

BILL ANALYSIS

Senate Research Center
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S.B. 888
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As Filed

DIGEST

Currently, Texas law does not provide standards for electronic filing and recording of instruments in public records. However, states are beginning to adopt electronic recording statutes for recording and filing documents and instruments in public record. S.B. 888 would create an Electronic Recording Advisory Committee to assist the Texas State Library and Archives Commission to establish standards for electronic filing and recording of instruments in public record in a county, and would recommend legislation for future adoption of electronic recording and digital signatures statutes relating to real property transactions.

PURPOSE

As proposed, S.B. 888 establishes standards for electronic filing and recording of instruments in public record.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the Texas State Library and Archives Commission in SECTION 2 (Section 195.002(a), Local Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 191, Local Government Code, by adding Section 191.009, as follows:

Sec. 191.009. ELECTRONIC FILING AND RECORDING. Authorizes a county clerk to accept instruments by electronic filing and record the instruments electronically, if the filing or recording complies with the rules adopted by the Texas State Library and Archives Commission (commission) under Chapter 195. Provides that an instrument that is filed electronically in compliance with the rules adopted under Chapter 195 is considered to have been filed in compliance with any law relating to the filing of instruments with a county clerk.

SECTION 2. Amends Title 6B, Local Government Code, by adding Chapter 195, as follows:

CHAPTER 195. ELECTRONIC FILING OF RECORDS WITH AND RECORDING BY COUNTY CLERK

Sec. 195.001. DEFINITIONS. Defines “commission” and “director and librarian.”

Sec. 195.002. ADOPTION OF RULES. Authorizes the commission to adopt rules by which a county clerk may accept instruments by electronic filing and record instruments electronically under Section 191.009. Sets forth rules for electronic filing and recording instruments. Requires rules adopted by the commission under this section that permit the use of digital signatures in the electronic filing of instruments with the county clerk, to the extent practicable, to be consistent with rules governing digital signatures adopted by the Department of Information Resources under Section 2054.060, Government Code, as added by Chapter 528, Acts of the 75th Legislature, Regular Session, 1997. Requires the commission to consider the recommendations of the Electronic Recording Advisory Committee established under Section 195.008, before adopting or amending a rule under this section.

Sec. 195.003. PERSONS AUTHORIZED TO FILE ELECTRONICALLY. Authorizes certain persons to file documents electronically for recording with a county clerk that accepts electronic filing and recording under this chapter.

Sec. 195.004. NOTICE OF CONFIRMATION. Requires a county clerk that accepts electronic filing and recording under this chapter to confirm or reject an electronic filing of an instrument, no later than the first business day after the date an instrument is filed. Requires notice under this section to be made by electronic means if possible, or if notice under Subdivision (1) is not possible by telephone or electronic facsimile machine. Provides that the instrument is considered accepted for filing and may not subsequently be rejected, if the county clerk fails to provide notice of rejection within the time provided by Subsection (a).

Sec. 195.005. TIME INSTRUMENT CONSIDERED FILED OR RECORDED. Provides that an instrument that is recorded electronically under this chapter is considered to be recorded in compliance with a law relating to the recording of instruments as of the county clerk's business day on which the instrument is filed electronically. Requires an instrument filed electronically under this chapter to be recorded as timely as an instrument filed by any other means.

Sec. 195.006. ADDITIONAL FEE PROHIBITED. Provides that the fee to file or record an instrument electronically under this chapter is the same as the fee for filing or recording the instrument by other means, and a county clerk may not charge an additional fee for filing or recording an instrument electronically under this chapter.

Sec. 195.007. ACCESS TO INSTRUMENT RECORDED ELECTRONICALLY. Requires an instrument filed or recorded electronically to be available for public inspection in the same manner and at the same time as an instrument filed or recorded by other means. Requires the county clerk to provide a requestor, as defined by Section 552.003, Government Code, of an instrument filed or recorded electronically under this chapter with electronic copies of the instrument in a form that is capable of being processed by the use of technology that is generally available and nonproprietary in nature. Requires the county clerk to provide the copies to the requestor at the cost of producing the copies in accordance with Section 552.262, Government Code.

Sec. 195.008. ELECTRONIC RECORDING ADVISORY COMMITTEE. Requires the Electronic Recording Advisory Committee (committee) to be appointed as required by this section to recommend to the commission initial and subsequent rules to be adopted under this chapter. Provides that the committee consists of certain persons. Provides that a member of the committee serves a term of two years that expires on August 31 of each odd-numbered year. Provides that a vacancy in the membership of the committee is filled in the same manner as the initial appointment and is for the remainder of the unexpired term. Provides that a meeting of the committee is at the call of the presiding officer and is subject to Chapter 551, Government Code. Provides that a member of the committee is not entitled to compensation or reimbursement of expenses from the commission for serving on the committee. Entitles a member of the committee who is an employee or officer of a state agency to compensation and reimbursement of expenses for service on the committee as determined by the state agency of which the member is an officer or employee. Provides that Chapter 2110, Government Code, does not apply to the committee.

SECTION 3. Entitles the entities to make appointments to the committee established under Section 195.008, Local Government Code, as added by this Act, no later than November 1, 1999. Provides that the terms of the initial members of the committee expire August 31, 2001. Requires the committee to make its recommendations for the initial adoption of rules under Chapter 195, Local Government Code, as added by this Act, no later than September 1, 2000. Requires the commission to adopt rules to implement Chapter 195, Local Government Code, as added by this Act, no later than January 1, 2001. Requires the committee to make written recommendations on statutory changes necessary to allow for digital signatures on real estate transactions and the electronic filing and recording of instruments executed by digital signatures, no later than December 31, 2000. Requires the committee to send the recommendations to the lieutenant governor, the speaker of the house of representatives, and the commission.

SECTION 4. Emergency clause.

Effective date: upon passage.