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FISCAL IMPACT REPORT

SPONSOR Youngberg DATE TYPED 3/8/05 HB 913

SHORT TITLE Uniform Property Electronic Recording Act SB _____

ANALYST Hadwiger

APPROPRIATION (in \$000s)

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Office of the Attorney General (AG)

No comments were received from the New Mexico Association of Counties at the time this FIR was prepared.

SUMMARY

Synopsis of Bill

House Bill 913 would enact the Uniform Real Property Electronic Recording Act. This act provides legal authority for the acceptance and recording of real estate documents by county clerks in electronic format. The act authorizes clerks, in compliance with standards established by the Information Technology Commission in consultation with New Mexico county clerks, to begin accepting records in electronic form, storing electronic records, and setting up systems for searching for and receiving these land records. The Act provides that laws requiring an original, written, tangible document, a signature and either notification, acknowledgment, verification or witnessing, are satisfied by an electronic document and appropriate electronic signatures. The effective date of the Act is January 1, 2006.

Significant Issues

The proposed bill would be in substantially the same form as produced and recommended by the National Conference of Commissioners on Uniform State Laws (NCCUSL) in August, 2004. That organization explained the intent of the bill as follows:

The status of electronic information technology has progressed rapidly in recent years. Innovations in software, hardware, communications technology and security protocols have made it technically feasible to create, sign and transmit real estate transactions electronically. 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 acknowledgements 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 acknowledgement instead of handwritten ones, an electronic document might not be recordable under the laws of these states. Despite these uncertainties, recorders in approximately 40 counties in several states began recording electronic documents. These efforts depend, however, on the initiatives of individual recorders and the opportunities available under the laws of those states. They are piecemeal and offer only limited interoperability among the recording venues and across state lines. They do not provide a uniform legal structure for the acceptance and processing of electronic documents. The Uniform Real Property Electronic 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.

The Administrative Office of the Courts (AOC) and Office of the Attorney General (AG) were concerned that the proposed bill conflicts with many provisions of existing statute without specifically amending them. The AG wrote:

Section 3 of the Act provides: If a law requires, as a condition for recording, that a document be an original, be on paper or another tangible medium or be in writing, the requirement is satisfied by an electronic document satisfying the Uniform Real Property Electronic Recording Act. However, existing laws which specifically and in great detail govern the clerk's duties with regard to recording documents are not amended or repealed by this bill. Notwithstanding Section 3, the Act will conflict with those laws, and could cause confusion and uncertainty. For example, NMSA Section 14-8-7 provides "It shall be the duty of county clerks in this state to use either a good grade of nonfadeable permanent black ink or a good grade of black record typewriter ribbon in recording all instruments of writing which by law they are required to record." NMSA Section 14-8-8 requires criminal penalties (fines) for clerks not complying with that provision. NMSA Section 14-8-2 provides "It shall be the duty of the county clerk to record in a book of good size, which he shall keep in his office for this purpose, all land titles and other papers which by law should be recorded." NMSA Section 14-

9-4 requires the clerk to accept a “writing” affecting the title to real estate, manually record details in a “reception book”, and subjects the clerk to criminal penalties for failure to make those entries. NMSA Section 14-8-16 governs the filing of plats or other real property descriptions and requires certification by a licensed surveyor, and filing in duplicate. NMSA Section 14-8-11 requires the Attorney General and the “state comptroller” to select the form of recorded instruments for which recording fees may be charged, and county clerks are directed to “purchase printed forms for recording in record books...” NMSA Section 14-8-6 requires clerks to affix endorsements “on that document” when received for recording. NMSA Section 14-8-4 prohibits the filing of instruments of writing that are not acknowledged and certified.

FISCAL IMPLICATIONS

The bill may provide some cost savings to counties by allowing clerks to accept and store recorded documents in electronic format.

AOC noted there will be a minimal administrative cost for statewide update, distribution, and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced proceedings. New laws, amendments to existing laws, and resultant proceedings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

ADMINISTRATIVE IMPLICATIONS

Enactment of statutory procedures to allow county clerks to accept electronic documents and signatures could simplify county archival operations, as well as searching and retrieving documents.

TECHNICAL ISSUES

See AG concerns above.

ALTERNATIVES

Amend other statutes governing county clerks to conform to the requirements in HB913.

POSSIBLE QUESTIONS

1. Has the New Mexico Association of Counties endorsed this bill?

DH/lg