

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: SB 844

INTRODUCER: Senator Hooper

SUBJECT: Public Records

DATE: February 16, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Ponder</u>	<u>McVaney</u>	<u>GO</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>CA</u>	_____
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 844 amends s. 28.222, F.S., to provide a mechanism for the access to certain information in the Official Records, as maintained by a clerk of circuit court, which is otherwise exempt from public records inspection and copying requirements. A person may access such exempt information by presenting (in person, by mail, facsimile or electronically) a government-issued photo identification credential and written request with attestation that the purpose of the request meets a lawful purpose to which includes, but is not limited to:

- Determining marketability of title;
- Perfecting or enforcing a lien or other interest in real or personal property; and
- Purchasing, leasing, or lending involving real or personal property.

The bill provides that access may also be given via a limited access licensing agreement and authorizes a clerk of court to enter into such agreements with specified entities and professionals. The bill provides for criminal penalties for the unlawful use of any Official Record.

The bill amends s. 28.2221, F.S., which governs electronic access to Official Records. Current law prohibits a county recorder or clerk of court (Clerk) from placing an image or copy of a public record, including an Official Record, on a publicly available website for general public display if that copy or image is of a (1) military discharge; (2) death certificate; or (3) a court file, record, or paper relating to matters or cases governed by the Florida Rules of Family Law, the Florida Rules of Juvenile Procedure, or the Florida Probate Rules.¹ The bill amends s. 28.2221, F.S., to include information made exempt from inspection or copying under s. 119.071, F.S., within this prohibition.

Current law provides for notice to affected parties of the right to request redaction or removal of records prohibited from being placed by the Clerk on a publicly available website and specifies

¹ Section 28.2221(5)(a), F.S.

that no fee may be charged for such request. The bill provides that a request for removal of information by eligible individuals claiming an exemption under s. 119.071, F.S., must:

- Be written;
- Be notarized;
- State under oath the statutory basis for removal of the information, image, or copy that is restricted from general public display; and
- Contain confirmation of the individual's eligibility for exempt status.

The bill provides that a party making a false attestation is subject to the penalty of perjury.

Current law does not provide an expiration date for when the redacted or removed information is restored. Thus, most individuals do not need to renew their request to keep the information redacted or removed. The bill provides for the restoration of information that has been restricted from public display pursuant to a request for removal under s. 119.071, F.S., at:

- The request of any affected party at any time, or
- The request of any person after the passage of 5 years through July 1, 2026, or the date of the most recent request for the exemption, whichever is later, unless any affected party makes an additional request for removal.

The bill provides that a request for restoration be made in writing and must identify the Official Records book and page number for any document to be restored. There is no fee for the restoration of any document.

The bill amends s. 119.071, F.S., which contains several general exemptions to the Public Records Act. The bill limits the applicability of the public records exemptions relating to agency investigations, agency personnel, and other personal information, to Official Records and the current index of documents under s. 28.2221(2), F.S., to restricting a Clerk from placing on a publicly available website information that is restricted from general public display. The bill provides that agency investigations, agency personnel, and other personal information do not limit the inspection and copying of exempt information at a Clerk's office or electronically through a limited access licensing agreement. The bill requires Clerks, by October 1, 2021, to:

- Restore any previously redacted names of parties to an instrument; and
- Not redact the names of parties to an instrument in the register and current index of documents.

The bill provides a similar provision of application to county property appraisers or county tax collectors (County Officers) and restricts them from placing the names of any individual entitled to an exemption in all publicly available records maintained by County Officers. The bill requires County Officers to restore any previously redacted street address, legal description, or other information identifying real property within the agency's records as long as the name of the individual entitled to the exemption is not associated with the property or otherwise displayed in the public records of the agency.

The bill requires any information redacted pursuant to the public records exemptions relating to agency investigations, agency personnel, and other personal information to be restored to the publicly available records maintained by County Officers at the request of any affected party at

any time, or at the request of any person after the passage of 5 years through July 1, 2026, or the date of the most recent request for the exemption, whichever is later. The request for restoration of the information must be made in writing and delivered in person or by mail, facsimile, or electronic transmission to the County Officer.

The bill also removes obsolete language.

Clerks may incur additional costs associated with processing requests for access, facilitating limited access license agreements, processing renewed removal requests and in restoring previously redacted information pursuant to s. 119.071. Other county officers may also incur additional costs in complying with the restoration requirement of exempt information under s. 119.071, F.S.

The bill takes effect July 1, 2021.

II. Present Situation:

Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.² The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.³

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, section 11.0431, Florida Statutes (F.S.), provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.⁴ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁵ Lastly, chapter 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁶

² FLA. CONST. art. I, s. 24(a).

³ *Id.*

⁴ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020)

⁵ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁶ Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁷ The Florida Supreme Court has interpreted the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁸

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁹ A violation of the Public Records Act may result in civil or criminal liability.¹⁰

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.¹¹ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹²

General exemptions from the public records requirements are contained in the Public Records Act.¹³ Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹⁴

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.¹⁵ Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.

⁷ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

⁸ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁹ Section 119.07(1)(a), F.S.

¹⁰ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹¹ FLA. CONST. art. I, s. 24(c).

