

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Judiciary Committee

BILL: CS/SB 2366

INTRODUCER: Judiciary Committee and Senator Argenziano

SUBJECT: Court Files/Public Records

DATE: April 6, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cibula	Maclure	JU	Fav/CS
2.	_____	_____	GO	_____
3.	_____	_____	JA	_____
4.	_____	_____	RC	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill revises the law relating to the responsibility of court clerks and county recorders to protect the confidentiality of social security, bank account, credit, and debit card numbers. Existing law requires court clerks and county recorders to redact the confidential numbers from records before making a record available to the public beginning on January 1, 2007. This bill:

- Appears to extend the deadline to January 1, 2009, from January 1, 2007, by which clerks of court must automatically redact social security, bank account, credit, and debit card numbers from court records;
- Provides court clerks and county recorders with immunity from liability for inadvertent releases of any confidential information;
- Requires court clerks to post notices stating that social security, bank account, credit, and debit card numbers may not be included in court filings unless required by law;
- Requires court clerks to post notices stating that a person may request the redaction of his or her social security, bank account, credit, and debit card numbers from court records; and
- Authorizes county recorders to use an automated program to redact social security, bank account, credit, and debit card numbers from official records.

This bill substantially amends section 119.071, Florida Statutes. The bill also reenacts section 1007.35, Florida Statutes.

II. Present Situation:

Clerks of court and county recorders are required to maintain a variety of court and official records. Court clerks also serve as county recorders.¹ Court records maintained by a clerk of court include:

the contents of the court file, including the progress docket and other similar records generated to document activity in a case, transcripts filed with the clerk, documentary exhibits in the custody of the clerk, and electronic records, videotapes, or stenographic tapes of depositions or other proceedings filed with the clerk, and electronic records, videotapes, or stenographic tapes of court proceedings²

Official records maintained by county recorders include recorded judgments, deeds, mortgages, claims of liens, death certificates, certificates of discharge from military service, maps, and other records.³ Some of these court records and official records contain information that is confidential and exempt from disclosure under public records laws. The confidential information includes social security, bank account, debit, or credit card numbers.⁴ Under existing law, this confidential information is available to the public, unless the person to whom the information pertains requests that the information be redacted.⁵ However, beginning on January 1, 2007, clerks must redact these numbers from records even without a request to redact them.⁶ As a result, the clerks will have to review and redact confidential numbers from each document requested by the public before making the document available for inspection and copying.

According to the Association of Court Clerks and Comptroller (association), the records that may have to be redacted beginning January 1, 2007, are voluminous. Additionally, persons requesting to view documents will have to wait until the clerk has reviewed the document and redacted the confidential information. The association also reports that the amount of time required to review requested documents will be significant.

The Florida Supreme Court created a Committee on Privacy and Court Records (committee) to examine ways to protect the privacy of the public while assuring public access to records.⁷ On August 15, 2005, the committee issued its report, which includes 24 recommendations.⁸ The committee concluded “that a system which would require all court records to be inspected to redact all [confidential and exempt] information . . . would be exceedingly difficult, if not practically impossible, given . . . the foreseeable resources of the judicial branch.”⁹ The committee, however, did not specifically address the requirements under existing law for clerks

¹ Section 28.222, F.S. In Orange County, however, the county comptroller serves as the county recorder.

² Rule 2.051(b)(1)(A), Fla. R. Jud. Admin.

³ Sections 28.222, F.S.

⁴ Section 119.071(5)(a)7.d. and e., F.S.

⁵ *Id.*

⁶ Section 119.071(5)(a)7.g., F.S.

⁷ *In Re: Committee on Privacy and Court Records*, Administrative Order No. AOSC04-4 (Fla. Feb. 12, 2004).

⁸ Committee on Privacy and Court Records, Supreme Court of Florida, *Privacy, Access, and Court Records: Report and Recommendations of the Committee on Privacy and Court Records* (August 15, 2005), available at http://www.floridasupremecourt.org/pub_info/index.shtml#Privacy.

