

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 certain notice requirements
20 and requiring publication of notice by county
21 recorders and clerks of the court; providing
22 that affected persons may petition the court
23 for an order of compliance; requiring clerks of
24 court to provide for electronic retrieval of
25 images of certain documents by a specified
26 date; providing an appropriation; providing an
27 effective date.

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29 Be It Enacted by the Legislature of the State of Florida:
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1 Section 1. Study Committee on Public Records;
2 creation; membership; duties.--

3 (1) There is created a Study Committee on Public
4 Records. The committee shall be composed of twenty-two
5 members, nine of whom will serve in an advisory, nonvoting
6 capacity, as follows:

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

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

25 (c) The Speaker of the House of Representatives shall
26 appoint a member of the House of Representatives interested in
27 and knowledgeable in the areas of public records law, judicial
28 records, and family law issues; one attorney with expertise in
29 real property and probate law; and a representative from a
30 financial institution or from the credit industry. To serve in
31 an advisory capacity, the Speaker of the House of

1 Representatives shall appoint two representatives from among
2 local or community service providers.

3 (d) The Chief Justice of the Supreme Court shall
4 appoint two judges or justices who are interested in and
5 knowledgeable regarding public records law and who are
6 familiar with the variety and types of judicial records. To
7 serve in an advisory capacity, the Chief Justice of the
8 Supreme Court shall appoint a representative from the judicial
9 branch.

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

12 (2) The Speaker of the House of Representatives and
13 the President of the Senate shall designate legislative staff
14 knowledgeable in the areas of public records and privacy laws
15 to assist the committee and provide all necessary data
16 collection, analysis, research, and support services.

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

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

4 b. Whether levels of accessibility should be
5 established based on the nature of the information and the
6 user of the information, circumstances warranting the
7 establishment of levels of accessibility, and the need for
8 restrictions with respect thereto.

9 6. How to ensure the privacy, security, and full
10 participation of children and families within the judicial
11 system without undermining the fairness of the judicial
12 process.

13 7. What changes, if any, in law, rule, policy, or
14 practice related to the collection, filing, and dissemination
15 of information contained in court records are necessary to
16 facilitate information sharing, admissibility of evidence, and
17 public access to court records, yet at the same time balance
18 security and privacy needs.

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

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

24 c. What, if any, penalties should be in place if such
25 disclosure occurs.

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

30 1. How the storage, retrieval, dissemination, and
31 accessibility of official records through advanced

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

4 7. What procedural safeguards, enforcement practices,
5 and underlying policies used by public records custodians
6 currently exist or could be implemented to protect the
7 disclosure of confidential or exempt information.

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

11 (5) Committee members serving in an advisory capacity
12 shall provide information to the committee, as requested.
13 Advisory members are, in part, responsible for reporting to
14 the committee any recommendations regarding the following
15 issues:

16 (a) What information contained in agency records
17 pertaining to minors and family issues of a sensitive nature
18 should be exempt from public disclosure, and what is the best
19 method of protecting against the unlawful dissemination of
20 such information when these records are used for court
21 proceedings.

22 (b) What changes to agency policies and procedures are
23 necessary in order to ensure that sensitive personal
24 information relating to minors and family issues of a
25 sensitive nature is most effectively and efficiently
26 disseminated to the judiciary when such information is
27 pertinent to court proceedings.

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

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1 (7) The committee shall review, at a minimum,
2 documents compiled by the legislative, executive, and judicial
3 branches; the clerks of court; and the Florida Bar, relating
4 to the topics of privacy, technology, and public records,
5 including official records and court records.

6 (8) The committee shall submit a final report to the
7 Governor, the Chief Justice of the Supreme Court, the
8 President of the Senate, and the Speaker of the House of
9 Representatives, by January 1, 2003. The final report shall
10 include specific recommendations regarding the privacy and
11 public records issues identified in this act. To the extent
12 possible, the report shall include proposed legislation or
13 rule change recommendations. The report shall identify any
14 necessary support services, additional training, and fiscal
15 impact resulting from its recommendations.

16 (9) Members of the committee shall serve without
17 compensation but are entitled to be reimbursed for per diem
18 and travel expenses as provided in s. 112.061. Per diem travel
19 and expenses for committee members who are employees of the
20 state shall be provided from the budgets of the employing
21 agencies.

