

H.512 (An act relating to modernizing land records and notarial acts law)

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INTRODUCTION

The Secretary of State's Office, through the Office of Professional Regulation, which regulates notaries public ([Title 26, Chapter 103](#)), and the Vermont State Archives and Records Administration, which administers the Statewide Records and Information Management Program ([3 V.S.A. § 117](#)) oppose the approach taken by H.512. We have drafted our own recommended legislation. We did not do this in response to H.512, which we had not seen when our bill was drafted. This is our recommended approach to address the gaps the State of Vermont is facing by not yet adopting a uniform law related to the electronic recording of land records and an August 2021 revision of a uniform law related to notarial acts. In our assessment of the bill, H.512 does not adequately address all underlying issues and its heavy-handed bureaucratic approach is both unnecessary and unlikely to encourage buy-in and cooperation from those involved.

A copy of our Office's recommended legislation has been submitted to this Committee as part of today's written testimony. It is important to note, as one of the underlying issues not addressed by H.512, that our recommended legislation been drafted to reflect Federal legislation pending in the 117th Congress ([S.1625 - Securing and Enabling Commerce Using Remote and Electronic Notarization Act of 2021](#)).

S.1625 assumes that specific commerce legislation related to electronic notarization and electronic recording have already been enacted in all states. As a result, when passed, S.1625 will preempt Vermont state law, particularly regarding notarial acts. Therefore, there is a need for the State of Vermont to enact the latest revision of the Revised Uniform Law on Notarial Acts (RULONA) as well as the Uniform Real Property Electronic Recording Act (URPERA), which was promulgated by the Uniform Law Commission in 2004. Due to the pending Federal legislation, there is also a need to enact legislation that closely adheres to the intent and language of those uniform laws. H.512 does not address these issues.

Regarding land records specifically, all other states have adopted URPERA or similar electronic recording legislation. As a result, electronic recording systems for land records are in

place in all states, except Vermont, and, according to the Property Records Industry Association (PRIA), more than 85% of the United States population resides in jurisdictions that electronically record their land records. This means that recorders in other states are receiving recordings electronically and are recording them electronically, and, for those records submitted for recording in paper format, authorized by their respective state laws to convert the paper to electronic prior to recording electronically.

Through a combination of legislation, technologies, and, most importantly, standards, electronically recorded land records can be made available online for remote access and use and with a high degree of legal certainty, which is essential. URPERA, when enacted in Vermont, will empower town clerks to move ahead with electronic recording. Without URPERA, town clerks can *only* accept paper records and can *only* use paper-based recording systems and the legal certainty of scanned versions are questionable.

The value and need for both RULONA and URPERA were noted in a [2019 legislative report](#) requested by the Committee in Act 205 of 2018¹. This report, prepared by the Vermont State Archives and Records Administration in collaboration with the Agency of Digital Services, the Vermont Municipal Clerks and Treasurers Association (VMCTA), and the Vermont League of Cities and Towns (VLCT), recommended, in part:

“Adopting the Uniform Real Property Electronic Recording Act (URPERA) [to] modernize Vermont statutes and allow individual municipalities to electronically record land records when they are able to provide the necessary guarantees that they can preserve, protect, and provide access to these records in perpetuity as required by law [...and...]

Developing and implementing a sustainable infrastructure for electronic notarization and authentication to ensure that the entire scope of a land transaction can be captured in the same environment, preserving necessary context.”

Our recommended legislation includes the necessary support and services town clerks can receive from our Office to move forward with electronic recording, including statewide standards and best practices and compliant systems, for which the state procurement process can

¹ See: https://sos.vermont.gov/media/r3jh24ig/vsara_blockchains_for_public_recordkeeping_white_paper_v1.pdf

be used. Statewide contracts will lower costs and provide consistency in how land records are recorded, accessed and used. Should there be monies available through the American Rescue Plan Act of 2021 (ARPA), an appropriation specific to enabling such systems for use by town clerks should be considered. The creation of one full-time position allocated to our Office to provide direct support to town clerks for land records is also in our recommended legislation.

RECOMMENDATIONS RE: H.512

The Secretary of State's Office was not consulted on the language in this bill and the proposed 3 V.S.A. chapter 5, subchapter 5 (Land Records Management Office) will result in fundamental changes to our Office as well the organization, oversight, and conduct of the Secretary of State's Office as they relate to the matter of public records and the management of public records. The proposed language may also encroach upon the Vermont Constitution, Chapter II, Article 62 which states:

§ 62. [RECORD OF DEEDS] All deeds and conveyances of lands shall be recorded in the Town Clerk's office in their respective towns; and, for want thereof, in the County Clerk's office in the same county.

Our Office can't support a bill that will bifurcate the mandates of our divisions, creating a new division that overlaps with or usurps the existing duties of VSARA or the State Archivist. Nor do we believe there is a need to create this additional division of government for the purpose of modernizing land records or enabling electronic notarization. Should the Committee decide to continue with H.512 as currently written, we recommend referring the bill to the Government Operations Committees because it is a fundamental restructuring of our Office and the organization, oversight, and conduct of the Secretary of State's Office in matters related to public records and the management of public records.

As stated earlier above, sections 3 and 4 of H.512, as drafted, do not adequately address URPERA or RULONA or the pending Federal legislation. We respectively refer the Committee to the copy of our Office's recommended legislation submitted as part of today's testimony and, due to the specific correlation to commerce and pending Federal legislation, recommend a rewrite of H.512 using our recommended legislation as an initial baseline.

We are confident that enacting these uniform laws and leveraging the existing authorities, mandates and, most importantly, the expertise of the Office of Professional Regulation and the Vermont State Archives and Records Administration will give the State of Vermont a giant step forward in remote online notarization and land records modernization.