

By the Committees on Governmental Oversight and Productivity;
Judiciary; and Senator Burt

302-2122-02

1 A bill to be entitled
2 An act relating to public records; creating the
3 Study Committee on Public Records to examine
4 existing policies, practices, and laws relating
5 to public records in light of technological
6 advances and privacy and security concerns
7 relating to personal and sensitive information
8 concerning individuals; amending s. 28.2221,
9 F.S., relating to electronic access to official
10 records, to impose a legislative moratorium on
11 Internet publication and accessibility to
12 public records until the Legislature authorizes
13 public access via the Internet; providing
14 exceptions; providing an effective date.

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

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18 Section 1. Study Committee on Public Records;
19 creation, membership, duties.--

20 (1) There is created a Study Committee on Public
21 Records. The committee shall be composed of 23 members, 8 of
22 whom will serve in an advisory, nonvoting capacity. The
23 committee shall be composed of the following members:

24 (a) The Governor shall appoint one public citizen, one
25 attorney with expertise in Florida's public records and
26 privacy laws, a representative from the First Amendment
27 Foundation, a representative of the data-aggregation industry,
28 and a representative from the Florida Department of Law
29 Enforcement. The Governor shall also appoint a representative
30 from the Department of Children and Family Services, a
31 representative from the Department of Juvenile Justice, and a

1 representative from the Department of Education, to serve in
2 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 two Clerks of the Circuit
29 Court.

30 (f) All state and local governmental entities are
31 directed to cooperate with and assist the committee to the

1 fullest extent possible. Additionally, the Florida Association
2 of Clerks shall provide data, and assist and cooperate with
3 the committee as requested.

4 (g) The Speaker of the House of Representatives and
5 the President of the Senate shall designate legislative staff
6 or joint committee staff to assist the committee and provide
7 all necessary data-collection, analysis, research, and support
8 services.

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

23 (3) The committee shall address:

24 (a) The issues of privacy and public access as they
25 relate to the collection and dissemination of information
26 contained in court records. Specifically, the committee shall
27 address:

28 1. How the collection, storage, retrieval,
29 dissemination and accessibility of court records through
30 advanced technologies such as remote electronic access
31 including over the Internet has affected: the expectation of

1 privacy to sensitive, personal, or other evidentiary
2 information contained in court records; the role and
3 effectiveness of the court, and the clerks of the court over
4 these records; and the operations of other governmental
5 entities that use information in court records; the security
6 and safety of citizens; and the interests of business,
7 research, and media industries in these records.

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

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

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

19 5. What information is and should be accessible and
20 whether levels of accessibility should be established
21 depending on the nature of the information and the user of the
22 information and under what circumstances or restrictions.

23 6. How to ensure the privacy, security, and full
24 participation of children and families within the judicial
25 system without undermining the fairness of the judicial
26 process.

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

3 8. What impediments exist with regard to preventing
4 the unauthorized or inadvertent disclosure of confidential or
5 exempt information in current and future court records; whose
6 responsibility it should be to ensure that such information is
7 kept exempt from public disclosure; and what, if any,
8 penalties should be in place if such disclosure occurs.

9 (b) The issues of privacy and public access as they
10 relate to the collection and dissemination of information
11 contained in all official records. Specifically, the committee
12 shall address:

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

23 2. How best to balance the positive and negative
24 affects of access to official records regardless of the
25 medium.

26 3. Should confidential or exempt information contained
27 in official records continue to be disclosed to the public in
28 copies of records disclosed at the clerk's office or obtained
29 through electronic means.

30 4. Whose responsibility should it be to ensure that
31 confidential or exempted information is identified, kept out

1 of official records, and kept exempt from public disclosure,
2 and what changes to the law, practices and procedures need to
3 occur in order to most effectively and efficiently keep
4 confidential or exempt information out of official records.

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

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

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

15 8. Should sanctions be created with regard to what is
16 placed in official records as well as for disclosing
17 confidential or exempt information.

18 (4) Those members serving in an advisory capacity are
19 to provide information to the committee, as requested.
20 Advisory members are, in part, responsible for reporting back
21 to the commission any recommendations regarding the following
22 issues:

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

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

3 (5) The committee, as it deems appropriate, may
4 examine and recommend changes to laws, rules, and policies
5 governing all public records.

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

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

21 (8) Members of the committee shall serve without
22 compensation but are entitled to be reimbursed for per diem
23 and travel expenses as provided in section 112.061, Florida
24 Statutes. Any member of the committee who is a government
25 employee shall have their per diem and travel expenses
26 reimbursed by their employer. There is hereby appropriated
27 \$25,000 from the General Revenue Fund to the Executive Office
28 of the Governor for the purpose of reimbursement for per diem
29 and travel expenses as authorized by this act.

30 (9) The committee is terminated June 30, 2003.
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1 Section 2. Section 28.2221, Florida Statutes, is
2 amended to read:

3 28.2221 Electronic access to official records.--

4 (1) The Legislature finds that a proper and legitimate
5 state purpose is served by providing the public with access to
6 public records and information on the Internet. The
7 Legislature further finds that a proper and legitimate state
8 purpose is also served by preventing the disclosure of records
9 and information made exempt by law from public disclosure ~~and~~
10 ~~hereby determines that the provisions of this section fulfill~~
11 ~~and further an important state interest.~~

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

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

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

30 (5)(a) No county recorder or clerk of the court may
31 place an image or copy of a public record, including a court

1 file or an official record, on a publicly available Internet
2 website for general public display if that image or copy is of
3 a military discharge; death certificate; or a court file,
4 record or paper relating to matters or cases governed by the
5 Florida Rules of Family Law, the Florida Rules of Juvenile
6 Procedure, and the Florida Probate Rules. Any such records
7 made available by the county recorder or clerk of the court on
8 a publicly available Internet website for general public
9 display prior to the effective date of this act must be
10 removed if the affected party identifies the record and
11 requests that it be removed.

12 (b) Notice of the right of an affected party to
13 request removal of such records pursuant to this subsection
14 shall be displayed on a publicly available Internet website of
15 each county recorder or clerk of the court with appropriate
16 instructions for making the removal request in person, by
17 mail, by facsimile, by electronic means or by means other than
18 telephone. An affected party may petition the circuit court
19 for an order directing compliance with this paragraph.

20 (c) Except as provided by this subsection by January
21 1, 2006, each county recorder or clerk of the court shall
22 provide for electronic retrieval, at a minimum, of images of
23 documents referenced as the index required to be maintained on
24 the county's official records website by this section.

25 (6) This section does not prohibit a title insurance
26 company licensed in this state or its designee from
27 maintaining a secure Internet site that makes official records
28 available for the exclusive use of its agents and customers.
29 This section also does not prohibit a title insurance company
30 from continuing to maintain such site during the moratorium
31 imposed on the transfer of records and other documents under

1 subsection (5). The county recorder of each county in this
2 state is expressly authorized to continue any arrangement with
3 a title insurance company for the timely transfer of
4 electronic records.

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

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8 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
9 COMMITTEE SUBSTITUTE FOR
10 CS/SB 668

11 Expands the committee from 21 to 23. Requires the appointment
12 of a representative of a data aggregation industry to the
13 committee by the Governor. Also, adds an additional clerk of
14 the court to the committee.

15 Corrects the designation of the entity by changing it from
16 "commission" to "committee."

17 Requires state and local entities to cooperate with the
18 committee to the fullest extent possible.

19 Provides for the designation of legislative committee staff or
20 joint committee staff to assist the committee.

21 Prohibits placement of specified documents on a publicly
22 available Internet website.
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