



Legislation Text

File #: 20-817, Version: 1

Adopt a resolution to withdraw from the Joint Powers Agreement with California Electronic Recording Transaction Authority (CERTNA) effective July 1, 2021; Delegate authority to the Assessor/Recorder to participate in the Statewide Electronic Courier Universal Recording Environment (SECURE); and Authorize an Appropriation Transfer Request for \$82,789 from Contingencies in the Recorder's Special Revenue Fund for SECURE set-up, onboarding costs and initial maintenance fee (4/5 vote required)

Published Notice Required? Yes ☐ No ☒

Public Hearing Required? Yes ☐ No ☒

DEPARTMENTAL RECOMMENDATION:

1. Adopt a resolution to withdraw from the Joint Powers Agreement with California Electronic Recording Transaction Authority (CERTNA) effective July 1, 2021;
2. Delegate authority to the Assessor/Recorder to participate in the Statewide Electronic Courier Universal Recording Environment (SECURE);
3. Authorize an Appropriation Transfer Request for \$82,789 from Contingencies in the Recorder's Special Revenue Fund for SECURE set-up, onboarding costs and initial maintenance fee (4/5 vote required).

SUMMARY:

The Electronic Recording Delivery Act of 2004 (ERDA) was enacted to authorize a county recorder to establish an electronic recording delivery system (ERDS) for recording of specified digitized electronic records, pursuant to the provisions and regulations developed by the California Department of Justice (DOJ).

In 2006, the Board of Supervisors adopted Resolution 2006-220 which approved the County participation in the ERDA, and in 2017, authorized the Assessor/Recorder to execute a Joint Powers Agreement with the CERTNA, a public entity created for the purpose of participating in the ERDS. The Board also delegated authority to the Assessor/Recorder to conduct negotiations, executions and submissions of documents which may be necessary for the participation of Solano County in the CERTNA ERDS.

Solano County has continued to participate and use the CERTNA portal for electronic recording since July 2018. Recent events including the departure or planned departure of counties representing significant portions of CERTNA's annual revenue have raised concerns about the long-term sustainability of CERTNA. As an alternative, the Assessor/Recorder is recommending participating in a multi-county electronic recording delivery system called SECURE, that allows county recorders to make use of a single streamlined system to record documents electronically. SECURE operates a more sustainable business model, with a more stable staffing and budget structure than CERTNA. SECURE is a system jointly owned and operated by Los Angeles, Orange, Riverside, and San Diego counties, and went live in 2009.

The transition from CERTNA to SECURE is anticipated to take approximately seven months. The first step is to notify CERTNA of the County's intent to withdraw from CERTNA, which can only be done on the first day of

July of any year following six months' prior notice. The notice must be done by resolution of the legislative body of the participating agency (Attachment A). Once the withdrawal is effective, an exit fee may be payable to CERTNA. There are sufficient funds in the Recorder's Special Revenue Fund for Electronic. The special revenue fund receive revenue through dedicated fees collected for the express purpose of supporting electronic recording.

The one-time start-up cost to join SECURE is \$50,000, with an annual maintenance fee of \$0.30 per recorded document. The initial annual maintenance fee to be paid Fiscal Year 2020/21 will be \$32,789 (based on 109,297 documents recorded in 2019 multiplied by \$.30). The annual maintenance fee may change from year-to-year based on recording volume. This represents an annual maintenance savings of approximately \$40,000 from the current budgeted costs to participate in CERTNA. Delegating authority to the Solano Assessor/Recorder will allow the County to enter into a Memorandum of Understanding (MOU) with SECURE (Attachment B), following approval by County Counsel as to form and legality.

FISCAL IMPACT:

There is zero Net County Cost associated with this action. The approved 2020-2021 Assessor/Recorder appropriations will be increased by \$82,789 for the \$50,000 startup fee and \$32,789 first year maintenance cost, and will be funded by a one-time transfer from the Recorder's Special Revenue Fund for Electronic Recording. If a CERTNA withdrawal fee is applicable, it will be based on the County's proportional share of indebtedness while it was a party to CERTNA. Any such fee will be budgeted and paid by the 2021-2022 Recorder Special Revenue budget.

DISCUSSION:

In the initial implementation of the ERDS system the Assessor/Recorder intended to adapt its manual, paper-based system of recording to accept electronic submissions, greatly improving efficiency, effectiveness, and service delivery to the public. The ERDA (Assembly Bill 578, adding Government Code §§ 27390-27399, effective September 21, 2004) authorized a County Recorder, upon approval by resolution of the Board of Supervisors, to establish an ERDS for recording of specified digitized and digital electronic records, subject to specified conditions, including system certification, regulation, and oversight by the DOJ. The Board of Supervisors approved the County for ERDS with the adoption of Resolution 2006-220 (Attachment A). In 2017 the Assessor/Recorder was authorized to execute a Joint Powers Agreement with the CERTNA, a public entity created for the purpose of participating in the ERDS. The Board also delegated authority to the Assessor/Recorder to conduct negotiations, executions and submissions of documents which may be necessary for the participation of Solano County in the CERTNA ERDS. In Fiscal Year 2017/2018 the Board approved a one-dollar (\$1) fee and collection thereof for recording the first page of every real estate instrument, paper, or notice required or permitted by law to be recorded to be used solely for the implementation and ongoing operation of an ERDS as provided in the ERDA. This fee is expressly authorized by Government Code section 27397. All collection and cost of operation is accounted for in a separate Budget Unit (BU) in the Recorder's Special Revenue Fund. (Fund 215 BU 4005)

Since July 2018 the Assessor/Recorder has utilized e-recording technology and eliminated time-consuming steps in the recording process. E-recording reduces repetitive motion by staff, allows documents to be recorded and returned to submitters within a shorter timeframe, and decreases the amount of paper generated. The process allows an authorized submitter to send the image of a document and related information to the Recorder's Office electronically through a secured portal. Recorder staff receive and record the document then transmit the recorded information back to the submitter electronically through the same secure portal. In fiscal year 2019/2020 the Recorder e-recorded 38,113 official documents which is 31% of all recorded documents. This percentage will likely increase as the Recorder approves more title companies to e-record with the County. Currently, Solano County e-recording is available to 627 title companies located throughout the nation. Aside from these efficiencies, the Recorder has decreased

expenditures in postage and mail supplies.

