

SENATE RESOLUTION NO. 202

BY SENATOR MORRIS

A RESOLUTION

To create the Task Force on Statewide Standards for Clerks of Court Electronic Filing and Records Retention.

WHEREAS, Article 251 of the Code of Civil Procedure provides that the clerk of court is the legal custodian of all records filed with the clerk and is responsible for their safekeeping and preservation; and

WHEREAS, Article 253 of the Code of Civil Procedure authorizes the clerk of court to establish a system for the transmission of pleadings and other documents and filings electronically, and makes the electronic record the original record; and

WHEREAS, Article 258 of the Code of Civil Procedure authorizes the clerk of court to adopt and implement plans, including written contracts between clerks of court and filers, that comply with the Louisiana Uniform Electronic Transactions Act, R.S. 9:2601 et seq., which provides for accepting electronic records of recordable written instruments for filing and recording; and

WHEREAS, R.S. 44:39 authorizes those in control of public records to use electronic digitizing processes capable of reproducing an unalterable image of the original source document for the recordation, filing, and preservation of all existing public records, forms, and documents, and which provides that the electronic copy, when satisfactorily identified, shall be deemed to be an original itself; and

WHEREAS, R.S. 44:36 provides requirements for the destruction of records of every nature and kind that are deemed permanent under a record retention and disposal schedule adopted by the secretary of state and the clerks of court in accordance with R.S. 44:410 and 411, including criminal records, and requires retention of certain records created before 1922 in their original form; and

WHEREAS, the Louisiana Public Records Law, including and without limitation R.S. 44:36 and 44:401 et seq., provides for the retention and disposal of records which must be followed by all state agencies, including clerks of court; and

WHEREAS, R.S. 13:754 creates the Louisiana Clerks' Remote Access Authority (LCRAA) to provide for infrastructure, governance, standard operating procedures, technology, and training to support a statewide portal for secure remote access by internet users to certain records maintained by LCRAA members and to provide assistance to LCRAA members in procuring, implementing, enhancing, and maintaining equipment, supplies, and services related to technology to facilitate electronic transactions and communications and to disseminate information to the public, to facilitate the operations of any member during any declared emergency, and to provide for document preservation; and

WHEREAS, R.S. 44:411 requires that the secretary of state, acting through the state archivist, establish standards for the selective retention of records of continuing value, and monitor state and local agencies in the application of such standards to all records in their custody; and

WHEREAS, a study should be made to determine the feasibility and propriety of clerks of court creating electronic records of original paper documents and the maintenance, preservation, and disposition of original paper documents once converted to electronic record, and propose recommendations, together with specific proposals for legislation; and

WHEREAS, while the above statutes provide authorization for electronic filings and records retention, there is a need to develop statewide standardized electronic filing and record retention procedures, including studying the costs and benefits of such standardized procedures, and studying existing procedures for the management and disposal of paper records, documents, and filings; and

WHEREAS, with regard to electronic filing and records retention practices, including the conversion of original paper documents for filing in electronic form and the maintenance and preservation of original paper documents, there is a lack of statewide standards among clerks of court, and a lack of statewide best practices for implementing electronic filings or the electronic retention of paper documents; and

WHEREAS, the development of statewide standardized procedures for electronic filing and retention of records would further ensure and increase public access to public records, provide increased cost efficiency in the disposal and retention of original paper documents, and maintain the integrity of public records; and

WHEREAS, recent events affecting the courts, including the pandemic, have highlighted the need for a baseline of improved technology within state courts, including restructuring delivery systems, redesigning processes, and reorganizing court structure; and

WHEREAS, the Louisiana Supreme Court has recognized these needs, evidenced by the creation of the Louisiana Supreme Court Technology Commission to identify technological needs, create technological improvements, establish goals for implementation, devise best practices, suggest necessary rule changes and steps toward implementing technology goals in state courts, and identify best practices in electronic filing and records retention; and

WHEREAS, the authenticity, accuracy, accessibility, and proper security, maintenance, retention, and destruction of public paper records, including electronic records, in the custody of the clerks of court are in the best interest of all the citizens of the state.

THEREFORE, BE IT RESOLVED that the Senate of the Legislature of Louisiana does hereby establish the Task Force on Statewide Standards for Clerks of Court Electronic Filing and Records Retention to study the feasibility and propriety of the electronic filing of legal documents, the electronic filing of documents in the conveyance and mortgage records, the retention, maintenance, preservation, and disposition of original paper documents once converted to electronic record, public access to all public records, including ease of functionality and viewing, and maintaining the integrity of public records, including original documents, and to propose recommendations, together with specific proposals for legislation, by written report to the legislature no later than February 15, 2022.

