

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 16-0952.02 Ed DeCecco x4216

SENATE BILL 16-115

SENATE SPONSORSHIP

Martinez Humenik,

HOUSE SPONSORSHIP

(None),

Senate Committees
Local Government

House Committees

A BILL FOR AN ACT

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

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The bill creates the electronic recording technology board (board) in the department of state. The board, which is authorized to issue revenue bonds, is established as an enterprise. So long as it constitutes an enterprise, the board is not subject to any provisions of section 20 of article X of the state constitution. The board sunsets in 6 years, but prior to that sunset, it is subject to a sunset review.

The board is authorized to impose a surcharge of up to \$2 on all documents that a clerk and recorder receives for recording or filing. If imposed, counties are required to collect the surcharge on behalf of the board and transmit it to the state treasurer for deposit in the newly created electronic recording technology fund (fund).

The board is required to:

- ! Develop a strategic plan incorporating the core goals of security, accuracy, sequencing, online public access, standardization, and preservation of public records;
- ! Determine functionality standards for an electronic filing system that support the core goals;
- ! Issue a request for proposal for electronic filing system equipment and software that will be available to counties on an optional basis;
- ! Develop best practices for an electronic filing system;
- ! Provide training to clerk and recorders related to electronic filing systems; and
- ! Make grants to counties to establish, maintain, improve, or replace electronic filing systems for documents that are recorded with a clerk and recorder. In awarding grants, the board is required to give priority for grants to counties that do not have sufficient revenue from the surcharge proceeds to maintain their existing electronic filing systems.

The money in the fund is continuously appropriated to the board to be used for these purposes.

The bill repeals the secretary of state's powers to ensure uniformity related to electronic filing systems, which powers become the board's responsibility, and requires the department of state to prepare an annual report that is published online about the grants that the board made in the prior fiscal year.

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

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

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

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

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

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

17 **24-21-402. Electronic recording technology board - creation**
18 **- enterprise status.** (1) THE ELECTRONIC RECORDING TECHNOLOGY
19 BOARD IS CREATED IN THE DEPARTMENT OF STATE. THE BOARD CONSISTS
20 OF THE SECRETARY OF STATE, OR HIS OR HER DESIGNEE, AND EIGHT OTHER
21 MEMBERS APPOINTED AS FOLLOWS:

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

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

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

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

6 (e) TWO MEMBERS WHO ARE CLERK AND RECORDERS FROM A
7 THIRD, FOURTH, OR FIFTH CLASS COUNTY AS DESIGNATED IN SECTION
8 30-1-101, C.R.S., WITH ONE APPOINTED BY THE PRESIDENT OF THE SENATE
9 AND THE OTHER APPOINTED BY THE SECRETARY OF STATE.

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

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

25 (2) THE BOARD CONSTITUTES AN ENTERPRISE FOR PURPOSES OF
26 SECTION 20 OF ARTICLE X OF THE STATE CONSTITUTION SO LONG AS IT
27 RETAINS THE AUTHORITY TO ISSUE REVENUE BONDS UNDER SECTION

1 24-21-405 AND RECEIVES LESS THAN TEN PERCENT OF ITS TOTAL
2 REVENUES IN GRANTS FROM ALL COLORADO STATE AND LOCAL
3 GOVERNMENTS COMBINED. THE BUSINESS PURPOSE OF THE BOARD IS TO
4 DEVELOP AND MODERNIZE ELECTRONIC FILING SYSTEMS THROUGHOUT THE
5 STATE. SO LONG AS IT CONSTITUTES AN ENTERPRISE UNDER THIS SECTION,
6 THE BOARD IS NOT SUBJECT TO ANY PROVISIONS OF SECTION 20 OF ARTICLE
7 X OF THE STATE CONSTITUTION.

8 **24-21-403. Core goals - powers and duties - rules.** (1) THE
9 GENERAL ASSEMBLY HEREBY DECLARES THAT THE CORE GOALS IN
10 DEVELOPING AND MODERNIZING ELECTRONIC FILING SYSTEMS ARE TO:

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

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

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

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

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

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

6 (3) THE BOARD SHALL:

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

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

11 (c) ISSUE A REQUEST FOR PROPOSAL FOR ELECTRONIC FILING
12 SYSTEMEQUIPMENT AND SOFTWARE THAT THE COUNTIES MAY CHOOSE TO
13 ACQUIRE;

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

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

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

18 AND

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

20 (4) THE BOARD MAY:

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

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

24 **24-21-404. Electronic recording technology fund - electronic**
25 **filing - grants.** (1) (a) THE ELECTRONIC RECORDING TECHNOLOGY FUND
26 IS CREATED IN THE STATE TREASURY AND CONSISTS OF MONEY CREDITED
27 THERETO IN ACCORDANCE WITH SECTION 30-10-421 (3) (a), C.R.S. THE

1 MONEY IN THE FUND IS CONTINUOUSLY APPROPRIATED TO THE BOARD TO
2 AWARD GRANTS UNDER SUBSECTION (2) OF THIS SECTION AND FOR ANY
3 OTHER PURPOSE AUTHORIZED BY THIS PART 4, INCLUDING ANY DIRECT AND
4 INDIRECT ADMINISTRATIVE EXPENSES.

