

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 Rules

BILL: CS/CS/SB 844

INTRODUCER: Community Affairs Committee; Governmental Oversight and Accountability Committee; and Senator Hooper

SUBJECT: Public Records

DATE: April 19, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Ponder</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
2.	<u>Hackett</u>	<u>Ryon</u>	<u>CA</u>	<u>Fav/CS</u>
3.	<u>Ponder</u>	<u>Phelps</u>	<u>RC</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 844 amends s. 28.222, F.S., establishing the clerk as the county recorder, to improve readability, and s. 28.2221, F.S., which governs electronic access to Official Records to provide access to otherwise exempt information to specified parties and for limited purposes.

The bill prohibits a county recorder, unless otherwise required by the court, from removing a grantor name, grantee name, or party name from the index on the publicly available website on the basis of a public records exemption as defined in s. 119.011(8), F.S., unless the name of the grantor or grantee includes the street address portion of the home address. The bill expressly provides that home addresses¹ that are exempt from inspection or copying must not be included within the index or otherwise displayed on the county recorder's publicly available website on which images or copies of the county's official records are placed.

Current law prohibits a county recorder 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

¹ Section 119.071(4)(d), F.S., defines "home address" 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.

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.² The bill amends s. 28.2221, F.S., to include information made exempt from inspection or copying by the public within this prohibition.

Current law provides for notice to affected parties of the right to request removal of records prohibited from being placed by the county recorder on a publicly available website and specifies 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 requires any information restricted from public display pursuant to a request for removal under s. 119.071, F.S., must be provided to the individual whose information was removed upon written request by sworn affidavit. The bill provides that a party making a false attestation in a written request for removal or for restricted information is subject to the penalty of perjury.

The bill authorizes access to exempt information under s. 119.071(4)(d), F.S., for the purpose of conducting a title search, to:

- An authorized title insurer and their affiliates;
- A title insurance agent, or title insurance agencies; or
- An attorney duly admitted to practice law in this state and in good standing with The Florida Bar.

The bill requires presentation of a photo identification and affirmation via sworn affidavit to the county recorder to access the otherwise exempt information. The affiant requestor must attest to his or her authority and the authorized purpose to access exempt information pursuant to this section for the property specified within the sworn affidavit.

The bill provides that, upon providing a document disclosing redacted information to an affiant requestor, the county recorder must provide the affected party with a copy of the affidavit requesting disclosure.

The bill specifies that the county recorder must record the affidavit in the official record but must not place the image or copy of the affidavit on a publicly available website for general public display. A party making a false attestation under this section is subject to the penalty of perjury under s. 837.012, F.S.

The bill 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

² Section 28.2221(5)(a), F.S.

commits a felony of the third degree, punishable as provided in ss. 775.082, 775.083, or 775.084, F.S.

The bill amends s. 119.071, F.S., which contains several general exemptions to the Public Records Act. Current law provides that an agency that is the custodian of certain exempt information and is not the employer of the individual benefiting from the exemption must maintain the exempt status of that exemption only if the individual or employing agency submits a written request for maintenance of the exemption to the custodial agency. The bill requires this request to be notarized and that the individual state under oath the statutory basis for his or her exemption and confirm his or her status as a party eligible for exempt status.

The bill requires a county property appraiser or county tax collector to comply with a written request for maintenance of exemption by removing the name of the individual with exempt status and the instrument number and/or Official Records book and page number identifying the property with the exempt status from all publicly available records maintained by the property appraiser or tax collector. The bill provides that for written requests received prior to July 1, 2021, a county property appraiser or county tax collector must comply by October 1, 2021. The bill prohibits a county property appraiser or county tax collector from removing the street address, legal description or other information identifying real property within agency records, so long as a name or personal information otherwise exempt under s. 19.071(4)(d), F.S., is associated with the property or otherwise displayed in the public records of the agency.

The bill provides notice to individuals eligible for exempt status under s. 119.071(4)(d), F.S., that such information may be disclosed pursuant to s. 28.2221, F.S., to: (i) a title insurer and its affiliates; (ii) a title insurance agent or title .

Current law does not provide an expiration date for when the redacted or removed information is restored. The bill provides that the exempt status of a home address³ contained in the Official Records is maintained only during the period which the protected party resides at the dwelling location. Upon conveyance of the real property after October 1, 2021, and when such real property no longer constitutes the protected party's home address as defined in s. 119.071(4)(d), F.S., the protected party must submit a written request to release the removed information to the county recorder. The written request must comport with specified requirements. Additionally, upon the death of a protected party, any party can request the county recorder to release the removed information under certain circumstances.

The bill requires a county recorder to include on the daily schedule of deeds and conveyances, which is provided to county property appraisers, notification of any information therein that is subject to a request for removal on file with the county recorder.

The bill also removes obsolete language.

³ Section 119.071(4)(d)1.a., F.S., defines "home address" to mean "Home addresses" means 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.

Clerks of court may incur additional costs as they process requests for access, facilitate limited access license agreements, include notification of removal requests on file within the daily schedule, and process requests to release home address information.

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.⁴ 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.⁵

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, 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.⁶ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁷ Lastly, ch. 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.⁸

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁹ 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.¹⁰

⁴ FLA. CONST. art. I, s. 24(a).

⁵ *Id.*

⁶ 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)

⁷ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁸ 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.”

⁹ 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.”

¹⁰ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

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.¹¹ A violation of the Public Records Act may result in civil or criminal liability.¹²

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.¹³ 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.¹⁴

General exemptions from the public records requirements are contained in the Public Records Act.¹⁵ Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹⁶

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.¹⁷ Custodians of records designated as "confidential and exempt" may not disclose the record except under circumstances specifically defined by the Legislature.

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;¹⁸

¹¹ Section 119.07(1)(a), F.S.

¹² Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹³ FLA. CONST. art. I, s. 24(c).

¹⁴ *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).

¹⁵ *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).

¹⁶ *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).

¹⁷ *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹⁸ 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.

- Agency Investigations;¹⁹
- Security and Firesafety;²⁰
- Agency Personnel Information;²¹ and
- Other Personal Information.²²

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 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;²³
- Certain current or former nonsworn investigative personnel of the Department of Financial Services;²⁴
- Certain current or former nonsworn investigative personnel of the Office of Financial Regulation's Bureau of Financial Investigations;²⁵
- Current or former certified firefighters;²⁶
- Current or former justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges;²⁷
- Current or former state attorneys, assistant state attorneys, statewide prosecutors, and assistant statewide prosecutors;²⁸
- General magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers;²⁹
- 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;³⁰

¹⁹ Section 119.071(2), F.S.

²⁰ Section 119.071(3), F.S.

²¹ Section 119.071(4), F.S.

²² Section 119.071(5), F.S.

²³ Section 119.071(4)(d)2.a., F.S.

²⁴ Section 119.071(4)(d)2.b., F.S.

²⁵ Section 119.071(4)(d)2.c., F.S.

²⁶ Section 119.071(4)(d)2.d., F.S.

²⁷ Section 119.071(4)(d)2.e., F.S.

²⁸ Section 119.071(4)(d)2.f., F.S.

²⁹ Section 119.071(4)(d)2.g., F.S.

³⁰ Section 119.071(4)(d)2.h., F.S.

- Current or former code enforcement officers;³¹
- Current or former guardians ad litem;³²
- 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;³³
- Current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel;³⁴
- Current or former investigators or inspectors of the Department of Business and Professional Regulation;³⁵
- County tax collectors;³⁶
- Certain current or former personnel of the Department of Health;³⁷
- Certain current or former impaired practitioner consultants who are retained by an agency and certain current or former employees of an impaired practitioner consultant;³⁸
- Current or former certified emergency medical technicians and paramedics;³⁹
- Certain current or former personnel employed in an agency's office of inspector general or internal audit department;⁴⁰
- Current or former directors, managers, supervisors, nurses, and clinical employees of an addiction treatment facility;⁴¹ and
- Current or former directors, managers, supervisors, and clinical employees of certain child advocacy centers.⁴²

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.⁴³ Further, all of these exemptions have retroactive application.⁴⁴

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

³¹ Section 119.071(4)(d)2.i., F.S.

³² Section 119.071(4)(d)2.j., F.S.

³³ Section 119.071(4)(d)2.k., F.S.

³⁴ Section 119.071(4)(d)2.l., F.S.

³⁵ Section 119.071(4)(d)2.m., F.S.

³⁶ Section 119.071(4)(d)2.n., F.S.

³⁷ Section 119.071(4)(d)2.o., F.S.

³⁸ Section 119.071(4)(d)2.p., F.S.

³⁹ Section 119.071(4)(d)2.q., F.S.

⁴⁰ Section 119.071(4)(d)2.r., F.S.