BE IT FURTHER RESOLVED that the task force should include consideration of: (1) existing systems established by certain clerks of court for the electronic filing and storage of any pleading, document, or exhibit; (2) records retention schedules currently adopted and already in place between the secretary of state and clerks of court; (3) current law as it relates to the electronic filing and storage of documents and records retention and disposal; (4) the need to enact new law or amend existing law with regard to electronic filing of public records and the electronic storage and retention of records; (5) the best practices and minimum standards for electronic filing of legal documents and evidence including documents and evidence filed in civil proceedings, criminal proceedings, as well as

conveyance and mortgage records, consistent with the objective of maintaining the integrity of public records, ease of access by the public and those who rely upon such records, and ease of functionality by participants in electronic filing systems; and, (6) how electronic filing systems can be made consistent with the requirements of Louisiana law and rules related to evidence in the form of original paper or electronic copies of documents.

BE IT FURTHER RESOLVED that the task force shall consist of the following members:

(1) The chief justice of the Louisiana Supreme Court, or his designee.

(2) The chairman of the Louisiana Supreme Court Technology Commission, or his designee.

(3) The president of the Louisiana District Judges Association, or his designee.

(4) The president of the Louisiana State Bar Association, or her designee.

(5) A representative of the Family Law Section of the Louisiana State Bar Association.

(6) Five representatives of the Louisiana Clerks of Court Association, such that at least two appointees represent rural parishes and at least two appointees represent urban parishes, designated by the president of the association.

(7) The president of the Louisiana District Attorneys Association, or his designee.

(8) The president of the Louisiana Association of Criminal Defense Lawyers, or his designee.

(9) The president of the Louisiana Association of Defense Counsel, or his designee.

(10) The president of the Louisiana Association for Justice, or his designee.

(11) A representative of the Louisiana State Law Institute, designated by the president of the council.

(12) A representative of the Louisiana Board of Ethics who specializes in public records law, designated by the chairman of the board.

(13) The state archivist, or her designee.

(14) The president of the Louisiana Land Title Association, or his designee.

(15) The president of the Louisiana Banker's Association, or his designee.

(16) The president of the Louisiana Association of Independent Land Title Agents,

or his designee.

BE IT FURTHER RESOLVED that each designating authority shall submit the names of designees to task force to the Senator representing Senate District No. 35 no later than July 31, 2021.

BE IT FURTHER RESOLVED the task force shall convene for its first meeting no later than August 15, 2021, at the call of the Senator representing Senate District No. 35 and at the first meeting, the members shall elect a chairman and other officers as the task force may deem appropriate.

BE IT FURTHER RESOLVED that in conducting this study the task force will seek input and advice from the following:

(1) Louisiana Clerks' Remote Access Authority.

(2) Louisiana Supreme Court Technology Commission.

(3) Louisiana State Law Institute.

(4) The State Archivist.

(5) Louisiana clerks of court who have implemented electronic filing and record retention programs.

(6) Louisiana State Bar Association's Access to Justice Commission.

(7) Legislators who have an interest in the subject matter of the task force.

BE IT FURTHER RESOLVED that a majority of the task force shall constitute a quorum for the transaction of business. All official actions of the task force shall require the affirmative vote of a majority of the members.

BE IT FURTHER RESOLVED that the members of the task force shall serve without compensation, except per diem or expenses reimbursement to which they may be individually entitled as members of their constituent organizations.

BE IT FURTHER RESOLVED that the task force shall terminate on June 30, 2022.

BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the Louisiana District Judges Association, Louisiana State Bar Association, Louisiana Ethics Administration, Louisiana Clerks of Court Association, Louisiana Association of Criminal Defense Lawyers, Louisiana Association for Justice, Louisiana District Attorneys Association, Louisiana Land Title Association, Louisiana Banker's Association, Louisiana

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ENROLLED

Association of Independent Land Title Agents, Louisiana State Law Institute, Louisiana Supreme Court Technology Commission, Louisiana Clerks' Remote Access Authority, Chief Justice of the Louisiana Supreme Court, and State Archivist.

PRESIDENT OF THE SENATE