

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 Judiciary

BILL: SB 918

INTRODUCER: Senator Grimsley

SUBJECT: Clerks of Circuit Court

DATE: February 12, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Jones</u>	<u>Miller</u>	<u>TR</u>	<u>Favorable</u>
2.	<u>Cibula</u>	<u>Cibula</u>	<u>JU</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 918 requires the Official Records of the county, as well as other records and books, be *readily accessible* at the county seat, rather than *kept* at the county seat or in the county. This change is intended to allow the clerks of the circuit courts to store original records at a location other than the county seat if the records are made available electronically at the county seat.

The bill also requires driver improvement schools to transmit, within seven business days after a person successfully completes the course, the individual completion certificate, or related data, to a clerk of the circuit court through the statewide e-filing portal.

The bill takes effect July 1, 2018.

II. Present Situation:

Clerks of the circuit court are county officers who may perform court-related functions as the clerk of court and county-related functions as the “ex officio clerk of the board of county commissioners, auditor, recorder and custodian of all county funds.”¹

Under article VIII, subsection 1(k) of the Florida Constitution, clerks of the circuit courts and other county officers must maintain their permanent records and principal office in the county seat of the county they serve. This specific wording of these constitutional requirements reads as follows:

In every county there shall be a county seat at which shall be located the principal offices and *permanent records of all county officers*. The county seat may not be moved except as provided by general law. Branch offices for the conduct of county business may be

¹ FLA. CONST. art. V., s. 16 and art. VIII, s. 1(d).

established elsewhere in the county by resolution of the governing body of the county in the manner prescribed by law. No instrument shall be deemed recorded until filed at the county seat, or a branch office designated by the governing body of the county for the recording of instruments, according to law.

Section 28.07, F.S., largely applies the constitutional provision above to the clerks of the circuit courts. Specifically, the statute requires the clerk to keep his or her office at the county seat. Additionally, the section requires the Official Records of the county to be kept at the county seat, while other records and books must be kept within the county but need not be kept at the county seat. The Official Records are a record of all instruments that the clerk is required or authorized by law to record in his or her county.² All instruments recorded in the Official Records are open to the public, under the supervision of the clerk.³

These instruments include:

- Deeds, leases, bills of sale, agreements, mortgages, notices or claims of lien, notices of levy, tax warrants, tax executions, and other instruments relating to the ownership, transfer, or encumbrance of or claims against real or personal property or any interest in it;⁴
- Formal notices of pending legal actions;⁵
- Judgments entered by any court having jurisdiction in this state and assignments, releases, and satisfaction of judgments;⁶
- The portion of a certificate of discharge, separation, or service from the U.S. military, air, or naval forces which indicates the character of discharge, separation, or service of a Florida citizen;⁷
- Notices of liens for taxes payable to the United States and other liens in favor of the United States, and certificates discharging, partially discharging, or releasing the liens;⁸
- Certified copies of petitions, decrees of adjudication, and orders approving the bonds of trustees appointed in proceedings under the U.S. Bankruptcy Act;⁹
- Certified copies of death certificates;¹⁰ and
- Other instruments required or authorized by law to be recorded.¹¹

Driver Improvement Schools

Section 318.14(9), F.S., provides that any person who does not hold a commercial driver license or commercial learner's permit and who is cited while driving a noncommercial vehicle for certain noncriminal traffic infractions¹² may elect to attend a basic driver improvement course approved by the Department of Highway Safety and Motor Vehicles. If the individual completes

² Section 28.001(1), F.S.

³ Section 28.222(7), F.S.

⁴ Section 28.222(3)(a), F.S.

⁵ Section 28.222(3)(b), F.S. This includes notices of an action pending in a U.S. court having jurisdiction in Florida.

⁶ Section 28.222(3)(c), F.S.

⁷ Section 28.222(3)(d), F.S.

⁸ Section 28.222(3)(e), F.S.

⁹ Section 28.222(3)(f), F.S.

