

HOUSE BILL REPORT

HB 2104

As Passed House:

March 7, 2007

Title: An act relating to real property electronic recording.

Brief Description: Creating the uniform real property electronic recording act.

Sponsors: By Representatives Curtis, Simpson, Ross and Eddy; by request of Secretary of State.

Brief History:

Committee Activity:

Local Government: 2/20/07, 2/23/07 [DP].

Floor Activity:

Passed House: 3/7/07, 97-0.

Brief Summary of Bill

- Adopts the Uniform Real Property Electronic Recording Act, establishing the definitions, standards, procedures, and authority needed by county auditors related to the implementation of a system for the recording, storage, and transmission of documents existing in electronic form.
- Authorizes the official recording of an electronic document and the acceptance of a legally required signature, notarization, verification, or acknowledgment when received electronically in accordance with specified requirements.
- Requires the Secretary of State to create an "E-Recording Standards Commission" to review electronic recording standards and to make recommendations regarding the implementation of standardized rules for such recording.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: Do pass. Signed by 7 members: Representatives Simpson, Chair; Eddy, Vice Chair; Curtis, Ranking Minority Member; Schindler, Assistant Ranking Minority Member; Ross, B. Sullivan and Takko.

Staff: Thamas Osborn (786-7129).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background:

Duties and Authority of County Auditors

The county auditor is responsible for the recording of specified documents required by law to be part of the public record kept by a county. The documents that must be recorded by a county auditor include judgments, liens, deeds, mortgages, and many other categories of documents pertaining to property ownership and real estate transactions. State law specifies requirements that must be met by an auditor when exercising his or her recording duties and specifically authorizes an auditor to record documents in "electronic format".

Washington Electronic Authentication Act

The Washington Electronic Authentication Act (chapter 19.34 RCW) creates standards and procedures for the use of digital signature technology in commercial transactions. The act authorizes the Secretary of State to establish rules and procedures governing the use of electronic signatures in order to ensure the authenticity and reliability of electronic messages.

"Uniform Real Property Electronic Recording Act" and the National Conference of Commissioners on Uniform State Laws

The Uniform Real Property Electronic Recording Act (URPERA) is the product of the National Conference of Commissioners On Uniform State Laws (NCCUSL), an organization that authors and promotes uniform, comprehensive statutory frameworks intended for nationwide adoption pertaining to many areas of law where national uniformity is deemed beneficial. Among the uniform acts created by the NCCUSL are the following:

- Uniform Probate Code;
- Uniform Child Custody Jurisdiction Act;
- Uniform Interstate Family Support Act; and
- Uniform Limited Partnership Act.

In its prefatory note to the URPERA, the NCCUSL explains:

Even though documents resulting from electronic transactions are valid and enforceable between the parties, there is uncertainty and confusion about whether those electronic documents may be recorded in the various local land records offices in the several states. Legacy laws and regulations in many states purport to limit recordable documents to ones that are in writing or on paper or require that they be originals. Other laws and regulations require signatures to be in writing and acknowledgments to be signed. Being electronic and not written on paper, being an electronic version of an original paper document, or having an electronic signature and acknowledgment instead of handwritten ones, an electronic document might not be recordable under the laws of these states.

The Uniform Real Property Recording Act was drafted to remove any doubt about the authority of the recorder to receive and record documents and information in electronic form. Its fundamental principle is that any requirements of state law describing or requiring that a document be an original, on paper, or in writing are satisfied by a document in electronic form. Furthermore, any requirement that the document contain a signature or acknowledgment is satisfied by an electronic signature or

acknowledgment. The act specifically authorizes a recorder, at the recorder's option, to accept electronic documents for recording and to index and store those documents.

Many states have already passed legislation adopting the URPERA and other states are currently considering such legislation.

Summary of Bill:

The act creates a new chapter in the Revised Code of Washington adopting the provisions of the URPERA. The act creates the definitions, standards, procedures, and authority needed by county auditors for the implementation of a system for the recording, storage, and transmission of documents existing in electronic form.

County auditors are provided with the explicit authority needed for the official recording and transmission of an electronic document and the acceptance of a legally required signature, notarization, verification, or acknowledgment when received electronically in accordance with specified requirements.

The Secretary of State is required to create an "E-Recording Standards Commission" (Commission) to review electronic recording standards and to make recommendations regarding the implementation of standardized rules for such recording. The majority of the Commission must be county auditors or recorders, but may also include treasurers, assessors, land title company representatives, escrow agents, mortgage brokers, and others whom the Secretary of State deems appropriate.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony:

(In support) The bill is needed to create a uniform, interstate standard with respect to the use and recording of electronic documents. Interstate uniformity is desirable and efficient, and would benefit both the consumer and business. The bill would greatly simplify land use transactions, and thus make real estate transactions faster and less expensive. County auditors favor this bill because it allows for the modernization of the recording process and would simplify the storage of land records.

(Opposed) None.

Persons Testifying: (In support) Dennis Cooper, Uniform Law Commission; Megan Ridout and Jerry Handfield, Office of the Secretary of State.

Persons Signed In To Testify But Not Testifying: None.