

CHAPTER 356

GOVERNMENT - STATE

SENATE BILL 16-115

BY SENATOR(S) Martinez Humenik, Aguilar, Baumgardner, Cooke, Garcia, Grantham, Guzman, Heath, Holbert, Kefalas, Kerr, Lambert, Marble, Merrifield, Roberts, Scheffel, Scott, Tate, Todd, Ulibarri, Woods, Cadman;
also REPRESENTATIVE(S) Moreno and Conti, Lebsock.

AN ACT

CONCERNING AN ELECTRONIC FILING SYSTEM FOR DOCUMENTS RECORDED WITH A COUNTY CLERK AND RECORDER, AND, IN CONNECTION THEREWITH, CREATING THE ELECTRONIC RECORDING TECHNOLOGY BOARD, WHICH IS AN ENTERPRISE; AUTHORIZING THE BOARD TO SET AN ADDITIONAL FILING SURCHARGE FOR A FIVE-YEAR PERIOD; REQUIRING COUNTIES TO TRANSMIT THE PROCEEDS OF THE BOARD'S SURCHARGE TO THE STATE FOR DEPOSIT IN A CASH FUND ADMINISTERED BY THE BOARD; REQUIRING THE BOARD TO MAKE GRANTS FROM THE FUND TO COUNTIES TO CREATE, MAINTAIN, IMPROVE, OR REPLACE ELECTRONIC FILING SYSTEMS; ESTABLISHING REPORTING REQUIREMENTS FOR THE BOARD; INCREASING A LOCAL FILING SURCHARGE; AND MAKING AN APPROPRIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 2-3-1203, **add** (3) (ii.5) (III) as follows:

2-3-1203. Sunset review of advisory committees. (3) The following dates are the dates on which the statutory authorization for the designated advisory committees is scheduled for repeal:

(ii.5) September 1, 2022:

(III) THE ELECTRONIC RECORDING TECHNOLOGY BOARD CREATED IN PART 4 OF ARTICLE 21 OF TITLE 24, C.R.S.

SECTION 2. In Colorado Revised Statutes, 24-1-111, **add** (3) as follows:

24-1-111. Department of state - creation. (3) THE DEPARTMENT OF STATE INCLUDES THE ELECTRONIC RECORDING TECHNOLOGY BOARD ESTABLISHED IN SECTION 24-21-402 (1), AND ITS POWERS, DUTIES, AND FUNCTIONS, AS IF THE BOARD

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

WERE TRANSFERRED BY A **TYPE 1** TRANSFER, AS SUCH TRANSFER IS DEFINED IN SECTION 24-1-105.

SECTION 3. In Colorado Revised Statutes, **add** part 4 to article 21 of title 24 as follows:

PART 4
ELECTRONIC RECORDING
TECHNOLOGY BOARD

24-21-401. Definitions. AS USED IN THIS PART 4, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "BOARD" MEANS THE ELECTRONIC RECORDING TECHNOLOGY BOARD CREATED IN SECTION 24-21-402 (1).

(2) "ELECTRONIC" MEANS RELATING TO TECHNOLOGY HAVING ELECTRICAL, DIGITAL, MAGNETIC, WIRELESS, OPTICAL, ELECTROMAGNETIC, OR SIMILAR CAPABILITIES.

(3) "ELECTRONIC FILING SYSTEM" MEANS THE DOCUMENT MANAGEMENT SYSTEM USED BY A CLERK AND RECORDER TO COMPLY WITH THE STATUTORY REQUIREMENTS SET FORTH IN PART 4 OF ARTICLE 10 OF TITLE 30, C.R.S., FOR:

(a) ELECTRONIC DOCUMENTS RECEIVED FOR RECORDING OR FILING IN THE CLERK AND RECORDER'S OFFICE; AND

(b) PAPER DOCUMENTS RECEIVED FOR RECORDING OR FILING IN THE CLERK AND RECORDER'S OFFICE THAT ARE CONVERTED FROM PAPER, MICROFILM, OR MICROFICHE INTO AN ELECTRONIC FORMAT.

(4) "FUND" MEANS THE ELECTRONIC RECORDING TECHNOLOGY FUND CREATED IN SECTION 24-21-404 (1).

