commission and the State Commission of Public Records to begin accepting records in electronic format, storing electronic records, and setting up systems that would provide for security protection to ensure that electronic documents are accurate, authentic, adequately preserved and resistant to tampering.

FISCAL IMPLICATIONS

SB 201 may provide some cost savings to counties by allowing clerks to accept and store recorded documents in electronic format.

SIGNIFICANT ISSUES

According to DFA, SB 201 would be substantially in the same format as the one created by the National Conference of Commissioners on Uniform State Laws (NCCUSL) in August of 2004.

Electronic recording, or “e-recording,” has been under consideration by the real estate industry for some time. Industry groups, such as the Property Records Industry Association, have been advocates for e-recording. The act explicitly recognizes the piecemeal aspects of the individual efforts and attempts to provide some uniformity to the legal structure of electronic recording.

The act also represents an extension of the work of the conference to give legal effect to transactions that are executed electronically. The conference previously approved the Uniform Electronic Transaction Act (UETA), which permits electronic records and the electronic execution of documents between parties.

The NCCUSL commentary continues by stating that the Act accomplishes three main things. First, it allows for the recording of an electronic document and permits an electronic signature and an electronic notary to suffice, notwithstanding any other legal requirement to the contrary. Second, it authorizes the recorder to implement electronic recording functions. Third, it provides for the creation of an electronic recording commission or enables an existing state agency to adopt standards to implement the Act.

The Act’s commentary recognizes that various “legacy laws” exist, which limit the recordability of documents. First and foremost, there is the issue of fraud. Ohio law has traditionally required that instruments be signed and acknowledged to be recorded. The Act permits electronic signatures as previously noted. The act’s definition of “electronic signature” is fairly broad. A second concern relates to the effectiveness of electronic documents the recorder receives. The act does not address this matter; instead, it recognizes the diversity of state law. Filing around the clock by fax machine and e-mail becomes a very real possibility under the act. Questions regarding matters such as presentment, priority and notice are left up to individual states to decide.

A third concern is the matter of funding. The Act recognizes that an electronic recording system may involve “relatively large ‘front-end’ expenses” and encourages states to resolve the issue of funding prior to passage. While the act does not mandate an electronic recording system by its terms, and permits the continued use of paper documents, it would be unwise to ignore the cost issue of an electronic system.

SB 924 became effective January 1, 2007. It allows an electronic signature to qualify as a sufficient signature. Such electronic signature also satisfies the requirement that a document be notarized, verified, or taken under oath. The county recorder of deeds may convert paper documents into electronic form for the purpose of indexing, storing, and archiving and may accept fees and documents electronically. This act also establishes the Electronic Recording Commission to adopt standards for implementing this Act.

PERFORMANCE IMPLICATIONS

The Uniform Real Property Electronic Recording Act (UTEA) was adopted by the National Conference of Commissioners on Uniform State Laws at its annual conference held in 2004.

Furthermore, the UETA has been adopted in 46 states, the District of Columbia and the U.S. Virgin Islands. There is some momentum for the adoption of the Act. It was approved by the American Bar Association's House of Delegates in February 2005. The Act has also been introduced in the legislatures of eight other states.

SB 201 represents an effort to provide statutory authority to county clerks statewide to come into compliance with the UTEA, as well as the Uniform Real Property Electronic Recording Act adopted by the US Senate.

ADMINISTRATIVE IMPLICATIONS

Enactment of SB 201 could simplify county archival procedures, including, but not limited to the searching and retrieval of documents in the clerk's office.

OTHER SUBSTANTIVE ISSUES

In its current format, SB 201 offers some additional language to the "The Uniform Real Property Electronic Recording Act" that was not present in prior bills. SB 201 contains language making the recording of electronic real property document as "optional". Furthermore, SB 201 also includes new language in the Administration and Standards Section that identifies the State Commission of Public Records as an agency that will work in conjunction with the Information Technology Commission and the county clerks of New Mexico to adopt standards to implement this statute. In addition, new text also requires the standards of the act to provide for security protection to ensure that electronic documents are accurate, authentic, adequately preserved and resistant to tampering.

AMENDMENTS

The NCCUSL commentary includes the matter of funding. Additional language providing resources to counties may be an item that should receive consideration

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

If the Uniform Real Property Electronic Recording Act of SB 201 is not enacted, then current administration of real property documents by county clerks would remain unchanged and the state would not advance towards current national standards and uniformity to the legal structure of electronic recording would not be realized.

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