

STORAGE NAME: h4109a.go
DATE: April 15, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
GOVERNMENTAL OPERATIONS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 4109
RELATING TO: County Clerks Public Records Access Act
SPONSOR(S): Representative Crist
COMPANION BILL(S): CS/SB 1604(s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) GOVERNMENTAL OPERATIONS YEAS 4 NAYS 1
 - (2) CRIMINAL JUSTICE APPROPRIATIONS
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

This bill creates the "County Clerks Public Records Access Act" (Act). This Act requires that no later than December 31, 1999, the clerks of the court of each county publish on the Internet, ***without additional charge or obligation to the public***, the following information:

- Lists of grantor/grantees and other parties, relevant dates, and official records book and page numbers, with regard to, for example, deeds and mortgages, for within the past 10 years.
- Minutes of county commission meetings convened within the past 4 years; must include a mechanism by which the public may use a 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.
- All final judgments entered by the courts against a party within the past 10 years.
- Information to assist domestic violence victims.
- Information assisting people in obtaining child support and alimony.
- Jury service information.
- A list of all felony criminal sentences imposed during the preceding calendar year in the county in which the clerk serves.

This bill provides a statement of "proper and legitimate state purpose".

This bill has a fiscal impact, see "Fiscal Comments", and also see "Applicability of Mandates Provision".

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Currently, a person in custody of a public record must permit the record to be inspected and examined by any person at a 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 circuit court for maintaining certain public records. By statute, the clerk may charge specified fees for copying these records. s. 28.24, F.S. Currently, no law requires clerks 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 other county websites, where available. See <http://www.clerk.co.brevard.fl.us> (then click on "Florida Counties").

The Leon County Clerk's Office, which includes Tallahassee, has recently placed some information on the Internet. That Internet address is: <http://www.clerk.leon.fl.us>.¹ (Note that in the "Whereas" clauses of this bill, an incorrect Internet address is given.) The Leon County Clerk's Office website does *not* make the actual document available for viewing. As of April 8, 1998, the Leon County Clerk's Office Internet website has been accessed 229,342 times. The Leon County Clerk's Office did not receive state funding for the development or administration of this website. The monies for their Internet website came from the Public Records Modernization Trust Fund. See s. 28.222, F.S.; Tel. Conf., John Stott, Chief Deputy Clerk, Leon County Clerk's Office, 4/8/98.

There are county clerks' offices, however, that do not have automated systems for handling much of their information. Other offices that are automated do not have an Internet presence.

¹Going to that address and 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.

B. EFFECT OF PROPOSED CHANGES:

This bill creates the "County Clerks Public Records Access Act" (Act). This Act requires that no later than December 31, 1999, the clerks of the court of each county publish on the Internet, ***without additional charge or obligation to the public***, certain information. December 31, 1999, appears a rather early date, especially for clerks that do not have automated systems already in place.

This bill provides that "[a]ll deeds, mortgages, tax deed applications, tax liens, and real property transactions recorded within the past 10 years", be published on the Internet, if that information is available. That would lead one to believe that the entire document must be made available. However, an additional provision states that "[s]uch information shall at a minimum include a list of grantor/grantees or parties, the date the relevant document was created, and the book and page number of the official records where the document is entered." Thus only such lists, dates, and book and page numbers must be published on the Internet. However, the entire document may be provided, apparently at the clerk's discretion.

The above provision requires publication of such information on the Internet "within the past 10 years". That would appear to be a rolling 10 year requirement such that no more than 10 years worth of data need be published. With this type of information it would seem that a continuing compilation of published information would be more valuable.

Additionally, the following information must be made available on the Internet:

- Minutes of county commission meetings convened within the past 4 years. (A rolling 4 year requirement such that no more than 4 years worth of data need be maintained.) Furthermore, this information must include a mechanism by which the public may use a 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. This requirement has no time limitation, and could prove cumbersome many years in the future.
- All final judgments entered by the courts against a party within the past 10 years. (A rolling 10 year requirement.)
- Information to assist domestic violence victims. Such information must include instructions and assistance in obtaining protective injunctions and any other information on domestic violence maintained by the county clerks.
- Information assisting people in obtaining child support and alimony.
- Jury service information.

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- A listing of all felony criminal sentences imposed during the preceding calendar year in the county in which the clerk serves. The bill further specifies what information must be included.

This bill further requires that clerks utilize appropriate Internet security measures to ensure that no person has the ability to directly access public records or to alter or modify any public record. Furthermore, no information retrieved from the Internet can be admitted in court as an authenticated document.

This bill also provides that nothing in the bill obligates a clerk of the circuit court to provide copies of public records without charge, as authorized by law.

Finally, this bill provides a statement of legitimate state purpose, which is intended to address the mandates issue. See discussion below in "Applicability of Mandates Provision."

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No

(3) any entitlement to a government service or benefit?

This bill requires that certain information held by the clerk's office be made available on the Internet, free of charge.

b. If an agency or program is eliminated or reduced:

An agency or program is not eliminated or reduced.

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No

b. Does the bill require or authorize an increase in any fees?

No

c. Does the bill reduce total taxes, both rates and revenues?

No

d. Does the bill reduce total fees, both rates and revenues?