24-21-402. Electronic recording technology board - creation - enterprise status. (1) THE ELECTRONIC RECORDING TECHNOLOGY BOARD IS CREATED IN THE DEPARTMENT OF STATE. THE BOARD CONSISTS OF THE SECRETARY OF STATE, OR HIS OR HER DESIGNEE, AND EIGHT OTHER MEMBERS APPOINTED AS FOLLOWS:

(a) ONE MEMBER FROM THE REAL ESTATE SECTION OF THE COLORADO BAR ASSOCIATION APPOINTED BY THE GOVERNOR;

(b) ONE MEMBER FROM THE TITLE INDUSTRY APPOINTED BY THE GOVERNOR;

(c) ONE MEMBER FROM THE MORTGAGE LENDING INDUSTRY APPOINTED BY THE SECRETARY OF STATE;

(d) THREE MEMBERS WHO ARE CLERK AND RECORDERS FROM A FIRST OR SECOND CLASS COUNTY AS DESIGNATED IN SECTION 30-1-101, C.R.S., WITH ONE APPOINTED BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND THE OTHER TWO APPOINTED BY THE SECRETARY OF STATE; AND

(e) TWO MEMBERS WHO ARE CLERK AND RECORDERS FROM A THIRD, FOURTH, OR FIFTH CLASS COUNTY AS DESIGNATED IN SECTION 30-1-101, C.R.S., WITH ONE APPOINTED BY THE PRESIDENT OF THE SENATE AND THE OTHER APPOINTED BY THE SECRETARY OF STATE.

(f) APPOINTING AUTHORITIES SHALL APPOINT THE INITIAL BOARD MEMBERS FOR TERMS BEGINNING ON JULY 1, 2016, AND THE BOARD SHALL HAVE ITS FIRST MEETING BY AUGUST 15, 2016. ALL OF THE BOARD MEMBERS OTHER THAN THE SECRETARY OF STATE, OR HIS OR HER DESIGNEE, SERVE TWO-YEAR TERMS; EXCEPT THAT THE INITIAL TERM FOR THE MEMBER APPOINTED FROM THE TITLE INDUSTRY IS THREE YEARS AND THE TERM OF TWO OF THE MEMBERS REPRESENTING COUNTIES DESIGNATED BY THE SECRETARY OF STATE IS ONE YEAR.

(g) BOARD MEMBERS SERVE WITHOUT COMPENSATION; EXCEPT THAT BOARD MEMBERS ARE ENTITLED TO REIMBURSEMENT FROM THE FUND FOR ACTUAL AND NECESSARY EXPENSES INCURRED IN THE PERFORMANCE OF THEIR DUTIES. A VACANCY ON THE BOARD IS FILLED IN THE SAME MANNER AS THE ORIGINAL APPOINTMENT WAS MADE. A PERSON APPOINTED TO FILL A VACANCY SERVES FOR THE REMAINDER OF THE UNEXPIRED TERM.

(2) THE BOARD CONSTITUTES AN ENTERPRISE FOR PURPOSES OF SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION SO LONG AS IT RETAINS THE AUTHORITY TO ISSUE REVENUE BONDS UNDER SECTION 24-21-405 AND RECEIVES LESS THAN TEN PERCENT OF ITS TOTAL REVENUES IN GRANTS FROM ALL COLORADO STATE AND LOCAL GOVERNMENTS COMBINED. THE BUSINESS PURPOSE OF THE BOARD IS TO DEVELOP AND MODERNIZE ELECTRONIC FILING SYSTEMS THROUGHOUT THE STATE. SO LONG AS IT CONSTITUTES AN ENTERPRISE UNDER THIS SECTION, THE BOARD IS NOT SUBJECT TO ANY PROVISIONS OF SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION.

24-21-403. Core goals - powers and duties - rules. (1) THE GENERAL ASSEMBLY HEREBY DECLARES THAT THE CORE GOALS IN DEVELOPING AND MODERNIZING ELECTRONIC FILING SYSTEMS ARE TO:

(a) ASSURE THE SECURITY, ACCURACY, AND PRESERVATION OF PUBLIC RECORDS REQUIRED TO BE MAINTAINED BY A CLERK AND RECORDER;

(b) MAINTAIN THE PRIVACY OF PERSONAL IDENTIFYING INFORMATION, ONLINE PUBLIC ACCESS TO WHICH IS NOT NECESSARY TO THE PROPER FUNCTIONING OF LAND TITLE RECORDS OR OTHER PUBLIC RECORDS REQUIRED TO BE MAINTAINED BY A CLERK AND RECORDER;

