

SUBJECT: Authorizing electronic filing and recording of public records

COMMITTEE: County Affairs — committee substitute recommended

VOTE: 7 ayes — Ramsay, G. Lewis, B. Brown, Chisum, Farabee, Salinas, Swinford
0 nays
2 absent — Hilderbran, Krusee

WITNESSES: For — Carmelo D. Bramante, Fannie Mae; Dana DeBeauvoir; Jim Gosdin and Terri Keppner, Stewart Title Guaranty Co.
Against — None
On — Robert S. Martin, Texas State Library and Archives Commission

BACKGROUND: The Texas State Library and Archives Commission (TSLAC) administers the Local Government Records Act of 1989, which sets standards for minimum retention of public records. State law requires the commission to work with other state agencies to help the custodians of local government records establish and operate efficient and economical records-management programs, reduce paperwork, and preserve records of historical value.
Art. 5, sec. 20 of the Texas Constitution requires a county clerk to record exactly and without delay the contents of each document that is filed for recording and that the clerk is authorized to record.

DIGEST: CSHB 2262 would require TSLAC to adopt rules allowing county clerks to accept documents filed electronically and to record documents electronically. The bill would authorize county clerks to accept or record documents electronically and would require the formation of an Electronic Recording Advisory Committee to recommend the required rules.
Electronic filing and recording. CSHB 2262 would add Sec. 191.009 to the Local Government Code to authorize county clerks to accept and record documents filed electronically if the filing or recording complies with the rules adopted by TSLAC.

The bill would authorize county clerks to accept electronically filed documents from Texas licensed attorneys; from banks, savings and loan associations, savings banks, or credit unions; from federally chartered lending institutions or other federal entities; from persons licensed to make regulated loans in Texas; from title insurance companies or agents; and from state agencies.

The bill would require a county clerk who accepted an electronically filed document to confirm or reject the document no later than one business day after the document was filed, or else the document would be considered accepted. The county clerk would be required to notify the person filing the document by electronic means, if possible, or by telephone or fax.

CSHB 2262 would prohibit a county clerk from charging any additional fee to file or record documents electronically. The bill would require a county clerk to make any electronically filed document available for public inspection in the same manner as any other filed document. A county clerk would have to provide electronically filed or recorded documents upon request and could charge only the cost of providing the information.

Adoption of rules. CSHB 2262 would add Chapter 195 to the Local Government Code, requiring TSLAC to adopt rules by January 1, 2001, regarding electronic filing and recording of documents by county clerks. The rules would have to provide for:

- ! the electronic filing and recording of real property records and other instruments filed with and recorded by the county clerk, except for records maintained under Local Government Code, sec. 192.006, which covers county court acts, proceedings, and judgments;
- ! the means by which someone may file a document electronically and the means by which the county clerk may record it electronically;
- ! requiring that the means of filing and recording be generally available and be nonproprietary technology; and
- ! security standards to prevent the filing or recording of fraudulent or altered documents.

CSHB 2262 would require that the rules adopted to allow the use of digital signatures be consistent with the Department of Information Resources' rules governing digital signatures under Government Code, sec. 2054.060. The bill

would require the Electronic Recording Advisory Committee to make written recommendations by December 31, 2000, on statutory changes needed to allow for digital signatures and to send these recommendations to the lieutenant governor, the House speaker, and TSLAC.

Advisory committee. CSHB 2262 would require the formation of an Electronic Recording Advisory Committee to recommend initial and subsequent rules for TSLAC to consider. The bill would require the committee to make its initial recommendations by September 1, 2000.

CSHB 2262 would require the appointment of nineteen people to the committee, including representatives of TSLAC, title insurance companies, the County Judges and Commissioners Association, the County and District Clerks Association of Texas, the Texas Land Title Association, the Attorney General's Office, the Comptroller's Office, the General Services Commission, the Department of Information Resources, a federal government agency, the general public, and a person who in the course of business obtains recorded documents from a county clerk to maintain an abstract or title plant. TSLAC's director and librarian or a designee would serve as the presiding officer.

Committee members would serve two years and would not be entitled to compensation or reimbursement of expenses, except for state employees appointed to the committee. A committee member who was a state employee could receive compensation and reimbursement of expenses as determined by the employing agency. CSHB 2262 would require the groups who made appointments to the committee to do so by November 1, 1999. The terms of the initial members would expire August 31, 2001.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house.

**SUPPORTERS
SAY:**

CSHB 2262 would benefit county clerks, the real estate industry, and the public. It would save county clerks' offices time and money. With electronic filing and recording of documents, county clerks could process title documents faster and could shorten the turnaround time to send a reply of acceptance or rejection to a title company. This also would allow title companies and the county clerk to resolve title problems sooner.

With technological advances in information transfer, documents can be filed and recorded electronically for public record. Other states are adopting laws to allow the electronic filing and recording of public documents, and CSHB 2262 would allow county clerks and those who most often use the record-keeping services of their office to take full advantage of this new technology.

Counties are dealing with greater workloads due to lower interest rates sparking a booming real estate market, the adoption of the state's home equity law allowing second mortgages, and more people moving to Texas. CSHB 2262 would enable county clerks to handle these workloads without increasing staff, thus saving money.

CSHB 2262 would authorize but not require county clerks to accept and record documents electronically. Counties would have the flexibility to assess whether this would work for their area. Larger counties would be most likely to decide to accept and record documents electronically, and these counties already have the computer technology to do so.

CSHB 2262 would require precautions to deal with fraud. First, the advisory committee would set guidelines to ensure that the likelihood of fraud would be no greater than with filing documents in person. Also, the bill would restrict authorization to file documents electronically to licensees of the state who are regulated by the state and federal agencies.

**OPPONENTS
SAY:**

CSHB 2262 could increase the likelihood of fraudulent documents being filed with county clerks. Without an increase in staff, county clerks might not be able to provide adequate scrutiny of electronically filed documents.

NOTES:

The committee substitute added "a federal government-sponsored entity" and "an instrumentality of the federal government" to the list of those who would be authorized to file documents electronically with a county clerk. It also added an officer or employee of a federal government-sponsored entity to the composition of the Electronic Recording Advisory Committee.

The companion bill, SB 888 by Harris, passed the Senate on the Local and Uncontested Calendar on April 8 and was reported favorably, without amendment, by the House County Affairs Committee on April 14, making it eligible to be considered in lieu of HB 2262.

