

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1179

Electronic Documents Recorded in the Official Records

SPONSOR(S): Grimsley

TIED BILLS:

IDEN./SIM. BILLS: SB 1288

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Civil Justice & Courts Policy Committee		Mato	De La Paz
2)	Governmental Affairs Policy Committee			
3)	Criminal & Civil Justice Policy Council			
4)				
5)				

SUMMARY ANALYSIS

Several of the state's 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, s. 695.27, F.S., (URPERA) and others began accepting electronic documents for recording before the rules contemplated in the URPERA were formally adopted.

This 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 then in effect. The bill provides that all such recorded documents are deemed to provide constructive notice.

The bill appears to have no fiscal impact.

The bill provides that it is effective upon becoming 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 Florida Legislature adopted the Uniform Electronic Transaction Act, s. 668.50, F.S., (UETA). This Act was based on work by the National Conference of Commissioners on Uniform State Laws (NCCUSL). Many, including NCCUSL, believed that 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 UETA and a significant number of electronic documents were filed.

Some legal commentators disagreed, feeling that 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 Florida legislature in 2006 as the Florida "Uniform Real Property Electronic Recording Act, s. 695.27, F.S., (URPERA).

The adoption of URPERA, as a matter of statutory interpretation, called into question the efficacy of electronic documents recorded under UETA.

Subsection (5)(a) of URPERA provided that:

- (a) The Department of State, by rule pursuant to ss. 120.536(1) and 120.54 F.S., shall prescribe standards to implement this section in consultation with the Electronic Recording Advisory Committee

Subsection (4)(b) of URPERA directed a county recorder who elected to receive, index, store, archive, and transmit electronic documents do so in compliance with standards established by rule by the Department of State.

Before these rules could be set in place, a significant number of County Recorders began accepting electronic recordings and finding significant cost and labor savings. Today, Rule 1B-31, Florida

Administrative Code, is effective implementing URPERA and there are guidelines to follow when 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 deeds, mortgages, and other documents, previously or hereafter accepted by a county recorder for recordation, whether under UETA or URPERA, are deemed to be valid electronic documents with valid electronic signatures and provide notice to all persons notwithstanding:

- (a) that such documents may have been recorded before the formal adoption of rules by the Florida Secretary of State or didn't fully comply with the provisions and requirements later imposed by the (then unknown) Rule 1B-31 F.A.C.; or
- (b) Technical deviations from, or the inability to prove compliance with, any rules and procedures for electronically recorded documents which may have been in effect at the time the electronic document was submitted for recording.

The bill amends s. 695.27, F.S., to include s. 695.28, F.S. in its short title and to specify the definitions in s. 695.27, F.S., apply to s. 695.28, F.S.

B. SECTION DIRECTORY:

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

Section 2 – creates s. 695.28, F.S., relating to validity of recorded electronic documents.

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

Section 4 – provides the bill is effective upon becoming 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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES