

Committee Substitute for House Bill No. 1679

An act relating to public records; creating the Study Committee on Public Records; providing for membership and organization of the committee; providing purpose, duties, and responsibilities of the committee; requiring a report; providing for expiration of the committee; amending s. 28.2221, F.S., relating to electronic access to official records; revising declared state purpose with respect to such access; providing limitations with respect to a specified Internet index of documents; providing that county recorders may not place images or copies of specified public records on a publicly available Internet website for general public display; requiring that such records placed on the Internet prior to the effective date of the act be removed upon request; providing certain notice requirements and requiring publication of notice by county recorders and clerks of the court; providing that affected persons may petition the court for an order of compliance; requiring clerks of court to provide for electronic retrieval of images of certain documents by a specified date; providing an appropriation; providing an effective date.

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

Section 1. Study Committee on Public Records; creation; membership; duties.—

(1) There is created a Study Committee on Public Records. The committee shall be composed of twenty-two members, nine of whom will serve in an advisory, nonvoting capacity, as follows:

(a) The Governor shall appoint one at-large member who is a resident of the state, one attorney with expertise in Florida's public records and privacy laws, a representative from the First Amendment Foundation, and a representative of the data aggregation industry. To serve in an advisory capacity, the Governor shall appoint a representative from the Florida Department of Law Enforcement, a representative from the Department of Children and Family Services, a representative from the Department of Juvenile Justice, and a representative from the Department of Education.

(b) The President of the Senate shall appoint a member of the Senate interested in and knowledgeable in the areas of public records law, judicial records, and real property and probate issues; one attorney with expertise in family law; and a representative of the real property title industry. To serve in an advisory capacity, the President of the Senate shall appoint one domestic violence advocate and one child and family advocate.

(c) The Speaker of the House of Representatives shall appoint a member of the House of Representatives interested in and knowledgeable in the areas of public records law, judicial records, and family law issues; one attorney with expertise in real property and probate law; and a representative from a financial institution or from the credit industry. To serve in an

advisory capacity, the Speaker of the House of Representatives shall appoint two representatives from among local or community service providers.

(d) The Chief Justice of the Supreme Court shall appoint two judges or justices who are interested in and knowledgeable regarding public records law and who are familiar with the variety and types of judicial records. To serve in an advisory capacity, the Chief Justice of the Supreme Court shall appoint a representative from the judicial branch.

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

(2) The Speaker of the House of Representatives and the President of the Senate shall designate legislative staff knowledgeable in the areas of public records and privacy laws to assist the committee and provide all necessary data collection, analysis, research, and support services.

(3) The attorney appointed by the Governor shall serve as chair of the committee. Members must be appointed within 30 days after the effective date of this act. No sooner than 40 days and no later than 60 days after the effective date of this act, the committee shall meet to establish procedures for the conduct of its business and to elect a vice chair. The committee shall meet at the call of the chair but no less frequently than every 2 months. A majority of the members of the committee constitutes a quorum, and a quorum is necessary for the purpose of voting on any action or recommendation of the committee. All meetings shall be held in Tallahassee, unless otherwise decided by the committee. No more than two meetings held in locations other than Tallahassee may be held for the purpose of taking public testimony regarding the issues set forth in subsection (4).

(4) The committee shall address:

(a) The issues of privacy and public access as they relate to the collection and dissemination of information contained in court records. With respect to such issues, the committee shall specifically address:

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

a. The expectation of privacy to sensitive, personal, or other evidentiary information contained in court records;

b. The role and effectiveness of the court and the clerks of the court as custodians of these records;

c. The operations of other governmental entities that use information in court records;

d. The security and safety of citizens; and

e. The interests of business, research, and media industries in these records.

2. How best to balance the positive and negative effects of electronic access to court records.

3. Whether the courts and participants in the judicial process require or provide excessive and unnecessary information, and if so, the best manner in which to address such issues.

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

5.a. What information is and should be accessible, the circumstances warranting accessibility, and the need for restrictions with respect thereto; and

b. Whether levels of accessibility should be established based on the nature of the information and the user of the information, circumstances warranting the establishment of levels of accessibility, and the need for restrictions with respect thereto.

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

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

8.a. What impediments exist with regard to preventing the unauthorized or inadvertent disclosure of confidential or exempt information in current and future court records;

b. Who should be responsible for ensuring that such information is kept exempt from public disclosure; and

c. What, if any, penalties should be in place if such disclosure occurs.

(b) The issues of privacy and public access as they relate to the collection and dissemination of information contained in all official records. With respect to such issues, the committee shall specifically address:

1. How the storage, retrieval, dissemination, and accessibility of official records through advanced technologies such as remote electronic access, including Internet access, has affected:

a. The expectation of privacy with respect to sensitive or personal information contained in official records;

b. The role and effectiveness of the county recorder;

- c. The operations of other governmental entities who use official records;
- d. The security and safety of citizens; and
- e. The interests of business, research, and media industries.

2. How best to balance the positive and negative effects of access to official records, regardless of the medium.

3. The question of whether confidential or exempt information contained in official records should continue to be disclosed to the public in copies of records disclosed at the county recorder's office or obtained through electronic means.

4.a. Who should be responsible for ensuring that confidential or exempt information is identified, kept out of official records, and kept exempt from public disclosure; and

b. What changes to the law, practices, and procedures need to occur in order to most effectively and efficiently keep confidential or exempt information out of official records.

5. How the public and the legal and business communities can be educated with regard to limiting the types of personal information included in official records.

6. How to promote greater communication between all branches of government regarding the collection and disclosure of sensitive personal information.

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

8. The question of whether sanctions should be created with regard to what is placed in official records as well as for disclosing confidential or exempt information.

(5) Committee members serving in an advisory capacity shall provide information to the committee, as requested. Advisory members are, in part, responsible for reporting to the committee any recommendations regarding the following issues:

(a) What information contained in agency records pertaining to minors and family issues of a sensitive nature should be exempt from public disclosure, and what is the best method of protecting against the unlawful dissemination of such information when these records are used for court proceedings.

(b) What changes to agency policies and procedures are necessary in order to ensure that sensitive personal information relating to minors and family issues of a sensitive nature is most effectively and efficiently disseminated to the judiciary when such information is pertinent to court proceedings.

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

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

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

(9) Members of the committee shall serve without compensation but are entitled to be reimbursed for per diem and travel expenses as provided in s. 112.061. Per diem travel and expenses for committee members who are employees of the state shall be provided from the budgets of the employing agencies.

(10) The committee is terminated June 30, 2003.

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

28.2221 Electronic access to official records.—

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

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

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

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

(5)(a) No county recorder or clerk of the court may place 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 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.

(b) Any records specified in this subsection made available by the county recorder or clerk of the court on a publicly available Internet website for general public display prior to the effective date of this act must be removed if the affected party identifies the record and requests that it be removed. Such request must be in writing and delivered by mail, facsimile, or electronic transmission, or in person to the county recorder or clerk of the court. The request must specify the identification page number of the document to be removed. No fee may be charged for the removal of a document pursuant to such request.

(c) No later than 30 days after the effective date of this act, notice of the right of any affected party to request removal of records pursuant to this subsection shall be conspicuously and clearly displayed by the county recorder or clerk of the court on the publicly available Internet website on which images or copies of the county's public records are placed and in the office of each county recorder or clerk of the court. In addition, no later than 30 days after the effective date of this act, the county recorder or the clerk of the court must have published, on two separate dates, a notice of such right in a newspaper of general circulation in the county where the county recorder's office is located as provided for in chapter 50. Such notice must contain appropriate instructions for making the removal request in person, by mail, by facsimile, or by electronic transmission. The notice shall state, in substantially similar form, that any person has a right to request that a county recorder or clerk of the court remove an image or copy of a public record, including an official record, from 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. Such request must be made in writing and delivered by mail, facsimile, or electronic transmission, or in person to the county recorder or clerk of the court. The request must identify the document identification page number of the document to be removed. No fee will be charged for the removal of a document pursuant to such request.

(d) Any affected person may petition the circuit court for an order directing compliance with this subsection.

(e) By January 1, 2006, each county recorder or clerk of the court shall provide for electronic retrieval, at a minimum, of images of documents referenced as the index required to be maintained on the county's official records website by this section.

Section 3. There is hereby appropriated from the General Revenue Fund to the Executive Office of the Governor the sum of \$25,000 for the purpose of reimbursement for per diem and travel expenses as authorized by this act.

Section 4. This act shall take effect upon becoming a law. For purposes of codifying the Florida Statutes 2002, the Division of Statutory Revision of the Office of Legislative Services is directed to substitute the effective date of Council Substitute for House Bill 1679, First Engrossed, for the language “the effective date of this act” as used in section 28.2221(5)(b) and (c), Florida Statutes, as amended by section 2 of Council Substitute for House Bill 1679, First Engrossed.

Approved by the Governor June 5, 2002.

Filed in Office Secretary of State June 5, 2002.