

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: April 2, 1998 Revised: _____

Subject: County Clerks Public Records Access Act

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	Moody	Moody	JU	Favorable/CS
2.	_____	_____	GO	_____
3.	_____	_____	WM	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The bill:

- Creates the “County Clerks Public Records Act”;
- Requires that the clerks of each county court, without charge to the public for viewing, publish specified information on the Internet no later than December 31, 2002;
- Allows the clerk to charge, under s. 28.24, F.S., for downloading or other access to the materials in printed form;
- Requires the clerks to utilize appropriate Internet security measures to ensure that public records cannot be accessed directly or modified; and
- Provides that information retrieved from the Internet is *not* admissible in court as an authenticated document unless otherwise provided by law.

This bill creates a yet unnumbered section of the Florida Statutes.

II. Present Situation:

Currently, a person in custody of a public record must permit the record to be inspected and examined by any person at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian’s designee. s. 119.07(1)(a), F.S. Chapter 28, F.S., sets out the responsibilities of the clerk of the court for maintaining certain public records. By statute, the clerk may charge specified fees for copying these records. s. 28.24, F.S. Presently, no law requires clerks of the circuit courts to make information available to the public over the Internet. However, a search of the Internet reveals that many counties have developed websites on the Internet, some including sites for the clerk of the court. The Brevard County Clerk of the Court has a website on the Internet that includes an index listing all 67 Florida counties with links to websites for those counties where available. A sampling of these

reveals a broad range of information regarding clerks' offices, but not access to actual public record documents.

Leon County, which includes Tallahassee, has recently placed the public records of its county clerk's office online. At <http://www.clerk.leon.fl.us>, selecting "public record" brings up the following information:

Welcome to the Leon County Florida Public Records, now available via the Internet. Please read the disclaimer. The Leon County Clerk's home page now features services allowing you to search the entire Leon County Public Records database for final judgments, land records, court records, and other public documents recorded since 1984. The search will return a list of Grantors/Grantees or Parties, the date of the document, the book and page number of the document, and other linked related instruments.

With information obtained online, you may *easily* retrieve and identify documents available at the Public Records Division of the Clerk's Office in the Leon County Courthouse, Room 129. The majority of the work can be done at your convenience.

Public Records Online is very new, and you may see unexpected results, but a simple modification of your search will usually get you back on track. Please be patient as we work to improve this service. If you have difficulties in using this service, or if you wish to report problems or suggest changes, please contact us using the E-mail button at the bottom of this page.

To begin your search of the Public Records, simply do the following:

1. Choose a search type at the bottom of this page.
2. Fill in the information requested by each page. This includes party name (*last name first*), beginning and ending dates, and (for the advanced search) instrument codes and book and page numbers. If the default values for certain items are acceptable to you, no modifications of these values are necessary. (For instance, the default beginning date is Jan 1, 1984, which is the earliest document date available.)
3. Press the SEARCH button.

Once you have followed these three easy steps, you will be presented with a list of documents matching your specifications. If there is a "yes" under the "More" category in the document listing, click on "yes" and it will show you additional information about the selected document.

At any time, you may click on the "Public Records" title on the left side of this screen to begin a new search. If you click on "yes" to retrieve more information

on a document, use your browser's "BACK" button to return to the list of documents that match your specifications.

The service provided on the websites reviewed, including Leon County, do *not* make the actual document available for viewing.

