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BILL ANALYSIS

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Senate Bill 791 (as enacted)
Sponsor: Senator Gerald Van Woerkom
Senate Committee: Local, Urban and State Affairs
House Committee: Intergovernmental and Regional Affairs

PUBLIC ACT 123 of 2010

Date Completed: 12-7-10

RATIONALE

In 2000, changes to Federal and State law provided a legal framework for conducting transactions electronically, establishing the validity and enforceability of electronic documents and electronic signatures. At the Federal level, under the Electronic Signatures in Global and National Commerce (E-Sign) Act, electronic signatures, contracts, and other records may not be denied legal effect or enforceability solely because they are electronic. In Michigan, the Uniform Electronic Transactions Act (UETA) gives legal effect to electronic records and signatures. Those laws, however, do not specifically mention real estate transactions or authorize registers of deeds to accept electronic records as public records of property sales or conveyances. Although some registers of deeds began to accept electronic records of real estate transactions, others were uncertain about their legal authority to do so. To address concerns of this nature, the Uniform Law Commission (which promulgates uniform laws for adoption by the states) designed model legislation that provides for the use of electronic documents and electronic signatures in records of real estate transactions. It was suggested that Michigan implement a version of that model law.

- Provides that an electronic document satisfies any requirement that a document be an original for the purpose of recording.
- Provides that an electronic signature satisfies a requirement that a document be signed for the purpose of recording.
- Creates the Electronic Recording Commission and requires it to adopt standards to implement the Act, keeping the standards in harmony with those of other jurisdictions that enact it.
- Allows a county register of deeds to accept electronic documents for recording.
- Requires a county register of deeds who implements functions related to the recording of electronic documents to do so in compliance with the standards established by the Commission.
- Requires a county register of deeds who accepts electronic documents to continue to accept paper documents.

The bill took effect on July 19, 2010.

Registers of Deeds

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 will be satisfied by an electronic document. Also, if a law requires as a condition for recording that a document be signed, the requirement will be satisfied by an electronic signature.

CONTENT

The bill created the "Uniform Real Property Electronic Recording Act" to provide for the recording of electronic documents by a county register of deeds. Specifically, the bill does all of the following:

("Document" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form, and that is eligible to be recorded in the land records maintained by the county register of deeds. "Electronic document" means a document that the county register of deeds receives in an electronic form.

"Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a document and executed or adopted by a person with the intent to sign the document.)

A requirement that a document or signature associated with a document be notarized, acknowledged, verified, witnessed, or made under oath will be satisfied if the electronic signature of the person authorized to perform that act, and all other information required to be included, is attached to or logically associated with the document or signature. A physical or electronic image of a stamp, impression, or seal does not have to accompany an electronic signature.

The Act does not require a register of deeds to accept electronic documents for recording. A county register of deeds who accepts electronic documents for recording must continue to accept paper documents as authorized by State law, and place entries for both types of documents in the same index.

A county register of deeds may do any of the following:

- Receive, index, store, archive, and transmit electronic documents.
- Provide for access to, and for search and retrieval of, documents and information by electronic means.
- Convert paper documents accepted for recording into electronic form.
- Convert into electronic form information recorded before the register of deeds began to record electronic documents.
- Accept electronically any fee or tax that the register of deeds is authorized to collect.

A register of deeds also may agree with other officials of a state or a political subdivision of a state, or of the United States, on procedures or processes to facilitate the electronic satisfaction of prior

approvals and conditions precedent to recording and the electronic payment of fees or taxes.

A county register of deeds who implements any of those functions must do so in compliance with any standards established by the Electronic Recording Commission.

Electronic Recording Commission

Effective January 1, 2011, the Commission is created within the Department of Technology, Management, and Budget (DTMB). The Commission will consist of eight members, including the DTMB Director or his or her designee (who will be a nonvoting member) and seven members appointed by the Governor, as follows:

- Four county registers of deeds.
- One individual engaged in the land title profession.
- One individual engaged in the business of banking.
- One licensed attorney whose practice emphasizes real property matters.

The appointed members must serve for a term of two years or until a successor is appointed, whichever is later, except that the members first appointed will serve one-, two-, or three-year terms. The Governor may remove an appointed member for incompetency, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or any other good cause.

The DTMB Director must call the first Commission meeting. At that meeting, the Commission must elect a chairperson and other officers it considers necessary or appropriate. The Commission then must meet at least quarterly, or more frequently at the call of the chairperson or if requested by at least five members. The Commission will be subject to the Open Meetings Act and the Freedom of Information Act.

Members must serve without compensation, but may be reimbursed for their actual and necessary expenses incurred in the performance of their official duties as Commission members.

