

By the Committee on Judiciary; and Senator Burt

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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 the Internet; providing exceptions; 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 commission shall be composed of 21 members, 8 of whom will serve in an advisory, nonvoting capacity. The commission shall be composed of the following members:

(a) The Governor shall appoint one public citizen, one attorney with expertise in Florida's public records and privacy laws, a representative from the First Amendment Foundation, and a representative from the Florida Department of Law Enforcement. The Governor shall also appoint a representative from the Department of Children and Family Services, a representative from the Department of Juvenile

1 Justice, and a representative from the Department of
2 Education, to serve in an advisory capacity.

3 (b) The President of the Senate shall appoint a member
4 of the Senate interested in and knowledgeable regarding public
5 records law, judicial records, and real property and probate
6 issues; one attorney with expertise in family law; and a
7 representative of the real-property title industry. The
8 President of the Senate shall also appoint a domestic violence
9 advocate and a child and family advocate to serve in an
10 advisory capacity.

11 (c) The Speaker of the House of Representatives shall
12 appoint a member of the House of Representatives interested in
13 and knowledgeable regarding public records law, judicial
14 records, and family law issues; one attorney with expertise in
15 real property and probate law; and a representative from a
16 financial institution or from the credit industry. The
17 Speaker of the House of Representatives shall also appoint two
18 representatives from among local or community service
19 providers to serve in an advisory capacity.

20 (d) The Chief Justice of the Supreme Court shall
21 appoint two judges or justices who are interested and
22 knowledgeable regarding public records law and who are
23 familiar with the variety and types of judicial records. The
24 Chief Justice of the Supreme Court shall also appoint a
25 representative from the judicial branch to serve in an
26 advisory capacity.

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

29 (f) The Speaker of the House of Representatives and
30 the President of the Senate shall designate legislative staff
31 knowledgeable regarding public records and privacy law to

1 assist the commission and provide all necessary
2 data-collection, analysis, research, and support services.

3 (2) The attorney appointed by the Governor shall serve
4 as chair of the commission. Members must be appointed within
5 30 days after the effective date of this act. Within 40 to 60
6 days after the effective date of this act, the commission
7 shall meet to establish procedures for the conduct of its
8 business and to elect a vice-chair. The commission shall meet
9 at the call of the chair but no less frequently than every 2
10 months. A majority of the members of the commission
11 constitutes a quorum, and a quorum is necessary for the
12 purpose of voting on any action or recommendation of the
13 commission. All meetings shall be held in Tallahassee, unless
14 otherwise decided by the commission, and then no more than two
15 such meetings can be held in other locations for the purpose
16 of taking public testimony regarding the issues below
17 described.

18 (3) The commission shall address:

19 (a) The issues of privacy and public access as they
20 relate to the collection and dissemination of information
21 contained in court records. Specifically, the commission
22 shall address:

23 1. How the collection, storage, retrieval,
24 dissemination and accessibility of court records through
25 advanced technologies such as remote electronic access
26 including over the Internet has affected: the expectation of
27 privacy to sensitive, personal, or other evidentiary
28 information contained in court records; the role and
29 effectiveness of the court, and the clerks of the court over
30 these records; and the operations of other governmental
31 entities that use information in court records; the security

1 and safety of citizens; and the interests of business,
2 research, and media industries in these records.

3 2. How best to balance the positive and negative
4 affects of electronic access to court records.

5 3. Whether the courts and participants in the judicial
6 process require or provide excessive and unnecessary
7 information, and if so how are such issues best addressed.

8 4. Whether categories of cases or information such as
9 financial affidavits, names and addresses of children,
10 psychological evaluations, testimony and reports of therapists
11 and counselors, and other evidentiary information found in
12 court records should be made confidential or exempt from
13 public disclosure in part or in totality.

14 5. What information is and should be accessible and
15 whether levels of accessibility should be established
16 depending on the nature of the information and the user of the
17 information and under what circumstances or restrictions.

18 6. How to ensure the privacy, security, and full
19 participation of children and families within the judicial
20 system without undermining the fairness of the judicial
21 process.

22 7. What changes, if any, in law, rule, policy, or
23 practice related to the collection, filing, and dissemination
24 of information contained in court records are necessary to
25 facilitate information sharing, admissibility of evidence, and
26 public access to court records, yet at the same time balance
27 security and privacy needs.

28 8. What impediments exist with regard to preventing
29 the unauthorized or inadvertent disclosure of confidential or
30 exempt information in current and future court records; whose
31 responsibility should it be to ensure that such information is

1 kept exempt from public disclosure; and what, if any,
2 penalties should be in place if such disclosure occurs.

3 (b) The issues of privacy and public access as they
4 relate to the collection and dissemination of information
5 contained in all official records. Specifically, the
6 commission shall address:

7 1. How the storage, retrieval, dissemination, and
8 accessibility of official records through advanced
9 technologies such as remote electronic access and the
10 Internet, has affected: the expectation of privacy to
11 sensitive, personal, or other evidentiary information
12 contained in official records; the role and effectiveness of
13 the county recorder; the operations of other governmental
14 entities who use official records; the security and safety of
15 citizens; and the interests of business, research, and media
16 industries.