¹² *Id.* See, e.g., *Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹³ See, e.g., s. 119.071(1)(a), F.S. (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹⁴ See, e.g., s. 213.053(2)(a), F.S. (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹⁵ See *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

General Exemptions from Inspection under the Public Records Act

Section 119.071, F.S., provides categories of public records that are exempt from inspection or copying and is entitled “General exemptions from inspection or copying of public records.” It contains five subparts and exempts information related to:

- Agency Administration;¹⁶
- Agency Investigations;¹⁷
- Security and Firesafety;¹⁸
- Agency Personnel Information;¹⁹ and
- Other Personal Information.²⁰

Section 119.071, F.S., provides for disclosure of certain exempt information under specified circumstances. The individuals covered by the exemptions found in s. 119.071, F.S., are eligible for redaction of their personal identifying information from public records. Many agencies make requests for removal or redaction on behalf of their current employees.

Public Records Exemption for Agency Investigations

Section 119.071(2), F.S., protects information related to agency investigations and makes exempt:

- Criminal intelligence and criminal investigative information received by a criminal justice agency prior to January 25, 1979;²¹ Whenever criminal intelligence information or criminal investigative information held by a non-Florida criminal justice agency is available to a Florida criminal justice agency only on a confidential or similarly restricted basis, the Florida criminal justice agency may obtain and use such information in accordance with the conditions imposed by the providing agency;²²
- Active criminal intelligence information and active criminal investigative information;²³
- Any information revealing surveillance techniques or procedures or personnel;²⁴
- Any information revealing the substance of a confession of a person arrested until such time as the criminal case is finally determined by adjudication, dismissal, or other final disposition;²⁵
- Any information revealing the identity of a confidential informant or a confidential source;

¹⁶ Section 119.071(1), F.S. Includes information related to (1) examinations administered by an agency for purposes of licensure, certification or employment; (2) certain specified information related to a competitive solicitation; (3) any financial statement of a prospective bidder in submitted to prequalify for bidding or for responding to a proposal for a road or any other public works project; (4) certain attorney work product; (5) videotape or video signals involving a federally licensed radio television station; (6) certain data processing software; and (7) specified United States Census Bureau address and map information.

¹⁷ Section 119.071(2), F.S.

¹⁸ Section 119.071(3), F.S.

¹⁹ Section 119.071(4), F.S.

²⁰ Section 119.071(5), F.S.

²¹ Section 119.071(2)(a)

²² Section 119.071(2)(b), F.S.

²³ Section 119.071(2)(c), F.S.

²⁴ Section 119.071(2)(d), F.S.

²⁵ Section 119.071(2)(e), F.S.

- All complaints and other records in the custody of any agency which relate to a complaint of discrimination relating to race, color, religion, sex, national origin, age, handicap, or marital status in connection with hiring practices, position classifications, salary, benefits, discipline, discharge, employee performance, evaluation, or other related activities;²⁶
- Certain specified criminal intelligence information;²⁷
- Specified criminal intelligence information or criminal investigative information revealing the personal assets of a victim of a crime, other than property stolen or destroyed during the commission of the crime;²⁸
- Any document that reveals the identity, home or employment telephone number, home or employment address, or personal assets of the victim of a crime and identifies that person as the victim of a crime, which document is received by any agency that regularly receives information from or concerning the victims of crime;²⁹
- A complaint of misconduct filed with an agency against an agency employee and all information obtained pursuant to an investigation by the agency of the complaint of misconduct;³⁰
- A body camera recording, or a portion thereof;³¹
- Criminal intelligence information or criminal investigative information that reveals the personal identifying information of a witness to a murder, as described in s. 782.04, F.S.;³²
- Personal identifying information of the alleged victim in an allegation of sexual harassment;³³
- The address of a victim of an incident of mass violence;³⁴
- A photograph or video or audio recording that depicts or records the killing of a law enforcement officer who was acting in accordance with his or her official duties or the killing of a victim of mass violence;³⁵

Public Records Exemption for Agency Personnel Information

Provisions in s. 119.071(4)(d), F.S., exempt from public disclosure certain personal identification and location information of specified agency personnel and their spouses and children. Personnel covered by these exemptions include:

- Active or former sworn or civilian law enforcement personnel, including correctional and correctional probation officers, certain investigative personnel of the Department of Children and Families and Department of Health, and certain personnel of the Department of Revenue and local governments involved in revenue collection and revenue and child support enforcement;³⁶

²⁶ Section 119.071(2)(g), F.S.

²⁷ Section 119.(2)(h), F.S.

²⁸ Section 119.071(2)(i), F.S.

²⁹ Section 119.071(2)(j), F.S.

³⁰ Section 119.071(2)(k), F.S.

³¹ Section 119.071(2)(l)2., F.S.

³² Section 119.071(2)(m)1., F.S.

³³ Section 119./071(2)(n), F.S.

³⁴ Section 119.071(2)(o), F.S.

³⁵ Section 119.071(2)(p)2., F.S.

³⁶ Section 119.071(4)(d)2.a., F.S.

- Certain current or former nonsworn investigative personnel of the Department of Financial Services;³⁷
- Certain current or former nonsworn investigative personnel of the Office of Financial Regulation’s Bureau of Financial Investigations;³⁸
- Current or former certified firefighters;³⁹
- Current or former justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges;⁴⁰
- Current or former state attorneys, assistant state attorneys, statewide prosecutors, and assistant statewide prosecutors;⁴¹
- General magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers;⁴²
- Certain current or former human resource, labor relations, or employee relations directors, assistant directors, managers, and assistant managers of any local government agency or water management district;⁴³
- Current or former code enforcement officers;⁴⁴
- Current or former guardians ad litem;⁴⁵
- Current or former juvenile probation officers, juvenile probation supervisors, detention superintendents, assistant detention superintendents, juvenile justice detention officers I and II, juvenile justice detention officer supervisors, juvenile justice residential officers, juvenile justice residential officer supervisors I and II, juvenile justice counselors, juvenile justice counselor supervisors, human services counselor administrators, senior human services counselor administrators, rehabilitation therapists, and social services counselors of the Department of Juvenile Justice;⁴⁶
- Current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel;⁴⁷
- Current or former investigators or inspectors of the Department of Business and Professional Regulation;⁴⁸
- County tax collectors;⁴⁹
- Certain current or former personnel of the Department of Health;⁵⁰
- Certain current or former impaired practitioner consultants who are retained by an agency and certain current or former employees of an impaired practitioner consultant;⁵¹

³⁷ Section 119.071(4)(d)2.b., F.S.

³⁸ Section 119.071(4)(d)2.c., F.S.

³⁹ Section 119.071(4)(d)2.d., F.S.

⁴⁰ Section 119.071(4)(d)2.e., F.S.

⁴¹ Section 119.071(4)(d)2.f., F.S.

⁴² Section 119.071(4)(d)2.g., F.S.

⁴³ Section 119.071(4)(d)2.h., F.S.

⁴⁴ Section 119.071(4)(d)2.i., F.S.

⁴⁵ Section 119.071(4)(d)2.j., F.S.

⁴⁶ Section 119.071(4)(d)2.k., F.S.

⁴⁷ Section 119.071(4)(d)2.l., F.S.

⁴⁸ Section 119.071(4)(d)2.m., F.S.

⁴⁹ Section 119.071(4)(d)2.n., F.S.

⁵⁰ Section 119.071(4)(d)2.o., F.S.

⁵¹ Section 119.071(4)(d)2.p., F.S.

- Current or former certified emergency medical technicians and paramedics;⁵²
- Certain current or former personnel employed in an agency's office of inspector general or internal audit department;⁵³
- Current or former directors, managers, supervisors, nurses, and clinical employees of an addiction treatment facility;⁵⁴ and
- Current or former directors, managers, supervisors, and clinical employees of certain child advocacy centers.⁵⁵

The employing agency as well as the employee is authorized assert the maintenance of the exempt status by submitting a written request for maintenance of the exemption (Request for Maintenance of an Exemption) to each agency which holds the employee's information.⁵⁶ Further, all of these exemptions have retroactive application.⁵⁷

The information exempted by the various provisions of s. 119.071(4)(d)2., F.S., is similar but not identical. All of the provisions in s. 119.071(4)(d)2., F.S., exempt from public disclosure the home addresses, telephone numbers, and dates of birth of the specified personnel. However, exemptions are not uniform for names, photographs, and places of employment.

In 2019, the legislature defined term "home address" in s. 119.071(4), F.S., for the first time.⁵⁸ "Home address" is defined to mean:

the dwelling location at which an individual resides and includes the physical address, mailing address, street address, parcel identification number, plot identification number, legal property description, neighborhood name and lot number, GPS coordinates, and any other descriptive property information that may reveal the home address.

Thus, the rights of individuals specified under s. 119.071(4)(d), F.S., and their spouses and their children, to request redaction of specified information is applicable to property records throughout their entire lives with no requirement for renewal.⁵⁹ This change allows qualifying individuals to redact all property descriptions from a public record, which may limit the ability to determine ownership of or encumbrances on a property.⁶⁰

Redacting this information may limit the effectiveness of the public record to give notice of property ownership to interested parties, which may:

- Create potential issues related to constructive notice and chain of title;

⁵² Section 119.071(4)(d)2.q., F.S.

⁵³ Section 119.071(4)(d)2.r., F.S.

⁵⁴ Section 119.071(4)(d)2.s., F.S.

⁵⁵ Section 119.071(4)(d)2.t., F.S.

⁵⁶ Section 119.071(4)(d)3., F.S.

⁵⁷ Section 119.071(4)(d)4., F.S.

⁵⁸ Chapter 2019-12, L.O.F.

⁵⁹ See OPPAGA Report at 2.

⁶⁰ Florida Office of Program Policy Analysis & Government Accountability, *A Review of Home Address Redaction Processes and Real Property Interests*, (hereinafter the "OPPAGA Report"), Report 20-06, December 2020, available at <https://oppaga.fl.gov/Documents/Reports/20-06.pdf> (last visited February 11, 2021).

- Increase the possibility of fraud;
- Provide protected parties a false sense of safety;
- Cause problems accurately surveying property; and
- Delay real property transactions.⁶¹

