

2021 Regular Session

SENATE RESOLUTION NO. 202

BY SENATOR MORRIS

CLERKS OF COURT. Creates Task Force on Statewide Standards for Clerks of Court Electronic Filing and Records Retention.

1 A RESOLUTION

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

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

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

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

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

1 shall be deemed to be an original itself; and

2 WHEREAS, R.S. 44:36 provides requirements for the destruction of records of every
3 nature and kind that are deemed permanent under a record retention and disposal schedule
4 adopted by the secretary of state and the clerks of court in accordance with R.S. 44:410 and
5 411, including criminal records, and requires retention of certain records created before 1922
6 in their original form; and

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

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

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

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

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

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

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

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

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

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

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

1 BE IT FURTHER RESOLVED that the task force should include consideration of:

2 (1) existing systems established by certain clerks of court for the electronic filing and storage
3 of any pleading, document, or exhibit; (2) records retention schedules currently adopted and
4 already in place between the secretary of state and clerks of court; (3) current law as it
5 relates to the electronic filing and storage of documents and records retention and disposal;
6 (4) the need to enact new law or amend existing law with regard to electronic filing of public
7 records and the electronic storage and retention of records; (5) the best practices and
8 minimum standards for electronic filing of legal documents and evidence including
9 documents and evidence filed in civil proceedings, criminal proceedings, as well as
10 conveyance and mortgage records, consistent with the objective of maintaining the integrity
11 of public records, ease of access by the public and those who rely upon such records, and
12 ease of functionality by participants in electronic filing systems; and, (6) how electronic
13 filing systems can be made consistent with the requirements of Louisiana law and rules
14 related to evidence in the form of original paper or electronic copies of documents.

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

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

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

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

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

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

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

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

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

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

- 1 (10) The president of the Louisiana Association for Justice, or his designee.
- 2 (11) A representative of the Louisiana State Law Institute, designated by the
- 3 president of the council.
- 4 (12) A representative of the Louisiana Board of Ethics who specializes in public
- 5 records law, designated by the chairman of the board.
- 6 (13) The state archivist, or her designee.
- 7 (14) The president of the Louisiana Land Title Association, or his designee.
- 8 (15) The president of the Louisiana Banker's Association, or his designee.
- 9 (16) The president of the Louisiana Association of Independent Land Title Agents,
- 10 or his designee.

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

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

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

- 20 (1) Louisiana Clerks' Remote Access Authority.
- 21 (2) Louisiana Supreme Court Technology Commission.
- 22 (3) Louisiana State Law Institute.
- 23 (4) The State Archivist.
- 24 (5) Louisiana clerks of court who have implemented electronic filing and record
- 25 retention programs.
- 26 (6) Louisiana State Bar Association's Access to Justice Commission.
- 27 (7) Legislators who have an interest in the subject matter of the task force.

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

