

By the Council for Smarter Government and Committee on  
State Administration and Representative Brummer

1                                   A bill to be entitled  
2           An act relating to public records; creating the  
3           Study Committee on Public Records; providing  
4           for membership and organization of the  
5           committee; providing purpose, duties, and  
6           responsibilities of the committee; requiring a  
7           report; providing for expiration of the  
8           committee; amending s. 28.2221, F.S., relating  
9           to electronic access to official records;  
10          revising declared state purpose with respect to  
11          such access; providing limitations with respect  
12          to a specified Internet index of documents;  
13          providing that county recorders may not place  
14          images or copies of specified public records on  
15          a publicly available Internet website for  
16          general public display; requiring that such  
17          records placed on the Internet prior to the  
18          effective date of the act be removed upon  
19          request; providing that affected persons may  
20          petition the court for an order of compliance;  
21          requiring clerks of court to provide for  
22          electronic retrieval of images of certain  
23          documents by a specified date; providing an  
24          appropriation; providing an effective date.

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26 Be It Enacted by the Legislature of the State of Florida:

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28           Section 1. Study Committee on Public Records;  
29 creation; membership; duties.--

30           (1) There is created a Study Committee on Public  
31 Records. The committee shall be composed of 21 members, eight

1 of whom will serve in an advisory nonvoting capacity, as  
2 follows:

3 (a) The Governor shall appoint one at-large member who  
4 is a resident of the state, one attorney with expertise in  
5 Florida's public records and privacy laws, a representative  
6 from the First Amendment Foundation, and a representative from  
7 the Florida Department of Law Enforcement. To serve in an  
8 advisory capacity, the Governor shall appoint a representative  
9 from the Department of Children and Family Services, a  
10 representative from the Department of Juvenile Justice, and a  
11 representative from the Department of Education.

12 (b) The President of the Senate shall appoint a member  
13 of the Senate interested in and knowledgeable in the areas of  
14 public records law, judicial records, and real property and  
15 probate issues; one attorney with expertise in family law; and  
16 a representative of the real property title industry. To serve  
17 in an advisory capacity, the President of the Senate shall  
18 appoint one domestic violence advocate and one child and  
19 family advocate.

20 (c) The Speaker of the House of Representatives shall  
21 appoint a member of the House of Representatives interested in  
22 and knowledgeable in the areas of public records law, judicial  
23 records, and family law issues; one attorney with expertise in  
24 real property and probate law; and a representative from a  
25 financial institution or from the credit industry. To serve in  
26 an advisory capacity, the Speaker of the House of  
27 Representatives shall appoint two representatives from among  
28 local or community service providers.

29 (d) The Chief Justice of the Supreme Court shall  
30 appoint two judges or justices who are interested in and  
31 knowledgeable regarding public records law and who are

1 familiar with the variety and types of judicial records. To  
2 serve in an advisory capacity, the Chief Justice of the  
3 Supreme Court shall appoint a representative from the judicial  
4 branch.

5 (e) The Florida Association of Circuit Court Clerks  
6 and Comptrollers shall appoint one Clerk of the Circuit Court.

7 (2) The Speaker of the House of Representatives and  
8 the President of the Senate shall designate legislative staff  
9 knowledgeable in the areas of public records and privacy laws  
10 to assist the committee and provide all necessary data  
11 collection, analysis, research, and support services.

12 (3) The attorney appointed by the Governor shall serve  
13 as chair of the committee. Members must be appointed within  
14 30 days after the effective date of this act. No sooner than  
15 40 days and no later than 60 days after the effective date of  
16 this act, the committee shall meet to establish procedures for  
17 the conduct of its business and to elect a vice chair. The  
18 committee shall meet at the call of the chair but no less  
19 frequently than every 2 months. A majority of the members of  
20 the committee constitutes a quorum, and a quorum is necessary  
21 for the purpose of voting on any action or recommendation of  
22 the committee. All meetings shall be held in Tallahassee,  
23 unless otherwise decided by the committee. No more than two  
24 meetings held in locations other than Tallahassee may be held  
25 for the purpose of taking public testimony regarding the  
26 issues set forth in subsection (4).

