

By the Committees on Governmental Operations; Judiciary; and
 Senator King

585-2541-07

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

A bill to be entitled

An act relating to real property electronic recording; creating s. 695.27, F.S.; providing a short title; providing definitions; providing for the validity of electronic documents relating to real property; providing for the recording of electronic documents by the county recorder; granting the Department of State rulemaking authority; creating the Electronic Recording Advisory Committee; providing the committee with certain powers and duties; providing for membership and meetings of the committee; providing that committee members shall serve without compensation and may not claim per diem and travel expenses from the Secretary of State; providing guidelines for the department, in consultation with the committee, to consider in adopting, amending, and repealing standards; providing for the termination of the committee; providing for uniformity of application and construction; specifying the relation to a federal act; amending s. 201.01, F.S.; providing that such electronic documents are subject to the same taxes as paper documents; amending s. 201.022, F.S.; providing for the electronic filing of certain required returns; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

1 Section 1. Section 695.27, Florida Statutes, is
2 created to read:

3 695.27 Uniform Real Property Electronic Recording
4 Act.--

5 (1) SHORT TITLE.--This section may be cited as the
6 "Uniform Real Property Electronic Recording Act."

7 (2) DEFINITIONS.--As used in this section:

8 (a) "Document" means information that is:

9 1. Inscribed on a tangible medium or that is stored in
10 an electronic or other medium and is retrievable in
11 perceivable form; and

12 2. Eligible to be recorded in the Official Records, as
13 defined in s. 28.222, and maintained by a county recorder.

14 (b) "Electronic" means relating to technology having
15 electrical, digital, magnetic, wireless, optical,
16 electromagnetic, or similar capabilities.

17 (c) "Electronic document" means a document that is
18 received by a county recorder in an electronic form.

19 (d) "Electronic signature" means an electronic sound,
20 symbol, or process that is executed or adopted by a person
21 with the intent to sign the document and is attached to or
22 logically associated with a document such that, when recorded,
23 it is assigned the same document number or a consecutive page
24 number immediately following such document.

25 (e) "Person" means an individual, corporation,
26 business trust, estate, trust, partnership, limited liability
27 company, association, joint venture, public corporation,
28 government or governmental subdivision, agency,
29 instrumentality, or any other legal or commercial entity.

30 (f) "State" means a state of the United States, the
31 District of Columbia, Puerto Rico, the United States Virgin

1 Islands, or any territory or insular possession subject to the
2 jurisdiction of the United States.

3 (3) VALIDITY OF ELECTRONIC DOCUMENTS.--

4 (a) If a law requires, as a condition for recording,
5 that a document be an original, be on paper or another
6 tangible medium, or be in writing, the requirement is
7 satisfied by an electronic document satisfying the
8 requirements of this section.

9 (b) If a law requires, as a condition for recording,
10 that a document be signed, the requirement is satisfied by an
11 electronic signature.

12 (c) A requirement that a document or a signature
13 associated with a document be notarized, acknowledged,
14 verified, witnessed, or made under oath is satisfied if the
15 electronic signature of the person authorized to perform that
16 act, and all other information required to be included, is
17 attached to or logically associated with the document or
18 signature. A physical or electronic image of a stamp,
19 impression, or seal need not accompany an electronic
20 signature.

21 (4) RECORDING OF DOCUMENTS.--

22 (a) In this subsection, the term "paper document"
23 means a document that is received by the county recorder in a
24 form that is not electronic.

25 (b) A county recorder:

26 1. Who implements any of the functions listed in this
27 section shall do so in compliance with standards established
28 by rule by the Department of State.

29 2. May receive, index, store, archive, and transmit
30 electronic documents.

31

1 3. May provide for access to, and for search and
2 retrieval of, documents and information by electronic means.

3 4. Who accepts electronic documents for recording
4 shall continue to accept paper documents as authorized by
5 state law and shall place entries for both types of documents
6 in the same index.

7 5. May convert paper documents accepted for recording
8 into electronic form.

