



**Colorado  
Legislative  
Council  
Staff**

**SB16-115**

**FISCAL NOTE**

**FISCAL IMPACT:**  State  Local  Statutory Public Entity  Conditional  No Fiscal Impact

**Drafting Number:** LLS 16-0952 **Date:** February 11, 2016  
**Prime Sponsor(s):** Sen. Martinez Humenik **Bill Status:** Senate Local Government  
**Fiscal Analyst:** Erin Reynolds (303-866-4146)

**BILL TOPIC:** ELECTRONIC RECORDING TECHNOLOGY BOARD

<b>Fiscal Impact Summary</b>	<b>FY 2016-2017</b>	<b>FY 2017-2018</b>
<b>State Revenue</b>	<b><u>\$600,000 to \$1.2 million</u></b>	<b><u>\$1.2 million to \$2.4 million</u></b>
Cash Funds	600,000 to 1.2 million	1.2 million to 2.4 million
<b>State Expenditures</b>	<b><u>\$6,545</u></b>	<b><u>\$6,566</u></b>
Cash Funds	5,289	5,289
Centrally Appropriated Costs	1,256	1,277
<b>FTE Position Change</b>	0.1 FTE	0.1 FTE
<b>Appropriation Required:</b> \$5,289 – Department of State (FY 2016-17).		
<b>Future Year Impacts:</b> Ongoing revenue and expenditure increases through FY 2022-23.		

**Summary of Legislation**

The bill creates the Electronic Recording Technology Board (board) in the Secretary of State's office (SOS) as a Type 1 transfer. The nine-member board is established as an enterprise and is authorized to issue revenue bonds. The board repeals in September 1, 2022, pending a sunset review.

The board is authorized to impose a surcharge of up to \$2 on all documents that a clerk and recorder retains for recording or filing between January 1, 2017, and December 31, 2021. If imposed, counties are required to collect the surcharge on behalf of the board and transmit it to the State Treasurer for deposit in the newly created Electronic Recording Technology Fund (fund). Revenue in the fund is TABOR-exempt and continuously appropriated to the board to be used for the following:

- developing a strategic plan that incorporates the core goals of security, accuracy, sequencing, online public access, standardization, and preservation of public records;
- determining functionality standards for an electronic filing system that support the core goals;
- issuing a request for proposal for electronic filing system equipment and software that will be available to counties on an optional basis;
- developing best practices for an electronic filing system;
- providing training to clerk and recorders related to electronic filing systems; and

- making grants to counties to establish, maintain, improve, or replace electronic filing systems for documents that are recorded with a clerk and recorder. The board is required to give priority for grants to counties that do not have sufficient revenue from the surcharge proceeds to maintain their existing electronic filing systems.

The bill repeals the SOS's power to ensure uniformity related to electronic filing systems and grants these powers to the board. The SOS is required to prepare an annual report that is published online about the grants that the board made in the prior fiscal year and also to report to the General Assembly before January 1, 2021, about the overall success of the grant program.

The bill also extends the \$1 surcharge that a clerk and recorder is currently required to collect and use for the county's core or electronic filing system until December 31, 2026. This surcharge was set to repeal June 30, 2017.

## **Background**

Under current law, clerk and recorder offices are authorized to collect and use the revenue from a \$1 technology surcharge for each recording or filing the county receives for ongoing improvements to its electronic document management system. Recordings and filings received that qualify for this technology surcharge are primarily related to real estate deeds or tax liens. The technology surcharge created under House Bill 02-1119 took effect September 1, 2002, and was extended by five years under HB 11-1313 until June 30, 2017.

In the past five years, revenue retained by counties from the \$1 technology surcharge has varied widely, as follows:

- counties with larger populations (Category I and II counties, such as Denver, El Paso, and Jefferson) have retained between \$55,000 and \$155,000 per year; and
- counties with smaller populations (Category III, IV, and V counties, such as Alamosa, Mesa, and Summit) have retained between \$500 and \$35,000 per year.

The nine counties with the largest populations, holding 67 percent of the state's residents, have been able to maintain technology surcharge revenue sufficient to cover annual document management system maintenance, while the remaining 55 counties, which hold 33 percent of the state's residents, have had system maintenance costs that exceed the technology surcharge revenue collected.

**Type 1 agencies.** A Type 1 agency is administered under the direction and supervision of its principal department; however, a Type 1 agency exercises its statutory powers, duties, and functions, including rule-making, independently of the executive director of its principal department. Any functions of a Type 1 agency not specifically established in statute, including all budgeting, purchasing, planning, and related management functions, are conducted under the direction and supervision of the executive director of its principal department. Examples of Type 1 agencies include the State Personnel Board in the Department of Personnel and Administration (DPA) and the Public Utilities Commission in the Department of Regulatory Agencies.

## **State Revenue**

***The bill will increase state revenue to the Electronic Recording Technology Fund by between \$600,000 and \$1.2 million in FY 2016-17, and by between \$1.2 million and \$2.2 million in FY 2017-18.***

The bill allows the board to impose a surcharge of up to \$2 on all documents that a clerk and recorder retains for recording or filing between January 1, 2017, and December 31, 2021, when the surcharge repeals. Table 1 outlines the estimated revenue to the fund based on the following assumptions and requirements under the bill:

- an estimated 1.2 million documents are filed annually that are eligible for the surcharge (about 15 percent of clerk and recorder filings are no fee transactions);
- the board will impose a surcharge of either \$1 or \$2 in all six fiscal years it is authorized to do so, therefore revenue is shown as a range; and
- only six months of revenue is authorized to be collected in FY 2016-17 and FY 2021-22.