27 (4) The committee shall address:

28 (a) The issues of privacy and public access as they  
29 relate to the collection and dissemination of information  
30 contained in court records. With respect to such issues, the  
31 committee shall specifically address:

- 1           1. How the collection, storage, retrieval,  
2 dissemination, and accessibility of court records through  
3 advanced technologies such as remote electronic access,  
4 including Internet access, has affected:
- 5           a. The expectation of privacy to sensitive, personal,  
6 or other evidentiary information contained in court records;
- 7           b. The role and effectiveness of the court and the  
8 clerks of the court as custodians of these records;
- 9           c. The operations of other governmental entities that  
10 use information in court records;
- 11           d. The security and safety of citizens; and
- 12           e. The interests of business, research, and media  
13 industries in these records.
- 14           2. How best to balance the positive and negative  
15 effects of electronic access to court records.
- 16           3. Whether the courts and participants in the judicial  
17 process require or provide excessive and unnecessary  
18 information, and if so, the best manner in which to address  
19 such issues.
- 20           4. Whether categories of cases or information such as  
21 financial affidavits, names and addresses of children,  
22 psychological evaluations, testimony and reports of therapists  
23 and counselors, and other evidentiary information found in  
24 court records should be made confidential or exempt from  
25 public disclosure in part or in totality.
- 26           5.a. What information is and should be accessible, the  
27 circumstances warranting accessibility, and the need for  
28 restrictions with respect thereto; and
- 29           b. Whether levels of accessibility should be  
30 established based on the nature of the information and the  
31 user of the information, circumstances warranting the

1 establishment of levels of accessibility, and the need for  
2 restrictions with respect thereto.

3 6. How to ensure the privacy, security, and full  
4 participation of children and families within the judicial  
5 system without undermining the fairness of the judicial  
6 process.

7 7. What changes, if any, in law, rule, policy, or  
8 practice related to the collection, filing, and dissemination  
9 of information contained in court records are necessary to  
10 facilitate information sharing, admissibility of evidence, and  
11 public access to court records, yet at the same time balance  
12 security and privacy needs.

13 8.a. What impediments exist with regard to preventing  
14 the unauthorized or inadvertent disclosure of confidential or  
15 exempt information in current and future court records;

16 b. Who should be responsible for ensuring that such  
17 information is kept exempt from public disclosure; and

18 c. What, if any, penalties should be in place if such  
19 disclosure occurs.

20 (b) The issues of privacy and public access as they  
21 relate to the collection and dissemination of information  
22 contained in all official records. With respect to such  
23 issues, the committee shall specifically address:

24 1. How the storage, retrieval, dissemination, and  
25 accessibility of official records through advanced  
26 technologies such as remote electronic access, including  
27 Internet access, has affected:

28 a. The expectation of privacy with respect to  
29 sensitive or personal information contained in official  
30 records;

31 b. The role and effectiveness of the county recorder;

- 1           c. The operations of other governmental entities who  
2 use official records;  
3           d. The security and safety of citizens; and  
4           e. The interests of business, research, and media  
5 industries.  
6           2. How best to balance the positive and negative  
7 effects of access to official records, regardless of the  
8 medium.  
9           3. The question of whether confidential or exempt  
10 information contained in official records should continue to  
11 be disclosed to the public in copies of records disclosed at  
12 the county recorder's office or obtained through electronic  
13 means.  
14           4.a. Who should be responsible for ensuring that  
15 confidential or exempt information is identified, kept out of  
16 official records, and kept exempt from public disclosure; and  
17           b. What changes to the law, practices, and procedures  
18 need to occur in order to most effectively and efficiently  
19 keep confidential or exempt information out of official  
20 records.  
21           5. How the public and the legal and business  
22 communities can be educated with regard to limiting the types  
23 of personal information included in official records.  
24           6. How to promote greater communication between all  
25 branches of government regarding the collection and disclosure  
26 of sensitive personal information.  
27           7. What procedural safeguards, enforcement practices,  
28 and underlying policies used by public records custodians  
29 currently exist or could be implemented to protect the  
30 disclosure of confidential or exempt information.  
31

1           8. The question of whether sanctions should be created  
2 with regard to what is placed in official records as well as  
3 for disclosing confidential or exempt information.