(c) ASSURE THAT THE SEQUENCE IN WHICH DOCUMENTS ARE RECEIVED BY A CLERK AND RECORDER FOR RECORDING OR FILING IS ACCURATELY REFLECTED, TO THE GREATEST EXTENT PRACTICABLE, IN THE RECORDS OF THE CLERK AND RECORDER, REGARDLESS OF WHETHER DOCUMENTS ARE RECEIVED ELECTRONICALLY OR BY OTHER MEANS;

(d) PROVIDE FOR ONLINE PUBLIC ACCESS TO PUBLIC RECORDS MAINTAINED BY A CLERK AND RECORDER; AND

(e) ASSURE THAT ELECTRONIC FILING SYSTEMS USED IN DIFFERENT COUNTIES ARE SIMILAR SO AS TO FACILITATE THE SUBMISSION AND SEARCHING OF ELECTRONIC RECORDS.

(2) IN ORDER TO ACCOMPLISH ITS BUSINESS PURPOSE, THE BOARD MAY IMPOSE AN ELECTRONIC FILING SURCHARGE OF UP TO TWO DOLLARS THAT IS UNIFORMLY COLLECTED ON ALL DOCUMENTS RECEIVED BY A COUNTY CLERK AND RECORDER FOR RECORDING OR FILING ON OR AFTER JANUARY 1, 2017, THROUGH DECEMBER 31, 2021.

(3) THE BOARD SHALL:

(a) DEVELOP A STRATEGIC PLAN THAT INCORPORATES THE CORE GOALS;

(b) DETERMINE FUNCTIONALITY STANDARDS FOR AN ELECTRONIC FILING SYSTEM THAT SUPPORT THE CORE GOALS;

(c) ISSUE A REQUEST FOR PROPOSAL FOR ELECTRONIC FILING SYSTEM EQUIPMENT AND SOFTWARE THAT THE COUNTIES MAY CHOOSE TO ACQUIRE;

(d) DEVELOP BEST PRACTICES FOR AN ELECTRONIC FILING SYSTEM;

(e) PROVIDE TRAINING TO CLERK AND RECORDERS RELATED TO ELECTRONIC FILING SYSTEMS;

(f) AWARD GRANTS IN ACCORDANCE WITH SECTION 24-21-404; AND

(g) PREPARE REPORTS IN ACCORDANCE WITH SECTION 24-21-406.

(4) THE BOARD MAY:

(a) ISSUE BONDS IN ACCORDANCE WITH SECTION 24-21-405; AND

(b) PROMULGATE ANY RULES NECESSARY TO ADMINISTER THE PROVISIONS OF THIS PART 4.

24-21-404. Electronic recording technology fund - electronic filing - grants.

(1) (a) THE ELECTRONIC RECORDING TECHNOLOGY FUND IS CREATED IN THE STATE TREASURY AND CONSISTS OF MONEY CREDITED THERETO IN ACCORDANCE WITH SECTION 30-10-421 (3) (a), C.R.S. THE MONEY IN THE FUND IS CONTINUOUSLY APPROPRIATED TO THE BOARD TO AWARD GRANTS UNDER SUBSECTION (2) OF THIS SECTION AND FOR ANY OTHER PURPOSE AUTHORIZED BY THIS PART 4, INCLUDING ANY DIRECT AND INDIRECT ADMINISTRATIVE EXPENSES.

(b) THE MONEY IN THE FUND SHALL NOT BE DEPOSITED IN OR TRANSFERRED TO THE GENERAL FUND OR ANY OTHER FUND. ALL INTEREST AND INCOME DERIVED FROM THE INVESTMENT AND DEPOSIT OF MONEY IN THE FUND ARE CREDITED TO THE FUND. ANY UNEXPENDED AND UNENCUMBERED MONEY IN THE FUND AT THE END OF A FISCAL YEAR SHALL REMAIN IN THE FUND AND NOT BE CREDITED OR TRANSFERRED TO THE GENERAL FUND OR ANOTHER FUND.

(2) THE BOARD SHALL USE MONEY IN THE FUND TO AWARD GRANTS TO COUNTIES TO ESTABLISH, MAINTAIN, IMPROVE, OR REPLACE THEIR ELECTRONIC FILING SYSTEMS. THE BOARD SHALL AWARD GRANTS, WHENEVER POSSIBLE, IN A MANNER THAT IS DESIGNED TO ACHIEVE THE CORE GOALS SPECIFIED IN SECTION 24-21-403 (1) OVER A REASONABLE PERIOD. IN MAKING GRANTS TO MAINTAIN EXISTING ELECTRONIC FILING SYSTEMS, THE BOARD SHALL GIVE PRIORITY TO RURAL COUNTIES AND TO COUNTIES THAT DO NOT HAVE SUFFICIENT REVENUE FROM THE SURCHARGE PROCEEDS RETAINED IN ACCORDANCE WITH SECTION 30-10-421 (3) (b), C.R.S., TO MAINTAIN THEIR ELECTRONIC FILING SYSTEMS. THE BOARD SHALL DEVELOP A GRANT APPLICATION PROCESS AND AWARD GRANTS BASED ON A SCORING SYSTEM THAT INCORPORATES THE CORE GOALS.

