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BILL ANALYSIS

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Senate Bill 927 (Substitute S-2)
Senate Bill 1160 (Substitute S-1)
Sponsor: Senator Tupac A. Hunter (S.B. 927)
Senator Mark C. Jansen (S.B. 1160)
Committee: Local, Urban and State Affairs

Date Completed: 9-25-08

CONTENT

Senate Bill 927 (S-2) would amend Chapter 65 of the Revised Statutes of 1846, which provides for the recording of conveyances, to do the following:

- Delete requirements that a register keep various entry books; and delete provisions regarding the effect of entry in those books.
- Require a register of deeds to note specific information when an instrument was delivered for recording, and provide for noting information on instruments delivered in bulk.
- Require an instrument delivered to a register to be accessible for public review.
- Allow a register to charge a fee for a search of an original instrument or a name search.
- Provide for civil immunity for employees of a register conducting or deciding whether to conduct a search.
- Require a register to post a "general index date" and maintain a record of the calendar date and the general index date recorded on that calendar date.
- Specify that a register's assignment of a liber and page or other unique identifying number would be prima facie evidence that an instrument had satisfied all recording requirements.
- Specify that an instrument would be deemed recorded at the time of

delivery if it were later determined to have satisfied all recording requirements.

Senate Bill 1160 (S-1) would amend Chapter 65 to:

- Rewrite requirements for a general index of instruments recorded, specifying information that a general index would have to contain, which would include the liber and page or other unique identifying number.
- Require a register of deeds to note a reference to the liber and page, or other unique identifying number, where an instrument was recorded.
- Require a recorded discharge of mortgage to refer to the liber and page, or other unique identifying number.

The bill also would repeal a section requiring each register of deeds to provide different sets of books for recording deeds and mortgages.

The bills are tie-barred to each other, and are described in detail below.

Senate Bill 927 (S-2)

Delivery of Instrument; Entry Books

The bill would delete provisions requiring every register of deeds to keep an entry book of deeds and an entry book of mortgages, with each page divided into

columns having specific headings (date of reception, grantors, grantees, township, to whom delivered, and fees received). The bill also would delete the requirement that each register of deeds keep a reception book of levies, which may be consolidated into one book with sheets divided into columns having particular headings or titles (receipt number, date of receipt, grantors, grantees, location, kind of instrument, to whom delivered, date mailed, and fees received).

Under the bill, when an instrument was delivered to the register of deeds for the purpose of recording, he or she would have to note the date, hour, and minute of delivery on the first page of the instrument using a stamp or other method signifying that the date, hour, and minute were affixed by the register or his or her duly authorized representative. If the instrument were received in bulk with other instruments, the date, hour, and minute of delivery would have to be affixed in this manner as soon as practical after delivery. The date, hour, and minute so noted would have to be presumed to be the date and time of delivery.

Public Review; Search; Fee

The bill would require each instrument delivered to a register to be accessible for public review. Accessibility would be satisfied by provision of the instrument inscribed in a tangible medium when requested. The accessibility requirement would be considered satisfied if the length of time between a request to locate a particular document or documents and the time the search was initiated and completed were reasonable in light of the volume of all instruments being recorded and the ability to gain access to requested documents without undue disruption to the office of the register.

A register would be permitted to do either of the following:

- Provide at least the first page of the instrument, stored in an electronic or other medium.
- Provide a temporary searchable journal containing at least the date of delivery, title of the instrument, and names of the parties to it.

Any information created or maintained under these provisions could be destroyed

when the instrument was entered into the index described in Section 28 of Chapter 65 or when the instrument was not accepted for recording. (Section 28, which Senate Bill 1160 (S-1) would amend, requires each register of deeds to keep a general index of instruments.)

A register could not charge a fee for any review or search under these provisions unless it involved the search of an original instrument. An original instrument would be available for public review only in the presence of the register, the deputy register, or a representative of the register appointed for that purpose. When the register or his or her representative performed a name search, a reasonable fee could be charged for any search or review requested. This fee could not exceed \$15 for each 15 minutes or fraction of 15 minutes.

These provisions would not apply once an instrument was indexed as required in Section 28.

Civil Immunity

Under the bill, if a county register of deeds or an officer, employee, or agent of a register of deeds were, or believed that he or she was, acting within the scope of his or her authority and in the course of his or her employment when authorizing, conducting, or deciding when or whether to conduct a search under the bill's public review provisions, that action would be within the exercise or discharge of the person's governmental function, and the register of deeds or the officer, employee, or agent would be immune from any claim for liability, including tort liability, that otherwise could entitle any individual or entity to monetary damages.

This civil immunity would be in addition to any civil immunity provided by law, including the application of Section 7 of the governmental immunity Act. (That section provides immunity from tort liability for personal injury or property damage caused by an employee or officer of a governmental agency if he or she is acting or reasonably believes he or she is acting within the scope of his or her authority, the governmental agency is engaged in the exercise or discharge of a governmental function, and the employee's or officer's conduct does not

amount to gross negligence that is the proximate cause of the injury or damage.)