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

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

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

27 **24-21-405. Authority to issue bonds.** THE BOARD MAY, BY

1 RESOLUTION, AUTHORIZE AND ISSUE REVENUE BONDS THAT ARE PAYABLE
2 ONLY FROM THE MONEY IN THE FUND. BONDS MAY BE ISSUED ONLY AFTER
3 APPROVAL BY BOTH HOUSES OF THE GENERAL ASSEMBLY ACTING EITHER
4 BY BILL OR JOINT RESOLUTION AND AFTER APPROVAL BY THE GOVERNOR
5 IN ACCORDANCE WITH SECTION 39 OF ARTICLE V OF THE STATE
6 CONSTITUTION.

7 **24-21-406. Reporting - annual - five-year report.** (1) ON OR
8 BEFORE SEPTEMBER 1, 2017, AND EACH SEPTEMBER 1 THEREAFTER UNTIL
9 SEPTEMBER 1, 2022, THE DEPARTMENT OF STATE SHALL PREPARE A
10 REPORT THAT, FOR EACH GRANT MADE DURING THE PRIOR FISCAL YEAR,
11 DESCRIBES THE:

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

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

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

23 **24-21-407. Repeal of part.** THIS PART 4 IS REPEALED, EFFECTIVE
24 SEPTEMBER 1, 2022. PRIOR TO SUCH REPEAL, THE BOARD SHALL BE
25 REVIEWED AS PROVIDED IN SECTION 2-3-1203, C.R.S.

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

1 **30-10-409. Reception book - form - contents - acceptance for**
2 **recording.** (5) A clerk and recorder who decides to accept electronic
3 filings shall establish procedures for such electronic filings that are
4 consistent with ~~the rules promulgated by the secretary of state pursuant~~
5 ~~to section 30-10-424 (1) (c) (H)~~ ANY STANDARDS OR RULES ESTABLISHED
6 BY THE ELECTRONIC RECORDING TECHNOLOGY BOARD PURSUANT TO
7 SECTION 24-21-403, C.R.S. No electronic filings shall be accepted by the
8 clerk and recorder until the clerk and recorder has established and made
9 publically available the procedures for electronic filings. Nothing in this
10 article shall be interpreted to require any clerk and recorder to accept
11 electronic filings. Nothing in this article shall abridge the power of any
12 clerk and recorder to accept or reject electronic filings in accordance with
13 the provisions of section 38-35-202, C.R.S.

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

17 **30-10-421. Filing surcharge - definitions.** (1)(b) Beginning July
18 1, 2004, and through ~~June 30, 2017~~ DECEMBER 31, 2026, the county clerk
19 and recorder shall collect a surcharge of one dollar for each document
20 received for recording or filing in his or her office. The surcharge shall
21 be in addition to any other fees permitted by statute.

22 (c) BEGINNING JANUARY 1, 2017, AND THROUGH DECEMBER 31,
23 2021, THE COUNTY CLERK AND RECORDER SHALL COLLECT THE
24 SURCHARGE IMPOSED BY THE ELECTRONIC RECORDING TECHNOLOGY
25 BOARD UNDER SECTION 24-21-403 (2), C.R.S., FOR EACH DOCUMENT
26 RECEIVED FOR RECORDING OR FILING IN HIS OR HER OFFICE. THE
27 SURCHARGE IS IN ADDITION TO ANY OTHER FEES PERMITTED BY STATUTE.

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

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

12 ~~(F) establishing, maintaining, or improving, OR REPLACING an~~
13 ~~electronic filing system. or~~

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

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

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

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

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

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

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

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

6 **30-10-424. Uniform administration - secretary of state.** ~~(1) In~~
7 ~~order to ensure uniformity among electronic filing systems, and in~~
8 ~~addition to any other powers prescribed by law, the secretary of state shall~~
9 ~~have the following powers to:~~

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

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

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

17 (d) ~~Repealed.~~

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

22 (I) ~~Establish eligibility requirements for the statewide purchasing~~
23 ~~network;~~

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

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

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

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

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

12 ~~(HH) Repealed.~~

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

15 **SECTION 7. Safety clause.** The general assembly hereby finds,
16 determines, and declares that this act is necessary for the immediate
17 preservation of the public peace, health, and safety.