⁹ *Id.* at 33.

to begin to redact social security, bank account, debit, and credit card numbers on January 1, 2007. The Supreme Court will accept comments from the public on some of the recommendations of the committee until May 1, 2006.¹⁰

III. Effect of Proposed Changes:

This bill revises the law relating to the responsibility of court clerks and county recorders to protect the confidentiality of social security, bank account, credit, and debit card numbers. Existing law requires court clerks and county recorders to redact the confidential numbers from records before making a record available to the public beginning on January 1, 2007.

This bill appears to extend the deadline to January 1, 2009, from January 1, 2007, by which clerks of court must automatically redact social security, bank account, credit, and debit card numbers from court records. Although the bill extends the deadline in s. 119.071(5)(a)7.d., F.S., the bill also deletes s. 119.071(5)(a)7.g., F.S., which requires the numbers to be automatically redacted beginning on January 1, 2007. As such, whether the Legislature intends to extend the deadline or eliminate the responsibility of the court clerks to automatically redact confidential numbers is unclear.

The bill eliminates the responsibility of county recorders to automatically redact social security, bank account, credit, and debit card numbers from official records beginning on January 1, 2007. The bill, however, requires county recorders that store documents electronically to use an automated program to redact confidential numbers.

This bill also provides court clerks and county recorders with immunity from liability for inadvertent releases of confidential information. This immunity appears to be broader than the type of confidential numbers described in the sub-subparagraphs in which it is inserted. For clarity, the Legislature may wish to place the immunity provisions in a separate sub-subparagraph of s. 119.71(5)(a)7., F.S.

The bill directs court clerks to *immediately* post notices:

- Informing the public of their rights to request the redaction of social security, bank account, credit, and debit card numbers from court documents; and
- Stating that the inclusion of social security, bank account, credit, and debit card numbers in court documents is prohibited unless required by law.

Although a notice must state that the inclusion of certain confidential numbers in court documents is prohibited by law, no prohibition has been found to exist. For consistency with the bill, the Legislature may wish to expressly prohibit the inclusion of confidential numbers in court documents, unless otherwise required by law. Additionally, staff has not been able to identify the existence of penalties for filing unnecessary confidential information in court documents.

¹⁰ Florida Supreme Court, Public Information, at http://www.floridasupremecourt.org/pub_info/index.shtml#Privacy.

The meaning of the word “immediately” regarding the timing of the posting of the notices is unclear. The Legislature may wish to make the requirements to post notices take effect when the bill becomes a law.

The bill takes effect July 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

This bill revises the law relating to the responsibility of court clerks and county recorders to protect the confidentiality of social security, bank account, credit, and debit card numbers. See the Effect of Proposed Changes section of this staff analysis for details.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill deletes a requirement that court clerks and county recorders automatically redact social security, bank account, debit, and credit card numbers beginning on January 1, 2007. This change may make personal financial information available to public inspection when the court clerk or county recorder would otherwise have to redact the information.

C. Government Sector Impact:

This bill will reduce the cost court clerks and county recorders would have to incur to redact information beginning on January 1, 2007, as required by existing law.

VI. Technical Deficiencies:

This bill appears to extend the deadline to January 1, 2009, from January 1, 2007, by which clerks of court must automatically redact social security, bank account, credit, and debit card numbers from court records. Although the bill extends the deadline in s. 119.071(5)(a)7.d., F.S., the bill also deletes s. 119.071(5)(a)7.g., F.S., which requires the numbers to be automatically redacted beginning on January 1, 2007. As such, whether the Legislature intends to extend the deadline or eliminate the responsibility of the court clerks to automatically redact confidential

numbers is not clear. If the Legislature wishes to eliminate the responsibility of the clerks to automatically redact the confidential numbers, the Legislature should delete the words “Until January 1, 2007,” from existing s. 119.071(5)(a)7.d., F.S. If the Legislature wishes to extend the deadline, it may wish to at least modify the proposed repeal of s. 119.071(5)(a)7.g., F.S.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