9 6. May convert into electronic form information
10 recorded before the county recorder began to record electronic
11 documents.

12 7. May agree with other officials of a state or a
13 political subdivision thereof, or of the United States, on
14 procedures or processes to facilitate the electronic
15 satisfaction of prior approvals and conditions precedent to
16 recording.

17 (5) ADMINISTRATION AND STANDARDS.--

18 (a) The Department of State, by rule pursuant to ss.
19 120.536(1) and 120.54, shall prescribe standards to implement
20 this section in consultation with the Electronic Recording
21 Advisory Committee, which is hereby created. The Florida
22 Association of Court Clerks and Comptrollers shall provide
23 administrative support to the committee and technical support
24 to the Department of State and the committee at no charge. The
25 committee shall consist of nine members, as follows:

26 1. Five members appointed by the Florida Association
27 of Court Clerks and Comptrollers, one of whom must be an
28 official from a large urban charter county where the duty to
29 maintain official records exists in a county office other than
30 the clerk of court or comptroller.

31

1 2. One attorney appointed by the Real Property,
2 Probate and Trust Law Section of The Florida Bar Association.

3 3. Two members appointed by the Florida Land Title
4 Association.

5 4. One member appointed by the Florida Bankers
6 Association.

7 (b) Appointed members shall serve a 1-year term. All
8 initial terms shall commence on the effective date of this
9 act. Members shall serve until their successors are appointed.
10 An appointing authority may reappoint a member for successive
11 terms. A vacancy on the committee shall be filled in the same
12 manner in which the original appointment was made, and the
13 term shall be for the balance of the unexpired term.

14 (c) The first meeting of the committee shall be within
15 60 days of the effective date of this act. Thereafter, the
16 committee shall meet at the call of the chair, but at least
17 annually.

18 (d) The members of the committee shall serve without
19 compensation and shall not claim per diem and travel expenses
20 from the Secretary of State.

21 (e) To keep the standards and practices of county
22 recorders in this state in harmony with the standards and
23 practices of recording offices in other jurisdictions that
24 enact substantially this section and to keep the technology
25 used by county recorders in this state compatible with
26 technology used by recording offices in other jurisdictions
27 that enact substantially this section, the Department of
28 State, in consultation with the committee, so far as is
29 consistent with the purposes, policies, and provisions of this
30 section, in adopting, amending, and repealing standards, shall
31 consider:

- 1 1. Standards and practices of other jurisdictions.
2 2. The most recent standards adopted by national
3 standard-setting bodies, such as the Property Records Industry
4 Association.
5 3. The views of interested persons and governmental
6 officials and entities.
7 4. The needs of counties of varying size, population,
8 and resources.
9 5. Standards requiring adequate information security
10 protection to ensure that electronic documents are accurate,
11 authentic, adequately preserved, and resistant to tampering.
12 (f) The committee shall terminate on July 1, 2010.
13 (6) UNIFORMITY OF APPLICATION AND CONSTRUCTION.--In
14 applying and construing this section, consideration must be
15 given to the need to promote uniformity of the law with
16 respect to its subject matter among states that enact it.
17 (7) RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND
18 NATIONAL COMMERCE ACT.--This section modifies, limits, and
19 supersedes the federal Electronic Signatures in Global and
20 National Commerce Act, 15 U.S.C. ss. 7001 et seq., but this
21 section does not modify, limit, or supersede s. 101(c) of that
22 act, 15 U.S.C. s. 7001(c), or authorize electronic delivery of
23 any of the notices described in s. 103(b) of that act, 15
24 U.S.C. s. 7003(b).