No

e. Does the bill authorize any fee or tax increase by any local government?

No

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

This bill does not purport to provide services to families or children.

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

No

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

This bill does not create or change a program providing services to families or children.

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Creates an unnumbered section of law.

E. SECTION-BY-SECTION RESEARCH:

See "Effect of Proposed Changes"

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None

2. Recurring Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

4. Total Revenues and Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

See "Fiscal Comments"

2. Recurring Effects:

See "Fiscal Comments"

3. Long Run Effects Other Than Normal Growth:

None

C. **DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

1. Direct Private Sector Costs:

None

2. Direct Private Sector Benefits:

The public, with Internet access, would have greater access to public information in the clerk's control.

3. Effects on Competition, Private Enterprise and Employment Markets:

None

D. **FISCAL COMMENTS:**

The costs associated with implementing this legislation are indeterminate. The cost to clerks without automated systems already in place to establish an Internet presence would be significantly greater than for clerks, with automated systems, to establish such presence. Generally, the smaller counties (less than 100,000 population) have less resources available and thus implementation of sophisticated automated systems is not as easily accomplished.

Cost variables include, for example, hardware and software, availability of staff capable of developing and sustaining an Internet presence, and data collection and scanning costs. Some clerks already have an Internet Website.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. **APPLICABILITY OF THE MANDATES PROVISION:**

This bill requires all 67 clerks of the circuit courts to publish certain information on the Internet by no later than December 31, 1999. The costs of so doing are indeterminate. However, an exception to the applicability of Article VII, Section 18 of the Florida Constitution is made for legislation that has been determined to be an important state interest, and which requires all similarly situated persons to comply. HB 4109 provides a statement of "important state interest" and requires all 67 clerks to comply.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the revenue raising authority of counties or municipalities in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the amount of state tax shared with counties or municipalities.

V. COMMENTS:

The Senate companion bill, CS/SB 1604, authorizes the clerks to charge "for the downloading or other access to these materials in printed form" as provided for in s. 28.24, F.S. As the Senate analysis correctly discerns, that arguably could allow clerks to charge \$4.00 a page for downloading.²

Section 119.085, F.S., provides for remote electronic access as an additional means of inspecting, examining, and copying public records. The clerk may charge a fee for remote electronic access, granted under a contractual arrangement with a user, which fee may include the direct and indirect costs of providing access. Fees for remote electronic access provided to the general public must be in accordance with the provisions of s. 119.07(1), F.S. Section 119.085, F.S., addresses direct, on-line modem access to the clerk's database; it did not envision nor does it address access to information provided by the clerks over the Internet. In like manner, the fee provision in s. 28.24(33), F.S., addresses furnishing "an electronic copy of information contained in a computer database" e.g., go to the clerk's office with your own disk (or buy a disk from the clerk) and have the clerk copy data on to the disk. This statutory fee provision also does not address downloading from the Internet.

In sum, this bill does not currently address fees because the whole point of the bill was to provide Internet access to information "**without additional charge or obligation to the public.**" (CS/SB 1604 provides: "without additional charge or obligation to the public *for viewing the information*") If Internet systems are put in place to download documents, some clerks would want to charge a fee for this. If so, the amount of that fee should be clearly, unambiguously, and specifically stated in the law; otherwise, litigation will ensue over which, if any of the existing fee provisions, apply. (Considering the case law of late, courts are inclined, with regard to their clerks, to sanction larger fees.)

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 15, 1997, the Committee on Governmental Operations adopted one remove everything after the enacting clause amendment, and an amendment thereto. The amendment to the amendment inserted language, that was in the original bill, which provides

² Section. 28.24(10), F.S., provides: "For copying any instrument in the public records by other than photographic process, per page...[\$]4.00." Whether downloading a document can be construed as "copying an instrument" is open to debate. In fact, no existing fee provision was designed to address downloading from the Internet.

that the information required to be put on the Internet by the clerks, would be accessible to the public "without additional charge or obligation".

The amendment

- removes all the whereas clauses;
- changes the title of the act;
- gives the clerks until January 1, 2001, instead of December 31, 1999, to provide the specified information on the Internet;
- combines some provisions and requires that that information be provided on the Internet back to "1989, or longer, if such information is available", rather than the rolling 10 year requirement which was provided for in the bill;
- eliminates the requirement that minutes of a county commission meeting include a mechanism by which the public may use a word search to locate data, and also specifies that the minutes placed on the Internet be the "adopted" minutes;
- requires that the agendas of future county commission meetings be published on the Internet only "if provided to the clerk in an electronic format";
- specifies the type of jury service information that is to be put on the Internet;
- eliminates the requirement that the name of the judge imposing the felony sentence be provided on the Internet and eliminates the requirement that if the clerk receives information that any criminal conviction has been vacated, that the clerk must also provide that information; and
- removes the reference to providing copies of public records (which is otherwise addressed in existing law).

Finally, the amendment amended s. 318.18, F.S., to include within the Uniform Traffic Citation Accounting System civil court case maintenance information and an Internet means for providing public access to county and court information. The name of the system was amended to read: "Uniform Civil Court and Traffic Citation Accounting System".

VII. SIGNATURES:

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