Public Records Exemption for Other Personal Information

Section 119.071(5), F.S., prevents the disclosure of

- Social security numbers held by an agency;⁶²
- Bank account numbers and debit, charge, and credit card numbers held by an agency;⁶³
- Information that would identify or locate a child who participates in a government-sponsored recreation program;⁶⁴
- Information that would identify or locate a parent or guardian of a child who participates in a government-sponsored recreation program;⁶⁵
- All records supplied by a telecommunications company, as defined by s. 364.02, to an agency which contain the name, address, and telephone number of subscribers;⁶⁶
- Any information provided to an agency for the purpose of forming ridesharing arrangements, which information reveals the identity of an individual who has provided his or her name for ridesharing, as defined in s. 341.031;⁶⁷
- Certain information held by the Department of Economic Opportunity, the Florida Housing Finance Corporation, a county, a municipality, or a local housing finance agency;⁶⁸
- Biometric identification information held by an agency;⁶⁹
- Personal identifying information of an applicant for or a recipient of paratransit services which is held by an agency;⁷⁰
- Identification and location information, if such attorney, judge, or magistrate submits to an agency that has custody of the identification and location information a written request to exempt such information from public disclosure and a written statement that he or she has made reasonable efforts to protect the identification and location information from being accessible through other means available to the public;⁷¹
- Any information furnished by a person to an agency for the purpose of being provided with emergency notification by the agency;⁷² and
- Identification and location information of a servicemember, if the servicemember submits to an agency that has custody of the identification and location information a written request to

⁶¹ The OPPAGA Report at 10.

⁶² Section 119.071(5)(a)5., F.S. This exemption applies to social security numbers held by an agency before, on, or after the effective date of this exemption. This exemption does not supersede any federal law prohibiting the release of social security numbers or any other applicable public records exemption for social security numbers existing prior to May 13, 2002, or created thereafter.

⁶³ Section 119.071(5)(b), F.S.

⁶⁴ Section 119.071(5)(c)2., F.S.

⁶⁵ Section 119.071(5)(c)3., F.S.

⁶⁶ Section 119.071(5)(d), F.S.

⁶⁷ Section 119.071(5)(e), F.S.

⁶⁸ Section 119.071(5)(f), F.S.

⁶⁹ Section 119.071(5)(g), F.S.

⁷⁰ Section 119.071(5)(h), F.S.

⁷¹ Section 119.071(5)(j), F.S.

⁷² Section 119.071(5)(j), F.S.

exempt the identification and location information from public disclosure; and a written statement that he or she has made reasonable efforts to protect the identification and location information from being accessible through other means available to the public.⁷³

Civil and Criminal Penalties Under The Public Records Act

If a person willfully and knowingly violates public records laws either by failing to release unprotected information or by releasing exempt or confidential information, that employee may be subject to criminal prosecution for a first degree misdemeanor, which carries a sentence of imprisonment up to one year and a fine of up to \$1000.⁷⁴ Additionally, knowing and willful failure to protect the public records of victims of crimes or accidents under s. 119.105, F.S., constitutes a third degree felony, punishable by a sentence of imprisonment up to five years and a fine of up to \$5,000.⁷⁵

Reasonable attorney's fees will be assessed against an agency found to have violated public records law.⁷⁶

Clerks of the Courts

Clerks of the circuit courts (Clerks) are constitutionally elected officers.⁷⁷ A Clerk is considered to be the county recorder.⁷⁸ As county recorder, the Clerk must record all instruments in one general series called "official records."⁷⁹ Official records consist of each instrument that the Clerk is required or authorized to record.

The Clerk is responsible for:

- Keeping and maintaining all court documents and electronic filings in the Clerk's office;⁸⁰
- Affixing a stamp, which may be electronic, to each document indicating the date and time that the submission was filed;⁸¹
- Maintaining a progress docket on which the filing of each pleading or motion is noted;⁸²
- Maintaining a general alphabetical index, direct and inverse of all instruments filed for recordation;⁸³ and
- Implementing an electronic filing process.⁸⁴

⁷³ Section 119.071(5)(k)2., F.S.

⁷⁴ Section 119.10(2)(a), F.S.

⁷⁵ Section 119.10(2)(b), F.S.

⁷⁶ Section 286.011(4), F.S.

⁷⁷ See, FLA. CONST., art. V, s. 16 and art. VIII, s. 1.

⁷⁸ Section 28.222(1), F.S.

⁷⁹ Section 28.222(2), F.S.

⁸⁰ Section 28.13, F.S.

⁸¹ *Id.*

⁸² Section 28.211, F.S.

⁸³ Section 28.222(2), F.S.

⁸⁴ Section 28.22205, F.S.

Official Records as Public Records

All instruments recorded in the Official Records must always be available to the public for inspection under the supervision of the Clerk.⁸⁵ The term “public records” includes each official record.⁸⁶ The purpose of recording a document is to put the public on notice about a particular matter. Clerks record numerous types of documents that are eligible for redaction or removal pursuant to s. 119.071, F.S.

Section 119.0714(3), F.S., provides that a person who prepares or files a record for recording in the Official Records may not include in that record a social security number or a bank account, debit, charge, or credit card number (Card Number) “unless otherwise expressly required by law.” If the social security number or Card Number is in electronic format, the county recorder must use his or her best effort to keep the social security numbers confidential and exempt pursuant to s. 119.071(5)(a), F.S., and to keep the complete Card Numbers exempt pursuant to s. 119.071(5)(b), F.S., without any person having to request redaction.⁸⁷ A holder of a social security number or a Card Number, or the attorney or legal guardian may request that a county record redact his social security number or Card Number that is part of an Official Record and made publicly available.⁸⁸ A request for redaction must be:

- Signed;
- Legibly written;
- Delivered by mail, facsimile, electronic transmission, or in person to the county recorder; and
- Specify the identification page number of the record that contains the number to be redacted.⁸⁹

The county recorder does not have a duty to inquire beyond the written request to verify the identity of a person requesting redaction.