(3) A COUNTY THAT RECEIVES A GRANT FROM THE BOARD SHALL COOPERATE WITH THE BOARD IN ITS PREPARATION OF THE REPORT REQUIRED BY SECTION 24-21-406 (1).

24-21-405. Authority to issue bonds. THE BOARD MAY, BY RESOLUTION, AUTHORIZE AND ISSUE REVENUE BONDS THAT ARE PAYABLE ONLY FROM THE MONEY IN THE FUND. BONDS MAY BE ISSUED ONLY AFTER APPROVAL BY BOTH HOUSES OF THE GENERAL ASSEMBLY ACTING EITHER BY BILL OR JOINT RESOLUTION AND AFTER APPROVAL BY THE GOVERNOR IN ACCORDANCE WITH SECTION 39 OF ARTICLE V OF THE STATE CONSTITUTION.

24-21-406. Reporting - annual - five-year report. (1) NOTWITHSTANDING SECTION 24-1-136 (11), ON OR BEFORE SEPTEMBER 1, 2017, AND EACH SEPTEMBER 1 THEREAFTER UNTIL SEPTEMBER 1, 2022, THE BOARD SHALL PREPARE A REPORT THAT, FOR EACH GRANT MADE DURING THE PRIOR FISCAL YEAR, DESCRIBES THE:

- (a) COUNTY THAT RECEIVED THE GRANT;
- (b) GRANT AMOUNT;
- (c) PURPOSE OF THE GRANT; AND
- (d) GRANT OUTCOMES.

(2) THE BOARD SHALL FOLLOW-UP WITH A COUNTY THAT RECEIVES A GRANT AS NECESSARY FOR THE DEPARTMENT OF STATE TO COMPLETE THE REPORT. THE DEPARTMENT SHALL PUBLISH A COPY OF THE REPORT ON THE DEPARTMENT'S WEBSITE.

(3) ON OR BEFORE JANUARY 1, 2021, THE BOARD SHALL REPORT TO THE GENERAL ASSEMBLY ABOUT THE OVERALL SUCCESS OF THE GRANT PROGRAM ESTABLISHED BY THIS PART 4.

24-21-407. Repeal of part. THIS PART 4 IS REPEALED, EFFECTIVE SEPTEMBER 1, 2022. PRIOR TO SUCH REPEAL, THE BOARD SHALL BE REVIEWED AS PROVIDED IN SECTION 2-3-1203, C.R.S.

SECTION 4. In Colorado Revised Statutes, 30-10-409, **amend** (5) as follows:

30-10-409. Reception book - form - contents - acceptance for recording.

(5) A clerk and recorder who decides to accept electronic filings shall establish procedures for such electronic filings that are consistent with ~~the rules promulgated by the secretary of state pursuant to section 30-10-424 (1) (c) (II)~~ ANY STANDARDS OR RULES ESTABLISHED BY THE ELECTRONIC RECORDING TECHNOLOGY BOARD PURSUANT TO SECTION 24-21-403, C.R.S. No electronic filings shall be accepted by the clerk and recorder until the clerk and recorder has established and made publically available the procedures for electronic filings. Nothing in this article shall be interpreted to require any clerk and recorder to accept electronic filings. Nothing in this article shall abridge the power of any clerk and recorder to accept or reject electronic filings in accordance with the provisions of section 38-35-202, C.R.S.

SECTION 5. In Colorado Revised Statutes, 30-10-421, **amend** (1) (b), (3) (b), and (6); **add** (1) (c); and **recreate and reenact, with amendments**, (3) (a) as follows:

30-10-421. Filing surcharge - definitions. (1) (b) Beginning July 1, 2004, and through ~~June 30, 2017~~ DECEMBER 31, 2026, the county clerk and recorder shall collect a surcharge of one dollar for each document received for recording or filing in his or her office. The surcharge shall be in addition to any other fees permitted by statute.