4           (5) Committee members serving in an advisory capacity  
5 shall provide information to the committee, as requested.  
6 Advisory members are, in part, responsible for reporting to  
7 the committee any recommendations regarding the following  
8 issues:

9           (a) What information contained in agency records  
10 pertaining to minors and family issues of a sensitive nature  
11 should be exempt from public disclosure, and what is the best  
12 method of protecting against the unlawful dissemination of  
13 such information when these records are used for court  
14 proceedings.

15           (b) What changes to agency policies and procedures are  
16 necessary in order to ensure that sensitive personal  
17 information relating to minors and family issues of a  
18 sensitive nature is most effectively and efficiently  
19 disseminated to the judiciary when such information is  
20 pertinent to court proceedings.

21           (6) The committee, as it deems appropriate, may  
22 examine and recommend changes to laws, rules, and policies  
23 governing all public records.

24           (7) The committee shall review, at a minimum,  
25 documents compiled by the legislative, executive, and judicial  
26 branches; the clerks of court; and the Florida Bar, relating  
27 to the topics of privacy, technology, and public records,  
28 including official records and court records.

29           (8) The committee shall submit a final report to the  
30 Governor, the Chief Justice of the Supreme Court, the  
31 President of the Senate, and the Speaker of the House of

1 Representatives, by January 1, 2003. The final report shall  
2 include specific recommendations regarding the privacy and  
3 public records issues identified in this act. To the extent  
4 possible, the report shall include proposed legislation or  
5 rule change recommendations. The report shall identify any  
6 necessary support services, additional training, and fiscal  
7 impact resulting from its recommendations.

8 (9) Members of the committee shall serve without  
9 compensation but are entitled to be reimbursed for per diem  
10 and travel expenses as provided in s. 112.061. Per diem travel  
11 and expenses for committee members who are employees of the  
12 state shall be provided from the budgets of the employing  
13 agencies.

14 (10) The committee is terminated June 30, 2003.

15 Section 2. Section 28.2221, Florida Statutes, is  
16 amended to read:

17 28.2221 Electronic access to official records.--

18 (1) The Legislature finds that a proper and legitimate  
19 state purpose is served by providing the public with access to  
20 public records and information on the Internet. The  
21 Legislature further finds that a proper and legitimate state  
22 purpose is also served by preventing disclosure of records and  
23 information made exempt by law from public disclosure and  
24 ~~hereby determines that the provisions of this section fulfill~~  
25 ~~and further an important state interest.~~

26 (2) No later than January 1, 2002, the county recorder  
27 in each county shall provide a current index of documents  
28 recorded in the official records of the county for the period  
29 beginning no later than January 1, 1990, on a publicly  
30 available Internet website which shall also contain a document  
31 requisition point for obtaining images or copies of the



1 documents reflected in the index and which has the capability  
2 of electronically providing the index data to a central  
3 statewide search site. The index shall be limited to grantor  
4 and grantee names, party names, date, book and page number,  
5 comments, and type of record.

6 (3) Each county recorder shall use appropriate  
7 Internet security measures to ensure that no person has the  
8 ability to alter or to modify records placed on the Internet  
9 by the county recorder ~~any public record.~~

10 (4) Unless otherwise provided by law, no information  
11 retrieved electronically pursuant to this section shall be  
12 admissible in court as an authenticated document.

13 (5) No county recorder may place an image or copy of a  
14 public record, including an official record, on a publicly  
15 available Internet website for general public display if that  
16 image or copy is of a military discharge; death certificate;  
17 or a court file, record, or paper relating to matters or cases  
18 governed by the Florida Rules of Family Law, the Florida Rules  
19 of Juvenile Procedure, or the Florida Probate Rules. Any such  
20 records made available by the county recorder on a publicly  
21 available Internet website for general public display prior to  
22 the effective date of this act must be removed if the affected  
23 party identifies the document and requests that it be removed.  
24 Any affected person may petition the circuit court for an  
25 order directing compliance with this provision. By January 1,  
26 2006, each county recorder or clerk of court shall provide for  
27 electronic retrieval, at a minimum, of images of documents  
28 referenced as the index required to be maintained on the  
29 county's official records website by this section.

30 Section 3. There is hereby appropriated from the  
31 General Revenue Fund to the Executive Office of the Governor

1 the sum of \$25,000 for the purpose of reimbursement for per  
2 diem and travel expenses as authorized by this act.

3           Section 4. This act shall take effect upon becoming a  
4 law.

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