25 Section 2. Section 201.01, Florida Statutes, is
26 amended to read:

27 201.01 Documents taxable, generally.--There shall be
28 levied, collected, and paid the taxes specified in this
29 chapter, for and in respect to the several documents, bonds,
30 debentures or certificates of stock and indebtedness, and
31 other documents, instruments, matters, writings, and things

1 described in the following sections, or for or in respect of
2 the vellum, parchment, ~~or paper,~~ or any other medium whether
3 tangible, electronic, or otherwise, upon which such document,
4 instrument, matter, writing, or thing, or any of them, is
5 written, ~~or printed,~~ or created electronically or otherwise,
6 by any person who makes, signs, executes, issues, sells,
7 removes, consigns, assigns, records, or ships the same, or for
8 whose benefit or use the same are made, signed, executed,
9 issued, sold, removed, consigned, assigned, recorded, or
10 shipped in the state. Unless exempt under s. 201.24 or under
11 any state or federal law, if the United States, the state, or
12 any political subdivision of the state is a party to a
13 document taxable under this chapter, any tax specified in this
14 chapter shall be paid by a nonexempt party to the document.
15 The documentary stamp taxes shall be paid on all recordable
16 instruments requiring documentary stamp tax according to law,
17 prior to recordation. With respect to mortgages or trust deeds
18 which do not incorporate the certificate of indebtedness, a
19 notation shall be made on the note or certificate that the tax
20 has been paid on the mortgage or trust deed.

21 Section 3. Subsections (1) and (3) of section 201.022,
22 Florida Statutes, are amended to read:

23 201.022 Consideration for realty; filing of return
24 condition precedent to recordation; penalty; compensation of
25 clerks; failure to file does not impair validity.--

26 (1) As a condition precedent to the recordation of any
27 deed transferring an interest in real property, the grantor or
28 the grantee or agent for grantee shall execute and file a
29 return with the clerk of the circuit court, who may accept the
30 return electronically. The return shall state the actual
31 consideration paid for the interest in real property. The

1 return shall state the parcel identification number maintained
2 by the county property appraiser in a manner prescribed by the
3 department. If the parcel is a split or cutout parcel, the
4 return shall state the parent parcel identification number if
5 the parcel identification number has not been assigned. The
6 return shall not be recorded or otherwise become a public
7 record and shall be confidential as provided by s. 193.074,
8 and shall be exempt from the provisions of s. 119.07(1),
9 except that the Department of Environmental Protection or,
10 through the Department of Environmental Protection, its
11 contract appraiser, shall have access to the return to verify
12 the consideration paid in any transfer of an interest in real
13 property, when such transfer is considered as part of an
14 appraisal for a proposed land acquisition project conducted
15 pursuant to any Department of Environmental Protection land
16 acquisition program. The Department of Environmental
17 Protection or its contract appraiser shall not disclose the
18 contents of the return to any other public or private entity.
19 The original return shall be forwarded to the Department of
20 Revenue, and a copy shall be forwarded to the property
21 appraiser.

22 (3) If the return required by this section is not
23 executed and filed, the clerk of the circuit court is required
24 to execute and file the return, on paper or electronically,
25 with the department. The clerk shall be compensated 1.0
26 percent of the tax paid on deeds as the cost of processing the
27 return required by this section in the form of a deduction
28 from the amount of the tax due and remitted by the clerk, and
29 the department shall allow the deduction to the clerk paying
30 and remitting the tax in the manner provided by the
31 department. However, no deduction or allowance shall be

1 granted when there is a manifest failure to maintain proper
2 records or make proper reports. The compensation provided
3 herein shall be in addition to that provided in s. 201.11(2).

4 Section 4. This act shall take effect upon becoming a
5 law.

6
7 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
8 COMMITTEE SUBSTITUTE FOR
9 CS for SB 2038

10 Provides that one of the members appointed by the Florida
11 Association of Court Clerks and Comptrollers to the Electronic
12 Recording Advisory Committee must be from a large urban
13 charter county where the duty to maintain official records
14 exists in a county office other than the clerk of court or
15 comptroller.

16 Provides that the Association will provide technical support
17 to the Committee and Department of State at no cost.

18 Provides that electronic documents may be taxed as their paper
19 counterparts, and that returns relating to the recordation of
20 real property filed with the clerk or Department of Revenue
21 may be filed electronically.
22
23
24
25
26
27
28
29
30
31