

By the Committee on Judiciary; and Senator Burt

308-821-02

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A bill to be entitled

An act relating to public records; creating the Study Commission on Public Records to examine existing policies, practices, and laws relating to public records in light of technological advances and privacy and security concerns relating to personal and sensitive information concerning individuals; amending s. 28.2221, F.S., relating to electronic access to official records, to impose a legislative moratorium on Internet publication and accessibility to public records until the Legislature authorizes public access via electronic means; providing an effective date.

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

Section 1. Study Commission on Public Records; creation, membership, duties.--

(1) There is created a Study Commission on Public Records. The Governor shall appoint a chair and the commission shall be composed of the following members appointed as follows:

(a) The Speaker of the House of Representatives shall appoint five persons, one of whom is a member of the House of Representatives, one of whom represents the financial institution or credit industry, one of whom represents the title industry, and two of whom represent local or community services providers.

(b) The President of the Senate shall appoint five persons, one of whom is a member of the Senate, one of whom

1 represents the broadcast, print, or electronic media, one of
2 whom represents the First Amendment Foundation, Inc., one of
3 whom represents domestic-violence advocates, and one of whom
4 represents child and family advocates.

5 (c) The Governor shall appoint a public citizen and a
6 representative from the Department of Children and Family
7 Services, a representative from the Department of Education, a
8 representative from the Department of Juvenile Justice, and a
9 representative from the Department of Law Enforcement.

10 (d) The Chief Justice of the Supreme Court shall
11 appoint a judge or justice, as applicable, from a county
12 court, from a circuit court, from an appellate court, and from
13 the Supreme Court; a guardian ad litem; and a person from an
14 office of trial court administrators.

15 (e) The Florida Association of Circuit Court Clerks
16 and Comptrollers shall appoint two clerks or deputy clerks.

17 (f) The Florida Bar shall appoint four attorneys who
18 are members in good standing of The Florida Bar, one of whom
19 is a representative of the Commission for Children, one of
20 whom is a representative of the Committee on Legal Needs of
21 Children, one of whom is a representative of the Family Law
22 Section, and one of whom is a representative of the Mediation
23 Committee, and an attorney or law professor who has expertise
24 in Florida's constitutional, privacy, or public records laws.

25 (2) Members must be appointed within 15 days after the
26 effective date of this act. Within 30 days after the
27 appointment of the membership, the commission shall meet to
28 establish procedures for the conduct of its business.

29 (3) The commission shall develop policy guidelines and
30 recommend changes to court procedures, rules, organizational
31 structure, and laws governing privacy, confidentiality,

1 admissibility of evidence, and public access which the
2 committee considers necessary to facilitate
3 information-sharing within the court and between the court and
4 interested parties, stakeholders, lawyers, and other users of
5 information within the judicial system. The commission shall
6 also examine the issues as relevant and necessary to
7 facilitate resolution of cases and related cases involving
8 issues such as dissolutions of marriage (and determinations of
9 custody, visitation, child support, alimony, and enforcements
10 and modifications attendant thereto), cases under the Uniform
11 Child Custody Jurisdiction Act and the Uniform Reciprocal
12 Enforcement of Support Act, and cases involving adoption or
13 paternity, domestic or repeat violence, or juvenile
14 delinquency or dependency, or termination of parental rights,
15 or cases of children or families in need of supervision within
16 the jurisdiction of the family division. Specifically, the
17 commission shall address:

18 (a) How the recent technological advances through
19 remote electronic access and the Internet have diminished the
20 logistical, physical, or geographical impediments to the
21 collection, storage, retrieval, dissemination and
22 accessibility of public records and information contained
23 therein and diminished the expectation of privacy in
24 sensitive, personal, or other evidentiary information.

25 (b) Whether information such as financial affidavits,
26 names and addresses of children, psychological evaluations,
27 testimony and reports of therapists or counselors, social
28 security numbers, and other personal, sensitive, or
29 evidentiary information found in public records within the
30 judicial system and agencies are or should be confidential,
31 privileged, or exempted from public-records access.

1 (c) Whether cases that fall within the jurisdiction of
2 the family court divisions should be exempted in their
3 totality from the public-records law as are juvenile and
4 adoption cases.

5 (d) What information is and should be accessible and
6 what levels of accessibility and inaccessibility should there
7 be depending on whether the information, regardless of
8 electronic or paper format, is needed and accessed internally
9 by the court, the interested parties, the agencies, other
10 stakeholders, the public, or other users of court information.

11 (e) How to promote greater communication and exchange
12 of necessary privileged, confidential, and personal
13 information needed by the courts and shared between the courts
14 and local and state agencies and how to ensure the privacy and
15 security of children and families from one case to another
16 without thwarting the fairness of the judicial process or
17 without chilling voluntary participation in services such as
18 counseling.