There are currently two e-recording systems certified for use by the DOJ: the CERTNA and the SECURE. CERTNA is a California JPA organization created to design, develop, implement and maintain the on-going operation of an ERDA-compliant ERDS. The system is used by multiple California counties to facilitate secure electronic recording. Counties have the option of joining the JPA as a full member with voting rights, sitting on the CERTNA Board of Directors, or as a Client County, which is a participant, but not a voting member.

SECURE's ERDA-compliant ERDS is owned and operated by four Southern California counties: Los Angeles, Orange, Riverside and San Diego. SECURE allows counties to enter as a Partner Counties, with services provided that are similar to CERTNA's Client County participation. SECURE went live on December 1, 2009 with five title companies recording property documents electronically in Los Angeles and Orange Counties using a single unified system. SECURE has been growing their partners with Santa Barbara County, Sacramento and San Mateo Counties (2009), Ventura County (2012), Marin County (2014), Tulare County (2016), Nevada County (2018) and most recently San Bernardino County (2020) - a former and founding CERTNA member. Counties that wish to utilize SECURE can join SECURE as partner counties by entering into a MOU with SECURE.

CERTNA and SECURE are the only two portals for electronic recording available to the various county recorders in California. However, their organizational structures and business models are different. CERTNA acts as an umbrella agency to standardize the electronic recording of documents by allowing counties to jointly develop, implement and support an ERDA compliant system allowing for the electronic recording of documents by multiple counties. CERTNA is administered by only two staff. As such, any potential loss or change in staffing or administration could negatively affect the continuity and stability of the organization. Recently, San Bernardino County (a founding member of CERTNA), which accounted for nearly 20% of CERTNA's 2019/20 revenue, left CERTNA and joined SECURE. In September and October of this year, the Recorders in Santa Clara and San Joaquin counties, accounting for 14% and 7% of CERTNA's 2019/20 revenue, respectively, were delegated authority by their Boards to join SECURE. Due to the absence of a robust organizational structure, CERTNA lacks long-term sustainability. SECURE is administered by approximately 8 staff and would be less impacted by any potential staffing changes, thereby giving the organization greater continuity and stability. To ensure the continuity of electronic recording services for Solano County, the Assessor/Recorder plans to withdraw from the CERTNA system in July 2021. The Assessor/Recorder will notify the Board of CERTNA of its withdrawal from the CERTNA agreement prior to December 31, 2020. The Assessor/Recorder now recommends participation in SECURE and presents this item to the Board at this time to avoid any work stoppage in electronic recording.

The transition from CERTNA to SECURE is anticipated to take approximately seven months. Once the withdrawal is effective, an exit fee may be payable to CERTNA, which is based on the amount of time a county is a party to CERTNA which is only three years for Solano County. There are sufficient funds in the Recorder's Special Revenue Fund (Fund 4000) to cover the cost. The Electronic Delivery System Fund (BU 4005) receives revenue through dedicated fees collected for the express purpose of supporting electronic recording.

The one-time start-up cost to join SECURE is \$50,000, with an annual maintenance fee of \$0.30 per recorded document. First year maintenance fees paid fiscal year 2020/2021 will be \$32,789 and are based on the number of recorded documents reported to the Department of Insurance for calendar year 2019. Since the recorded document count is the basis for the annual maintenance fee, as recording volume increases and decreases the maintenance fee will change. This represents a maintenance fee savings of approximately \$40,000 from the current annual costs to participate in CERTNA. Delegating authority to the Assessor/Recorder will allow the County to enter into an MOU with SECURE, following approval by County Counsel as to form and legality.

As stated earlier, the conversion to SECURE is estimated to take seven months, with the intent to be operational prior to the July 1 effective date for withdrawal from CERTNA. Vital to this transition is the scheduling of a DOJ audit of Solano County. Under the terms of the ERDA, both the County and the DOJ must perform specific statutory duties before the County puts its ERDS into operation. The regulations require an extensive amount of oversight by the DOJ to obtain system certification and ensure ongoing compliance. Even though Solano County is DOJ certified, we are required to pass another DOJ Audit to permit membership into SECURE. We are ineligible to convert to SECURE without the audit. Solano County will belong to both organizations simultaneously, until separation from CERTNA by the end of June 2021.

The conversion from CERTNA to SECURE will require multiple resources from Solano County Recorder and Department of Information Technology. This project will require multiple levels of testing of the entire system. The testing will include both internal and external user testing. The external user testing will involve all the users of ERDS - this includes banks, title companies and agents, about 600 users. The testing will also include Government to Government (G2G) user, the Franchise Tax Board.

ALTERNATIVES:

The Board could choose not to authorize the resolution to withdraw from Joint Powers Agreement with the CERTNA and delegate authority to participate in ERDS with SECURE. This is not recommended as SECURE maintains a more sustainable fiscal model and will ensure e-recording in service levels remain consistent.

OTHER AGENCY INVOLVEMENT:

County Counsel has reviewed the CERTNA Secure MOU and approved it as to form. DOIT will assist in the implementation of the SECURE program.

CAO RECOMMENDATION:

APPROVE DEPARTMENTAL RECOMMENDATION