⁴¹ Section 119.071(4)(d)2.s., F.S.

⁴² Section 119.071(4)(d)2.t., F.S.

⁴³ Section 119.071(4)(d)3., F.S.

⁴⁴ Section 119.071(4)(d)4., F.S.

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.⁴⁵ “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.⁴⁶ 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.⁴⁷

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;
- Increase the possibility of fraud;
- Provide protected parties a false sense of safety;
- Cause problems accurately surveying property; and
- Delay real property transactions.⁴⁸

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 \$1000.⁴⁹ 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 \$5,000.⁵⁰

Reasonable attorney’s fees will be assessed against an agency found to have violated public records law.⁵¹

⁴⁵ Chapter 2019-12, L.O.F.

⁴⁶ See OPPAGA Report at 2.

⁴⁷ 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).

⁴⁸ The OPPAGA Report at 10.

⁴⁹ Section 119.10(2)(a), F.S.

⁵⁰ Section 119.10(2)(b), F.S.

⁵¹ Section 286.011(4), F.S.

Clerks of the Courts

Clerks of the circuit courts (Clerks) are constitutionally elected officers.⁵² A Clerk is considered to be the county recorder.⁵³ As county recorder, the Clerk must record all instruments in one general series called “official records.”⁵⁴ 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;⁵⁵
- Affixing a stamp, which may be electronic, to each document indicating the date and time that the submission was filed;⁵⁶
- Maintaining a progress docket on which the filing of each pleading or motion is noted;⁵⁷
- Maintaining a general alphabetical index, direct and inverse of all instruments filed for recordation;⁵⁸
- Implementing an electronic filing process;⁵⁹ and
- Keeping and furnishing to respective county property appraisers a daily schedule of the deeds and conveyances filed for recordation (the schedule should set forth the name of the grantor, the names and addresses of each grantee and a description of the land as specified in each instrument so filed).⁶⁰

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.⁶¹ The term “public records” includes each official record.⁶² 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.⁶³ A holder of a social

⁵² See, FLA. CONST., art. V, s. 16 and art. VIII, s. 1.

⁵³ Section 28.222(1), F.S.

⁵⁴ Section 28.222(2), F.S.

⁵⁵ Section 28.13, F.S.

⁵⁶ *Id.*

⁵⁷ Section 28.211, F.S.

⁵⁸ Section 28.222(2), F.S.

⁵⁹ Section 28.22205, F.S.

⁶⁰ Section 695.22, F.S.

⁶¹ Section 28.222(7), F.S.

⁶² Section 28.001(2), F.S.

⁶³ Section 119.0714(3)(a)1., F.S.

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.⁶⁴ 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.⁶⁵

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.⁶⁶

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.

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.

⁶⁴ Section 119.0714(3)(b), F.S.

⁶⁵ Section 119.0714(3)(b)1., F.S.

⁶⁶ Section 119.0714(3)(c)2., F.S.

**Clerk Records That May Have Personal Identifying Information
Eligible for Redaction⁶⁷**

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.⁶⁸ 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).⁶⁹

If an eligible individual seeks additional redactions in the future, they must complete a new redaction request each time.⁷⁰ Most requestors self-attest that they meet the eligibility criteria for redaction.⁷¹ 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.⁷² “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.”⁷³

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

⁶⁷ OPPAGA Report at 6.

⁶⁸ *Id.* at 8.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

names, date, book and page number, comments, and type of record.⁷⁴ 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.⁷⁵ 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.⁷⁶

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.⁷⁷

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.”⁷⁸ 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.”⁷⁹ The County Officers maintain records, such as property 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

⁷⁴ In 2000, the Legislature passed CS/CS/SB 1334, codified as s. 28.221, F.S.

⁷⁵ Section 28.2221(5)(a), F.S.

⁷⁶ Section 28.2221(5)(d), F.S.

⁷⁷ Fla. R. Jud. Admin. 2.420(a).

⁷⁸ Section 192.001(3), F.S.

⁷⁹ Section 192.001(4), F.S.

property.⁸⁰ 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.⁸¹

III. Effect of Proposed Changes:

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.