III. Effect of Proposed Changes:

On December 31, 2002, the clerks of every county in Florida will have to make the following summarized list of materials available to the public over the Internet and assure that adequate security is in place so that public records cannot be compromised via the Internet:

- All deeds, mortgages, tax deed applications, tax liens, and real property transactions recorded within the past 10 years, or longer if such information is available for publication on the Internet, including at a minimum: grantor/grantee or parties, date the document was created, and the official record book and page;
- Minutes of county commission meetings convened within the past 4 years, with a mechanism by which the public can word search to locate data;
- Agendas of future county commission meetings provided to the county clerks;
- Marriage licenses issued and orders of dissolution of any marriages in the custody of the clerks;
- Final judgments of dissolution of marriage in the custody of the clerk filed within the past 10 years, including at a minimum: the name of each party, the type of case, the date the judgment was filed, and the official record book and page;
- All final judgments entered by the courts against a party within the past 10 years, including at a minimum: the name of each party, the type of case, the date the judgment was filed, and the official record book and page;
- Information to assist domestic violence victims, including information and instructions on obtaining protective injunctions and any other information on domestic violence;
- Information assisting people in obtaining child support and alimony;
- Jury service information; and
- A listing of all felony criminal sentences imposed.

Potentially, members of the public with access to the Internet, but for whom travel to the courthouse is difficult, inconvenient, or impossible, would utilize the clerk's automated system to obtain public information of importance to them. The bill allows the clerk to charge, under s. 28.24, F.S., for downloading or other access to the materials in printed form. Currently, law permits a charge of \$4 per page for "copying any instrument in the public record by other than photographic process." s. 28.24(10), F.S.

Leon County currently provides much of the information required in this bill over the Internet. However, it does *not* provide the actual documents for viewing. Since May of 1995, Leon County's Internet site is said to have been accessed over 100,000 times. Leon County did not receive state funding.

The bill takes effect upon becoming law. However, compliance is not required until December 31, 2002.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Section 18, Art. VII, Fla. Const., provides:

(a) No county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the legislature has determined that such law fulfills an important state interest and unless: funds have been appropriated that have been estimated at the time of enactment to be sufficient to fund such expenditure; the legislature authorizes or has authorized a county or municipality to enact a funding source not available for such county or municipality on February 1, 1989, that can be used to generate the amount of funds estimated to be sufficient to fund such expenditure by a simple majority vote of the governing body of such county or municipality; the law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature; the expenditure is required to comply with a law that applies to all similarly situated, including the state and local governments; or the law is either required to comply with a federal requirement or required for eligibility to a federal entitlement, which federal requirement specifically contemplates actions by counties or municipalities for compliance.

Because this bill affects each county and may require some or all local governments to spend money or to take actions which will require the expenditure of money, s. 18, Art. VII, Fla. Const., applies and could render legislation passed under this bill subject to constitutional challenge.

B. Public Records/Open Meetings Issues:

The bill requires only public records to be placed on the Internet. In addition, it provides minimums that may be placed on the Internet in lieu of entire documents. However, if a clerk of the court should choose to place entire documents on the Internet, great caution would have to be taken, and great care with each individual document, to avoid inadvertently making public information that is exempt from public records. For instance, a final judgment of dissolution of marriage often will include information about a party such as a home address, telephone number, place of employment, social security number, or name of the school or day care attended by the party's children. If the party is, for instance, active or former law enforcement personnel, a current or former assistant state attorney, a firefighter, or the spouse or child of someone who is such a person, the home address, telephone number, place of employment, social security number, or name of the school or day care attended by the party's children is all exempt from public records. s. 119.07(1)(I), F.S. A

public officer who knowingly makes public information that is exempt under s. 119.07(1), F.S., is subject to suspension and removal or impeachment and, in addition, is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, F.S. s. 119.02, F.S.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The cost of complying with the mandate in the bill would vary from county to county due to varying levels of automation within each affected circuit. One Leon County official estimated the cost of setting up the public records aspect of the website was between \$15,000 and \$20,000. However, it is not clear whether or not this accounts for savings resulting from donations of hardware or software or volunteer work, if the same was utilized in developing Leon County's system.

VI. Technical Deficiencies:

- The terminology "the date the relevant document was created" needs clarification. It could be interpreted to mean either the date the official record was created, or the date the Internet version of the record was created. If it is referring to the official record, then the date the document was filed might be more appropriate.

VII. Related Issues:

None.

VIII. Amendments:

None.