Since October 1, 2002, any person has a right to request a county recorder to remove from a publicly available website, any social security number contained in an Official Record. Such request must be:

- Made in writing;
- Delivered by mail, facsimile, or electronic transmission, or delivered in person, to the county recorder; and
- Specify the identification page number that contains the social security number to be redacted.⁹⁰

A fee may not be charged for the redaction of a social security number pursuant to such a request.

Section 119.0714(3)(e), F.S., specifies that the county recorder is not liable for the inadvertent release of social security numbers, or Card Numbers, filed with the county recorder.

⁸⁵ Section 28.222(7), F.S.

⁸⁶ Section 28.001(2), F.S.

⁸⁷ Section 119.0714(3)(a)1., F.S.

⁸⁸ Section 119.0714(3)(b), F.S.

⁸⁹ Section 119.0714(3)(b)1., F.S.

⁹⁰ Section 119.0714(3)(c)2., F.S.

A Request for Maintenance of an Exemption made pursuant to s. 119.071(4)(d) 3., F.S., must specify the document type, name, identification number, and page number of the official record that contains the exempt information.

Clerk Records That May Have Personal Identifying Information Eligible for Redaction⁹¹

Type of Official Record		
<ul style="list-style-type: none"> • Affidavit • Agreement • Assignment • Bond • Certificate • Certified Copy of Judgements • Condominium • Death Certificate • Deed • Easement • Financing Statement 	<ul style="list-style-type: none"> • Government Related • Judgment • Lien • Lis Pendens • Maps • Marriage Record • Mortgage • Military Discharge • Notices • Order 	<ul style="list-style-type: none"> • Plat Related • Plats • Powers of Attorney • Probate Documents • Releases • Restitution Orders • Restrictions • Satisfaction • Termination • Transfers of Security

In December 2020, the Florida Office of Program Policy Analysis and Government Accountability (the OPPAGA Report) issued a report entitled *A Review of Home Address Redaction Processes and Real Property Interests*. The OPPAGA Report states that the Florida Association of Court Clerks & Comptrollers has identified best practices for redaction requests.⁹² Each requestor, even those residing in the same home, are required to complete a request form:

- Identifying themselves;
- Stating what makes them eligible for redaction; and
- Enumerating the specific documents and identifying pieces of information to be redacted (specific instrument number, book, and page of the document).⁹³

If an eligible individual seeks additional redactions in the future, they must complete a new redaction request each time.⁹⁴ Most requestors self-attest that they meet the eligibility criteria for redaction.⁹⁵ The OPPAGA Report states that several Clerks reported that they require individuals to show identification or have the request form notarized to attest to their identity, most Clerks interviewed by OPPAGA do not further verify eligibility.⁹⁶ “When asked, staff from multiple Clerk’s offices stated that they do not have the authority or the ability to investigate or verify that the requestor meets the statutory criteria for redaction.”⁹⁷

⁹¹ OPPAGA Report at 6.

⁹² *Id.* at 8.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

Electronic Access To Official Records

Since January 1, 2002, under s. 28.2221, F.S., the county recorder or Clerk must provide a current index of documents in the Official Records on a publicly accessible website of instruments recorded on or after January 1, 1990, limited to grantor and grantee names, party names, date, book and page number, comments, and type of record.⁹⁸ Since January 1, 2006, the Clerk has also been required to provide electronic access to images of the indexed documents.

Florida law prohibits a county recorder or a Clerk from placing certain images or copies of public records, including an Official Record, on a publicly available Internet website.⁹⁹ Specifically, no county recorder or Clerk may place an image or copy of a public record, including an Official Record, on a publicly available Internet website if that image or copy is of a military discharge; death certificate; or a court file, record, or paper relating to matters or cases governed by the Florida Rules of Family Law, the Florida Rules of Juvenile Procedure, or the Florida Probate Rules.

Section 28.2221(5)(c), F.S., provides for notice to affected parties of the right to request removal or redaction of any image or copy of a public record, including an Official Record, if that image or copy is of a military discharge; death certificate; or a court file, record, or paper relating to matters or cases governed by the Florida Rules of Family Law, the Florida Rules of Juvenile Procedure, or the Florida Probate Rules. This request must be in writing (via mail, facsimile, or electronic transmission or in person) to the county recorder or Clerk. The request must identify the document identification page number of the document to be removed. No fee is charged for the removal or redaction of a document pursuant to such request. An affected person may petition the circuit court for an order directing compliance with this subsection.¹⁰⁰

Court Records as Public Records

To implement article 1, section 24(a) of The Florida Constitution, the Florida Supreme Court adopted Florida Rule of Judicial Administration 2.051, which has since been renumbered to rule 2.420. Rule 2.420 governs public access to judicial branch records and provides that “[t]he public shall have access to all records of the judicial branch of government” except in limited circumstances.”¹⁰¹

County Property Appraisers and County Tax Collectors

A “county property appraiser” is defined to mean “the county officer charged with determining the value of all property within the county, with maintaining certain records connected therewith, and with determining the tax on taxable property after taxes have been levied.”¹⁰² A “county tax collector” is defined to mean “the county officer charged with the collection of ad valorem taxes levied by the county, the school board, any special taxing districts within the county, and all municipalities within the county.”¹⁰³ The County Officers maintain records, such as property

⁹⁸ In 2000, the Legislature passed CS/CS/SB 1334, codified as s. 28.221, F.S.

⁹⁹ Section 28.2221(5)(a), F.S.

