

Date of Hearing: March 27, 2019

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Cecilia Aguiar-Curry, Chair
AB 212 (Bonta) – As Amended March 18, 2019

SUBJECT: Counties: recording fees.

SUMMARY: Allows county recorders to use a \$1 fee collected pursuant to existing law for additional purposes. Specifically, this bill:

- 1) Allows the board of supervisors of any county to use a \$1 fee collected pursuant to existing law for the following additional purposes:
 - a) For restoration and preservation of the county recorder's permanent archival microfilm;
 - b) To implement and fund a county recorder archive program as determined by the county recorder; and,
 - c) To implement and maintain or utilize a trusted system, as defined in existing law governing the storage or recording of records in electronic media or in a cloud computing storage service, for the permanent preservation of recorded document images.
- 2) Removes a requirement that the fee shall no longer be imposed when the county recorder's document storage system has been converted to micrographics and the costs to do so have been paid.

FISCAL EFFECT: None

COMMENTS:

- 1) **Background.** County recorders are responsible for accepting, recording, storing and retrieving a variety of documents. These include deeds, deeds of trust, court decrees and many other documents affecting title to real property; commercial code filings; subdivision maps; vital statistics such as births, deaths and marriages; and other items. Recorders are authorized to charge fees for each document recorded at \$10 for the first page and \$3 for each additional page. Additional fees are allowed for specified purposes.

Recorders have been allowed since 1980 to charge an additional \$1 fee for filing every instrument, paper, or notice for record in order to defray the cost of converting the recorder's document storage system to micrographics, also known as microfilm.

Government agencies, as well as libraries and other entities with a need to store large volumes of records, have been using microfilm since the early 1900s to store records of all kinds. Modern, polyester-based microfilm is still being used to store records, especially those that must be kept for longer time periods (generally more than 10 years) or permanently, as one of its primary advantages is its extremely long shelf-life of up to 500 years. However, acetate microfilm from the earlier part of the last century degrades over time and must be replaced. Microfilm is also limited in the types of documents it can store,

such as maps or other large documents, according to the County Recorders' Association of California.

After the microfilm fee authority for Recorders was enacted in 1980, the state tasked the Secretary of State (SOS) to develop uniform statewide standards for storing permanent and nonpermanent documents in electronic media and required the use of a "trusted system" to do so. "Trusted system" was defined as "a combination of techniques, policies, and procedures for which there is no plausible scenario in which a document retrieved from or reproduced by the system could differ substantially from the document that is originally stored."

- 2) **Recent Legislation.** AB 22 (Bonta), Chapter 834, Statutes of 2017, was intended to modify existing laws regulating document storage to make it easier for state and local governments to preserve and store public records in a more cost effective and efficient manner by utilizing cloud-based electronic storage services. AB 22 specifically authorized state and local agencies to store documents through the use of a cloud computing storage service.

AB 22 expanded the definition of a "trusted system" to include a cloud computing storage service that complies with International Organization for Standardization ISO/IEC 27001:2013, or other applicable industry-recognized standard relating to security techniques and information security management, and provides administrative users with controls to prevent stored records from being overwritten, deleted, or altered.

AB 22 additionally required a trusted system used by state agencies to comply with applicable standards articulated in the State Administrative Manual (SAM) and the Statewide Information Management Manual (SIMM), and allowed (but did not require) local agencies to comply with these standards.

AB 2225 (Limón), Chapter 535, Statutes of 2018, further clarified these statutes by requiring the SOS to develop the statewide standards for storing records electronically or in a cloud storage service in consultation with the California Department of Technology. In doing so, the SOS must use standards accredited by the American National Standards Institute or other applicable industry-recognized standards making body, including the International Organization for Standardization TR 15801:2017 or successor standard.

AB 2225 required public records stored or recorded in electronic media or in a cloud computing service by a state agency to comply with a trusted system as defined in the statewide standards, and clarified that local agencies are not prohibited from adopting these standards. The bill also clarified that the SAM and SIMM standards did not apply to local agencies unless they have a service system interconnection or data exchange with a state agency, or if they contract with a state agency for information systems. In such situations, the bill required written agreements between state and local agencies to establish terms that protect relevant public records.

- 3) **Bill Summary and Author's Statement.** This bill allows county recorders to use the \$1 fee originally authorized in 1980 to: restore and preserve their permanent archival microfilm; implement and fund a county recorder archive program; and, use a trusted system for storing records in electronic media or in a cloud computing storage service for the permanent preservation of recorded document images. The bill retains recorders' authority to utilize the fee to convert documents to microfilm.

According to the author, "The current Government code is antiquated and limited to costly microfilm. This bill would update current law to reflect current needs and the legislative flexibility in AB 22 from 2017. Specifically, this bill would allow counties to use existing funds...to restore and preserve documents in a 'future proof' matter. Thus allowing recorders the necessary flexibility and funding to meet their statutory responsibilities." This bill is sponsored by the County Recorders' Association of California.

- 4) **Committee Amendments.** The Committee may wish to consider the following amendments:
 - a) **Legislative Review of Expanded Authority.** State and local agencies were authorized to store records using cloud computing storage services only two years ago. According to the County Recorders' Association of California, no recorders are utilizing this technology yet. In addition, the authorized purpose of the fee that is the subject of this bill has not been changed since its original enactment in 1980 – nearly 40 years ago. This bill significantly expands the allowable uses of this fee for three additional purposes. The Committee may wish to consider adding a sunset date to this bill to give the Legislature an opportunity to review the effects of these changes before making them permanent.
 - b) **Cross-reference.** This bill refers to a definition of trusted system in Government Code section 12168.7, which also contains cross-references to code sections authorizing various agencies to use a trusted system, but does not add the code section being amended by this bill. The committee may wish to add this cross-reference.
- 5) **Arguments in Support.** The County Recorders' Association of California, sponsor of this bill, states, "This bill would offer County Recorders the option of utilizing newer methods of preservation. This not only reduces the reliance on microfilm for permanent preservation, but also allows for multiple methods of preservation, increasing the likelihood that recorded documents will be preserved for future generations. Additionally, the importance of using archival preservation methods are critical to ensure long term preservation of essential records. In most California counties Recorder archival programs are non-existent. The ability for the Recorders to create and maintain an archival program would ensure permanent and archival records are retained, preserved, converted, and made available to (the) public."
- 6) **Arguments in Opposition.** None on file.

REGISTERED SUPPORT / OPPOSITION:

Support

County Recorders Association of California [SPONSOR]
California State Association of Counties

Opposition

None on file

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