

2021 Regular Session

SENATE CONCURRENT RESOLUTION NO. 74

BY SENATOR MORRIS

CLERKS OF COURT. Creates the Task Force on Records Filed to the Custody of the Clerk of Court.

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A CONCURRENT RESOLUTION

To create the Task Force on Records Filed to the Custody of the Clerk of Court.

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, R.S. 13:917 and R.S. 13:1221 authorizes the clerk of court, upon consent of the judge or of the majority of judges in districts with several divisions, to destroy records of any certain judicial proceedings when the records are deemed by the presiding judge or judges to have no further use or value, if authorization is obtained from the state archivist in accordance with R.S. 44:411; and

WHEREAS, with regard to filing of paper documents, particularly the conversion of such documents for filing in electronic form by the clerk of court and the maintenance and preservation of such paper records, there is a lack of clear direction from the legislature, a lack of consistency among various court jurisdictions, the attempts by some clerks of court to convert to paperless records, the destruction of filed paper documents once filed electronically being contemplated without clear legislative authority or direction, a lack of best practices in implementing electronic filings or electronic retention of paper documents, including but not limited to original wills, original promissory notes, and other contracts; and

1 WHEREAS, some clerks of court are converting original paper pleadings,
2 documents, and exhibits into electronic records for the purpose of filing and maintaining the
3 records while the authority to do so is unclear; and

4 WHEREAS, among issues is the clerk of court's authority in taking original paper
5 documents and creating electronic records of them for permanent filing with the court; there
6 is a lack of guidance on what to do with the original paper document once an electronic
7 record of it has been created; and

8 WHEREAS, the authenticity, accuracy, accessibility, and proper security,
9 maintenance, retention, and destruction of public paper records, including electronic records,
10 in the custody of the clerk of court are in the best interest of all the citizens of the state; and

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

19 WHEREAS, the Louisiana Supreme Court has created the Louisiana Supreme Court
20 Technology Commission as a standing commission of the court, charged with identifying
21 technology needs, establishing goals for implementation, devising best practices, and
22 suggesting necessary rule changes and steps towards implementation of articulated
23 technology goals for the judiciary and how to best ensure the judiciary's application and
24 utilization of technological innovations; and

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

29 THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby
30 establish the Task Force on Records Filed to the Custody of the Clerk of Court to study the

1 feasibility and propriety of the clerk of court creating electronic records of original paper
2 documents and the maintenance, preservation, and disposition of original paper documents
3 once converted to electronic record, and to propose recommendations, together with specific
4 proposals for legislation, by written report to the legislature no later than February 15, 2022.

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

7 (1) The Chief Justice of the Louisiana Supreme Court, or his designee.

8 (2) One member from the Louisiana District Judges Association, designated by the
9 president of the association.

10 (3) A representative of the Fourth Judicial District Court, designated by the chief
11 judge.

12 (4) One member from the Louisiana Clerks of Court Association, designated by the
13 president of the board of directors.

14 (5) The clerk of court for the Fourth Judicial District Court.

15 (6) One member of the Louisiana Association of Criminal Defense Lawyers,
16 designated by the president of the association.

17 (7) One member of the Louisiana District Attorney's Association, designated by the
18 president of the association.

19 (8) One member of the Louisiana Association of Justice who specializes in insurance
20 defense, designated by the president of the association.

21 (9) One member from the Louisiana Land Title Association, designated by the
22 president of the board of directors.

23 (10) One member from the Louisiana Banker's Association, designated by the chief
24 executive officer.

25 (11) One member from the Louisiana Association of Independent Land Title Agents,
26 designated by the president of the association.

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

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

- 3 (1) Louisiana Clerks' Remote Access Authority.
- 4 (2) Louisiana Supreme Court Technology Commission.
- 5 (3) Louisiana State Law Institute.
- 6 (4) The State Archivist.

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

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

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

14 BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the
15 Louisiana District Judges Association, Fourth Judicial District Court, Louisiana Clerks of
16 Court Association, Louisiana Association of Criminal Defense Lawyers, Louisiana
17 Association of Justice, Louisiana District Attorney's Association, Louisiana Land Title
18 Association, Louisiana Banker's Association, Louisiana Association of Independent Land
19 Title Agents, Louisiana State Law Institute, Louisiana Supreme Court Technology
20 Commission, Louisiana Clerks' Remote Access Authority, Chief Justice of the Louisiana
21 Supreme Court, State Archivist, and Clerk of Court for the Fourth Judicial District.

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Lebra R. Bias.

SCR 74 Original

DIGEST
2021 Regular Session

Morris

Requests a task force to study the feasibility of the clerk 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 to propose recommendations for legislation by written report to the legislature no later than February 15, 2022. Provides that the task force terminate on June 30, 2022.