17 2. How best to balance the positive and negative
18 affects of access to official records regardless of the
19 medium.

20 3. Should confidential or exempt information contained
21 in official records continue to be disclosed to the public in
22 copies of records disclosed at the clerk's office or obtained
23 through electronic means.

24 4. Whose responsibility should it be to ensure that
25 confidential or exempted information is identified, kept out
26 of official records, and kept exempt from public disclosure,
27 and what changes to the law, practices and procedures need to
28 occur in order to most effectively and efficiently keep
29 confidential or exempt information out of official records.

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1 5. How the public and the legal and business community
2 can be educated with regard to limiting what personal
3 information is put in official records.

4 6. How do we promote greater communication between all
5 branches of government regarding the collection and disclosure
6 of sensitive, personal, or other evidentiary information.

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

11 8. Should sanctions be created with regard to what is
12 placed in official records as well as for disclosing
13 confidential or exempt information.

14 (4) Those members serving in an advisory capacity are
15 to provide information to the commission, as requested.
16 Advisory members are, in part, responsible for reporting back
17 to the commission any recommendations regarding the following
18 issues:

19 (a) What information contained in agency records
20 pertaining to minors and family issues of a sensitive nature
21 should be exempt from public disclosure, and how to protect
22 against the unlawful dissemination of such information when
23 these records are used for court proceedings.

24 (b) What changes to agency policies and procedures are
25 necessary in order to ensure that sensitive, personal, or
26 other evidentiary information relating to minors and family is
27 most effectively and efficiently disseminated to the judiciary
28 when such information is pertinent to court proceedings.

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

1 (6) The commission 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 (7) The commission 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 should 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 (8) Members of the commission shall serve without
17 compensation but are entitled to be reimbursed for per diem
18 and travel expenses as provided in section 112.061, Florida
19 Statutes. Any member of the commission who is a government
20 employee shall have their per diem and travel expenses
21 reimbursed by their employer. There is hereby appropriated
22 \$25,000 from the General Revenue Fund to the Executive Office
23 of the Governor for the purpose of reimbursement for per diem
24 and travel expenses as authorized by this act.

25 (9) The commission is terminated June 30, 2003.

26 Section 2. Section 28.2221, Florida Statutes, is
27 amended to read:

28 28.2221 Electronic access to official records.--

29 (1) The Legislature finds that a proper and legitimate
30 state purpose is served by providing the public with access to
31 public records and information on the Internet. The

1 Legislature further finds that a proper and legitimate state
2 purpose is also served by preventing the disclosure of records
3 and information made exempt by law from public disclosure and
4 ~~hereby determines that the provisions of this section fulfill~~
5 ~~and further an important state interest.~~

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

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

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

24 (5) No county recorder may place an image or copy of
25 an official record on a publicly available Internet website
26 for general public display if that image or copy is of a
27 military discharge; death certificate; and any court files,
28 records, and papers relating to matters or cases governed by
29 the Florida Rules of Family Law, the Florida Rules of Juvenile
30 Procedure, and the Florida Probate Rules. Any such records on
31 the Internet for general public display prior to the effective

1 date of this act must be removed upon identification of the
2 document and request of any affected party. Any affected
3 person may petition the circuit court for an order directing
4 compliance with this provision.By January 1, 2006, each
5 county recorder shall provide for electronic retrieval, at a
6 minimum, of images of documents referenced as the index
7 required to be maintained on the county's official records
8 website by this section.

9 (6) This section does not prohibit a title insurance
10 company licensed in this state or its designee from
11 maintaining a secure Internet site that makes official records
12 available for the exclusive use of its agents and customers.
13 This section also does not prohibit a title insurance company
14 from continuing to maintain such site during the moratorium
15 imposed on the transfer of records and other documents under
16 subsection (5). The county recorder of each county in this
17 state is expressly authorized to continue any arrangement with
18 a title insurance company for the timely transfer of
19 electronic records.

20 Section 3. This act shall take effect upon becoming a
21 law.
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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill 668

- 4 -- Revamps the composition of the 28-member Study
5 Commission on Public Records and reduce the
6 membership to 21 of whom 8 serve in an advisory
7 capacity.
8 -- Revises the provision regarding the moratorium on
9 the placement of official records on the Internet
10 to narrow the class of documents that are to be
11 withheld from the Internet for general public
12 access and to preclude the county recorders from
13 denying title insurance companies access to such
14 records when the title insurance companies have
15 arrangements with the county recorders to access
16 these records through a secure Internet website.
17 -- Provides that those records already posted on the
18 Internet that are statutorily protected by this
19 future moratorium must be removed upon the request
20 of an affected person and identification of the
21 specified document and provides a person with a
22 right to petition for writ of mandamus to order
23 compliance;
24 -- Reinstates existing law which requires the county
25 recorder to post documents, other than those
26 statutorily protected by the moratorium, on the
27 Internet by January 1, 2006.
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