

AMENDED IN ASSEMBLY JULY 14, 2008

AMENDED IN ASSEMBLY JUNE 9, 2008

AMENDED IN SENATE APRIL 8, 2008

**SENATE BILL**

**No. 1396**

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**Introduced by Senator Cox**

February 21, 2008

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An act to amend Section 27388 of the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

SB 1396, as amended, Cox. Local government: recording fees.

Existing law authorizes a county board of supervisors to impose a fee of up to \$2 to be paid at the time of recording of every real estate instrument, paper, or notice required or permitted by law to be recorded within that county, and defines "real estate instrument" to mean a deed of trust, an assignment of deed of trust, a reconveyance, a request for notice, and a notice of default.

This bill would authorize a county board of supervisors to impose a fee of up to \$3 to be paid at the time of recording of every real estate instrument, paper, or notice required or permitted by law to be recorded within that county, except as specified, and would define "real estate instrument" to mean a deed of trust, an assignment of deed of trust, a reconveyance, a request for notice, a notice of default, a substitution of trustee, a notice of trustee sale, and a notice of ~~recision~~ *rescission* of declaration of default.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 27388 of the Government Code is  
2 amended to read:

3 27388. (a) In addition to any other recording fees specified in  
4 this code, upon the adoption of a resolution by the county board  
5 of supervisors, a fee of up to three dollars (\$3) shall be paid at the  
6 time of recording of every real estate instrument, paper, or notice  
7 required or permitted by law to be recorded within that county,  
8 except those expressly exempted from payment of recording fees.  
9 “Real estate instrument” is defined for the purpose of this section  
10 as a deed of trust, an assignment of deed of trust, a reconveyance,  
11 a request for notice, a notice of default, a substitution of trustee,  
12 a notice of trustee sale, and a notice of rescission of declaration of  
13 default. “Real estate instrument” does not include any deed,  
14 instrument, or writing subject to the imposition of a documentary  
15 transfer tax as defined in Section 11911 of the Revenue and  
16 Taxation Code, nor any document required to facilitate the transfer  
17 subject to the documentary transfer tax. The fees, after deduction  
18 of any actual and necessary administrative costs incurred by the  
19 county in carrying out this section, shall be paid quarterly to the  
20 county auditor or director of finance, to be placed in the Real Estate  
21 Fraud Prosecution Trust Fund. The amount deducted for  
22 administrative costs shall not exceed 10 percent of the fees paid  
23 pursuant to this section.

24 (b) Money placed in the Real Estate Fraud Prosecution Trust  
25 Fund shall be expended to fund programs to enhance the capacity  
26 of local police and prosecutors to deter, investigate, and prosecute  
27 real estate fraud crimes. After deduction of the actual and necessary  
28 administrative costs referred to in subdivision (a), 60 percent of  
29 the funds shall be distributed to district attorneys subject to review  
30 pursuant to subdivision (d), and 40 percent of the funds shall be  
31 distributed to local law enforcement agencies within the county  
32 in accordance with subdivision (c). In those counties where the  
33 investigation of real estate fraud is done exclusively by the district  
34 attorney, after deduction of the actual and necessary administrative  
35 costs referred to in subdivision (a), 100 percent of the funds shall  
36 be distributed to the district attorney, subject to review pursuant  
37 to subdivision (d). The funds so distributed shall be expended for

1 the exclusive purpose of deterring, investigating, and prosecuting  
2 real estate fraud crimes.

3 (c) The county auditor or director of finance shall distribute  
4 funds in the Real Estate Fraud Prosecution Trust Fund to eligible  
5 law enforcement agencies within the county pursuant to subdivision  
6 (b), as determined by a Real Estate Fraud Prosecution Trust Fund  
7 Committee composed of the district attorney, the county chief  
8 administrative officer, the chief officer responsible for consumer  
9 protection within the county, and the chief law enforcement officer  
10 of one law enforcement agency receiving funding from the Real  
11 Estate Fraud Prosecution Trust Fund, the latter being selected by  
12 a majority of the other three members of the committee. The chief  
13 law enforcement officer shall be a nonvoting member of the  
14 committee and shall serve a one-year term, which may be renewed.  
15 Members may appoint representatives of their offices to serve on  
16 the committee. If a county lacks a chief officer responsible for  
17 consumer protection, the county board of supervisors may appoint  
18 an appropriate representative to serve on the committee. The  
19 committee shall establish and publish deadlines and written  
20 procedures for local law enforcement agencies within the county  
21 to apply for the use of funds and shall review applications and  
22 make determinations by majority vote as to the award of funds  
23 using the following criteria:

24 (1) Each law enforcement agency that seeks funds shall submit  
25 a written application to the committee setting forth in detail the  
26 agency's proposed use of the funds.