The Commission is required to adopt standards to implement the Act. To keep the standards and practices of county registers of deeds in Michigan in harmony

with those of county registers of deeds in other jurisdictions that substantially enact the Act, and to keep the technology they use compatible with technology used by offices of county registers of deeds in those other jurisdictions, the Commission, so far as is consistent with the purposes, policies, and provisions of the Act, in adopting, amending, and repealing standards, must consider all of the following:

- Standards and practices of other jurisdictions.
- The most recent standards promulgated by national standard-setting bodies, such as the Property Records Industry Association.
- The views of interested people and governmental officials and entities.
- The needs of counties of varying size, population, and resources.
- Standards requiring adequate information security protection to ensure that electronic documents are accurate, authentic, preserved adequately, and resistant to tampering.

Other Provisions

When the Act is applied and construed, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

The Act states that it does not invalidate electronic documents recorded under it, the Uniform Electronic Transactions Act, or the Electronic Signatures in Global and National Commerce Act, before the establishment of standards by the Electronic Recording Commission.

The new Act also states that it modifies, limits, and supersedes the Federal Electronic Signatures in Global and National Commerce (E-Sign) Act, but does not modify, limit, or supersede Section 101(c) of that Act, or authorize electronic delivery of any of the notices described in Section 103(b) of that Act.

(The E-Sign Act provides that, with respect to any transaction in or affecting interstate or foreign commerce, a signature, contract, or other record may not be denied legal effect, validity, or enforceability solely because it is in electronic form; and a contract may not be denied legal effect,

validity, or enforceability solely because an electronic signature or electronic record was used in its formation. Section 101(c) provides that if a statute, regulation, or other rule of law requires that information relating to a transaction in or affecting interstate or foreign commerce be provided or made available to a consumer in writing, the use of an electronic record satisfies the requirement if the consumer has consented affirmatively to such use and has not withdrawn consent, and the consumer, before consenting, is informed of his or her rights regarding consent and the ability to obtain the information on paper or in other nonelectronic form.

Section 103(b) lists documents that are not subject to Section 101. These include court orders or notices or official court documents required in connection with court proceedings, and specified notices pertaining to the termination of utility services, action taken under a credit agreement secured by or a rental agreement for an individual's primary residence, and other matters.)

MCL 565.841-565.847

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The new Act removes any confusion about whether electronic documents and electronic signatures can be accepted as records of real estate transactions, building on the legal authority established under UETA and the E-Sign Act. The definitions and other provisions in the new Act are consistent with those in UETA. While UETA gives legal effect to electronic documents and signatures, that law does not explicitly deal with real estate transactions or address whether those electronic documents carry the same weight in the public record as paper records. Statutory provisions that authorize electronic recording are important because Michigan law requires registers of deeds to keep public records of all property sales and conveyances. That requirement is designed to establish a clear chain of title, specifying each prior property owner and recording the transfer of the property from one to the next. State law requires that the documents

be original and signed as a means to verify their legitimacy.

The new Act establishes procedures that will meet the same objectives while allowing registers of deeds to take advantage of new technologies for accepting, storing, and transmitting documents electronically. Electronic documents can be generated in a number of ways: Paper documents can be scanned and then stored electronically, or documents can be generated, signed, and stored electronically, with no paper original. Additionally, formatting and other information can be incorporated into electronic records, enabling them to be transmitted, stored, and printed more easily than paper records are. For example, if all electronic records were formatted in a uniform manner, then the information in those documents could be automatically imported into an index without the need to re-enter the data, saving time and improving accuracy. Those efficiencies can both reduce costs for registers of deeds and make the entire transaction faster and more efficient.

The Act does not require the use of any particular technology, but instead authorizes the Electronic Recording Commission to determine suitable standards that are consistent with standards in other states and jurisdictions. As the use of electronic documents expands, the Act provides the framework for an orderly transition from the paper-based system to greater reliance on electronic records. Over 20 other states have already implemented similar legislation. By doing the same, Michigan will help avoid the adoption of inconsistent or incompatible standards that could cause problems in the future.

In addition, since some registers of deeds, including those in Oakland and Macomb Counties, have already begun accepting electronic records, based on the authority granted under the E-Sign Act and UETA, the new Act specifies that it does not invalidate documents already recorded under it, UETA, or the E-Sign Act before the Commission establishes standards.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

There should be only minimal costs associated with the creation of the Electronic Recording Commission. Although there will be no compensation for commissioners, the bill allows reimbursement for costs associated with Commission duties. The estimated additional costs are indeterminate but should be minimal.

Any costs associated with accepting electronic documents or converting documents into electronic format should be absorbed within individual counties' budgets. However, depending on staff size and technological capability, the conversion of documents into electronic format could create additional costs for some local registers of deeds in excess of current budgeted amounts. The estimate of these additional costs is indeterminate.

Fiscal Analyst: Joe Carrasco

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.