19 (f) What changes in law, rule, policy, or practice
20 related to the collection, filing, and dissemination of
21 information contained in public records within the judicial
22 system are necessary to facilitate information-sharing,
23 admissibility of evidence, and public access and to preclude
24 the unauthorized or inadvertent disclosure of or access to
25 constitutionally and statutorily protected information in
26 violation of privacy interests and individual safety.

27 (g) What procedural safeguards, enforcement practices,
28 and underlying policies used by public records custodians
29 currently exist to protect or otherwise prevent improper or
30 inadvertent release or access to publicly exempt or
31 confidential information.

1 (h) What logistical and practical impediments
2 currently exist to protecting an individual's privacy in
3 confidential and publicly exempt information in public records
4 collected, created, or retained by the court, the clerks of
5 court, and other persons or entities interacting with the
6 judicial system.

7 (i) Whose responsibility should it be to ensure that
8 information that is submitted, collected, or otherwise
9 maintained by public-records custodians is identified as
10 confidential or publicly exempt under the law.

11 (4) The commission shall identify in its
12 recommendation the necessary support services, additional
13 judicial and court-personnel training, and the fiscal impact
14 relating to each aspect of implementation and other
15 information necessary to further the initiative toward
16 statewide family court reform and the other attendant
17 recommendations.

18 (5) The commission may examine and recommend changes
19 to other laws, rules, and policies governing all public
20 records as applied to other categories of cases within the
21 judicial system as the commission considers appropriate to its
22 objectives.

23 (6) As part of its study, the commission shall review,
24 at a minimum:

25 (a) "Making the Multiple Exemptions to Florida Public
26 Records Laws Easier to Locate," Interim Project Report
27 2002-135, Senate Governmental Oversight and Productivity
28 Committee, October 2001.

29 (b) Recommendations and reports of committees and
30 subcommittees of the Florida Supreme Court addressing issues
31 of privacy, technology, public records, and court budget,

1 including "Privacy and Public Records," Draft Final Report,
2 OSCA, The Florida Supreme Court, November, 2001, and the
3 "Report of the Supreme Court Workgroup on Public Records,"
4 Final Report, April 2001.

5 (c) Recommendations and reports of the Committee on
6 Court Administration and Case Management of the Judicial
7 Conference of the United States.

8 (d) Recommendations and reports of sections and
9 committees of The Florida Bar, of other states addressing the
10 issue of privacy and public records, and of other relevant
11 literature governing policy development and implementation.

12 (7) The commission shall submit an interim report and
13 a final report to the Governor, the Chief Justice of the
14 Supreme Court, the President of the Senate, and the Speaker of
15 the House of Representatives, by December 15, 2002. The
16 commission shall submit a final report by February 15, 2003.
17 The final report shall include all recommendations and
18 elements required by this section, a draft of appropriate
19 legislation and rules of procedure, and other recommendations
20 regarding privacy and public records.

21 (8) The President of the Senate and the Speaker of the
22 House of Representatives shall designate staff within the
23 Legislature to assist the commission and provide all necessary
24 data-collection, analysis, research, and support services.

25 (9) Members of the commission shall serve without
26 compensation but are entitled to be reimbursed for per diem
27 and travel expenses as provided in section 112.061, Florida
28 Statutes.

29 (10) The commission is terminated June 30, 2003.

30 Section 2. Subsection (5) of section 28.2221, Florida
31 Statutes, is amended to read:

1 28.2221 Electronic access to official records.--
2 (5) An image of an official record, of a public
3 record, or of any other document referenced in the index and
4 required to be maintained on the county's official-records
5 website may not be made available by electronic placement,
6 electronic retrieval, or other electronic means or access
7 using the publicly available Internet website until a statute
8 is enacted to permit availability through electronic means.
9 With the exception of the index required to be maintained on
10 the county's official-records website by this section, all
11 public records, official records, or other documents made
12 available for public access via the Internet pursuant to
13 chapter 2000-164, Laws of Florida, shall be removed or made
14 unavailable via the Internet until a statute is enacted to
15 permit their availability through such means. This subsection
16 may not be construed to deny the availability and access to
17 public records by means other than the Internet consistent
18 with the laws governing public records and public meetings
19 under chapters 119 and 286 and the State Constitution.~~By~~
20 ~~January 1, 2006, each county recorder shall provide for~~
21 ~~electronic retrieval, at a minimum, of images of documents~~
22 ~~referenced as the index required to be maintained on the~~
23 ~~county's official records website by this section.~~

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

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SENATE SUMMARY

Creates the Study Commission on Public Records to examine existing policies, practices, and laws relating to public records in light of technological advances and privacy and security concerns relating to personal and sensitive information concerning individuals. Imposes a legislative moratorium on Internet publication and accessibility of public records until the Legislature authorizes public access via electronic means.