Table 1. Revenue Range Under SB16-115			
Fiscal Year	Documents Recorded or Filed	\$1 Surcharge	\$2 Surcharge
2016-17	600,000	\$600,000	to \$1,200,000
2017-18	1,200,000	\$1,200,000	to \$2,400,000
2018-19	1,200,000	\$1,200,000	to \$2,400,000
2019-20	1,200,000	\$1,200,000	to \$2,400,000
2020-21	1,200,000	\$1,200,000	to \$2,400,000
2021-22	600,000	\$600,000	to \$1,200,000

Money in the fund is continuously appropriated to the board to cover board expenditures and electronic filing system grants to counties. It is expected that no significant interest will accrue in this fund as grants will be regularly issued, which is expected to draw down the fund balance to a minimum each fiscal year. As the board has enterprise status, this revenue is also TABOR-exempt.

**Fee impact on individuals and business.** Section 2-2-322, C.R.S., requires legislative service agency review of measures which create or increase any fee collected by a state agency. Table 2 below identifies the fee impact of this bill.

Table 2. Fee Impact on Individuals or Business Under SB16-115					
Type of Fee	Current Fee	Proposed Fee	Fee Change	Number Affected	Total Fee Impact
Clerk and Recorder Document Surcharge	\$1	\$2 to \$3	\$1 to \$2	1,200,000	between \$1,200,000 and \$2,400,000
<b>TOTAL</b>					<b>at least \$1,200,000</b>

**State Expenditures**

**The bill will increase state cash fund expenditures from the Department of State Cash Fund in the SOS by \$5,289 per year starting in FY 2016-17, through FY 2021-22.**

**Secretary of State's Office.** The SOS requires 0.1 FTE of a General Professional III to assist the Finance Unit in its Administrative Division in developing and documenting grant agreements under the bill. These costs are outlined in Table 3. Workload will also increase for the Secretary of State, or his or her designee, to serve as a board member.

<b>Table 3. Expenditures Under SB16-115</b>		
<b>Department of State</b>	<b>FY 2016-17</b>	<b>FY 2017-18</b>
Personal Services	\$5,289	\$5,289
FTE	0.1 FTE	0.1 FTE
Centrally Appropriated Costs*	1,256	1,277
<b>TOTAL</b>	<b>\$6,545</b>	<b>\$6,566</b>

\* Centrally appropriated costs are not included in the bill's appropriation.

**Department of Personnel and Administration.** The DPA's State Purchasing and Contracts Office will assist the SOS to conduct the request for proposal (or solicitation) for electronic filing system equipment and software under the bill, as the SOS is not authorized to conduct this procurement process independently. This workload impact is expected to be minimal and can be accomplished within existing appropriations.

**Department of Law.** The board is authorized to promulgate rules necessary for its administration. To the extent that legal assistance is required, workload will increase in the Department of Law. This workload impact is expected to be minimal and can be absorbed within existing appropriations.

**Centrally appropriated costs.** Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. The centrally appropriated costs subject to this policy are estimated in the fiscal note for informational purposes and summarized in Table 4.

<b>Table 4. Centrally Appropriated Costs Under SB16-115</b>		
<b>Cost Components</b>	<b>FY 2016-17</b>	<b>FY 2017-18</b>
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$803	\$803
Supplemental Employee Retirement Payments	453	474
<b>TOTAL</b>	<b>\$1,256</b>	<b>\$1,277</b>

**Local Government Impact**

Clerk and recorders, at the discretion of the board, will begin collecting an additional surcharge of up to \$2 on those documents that it retains for recording or filing that are eligible for fee assessment between January 1, 2017, and December 31, 2021. This revenue estimate is outlined above in the State Revenue section, since it is transmitted by clerk and recorders to the State Treasurer, who credits the moneys to the fund for use by the board. As such, this revenue is excluded from the county's fiscal year spending.

In addition, clerk and recorders are authorized to continue collecting and retaining the \$1 technology surcharge until December 31, 2026. This results in continuing annual revenue of about \$1.2 million available to clerk and recorders for system maintenance costs beginning in FY 2017-18.

To the extent that clerk and recorders receive grants from the board, county grant revenue will increase, which is also excluded from a county's TABOR limit. These grants will be dedicated to replacing hardware and software in clerk and recorders offices. Pursuant to the bill's requirement, it is expected that smaller population counties, which are unable to support system maintenance costs with the current surcharge revenue, will receive grants before the larger counties, which pull in enough revenue from the existing technology surcharge to cover system maintenance costs.

Finally, workload for the five clerk and recorders appointed to serve on the board will increase. It is expected that this workload impact will be absorbed within existing resources and expenses incurred as a result of board participation will be paid by the fund.

**Effective Date**

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

**State Appropriations**

In FY 2016-17, the Department of State requires an appropriation of \$5,289 from the Department of State Cash Fund and an allocation of 0.1 FTE.

**State and Local Government Contacts**

Counties	Clerk and Recorders	Governor's Office
Law	Personnel and Administration	Regulatory Agencies
State	Treasury	