¹⁰⁰ Section 28.2221(5)(d), F.S.

¹⁰¹ Fla. R. Jud. Admin. 2.420(a).

¹⁰² Section 192.001(3), F.S.

¹⁰³ Section 192.001(4), F.S.

records, that contain information that is exempt under s. 119.071, F.S. For example, a county property appraiser's website may have a property owner name and a legal description of the property.¹⁰⁴ A county property appraiser's website can also include courtesy web-links to images of deeds found on Clerks' internet-based index of official records.¹⁰⁵

III. Effect of Proposed Changes:

This bill allows access to information in the Official Records held by the clerk of court that is otherwise exempt from public inspection and copying. This otherwise exempt information includes names, home addresses, and other personal identifying information of law enforcement officers, correctional officers, certain personnel of the Department of Children and Families, the Department of Revenue, the Department of Health, the Department of Financial Services, firefighters, judges and justices, assistant state attorneys and assistant public defenders, and others. Typically, this information is exempt when held by the person's employing agency. It may be made exempt if the person or the employing agency submits in writing a request to other custodians of the information to maintain the exemption.

Under current law, the person whose information is exempt may submit a notarized written request for the release of the information by the custodial agency. The request to release must specify the information to be released and the party that is authorized to receive the information. The bill allows the person whose information is exempt to request the release to the public at any time, or any person after the information has been held exempt for five years, unless the person whose information is exempt submits to the records custodian an additional request for the exemption. The process for the request appears to allow only the person whose information is exempt (not the employing agency) to make the request to the records custodian.

Section 1 amends s. 28.222(7), F.S., to improve the readability and substitutes the word "copies" for "extracts" in referring to instruments recorded in the Official Records. This section permits access to information that is otherwise exempt under s. 119.071, F.S. Specifically, the section provides that a person seeking access, electronically or in person, to information contained in the Official Records which is otherwise exempt under s. 119.071, F.S., may access such information upon presenting a government-issued photo identification credential to the Clerk/county recorder of court and a notarized written request for access. The copy of the government-issued photo identification credential and written request may be delivered in person or by mail, facsimile, or electronic transmission to the Clerk/county recorder.

This section provides that the notarized written request should include:

- The filing number of the instrument;
- The name of a party to the instrument(s), or the description of real or personal property associated with the instruments to be inspected; and
- An attestation that there exist a specific lawful purpose for requesting access, including but not limited to: (1) determining marketability of title; (2) perfecting or enforcing a lien or other interest in real or personal property; and (3) purchasing, leasing, or lending involving real or personal property.

¹⁰⁴ OPPAGA Report at 6.

¹⁰⁵ *Id.*

This section also authorizes the Clerk to enter into limited access licensing agreements granting users access to the Official Records through electronic means that are not subject to the general public display. The limited access licensing agreements may be made with:

- Attorneys who are admitted to The Florida Bar and members in good standing;
- Authorized title insurers, as defined in s. 624.09, F.S., and their affiliates, as defined in s. 624.10, F.S.;
- Title insurance agents or title insurance agencies, as defined in s. 626.841, F.S.;
- Financial institutions and their affiliates, as defined in s. 655.055; and
- Entities that provide access to title information, tax information, and document images for insurance companies, real estate and mortgage investors, attorneys, and governmental agencies.

This section also provides that a person who unlawfully uses any Official Record in a manner not authorized in this subsection commits a misdemeanor of the second degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S. Further, a person who unlawfully uses any Official Record with intent to cause bodily harm or with intent to threaten to cause bodily harm commits a felony of the third degree, punishable as provided in s. 775.082, F.S., s. 775.083, F.S., or s. 775.084, F.S.

Section 2 amends s. 28.2221, F.S., to remove past implementation dates regarding notice, make clarifying changes, and prohibit a county recorder or Clerk of court from placing information made exempt under s. 119.071, F.S., on a publicly available website for general public display. The section permits an affected party to request removal of information.

This section provides that the request to remove information or records must identify the Official Records book and page number, instrument number; or Clerk's file number of such document to be removed.

Any request for removal from a person claiming a public records exemption under s. 119.071, F.S., must:

- Be made in writing;
- Be notarized;
- State under oath the statutory basis for removal of the information, image, or copy that is restricted from general public display; and
- Confirm the individual's eligibility for exempt status.

A party making a false attestation is subject to the penalty of perjury under s. 837.012, F.S.

This section provides that any information restricted from public display pursuant to a request for removal made under s. 119.071, F.S., must be restored for general public display to the publicly available website at:

- The request of any affected party, at any time; or
- At the request of any person after the passage of 5 years, through July 1, 2026, or the date of the most recent request for the exemption, whichever is later, unless an affected party makes an additional request for removal.

The request for restoration, must be made in writing and delivered in person or by mail, facsimile, or electronic transmission to the county recorder or Clerk. The request must identify the Official Records book and page number or instrument number for any document to be restored. A fee may not be charged for the restoration of any document pursuant to such request.

Section 3 amends s. 119.071, F.S., which sets forth general exemptions to the Public Records Act, to create new subsection (6) entitled “Applicability.” The bill provides that application of subsections (2) Agency Investigations, (4) Agency Personnel Information, and (5) Other Personal Information to official records under s. 28.222(2), and the current index of documents under s. 28.2221(2), F.S., are limited to restricting a county recorder or Clerk from placing information that is restricted from general public display on a publicly available website.

