

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 1179                      Electronic Documents Recorded in the Official Records  
**SPONSOR(S):** Grimsley and Others  
**TIED BILLS:**                              **IDEN./SIM. BILLS:** CS/SB 1288

	<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
1)	Civil Justice & Courts Policy Committee	10 Y, 0 N	Mato	De La Paz
2)	Governmental Affairs Policy Committee	13 Y, 0 N	Williamson	Williamson
3)	Criminal & Civil Justice Policy Council		Mato	Havlicak
4)				
5)				

**SUMMARY ANALYSIS**

Several of the clerks of the court and county recorders were accepting electronic recordings relating to real property prior to the 2006 adoption of the Uniform Real Property Electronic Recording Act and others began accepting electronic documents for recording before rules contemplated in the act were formally adopted.

The bill retroactively and prospectively ratifies the validity of all such electronic documents submitted to and accepted by a county recorder for recordation, whether or not the electronic documents were in strict compliance with the statutory or regulatory framework in effect at that time. The bill provides that all such recorded documents are deemed to provide constructive notice. It also clarifies that changes made by the bill do not alter the duty of the clerk or recorder to comply with the Uniform Real Property Electronic Recording Act or rules adopted by the Department of State pursuant to that act.

The bill appears to have no fiscal impact.

The bill provides that it is effective upon becoming a law.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

In 2000, the Legislature adopted the Uniform Electronic Transaction Act (UETA).<sup>1</sup> This Act was based on work by the National Conference of Commissioners on Uniform State Laws (NCCUSL). Many, including NCCUSL, believed the UETA permitted the electronic creation, submission, and recording of electronic documents affecting real property.

Some county recorders began accepting electronic recordings based on the authorities facially granted under the UETA. As such, a significant number of electronic documents were filed.

Some legal commentators disagreed, feeling the UETA alone did not authorize the recording of electronic documents affecting title to real property. That disagreement, and the natural conservative nature of most real estate professionals, resulted in a limitation on the use and acceptability of electronic documents in real estate transactions.

To address this problem, NCCUSL promulgated a separate uniform law to address these perceived shortcomings. A variation of the NCCUSL uniform law was adopted by the by the Legislature in 2006 and was called the Uniform Real Property Electronic Recording Act (URPERA).<sup>2</sup>

The adoption of the URPERA, as a matter of statutory interpretation, called into question the efficacy of electronic documents recorded under UETA. The URPERA requires the Department of State, by rule to prescribe standards to implement the act in consultation with the Electronic Recording Advisory Committee.<sup>3</sup> It also directs any county recorder who elects to receive, index, store, archive, and transmit electronic documents to do so in compliance with standards established by rules adopted by the Department of State.<sup>4</sup>

Before the Department of State could begin establishing rules, several county recorders began accepting electronic recordings and, as a result, discovered significant cost and labor savings. At

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<sup>1</sup> See s. 668.50, F.S., part II of chapter 668, F.S.

<sup>2</sup> See s. 695.27, F.S.

<sup>3</sup> Section 695.27(5)(a), F.S. This section creates the Electronic Recording Advisory Committee. It also requires the Florida Association of Court Clerks and Comptrollers to provide administrative support to the Department of State and the committee at no charge. The committee is composed of nine members who serve one year terms.

<sup>4</sup> Section 695.27(4)(b), F.S.

present, Rule 1B-31, Florida Administrative Code, implements the URPERA and provides guidelines for accepting electronic documents.

#### Effect of the Bill

The bill creates s. 695.28, F.S., to retroactively and prospectively ratify the validity of all electronic documents affecting title to real property submitted to and accepted by a county recorder for recordation, notwithstanding possible technical defects.

The bill provides that all documents, previously or hereafter accepted by a county recorder for recordation electronically, whether under the UETA or the URPERA, are deemed to be validly recorded and provides notice to all persons notwithstanding that:

- Such documents may have been received and recorded before the formal adoption of rules by the Department of State; or
- Defects in, deviations from, or the inability to demonstrate strict compliance with any statute, rule, or procedure to electronically record documents that may have been in effect at the time the electronic documents were submitted for recording.

The bill clarifies that the newly created s. 695.28, F.S., does not alter the duty of the clerk or recorder to comply with the URPERA or rules adopted by the Department of State pursuant to that act.

Finally, the bill adds to the URPERA cross-references for the newly created section and provides that the newly created section also may be referred to as the Uniform Real Property Electronic Recording Act.

#### B. SECTION DIRECTORY:

Section 1 amends s. 695.27, F.S., relating to the Uniform Real Property Recording Act.

Section 2 creates s. 695.28, F.S., relating to the validity of electronically recorded documents.

Section 3 provides this act is intended to clarify existing law and applies prospectively and retroactively.

Section 4 provides that the bill is effective upon becoming a law.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure to funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill clarifies that the newly created s. 695.28, F.S., does not alter the duty of the clerk or recorder to comply with the URPERA or rules adopted by the Department of State pursuant to that act.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

None.