¹⁰ Section 28.222(3)(g), F.S.

¹¹ Section 28.222(3)(h), F.S.

¹² The option to elect to attend a driver improvement program is not available for violations of ss. 316.183(2), 316.187, 316.189, 320.0605, 320.07(3)(a) and (b), 322.065, and 322.15(1), F.S.

the course, adjudication is withheld and no points may be assessed against the individual's driver license. In addition, the DHSMV may require individuals involved in certain crashes to complete a driver improvement course as a requirement to maintain their driving privileges.¹³

Driver improvement course providers are required to submit course completion information to the DHSMV through the DHSMV's Driver Improvement Certificate Issuance System within 5 days.¹⁴ However, the person who completes the driver improvement course is required to obtain a completion certificate and submit it to the Clerk's office (as required by such office) by mail, e-mail, or in-person.¹⁵

III. Effect of Proposed Changes:

The bill amends s. 28.07, F.S., to require that the Official Records of the county, as well as other records and books, be *readily accessible* at the county seat, rather than "kept" within the county or at the county seat. This change is intended to allow clerks of court to store original records at a location other than the county seat if the records are made accessible electronically at the county seat.

This bill also amends s. 318.1451, F.S., to require that driver improvement schools transmit student course completion information to the clerks of court through the statewide e-filing portal within 7 days after a student completes a course. This information must be sufficient to update the Comprehensive Case Information System.¹⁶ The bill further requires that the course completion information be submitted to the clerk for the county that the student chooses. The change to s. 318.1451, F.S., is intended to eliminate the need for students to obtain and submit course completion certificates to a clerk's office.

The bill takes effect July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹³ Section 322.0261, F.S.

¹⁴ Section 318.1451(6)(f), F.S.

¹⁵ See Florida Association of Court Clerks & Comptrollers, *Bill Analysis of SB 918* (on file with the Senate Committee on Judiciary).

¹⁶ The e-filing portal allows users to submit documents to the clerks. See Florida Courts website, *eFiling*, <http://www.flcourts.org/resources-and-services/court-technology/efiling/> (last visited Feb. 8, 2018), for more information about the eFiling portal.

D. Constitutional Issues:

Article VIII, subsection 1(k) of the Florida Constitution states in part that “In every county there shall be a county seat at which shall be located the principal offices and permanent records of all county officers.”

This constitutional provision as well as the corresponding provision from the Florida Constitution of 1885 have been determined by the Attorney General and found by the Florida Supreme Court to prohibit the keeping of official records at a place other than a county seat.¹⁷ Accordingly, the statutory changes alone might not be sufficient to allow clerks of court to store their records outside of the county seats of the counties they serve.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The bill may have a positive impact on individuals who successfully complete driver improvement school and who will no longer be required to obtain and provide a copy of a course completion certificate to a clerk’s office.

The bill may have a negative impact on driver improvement schools that will be required to electronically submit completion certificates. And these schools may currently charge a fee to issue a paper completion certificate.

C. Government Sector Impact:

Clerks may eliminate costs associated with onsite storage needed to keep paper records at the county seat.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

¹⁷ *Mack v. Carter*, 183 So. 478, 479 (Fla. 1938); Op. Att’y Gen. 79-70 (1979) (“[I]t seems clear that the Official Records, as well as the prescribed registers and indexes as permanent records of the clerk, must be kept at the principal office of the clerk at the county seat, that no part of the Official Records, registers, or indexes may be moved from the county seat”); Op. Att’y Gen. 67-23 (1967) (“It is clear that the State Const. will not permit ‘the official books and records’ of the county superintendent to be kept outside the county seat.”); *see Sanchez v. Swanson*, 481 So. 2d 481, 483 (Fla. 1986) (stating that the constitutional requirement to maintain official records at a county seat “serves the manifest purpose of making such information available to the general public at a centralized depository.”).

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 28.07 and 318.1451.

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.