This section provides that subsections (2), (4), and (5), relating to agency investigations, agency personnel, and other personal information, respectively, do not limit the inspection and copying of exempt information at the office of the county recorder or Clerk or by electronic means through a limited access licensing agreement as provided in this chapter.

Current law provides social security numbers that are exempt under 119.071(4)(a)1., F.S. (the social security numbers of all current and former agency employees held by the employing agency), may be disclosed only:

- If disclosure of the social security number is expressly required by federal or state law or a court order;
- To another agency or governmental entity if disclosure of the social security number is necessary for the receiving agency or entity to perform its duties and responsibilities; or
- If the current or former agency employee expressly consents in writing to the disclosure of his or her social security number.

Section 119.071(5)(a), F.S., applies to social security numbers collected by an agency and provides that those social security numbers may be disclosed if:

- Such disclosure is expressly required by federal or state law or a court order;
- Such disclosure is necessary for the receiving agency or governmental entity to perform its duties and responsibilities;
- The individual expressly consents in writing to the disclosure of his or her social security number;
- Such disclosure is made to comply with the USA Patriot Act of 2001, Pub. L. No. 107-56, or Presidential Executive Order 13224;
- Such disclosure is made to a commercial entity for the permissible uses set forth in the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. ss. 2721 et seq.; the Fair Credit Reporting Act, 15 U.S.C. ss. 1681 et seq.; or the Financial Services Modernization Act of 1999, 15 U.S.C. ss. 6801 et seq., provided that the authorized commercial entity complies with the requirements of this paragraph; and
- Such disclosure is for the purpose of the administration of health benefits for an agency employee or his or her dependents;

- Such disclosure is for the purpose of the administration of a pension fund administered for the agency employee's retirement fund, deferred compensation plan, or defined contribution plan; or
- Such disclosure is for the purpose of the administration of the Uniform Commercial Code by the office of the Secretary of State.¹⁰⁶

This section is inconsistent with the provisions governing disclosure of social security numbers under ss. 119.071(4)(a)1. and 119.071(5)(a)6., F.S., as the section permits social security numbers to be accessed by any person via inspection and copying at the office of the Clerk or by a limited licensing agreement to specified individuals and entities.

This section requires a county recorder or Clerk, by October 1, 2021, to restore any previously redacted names of parties to an instrument and not redact the names of parties to an instrument in the register under s. 28.222(2), F.S., and current index of documents under s. 28.2221(2), F.S.

This section also provides that the application to a county property appraiser or county tax collector is limited to restricting the county property appraiser or county tax collector from placing the names of any individual entitled to exemption in all publicly available records maintained by the property appraiser or tax collector. County property appraisers or county tax collectors are required to restore any previously redacted street address, legal description, or other information identifying real property within the agency's records as long as the name of any individual entitled to exemption is not associated with the property or otherwise displayed in the public records of the agency.

This section requires any information redacted or removed from general public display pursuant to the public records exemptions relating to agency investigations, agency personnel, and other personal information to be restored to the publicly available records maintained by the County Officers at the request of any affected party at any time, or at the request of any person after the passage of 5 years through July 1, 2026, or the date of the most recent request for the exemption, whichever is later. The request must be made in writing and delivered in person or by mail, facsimile, or electronic transmission to the property appraiser or tax collector.

Section 4 provides that the bill takes effect on July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(a) of the State Constitution provides, in relevant part, that:

No county or municipality shall be bound by any general law requiring such county or municipality to spend funds...unless the legislature has determined that such law fulfills an important state interest and unless: the law requiring such expenditure is approved by two-thirds vote of

¹⁰⁶ Section 119.071(5)(a)6., F.S.

the membership of each house of the legislature; [or] . . . the expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments....

As drafted the bill does not contain a finding that the bill fulfills an important state interest nor does it apply to all persons similarly situated (records custodians).

Article VII, s. 18(d) of the State Constitution provides “laws having insignificant impact . . . are exempt from the requirements” of s. 18(a). The “insignificant” threshold, for the Fiscal Year 2021-2022, is forecast at approximately \$2.2 million.¹⁰⁷ The cumulative cost for counties and municipalities to comply with the provisions of the bill is unknown at this time. If the cumulative costs are less than \$2.2 million, the bill is exempt from the requirements in s. 18(a).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

An individual or a business that is currently unauthorized to obtain exempt records under s. 119.071, F.S., will now have access such information to the extent they comply with the process provided in the bill. The bill provides for an automatic restoration of redacted information every 5 years, starting on January 1, 2026. Thus, individuals eligible for an exemption under to s. 119.071, F.S., will now be required to affirmatively act by renewing their request for removal.

¹⁰⁷ Based on the Florida Demographic Estimating Conference’s Nov. 30, 20120 population forecast for 2021 of 21,893,919. The conference packet is *available at*: <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited Feb. 16, 2021).

C. Government Sector Impact:

Indeterminate. The bill may have an indeterminate negative fiscal impact for clerks of court as they process requests for access, facilitate limited access license agreements with specified entities, and process renewed removal requests. Additionally, the bill seems to impose a five year restoration requirement beginning July 1, 2026, and the clerks of court will undergo a substantial investment in resources as they restore previously redacted material. Additionally, they will likely be faced with an onslaught of additional requests for removal. County property appraisers and county tax collectors will also see an indeterminate negative fiscal impact in restoring information that has previously been redacted or removed from general public display.

