

**ASSEMBLY BILL**

**No. 578**

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**Introduced by Assembly Member Leno**

February 18, 2003

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An act to amend Section 27361.4 of, and to add Section 27279.5 to, the Government Code, relating to county recorders.

LEGISLATIVE COUNSEL'S DIGEST

AB 578, as introduced, Leno. County recorders: electronic recording.

(1) Existing law generally provides that the recorder of any county may, in lieu of a written paper, accept for recording a digitized image of a recordable instrument, subject to specified conditions.

This bill would authorize the county recorder to develop a system for accepting records for recording electronically. The bill would require a county developing an electronic recording system to obtain a report addressing the safety and security considerations of the proposed system from a qualifying computer security firm or consultant, as specified. The bill would also authorize an unspecified agency to adopt certain general standards for electronic recording systems and would require that unspecified agency to report to the Legislature on counties' electronic recording systems, as specified.

(2) Existing law authorizes the board of supervisors of any county to provide for specified fees for the filing and indexing of documents with the county recorder.

This bill would authorize the board of supervisors of any county to provide for an additional fee of up to \$1 per document for recording of a document electronically. It would authorize charging this fee for an

unspecified period after a county implements an electronic recording system.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 27279.5 is added to the Government  
2 Code, to read:

3 27279.5. (a) The county recorder may develop an electronic  
4 recording system in accordance with this section. In establishing  
5 this system, a county recorder shall perform due diligence to  
6 ensure the safety and security of the proposed system. Any system  
7 developed pursuant to this section shall provide for proper offsite  
8 archival procedures in accordance with guidelines developed  
9 pursuant to Section 12236. Nothing in this section shall preclude  
10 the application of Section 27203.

11 (b) The recorder shall be guided in the exercise of his or her  
12 discretion pursuant to subdivision (a) by the following factors:

13 (1) Whether accepting electronically transmitted records is in  
14 the best interest of the county and the public.

15 (2) Whether persons requesting access to the program for the  
16 purpose of electronically recording documents have effective  
17 security precautions in place to address potential fraud and forgery  
18 of documents during the electronic recording process.

19 (3) Whether the volume and quality of electronic records  
20 submitted will be sufficient to warrant electronic recordation.

21 (4) Whether a written agreement exists between the county and  
22 persons requesting access to the program in order to define the  
23 rights and responsibilities of each of them.

24 (5) Whether factors of cost, capacity, or security require the  
25 limitation of the provision of access to persons requesting to  
26 participate, based upon business reasons for recording documents,  
27 scope of authority under a license, if any, and volume of  
28 documents recorded in previous years.

29 (c) The \_\_\_\_ may adopt standards for the review and approval  
30 by county recorders of systems and processes to conduct electronic  
31 recording of digitized images or electronic records of recordable  
32 instruments. The standards shall include general guidelines  
33 relating to security, capacity, reliability, and uniformity.



1 (d) Before developing an electronic recording system, a county  
2 or county recorder shall consult with, and obtain a report from, a  
3 computer security firm or consultant selected from a list of firms  
4 or consultants approved by the \_\_\_\_\_. The report of the consultant  
5 shall be transmitted to \_\_\_\_\_ and shall include, but not be limited  
6 to, all of the following considerations:

7 (1) Safety and security of the proposed system.

8 (2) Results of testing of the system’s protections against fraud  
9 or intrusion.

10 (3) Recommendations of any additional precautions or  
11 provisions needed to ensure that the proposed system is as secure  
12 as the existing paper-based system, and protects the integrity of the  
13 recorder’s records.

14 (4) Recommendations from the district attorney as to the safety  
15 and security of the proposed system.

16 (e) If a district attorney or county counsel for a county  
17 developing an electronic recording system or the Attorney General  
18 reasonably believes that a system pursuant to this section has been  
19 compromised by fraud or intrusion, he or she shall immediately  
20 take the necessary steps to alert the county recorder to guard  
21 against any compromise of the system, which may result in the  
22 suspension of electronic recording.

23 (f) Upon request of the county recorder, the Department of  
24 Justice shall conduct a criminal background check of a requester  
25 or a private contractor submitting an electronic recording system  
26 for review and approval. The cost of the background check may  
27 be charged to the private contractor or requester.

28 (g) For the purposes of this section, security testing means an  
29 independent security audit, including, but not limited to, the use  
30 of computer security experts to attempt to penetrate a system for  
31 recording digitized images or electronic recording for the purposes  
32 of testing the security of the system. The contractor shall perform  
33 an independent security audit prior to and after beginning  
34 operation of an electronic recording system, with results to be  
35 provided to the county recorder and the district attorney for the  
36 respective counties.

37 (h) No later than two years after beginning operation of an  
38 electronic recording system, counties continuing to implement an  
39 electronic recording system pursuant to this section shall obtain a  
40 report evaluating the system from a firm or consultant with



1 expertise in computer security, selected from a list of those firms  
2 or consultants approved by the \_\_\_\_ .

3 (i) Periodically, and in no event later than January 31, 2007, the  
4 \_\_\_\_ shall compile all of the reports received pursuant to  
5 subdivision (d) and shall report to the Legislature on the results of  
6 the county systems. The report shall include information regarding  
7 the volume of instruments recorded, costs savings or cost  
8 increases, and changes in the number and effect, if any, of the  
9 incidence of fraudulent documents.

10 (j) This authority is in addition to any other authority or  
11 obligation under California or federal law.

12 SEC. 2. Section 27361.4 of the Government Code is amended  
13 to read:

14 27361.4. (a) The board of supervisors of any county may  
15 provide for an additional fee of one dollar (\$1) for filing every  
16 instrument, paper, or notice for record, in order to defray the cost  
17 of converting the county recorder’s document storage system to  
18 micrographics. Upon completion of the conversion and payment  
19 of the costs therefor, this additional fee shall no longer be imposed.

20 (b) The board of supervisors of any county may provide for an  
21 additional fee, other than the fees authorized in subdivisions (a)  
22 and (c), of one dollar (\$1) for filing every instrument, paper, or  
23 notice for record provided that the resolution providing for the  
24 additional fee establishes the days of operation of the county  
25 recorder’s offices as every business day except for legal holidays  
26 and those holidays designated as judicial holidays pursuant to  
27 Section 135 of the Code of Civil Procedure.

28 (c) The board of supervisors of any county may provide for an  
29 additional fee, other than the fees authorized in subdivisions (a)  
30 and (b), of one dollar (\$1) for filing every instrument, paper, or  
31 notice for record provided that the resolution providing for the  
32 additional fee requires that the instrument, paper, or notice be  
33 indexed within two business days after the date of recordation.

34 (d) *The board of supervisors of any county may provide for an*  
35 *additional fee, other than the fee provided for in subdivisions (a),*  
36 *(b), and (c), of up to one dollar (\$1) per document for recording*  
37 *a document electronically. This additional fee may be charged for*



1 up to \_\_\_\_\_ years after the implementation of an electronic  
2 recording system.

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