Section 2 amends s. 28.2221, F.S., to remove past implementation dates regarding notice and make clarifying changes. The section prohibits a county recorder, unless otherwise required by the court, from removing a grantor name, grantee name, or party name from the index on the publicly available website on the basis of an exemption as defined in s. 119.011(8), F.S., unless the name of the grantor or grantee includes the street address portion of the home address as defined in s. 119.071(4)(d), F.S. Additionally, this section provides that home addresses, as defined in s. 119.071(4)(d), F.S., that are exempt from inspection or copying, must not be included within the index or otherwise displayed on the county recorder's publicly available website on which images or copies of the county's official records are placed.

Section 2 also prohibits a county recorder from placing information made exempt from inspection or copying under s. 119.071, F.S., on a publicly available website for general public display. The section specifies that a request to remove information made exempt from inspection or copying under s. 119.071, F.S., or records must identify the Official Records book and page number, instrument number; or Clerk's file number of such document to be removed. Further, a 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.

Section 2 also provides that any information restricted from public display pursuant to a request for removal must be provided to the individual whose information was removed, at any time. The written request for restricted information must be made by sworn affidavit consistent with s. 92.50, F.S., and must include the Official Records book and page number, instrument number, or clerk's file number for any information or document to be released. A party making a false attestation is subject to the penalty of perjury.

This section permits access to information restricted from public display or copying pursuant to a request for removal made under s. 119.071(4)(d), F.S., for the purpose of conducting a title search⁸² to:

⁸⁰ OPPAGA Report at 6.

⁸¹ *Id.*

⁸² As defined in s. 627.7722(4), F.S.

- An authorized title insurer pursuant to s. 624.401, F.S., and its affiliates, as defined in s. 624.10, F.S.;
- A title insurance agent, or title insurance agency, as defined in s. 626.841, F.S.; or
- An attorney duly admitted to practice law in this state and in good standing with The Florida Bar.

Section 2 also requires that a photo identification be presented and affirmation via sworn affidavit to the county recorder. The photo identification and affirmation via sworn affidavit may be delivered in person, by mail or electronic transmission to the county recorder. The affiant requestor must attest to his or her authority and the authorized purpose to access exempt information pursuant to this section for the property specified within the sworn affidavit.

An affidavit submitted by a title insurer, title insurance agent or title insurance agency must include the Florida Company Code or the license number, as applicable, and an attestation to the affiant requestor's authorization to transact business in this state. Affidavits submitted by an attorney authorized under this section must include the affiant requestor's Florida Bar number and a statement that the affiant requestor has an agency agreement with a title insurer, directly, or through his or her law firm.

The county recorder must record the affidavit in the official record but must not place the image or copy of the affidavit on a publicly available website for general public display. Upon providing a document disclosing redacted information to an affiant requestor, the county recorder must provide the affected party with a copy of the affidavit requesting disclosure at the address listed on the document or on the request for removal. The county recorder must prepare a certificate of mailing to be affixed to the affidavit and must receive the statutory service charges as prescribed by s. 28.24 from the affiant requestor..

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

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 ss. 775.082, or 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 ss. 775.082, 775.083, 775.084, F.S.

Section 3 amends s. 119.071(4)(d), F.S., to require that a request for maintenance of an exemption be notarized and state under oath the statutory basis for the individual's exemption request and confirm the individual's status as a party eligible for exempt status.

Section 3 creates new subparagraph 4.a. to require a county property appraiser or county tax collector, as defined in s. 192.001, who receives a written request for maintenance of an exemption to comply by removing the name of the individual with exempt status and the instrument number and/or Official Records book and page number identifying the property with the exempt status from all publicly available records maintained by the property appraiser or tax collector. For written requests received prior to July 1, 2021, a county property appraiser or tax

collector must comply with this section by October 1, 2021. A county property appraiser or county tax collector must not remove the street address, legal description, or other information identifying real property within the agency's records so long as the name or personal information otherwise exempt from inspection and copying pursuant to this section are not associated with the property or otherwise displayed in the public records of the agency. A new subparagraph 4.b. is created to provide that any information restricted from public display, inspection or copying must be provided to the individual whose information was removed.

This section also provides notice that information made exempt under s. 119.071(4)(d), F.S., may be disclosed pursuant to s. 28.2221, F.S., to: (i) a title insurer authorized pursuant to s. 624.401 and its affiliates as defined in s. 624.19; (ii) a title insurance agent or title insurance agency as defined in s. 626.841(1) or (2), respectively; or (iii) an attorney duly admitted to practice law in this state and in good standing with The Florida Bar.