27 (2) In order to qualify for receipt of funds, each law enforcement  
28 agency submitting an application shall provide written evidence  
29 that the agency either:

30 (A) Has a unit, division, or section devoted to the investigation  
31 or prosecution of real estate fraud, or both, and the unit, division,  
32 or section has been in existence for at least one year prior to the  
33 application date.

34 (B) Has on a regular basis, during the three years immediately  
35 preceding the application date, accepted for investigation or  
36 prosecution, or both, and assigned to specific persons employed  
37 by the agency, cases of suspected real estate fraud, and actively  
38 investigated and prosecuted those cases.

39 (3) The committee's determination to award funds to a law  
40 enforcement agency shall be based on, but not be limited to, (A)

1 the number of real estate fraud cases filed in the prior year; (B)  
2 the number of real estate fraud cases investigated in the prior year;  
3 (C) the number of victims involved in the cases filed; and (D) the  
4 total aggregated monetary loss suffered by victims, including  
5 individuals, associations, institutions, or corporations, as a result  
6 of the real estate fraud cases filed, and those under active  
7 investigation by that law enforcement agency.

8 (4) Each law enforcement agency that, pursuant to this section,  
9 has been awarded funds in the previous year, upon reapplication  
10 for funds to the committee in each successive year, in addition to  
11 any information the committee may require in paragraph (3), shall  
12 be required to submit a detailed accounting of funds received and  
13 expended in the prior year. The accounting shall include (A) the  
14 amount of funds received and expended; (B) the uses to which  
15 those funds were put, including payment of salaries and expenses,  
16 purchase of equipment and supplies, and other expenditures by  
17 type; (C) the number of filed complaints, investigations, arrests,  
18 and convictions that resulted from the expenditure of the funds;  
19 and (D) other relevant information the committee may reasonably  
20 require.

21 (d) The county board of supervisors shall annually review the  
22 effectiveness of the district attorney in deterring, investigating,  
23 and prosecuting real estate fraud crimes based upon information  
24 provided by the district attorney in an annual report. The district  
25 attorney shall submit the annual report to the board, ~~the county~~  
26 ~~recorder~~, and to the Legislative Analyst's Office on or before  
27 September 1 of each year. The Legislative Analyst's Office shall  
28 compile the results and report to the Legislature, detailing both:

29 (1) Facts, based upon, but not limited to, (A) the number of real  
30 estate fraud cases filed in the prior year; (B) the number of real  
31 estate fraud cases investigated in the prior year; (C) the number  
32 of victims involved in the cases filed; (D) the number of  
33 convictions obtained in the prior year; and (E) the total aggregated  
34 monetary loss suffered by victims, including individuals,  
35 associations, institutions, corporations, and other relevant public  
36 entities, according to the number of cases filed, investigations,  
37 prosecutions, and convictions obtained.

38 (2) An accounting of funds received and expended in the prior  
39 year, which shall include (A) the amount of funds received and  
40 expended; (B) the uses to which those funds were put, including

1 payment of salaries and expenses, purchase of equipment and  
2 supplies, and other expenditures by type; (C) the number of filed  
3 complaints, investigations, prosecutions, and convictions that  
4 resulted from the expenditure of funds; and (D) other relevant  
5 information provided at the discretion of the district attorney.

6 (e) A county in which a district attorney fails to submit an annual  
7 report to the Legislative Analyst's Office pursuant to the  
8 requirements of subdivision (d) shall not expend funds held in that  
9 county's Real Estate Fraud Prosecution Trust Fund until the district  
10 attorney has submitted an annual report for the county's most  
11 recent full fiscal year.

12 (f) Annual reports submitted to the Legislative Analyst's Office  
13 pursuant to subdivision (d) shall be made in a standard form and  
14 manner determined by the Legislative Analyst's Office, in  
15 consultation with participating law enforcement agencies.

16 (g) The intent of the Legislature in enacting this section is to  
17 have an impact on real estate fraud involving the largest number  
18 of victims. To the extent possible, an emphasis should be placed  
19 on fraud against individuals whose residences are in danger of, or  
20 are in, foreclosure as defined under subdivision (b) of Section  
21 1695.1 of the Civil Code. Case filing decisions continue to be in  
22 the discretion of the prosecutor.

23 (h) A district attorney's office or a local enforcement agency  
24 that has undertaken investigations and prosecutions that will  
25 continue into a subsequent program year may receive nonexpended  
26 funds from the previous fiscal year subsequent to the annual  
27 submission of information detailing the accounting of funds  
28 received and expended in the prior year.

29 (i) No money collected pursuant to this section shall be expended  
30 to offset a reduction in any other source of funds. Funds from the  
31 Real Estate Fraud Prosecution Trust Fund shall be used only in  
32 connection with criminal investigations or prosecutions involving  
33 recorded real estate documents.

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