General Index & Calendar Dates

The bill would require a register of deeds to post in a conspicuous place in his or her office the general index date, and to maintain a record that memorialized both the calendar date and general index date that was posted on that calendar date. This public record would have to be maintained in any reasonable medium selected by the register.

As used in these provisions, "general index date" would mean that date through which all recorded instruments bearing a delivery date up to and including the general index date have been fully recorded at length and indexed and are available for public inspection.

Satisfaction of Recording Requirements

The bill specifies that a register's assignment of a liber and page or other unique identifying number would be prima facie evidence that the instrument had satisfied all recording requirements, including the payment of fees, and had been accepted for recording. (Prima facie evidence is evidence sufficient to establish a given fact unless disproved.)

An instrument would be deemed to be recorded at the date and time of delivery to the register if it were later determined that the instrument had satisfied all recording requirements, including the payment of fees.

When an instrument that was rejected on a prior occasion was delivered, a new delivery date and time would have to be noted on the face of the instrument, and the later date and time would be rebuttably presumed to be the date and time of delivery.

Entry Requirements; Effect of Entry

Currently, in the entry book of deeds, the register must enter all deeds of conveyance "absolute in their terms, and not intended as mortgages or securities, and all copies left as cautions". In the entry book of mortgages, the register must enter all mortgages and other deeds intended as securities, and all assignments of any

mortgages or securities. In the entry book of levies, the register must enter all levies, attachments, liens, notices of lis pendens (pending lawsuits affecting property), sheriffs' and U.S. marshals' certificates of sale, other instruments of encumbrances, and required documentation, noting the day, hour, and minute of receipt, and other particulars, in the appropriate columns, in the order in which the instruments are received.

An instrument must be considered recorded at the time so noted, and is notice to all people except the recorded landowner, of the liens, rights, and interests acquired by or involved in the proceedings. All subsequent owners or encumbrances take subject to the perfected rights or interests.

The bill would delete all of these provisions.

Senate Bill 1160 (S-1)

General Index

Each register of deeds currently is required to keep a proper general index to each set of books in which he or she must enter alphabetically the name of each party to each instrument recorded, with a reference to the book and page where the instrument is recorded. In a county where reproductions under the Records Media Act (now called the Records Reproduction Act) are combined in one set of books, the register must keep separate indexes of the instruments. The register also must keep a separate index in which all discharges of mortgages are entered daily, together with a reference to the volume and page where recorded or entered upon the margin. The bill would delete these requirements.

The bill also would delete a provision allowing each index required under Chapter 65 to be maintained wholly or partially by computerization.

The bill would require each register of deeds to keep a general index of instruments accepted for recording, after they had met all recording requirements, including the payment of fees. A register would have to keep the general index by means of books or computerization, or a combination of both. The index would have to include the following information:

- Liber and page, or other unique identifying number, which would have to be sequentially assigned.
- Instrument type.
- The name of each party to each instrument.
- Date processed, having met all recording requirements, including payment of fees.
- Location of land: section, town and range, platted description, or other description authorized by law.
- Other reference information as required.

Each computerized index would have to be maintained to allow for an alphabetical search of the names of each party to each instrument recorded by the register of deeds.

Certification on Recorded Instruments

Currently, a register of deeds must certify upon every instrument recorded the time when it was received and a reference to the book and page where it is recorded.

The bill instead would permit a register of deeds to note upon every instrument recorded the date and time when it was accepted, after the instrument met all recording requirements, including the payment of fees. The register would have to note a reference to the liber and page, or other unique identifying number, where the instrument was recorded.

Mortgage Discharge Certificate

Chapter 65 requires a register of deeds to record a discharge of mortgage when he or she is presented with a certificate of the discharge executed by the mortgagee or signed by a circuit court judge. The certificate must be recorded and a reference must be made to the book and page containing it, in the minutes of the discharge of the mortgage. The bill would require that a reference be made to the liber and page, or other unique identifying number.

Repeal

Section 26 of Chapter 65 requires each register of deeds to provide different sets of books for recording deeds and mortgages. In one set, deeds that are required to be entered in the entry book of deeds must be recorded at full length, with the certificates of acknowledgement or proof of the

execution of the deeds. In the other set, instruments required to be entered in the entry book of mortgages must be recorded a similar manner. A register who uses a medium under the Records Media Act as a method of recording may combine all reproductions of instruments into one set of numbered books.

The bill would repeal this section.

MCL 565.24 et al. (S.B. 927)
565.27 et al. (S.B. 1160)

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bills would have no fiscal impact on State revenue or expenditure, or any impact on local unit revenue. The bills could increase expenditures for some local units by an unknown amount, depending on the costs of adapting systems to the changes, whether a register already records the information mandated by the bills, and whether changes resulting from the bills would change the number of searches performed.

Fiscal Analyst: David Zin

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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.