Section 3 also provides that the exempt status of a home address within the Official Records is maintained only during the period which the protected party resides at the dwelling location. Upon conveyance of the real property after October 1, 2021, and when such real property no longer constitutes the protected party's home address as defined in s. 119.071(4)(d), F.S., the protected party must submit a written request to release the removed information to the county recorder. The written request to release the removed information must be notarized, confirm the protected party's request for release is pursuant to a conveyance of his or her dwelling location, and specify the identification page number of the document containing the information to be released. A fee may not be charged for the release of any document pursuant to such request.

Section 3 also provides that upon the death of the protected party as verified by a certified copy of a death certificate or court order, any party can request the county recorder to release the protected removed information unless there is a related request on file with the county recorder for continued removal of the information or unless such removal is otherwise by statute or by court order. The written request must attach the certified copy of a death certificate or order and must be notarized, must confirm the request for release is due to the death of the protected party, and must specify the Official Records book and page number, instrument number, or clerk's file number for each document containing the information to be released. A fee may not be charged for the release of any document pursuant to such request.

Section 4 amends s. 695.22, F.S., to require the daily schedule of deeds and conveyances include notification of any information therein that is subject to a request for removal on file with the county recorder.

Section 5 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 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 and 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.⁸³ 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.

⁸³ An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See Florida Senate Committee on Community Affairs, Interim Report 2012-115: Insignificant Impact, (Sept. 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited March 10, 2021). Based on the Florida Demographic Estimating Conference’s Nov. 13, 2020 population forecast for 2021 of 21,893,919. The conference packet is available at: <http://edr.state.fl.us/content/conferences/population/demographicsummary.pdf> (last visited March 10, 2021).

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.

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, include notification of removal requests on file within the daily schedule, and process requests to release home address information. County property appraisers and county tax collectors may see an indeterminate negative fiscal impact in complying with the request for maintenance of exemption provision in removing restricted information from general public display.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 28.222, 28.2221, 119.071 and 695.22 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS/CS by Community Affairs on March 30, 2021:**

The CS:

- Provides conducting a title search as the sole valid purpose for requesting redacted information.
- Provides that an affidavit requesting redacted information must specify the exact location of the document requested.
- Removes financial institutions as an eligible party to request redacted information.
- Provides that, upon providing a document disclosing redacted information to an affiant requestor, the county recorder must provide the affected party with a copy of both the affidavit and released information.
- Provides that various records subject to public records exemptions can be released upon the death of the protected party under certain circumstances.

CS by Governmental Oversight and Accountability on March 3, 2021:**The CS:**

- Limits the exempt status of a home address contained in the Official Records to the period during which the employee resides at the dwelling location. Upon conveyance of the dwelling location, the employee must submit to the county recorder a written request to release the removed information.
- Authorizes access of restricted information to specified entities⁸⁴ for defined purposes⁸⁵ upon presentation of identification and affidavit. Upon obtaining the address information, the affiant requestor must provide notice to the affected parties.
- Permits county recorders to enter into limited access license agreements with specified parties for defined purposes.
- Provides that an individual whose information was removed from public display to access his or her restricted information, at any time.
- Provides notice to employees covered by the exemption under s. 119.071(4)(d), F.S., that such exempt information may be disclosed to specified entities pursuant to s. 28.2221, F.S.
- Requires a county property appraiser and county tax collector to comply with a written request for maintenance of exemption.
- Prohibits a county property appraiser or county tax collector from removing a street address, legal description or other information identifying real property within agency records, so long as a name or personal information otherwise exempt under s. 119.071(4)(d), F.S., is associated with the property or otherwise displayed in the public records of the agency.
- Prohibits a county recorder from removing a grantor name, grantee name or party name from the index on the publicly available website unless the street address portion of a home address as defined in s. 119.071(4)(d), F.S., is included.
- Expressly provides that a home address as defined in s. 119.071(4)(d), F.S., must not be included within the index or otherwise displayed on the publicly available website.

B. Amendments:

None.

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

⁸⁴ An authorized title insurer as defined in s. 624.09, F.S., and their affiliates, as defined in s. 624.10, F.S.; A title insurance agent or title insurance agencies, as defined in s. 626.841, F.S.; An attorney duly admitted to practice law in this state and in good standing with The Florida Bar; or A financial institution as defined in s. 655.005, F.S.

⁸⁵ For the purpose of conducting a title search, as defined by s. 627.7722(4), F.S., perfecting or enforcing a lien or other interest in real or personal property, or purchasing, leasing, or lending involving real or personal property.