(c) BEGINNING JANUARY 1, 2017, AND THROUGH DECEMBER 31, 2021, THE COUNTY CLERK AND RECORDER SHALL COLLECT THE SURCHARGE IMPOSED BY THE ELECTRONIC RECORDING TECHNOLOGY BOARD UNDER SECTION 24-21-403 (2), C.R.S., FOR EACH DOCUMENT RECEIVED FOR RECORDING OR FILING IN HIS OR HER OFFICE. THE SURCHARGE IS IN ADDITION TO ANY OTHER FEES PERMITTED BY STATUTE.

(3) (a) A COUNTY CLERK AND RECORDER SHALL TRANSMIT MONTHLY EACH SURCHARGE COLLECTED IN ACCORDANCE WITH PARAGRAPH (c) OF SUBSECTION (1) OF THIS SECTION TO THE STATE TREASURER, WHO SHALL CREDIT THE SAME TO THE ELECTRONIC RECORDING TECHNOLOGY FUND CREATED IN SECTION 24-21-404, C.R.S. ANY MONEY TRANSMITTED TO THE STATE TREASURER IS COLLECTED ON BEHALF OF THE ELECTRONIC RECORDING TECHNOLOGY BOARD AND IS EXCLUDED FROM THE COUNTY'S FISCAL YEAR SPENDING.

(b) The county clerk and recorder shall retain the proceeds of the surcharge collected pursuant to paragraph (b) of subsection (1) of this section. Such proceeds shall be utilized to defray the costs of

~~(f) establishing, maintaining, or improving, OR REPLACING an electronic filing system. or~~

~~(H) Establishing, maintaining, or improving a core filing system.~~

(6) As used in this part 4, unless the context otherwise requires:

(a) ~~"Core filing system" means the document management system used by the clerk and recorder to comply with the statutory requirements set forth in this part 4 related to paper documents received for recording or filing in his or her office.~~

(b) "Electronic filing system" means the document management system used by the clerk and recorder to comply with the statutory requirements set forth in this part 4 ~~related to~~ FOR:

(I) Electronic documents received for recording or filing in his or her office; AND

(II) PAPER DOCUMENTS RECEIVED FOR RECORDING OR FILING IN THE CLERK AND RECORDER'S OFFICE THAT ARE CONVERTED FROM PAPER, MICROFILM, OR MICROFICHE INTO AN ELECTRONIC FORMAT.

(c) ~~"Necessary improvements to the core filing system" means any change to the core filing system that is required in order to establish an electronic filing system.~~

SECTION 6. In Colorado Revised Statutes, **repeal** 30-10-424 as follows:

30-10-424. Uniform administration - secretary of state. ~~(1) In order to ensure uniformity among electronic filing systems, and in addition to any other powers prescribed by law, the secretary of state shall have the following powers to:~~

~~(a) Assist a county clerk and recorder in conducting an assessment of the core filing system to identify necessary improvements to the core filing system;~~

~~(b) Provide training to assist a clerk and recorder in establishing, maintaining, or improving an electronic filing system;~~

~~(c) Provide training related to necessary improvements to the core filing system;~~

~~(d) Repealed.~~

~~(e) Establish a statewide purchasing network for the acquisition of hardware, software, and services related to an electronic filing system, which shall include all eligible clerk and recorders, and, in connection therewith:~~

~~(f) Establish eligibility requirements for the statewide purchasing network;~~

~~(H) Issue requests for information or requests for proposals or use any other standard vendor selection practices determined to be best suited for selecting appropriate contractors for the statewide purchasing network; and~~

~~(HH) Establish standards by which a county officer other than a county clerk and recorder may voluntarily become part of the statewide purchasing network for the acquisition of hardware, software, and services related to the administration of the duties for his or her office;~~

~~(f) Promulgate rules that establish:~~

~~(I) Standards for necessary improvements to the core filing systems;~~

~~(H) Standards for all electronic filing systems, including but not limited to a minimum standard for integration and coordination of information between counties and the methods by which the clerk and recorder will accept payment of fees for~~

~~electronic filings; and~~

~~(III) Repealed.~~

~~(g) Promulgate any other rules necessary to administer the provisions of this section or section 30-10-421.~~

SECTION 7. Appropriation. For the 2016-17 state fiscal year, \$5,289 is appropriated to the department of state for use by the administration division. This appropriation is from the department of state cash fund created in section 24-21-104 (3) (b), C.R.S., and is based on an assumption that the division will require an additional 0.1 FTE. To implement this act, the division may use this appropriation for personal services.

SECTION 8. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 10, 2016