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

23 Section 2. Section 28.2221, Florida Statutes, is
24 amended to read:

25 28.2221 Electronic access to official records.--

26 (1) The Legislature finds that a proper and legitimate
27 state purpose is served by providing the public with access to
28 public records and information on the Internet. The
29 Legislature further finds that a proper and legitimate state
30 purpose is also served by preventing disclosure of records and
31 information made exempt by law from public disclosure ~~and~~

1 ~~hereby determines that the provisions of this section fulfill~~
2 ~~and further an important state interest.~~

3 (2) No later than January 1, 2002, the county recorder
4 in each county shall provide a current index of documents
5 recorded in the official records of the county for the period
6 beginning no later than January 1, 1990, on a publicly
7 available Internet website which shall also contain a document
8 requisition point for obtaining images or copies of the
9 documents reflected in the index and which has the capability
10 of electronically providing the index data to a central
11 statewide search site. The index shall be limited to grantor
12 and grantee names, party names, date, book and page number,
13 comments, and type of record.

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

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

21 (5)(a) No county recorder or clerk of the court may
22 place an image or copy of a public record, including an
23 official record, on a publicly available Internet website for
24 general public display if that image or copy is of a military
25 discharge; death certificate; or a court file, record, or
26 paper relating to matters or cases governed by the Florida
27 Rules of Family Law, the Florida Rules of Juvenile Procedure,
28 or the Florida Probate Rules.

29 (b) Any records specified in this subsection made
30 available by the county recorder or clerk of the court on a
31 publicly available Internet website for general public display

1 prior to the effective date of this act must be removed if the
2 affected party identifies the record and requests that it be
3 removed. Such request must be in writing and delivered by
4 mail, facsimile, or electronic transmission, or in person to
5 the county recorder or clerk of the court. The request must
6 specify the identification page number of the document to be
7 removed. No fee may be charged for the removal of a document
8 pursuant to such request.

9 (c) No later than 30 days after the effective date of
10 this act, notice of the right of any affected party to request
11 removal of records pursuant to this subsection shall be
12 conspicuously and clearly displayed by the county recorder or
13 clerk of the court on the publicly available Internet website
14 on which images or copies of the county's public records are
15 placed and in the office of each county recorder or clerk of
16 the court. In addition, no later than 30 days after the
17 effective date of this act, the county recorder or the clerk
18 of the court must have published, on two separate dates, a
19 notice of such right in a newspaper of general circulation in
20 the county where the county recorder's office is located as
21 provided for in chapter 50. Such notice must contain
22 appropriate instructions for making the removal request in
23 person, by mail, by facsimile, or by electronic transmission.
24 The notice shall state, in substantially similar form, that
25 any person has a right to request that a county recorder or
26 clerk of the court remove an image or copy of a public record,
27 including an official record, from a publicly available
28 Internet website if that image or copy is of a military
29 discharge; death certificate; or a court file, record, or
30 paper relating to matters or cases governed by the Florida
31 Rules of Family Law, the Florida Rules of Juvenile Procedure,

1 or the Florida Probate Rules. Such request must be made in
2 writing and delivered by mail, facsimile, or electronic
3 transmission, or in person to the county recorder or clerk of
4 the court. The request must identify the document
5 identification page number of the document to be removed. No
6 fee will be charged for the removal of a document pursuant to
7 such request.

8 (d) Any affected person may petition the circuit court
9 for an order directing compliance with this subsection.

10 (e) By January 1, 2006, each county recorder or clerk
11 of the court shall provide for electronic retrieval, at a
12 minimum, of images of documents referenced as the index
13 required to be maintained on the county's official records
14 website by this section.

15 Section 3. There is hereby appropriated from the
16 General Revenue Fund to the Executive Office of the Governor
17 the sum of \$25,000 for the purpose of reimbursement for per
18 diem and travel expenses as authorized by this act.

19 Section 4. This act shall take effect upon becoming a
20 law. For purposes of codifying the Florida Statutes 2002, the
21 Division of Statutory Revision of the Office of Legislative
22 Services is directed to substitute the effective date of
23 Council Substitute for House Bill 1679, First Engrossed, for
24 the language "the effective date of this act" as used in
25 section 28.2221(5)(b) and (c), Florida Statutes, as amended by
26 section 2 of Council Substitute for House Bill 1679, First
27 Engrossed.