The bill only permits “affected parties” to file a request for removal. Agencies are not authorized to file a request for removal on behalf of their employees nor a Request for Maintenance of Exemption (as provided for in s. 119.071(4)(d)3., F.S.). Accordingly, agencies will likely need to expend resources to educate their employees on this change as well as the new restoration requirement.

VI. Technical Deficiencies:

Lines 159 through 169 limit the applicability of the public records exemptions relating to agency investigations, agency personnel, and other personal information by only restricting the access on a publicly available website while allowing access through either a limited access licensing agreement or a notarized written request for access to such otherwise exempt information. It is unclear to what extent information relating to agency investigations (subsection (2)), social security numbers (subsection (5)), and bank account numbers (subsection (5)) is recorded in the Official Records, and thus made subject to inspection and copying. This may result in confusion regarding whether the clerk is permitted to hold social security numbers or bank account numbers in such records.¹⁰⁸

VII. Related Issues:***Statutory Construction – Specific Lawful Purpose***

The bill states that a request to access records must include an attestation to a “specific lawful purpose for requesting access, which includes, but is not limited to, determining marketability of title; perfecting or enforcing a lien or other interest in real or personal property; and purchasing, leasing or lending involving real or personal property.”

The term “lawful” is defined by Black’s Law Dictionary as “warranted or authorized by the law; ... not contrary to nor forbidden by the law.”¹⁰⁹ “A specific lawful purpose” is plain in its broad meaning and intention and encompasses a multitude of purposes that extend beyond the real and personal property context. The use of the words “which includes, but is not limited to,” does not restrict what may be included under the umbrella of a “specific lawful purpose” but expands it to

¹⁰⁸ Section 119.0714(3), F.S.

¹⁰⁹ Black’s Law Dictionary (11th ed. 2019).

include such matters related to real or personal property.¹¹⁰ Thus, the phrase “which includes, but is not limited to” in reference to a “specific lawful purpose” notifies the public that any purpose not contrary to law in addition to those listed fulfills the stated requirement for a request to access exempt information under s. 119.071, F.S.

If a court determines this phrase¹¹¹ to be ambiguous, then it would be subject to the principles of statutory construction and the rule of ejusdem generis would likely be applied. The principle of ejusdem generis literally means “of the same kind or class.”¹¹² Black’s Law Dictionary gives the following example of ejusdem generis:

in the phrase *horses, cattle, sheep, pigs, goats, or any other farm animals*, the general language *or any other farm animals* — despite its seeming breadth — would probably be held to include only four-legged, hoofed mammals typically found on farms, and thus would exclude chickens.

Ejusdem generis provides that where the enumeration of specific things is followed or preceded by a more general word or phrase, the general phrase is construed to refer to a thing of the same nature as the specific things.¹¹³ Thus, when a general term like “specific lawful purpose” precedes a list of more specific items (a determination of marketability of title, perfecting or enforcing a lien ...), the general term is construed to refer to items similar to the specific items listed. Accordingly, a “specific lawful purpose” would likely be construed to include only lawful purposes related to real and personal property.

The legislature may want to consider whether it wants to amend the bill to specify that a “specific lawful purpose” constitutes only those matters related to real and personal property, or if it is intended for a broader application such that any reason authorized by law permits access to exempt information.

Information Made Exempt from Inspection or Copying Under Section 119.071, F.S.

On lines 94 to 102, the bill provides, in pertinent part, that:

A county recorder or clerk of the court may not place information made exempt from inspection or copying under s. 119.071, or any an image or copy of a public record, including an official record, on a publicly available ~~Internet~~ website for general public display *if* that image or copy is of a military discharge; death certificate ... or the Florida Probate Rules. (emphasis added)

¹¹⁰ See *Horton v. City of St. Augustine, Fla.*, 272 F.3d 1318, 1331 (11th Cir. 2001) (... if anything, the use of the phrase “includes, but is not limited to” in the definition of “perform” notifies the public that street performance is any kind of street performance in addition to those specifically listed).

¹¹¹ “... specific lawful purpose for requesting access, which includes, but is not limited to, determining marketability of title; perfecting or enforcing a lien or other interest in real or personal property; and purchasing, leasing or lending involving real or personal property.”

¹¹² Black’s Law Dictionary (11th ed. 2019).

¹¹³ See *Eicoff v. Denson*, 896 So. 2d 795, 798 (Fla. 5th DCA 2005).

If the legislature wants to include “information made exempt from inspection or copying under s. 119.071, F.S. within the prohibition to Clerks that is applicable to the other records specified,¹¹⁴ it may want to consider amending the bill to include “information made exempt from inspection or copying under s. 119.071, F.S.,” following the word “if” on line 98.

Likewise, on lines 119 and 121, the bill uses the term “information” without the clarifying language “made exempt from inspection or copying under s. 119.071.” Thus, as drafted it appears the bill will not include “information made exempt from inspection or copying under s. 119.071” as permissible subject matter for a request to remove. If the legislature intends to include such information, it is suggested an amendment be made to specify “information made exempt from inspection or copying under s. 119.071” on line 119 and 121.

VIII. Statutes Affected:

This bill substantially amends sections 28.222, 28.2221, and 119.071 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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

¹¹⁴ Military discharge; death certificate; or a court file, record, or paper relating to matters or cases governed by the Florida Rules of Family Law, the Florida Rules of Juvenile Procedure, or the Florida Probate Rules.