

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 264

SPONSOR: Committee on Judiciary

SUBJECT: Recording of Instruments in Branch Offices

DATE: March 4, 1999 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matthews</u>	<u>Johnson</u>	<u>JU</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

## I. Summary:

This bill conforms certain provisions of chapter 28, F.S., relating to recording of instruments, to implement the constitutional amendment that allows governing bodies to designate branch offices for recording of instruments.

This bill amends the following sections of the Florida Statutes: 28.07 and 28.222

## II. Present Situation:

In 1998, voters approved a constitutional amendment to section 1 of Article VIII of the Florida Constitution, based on a Constitution Revision Commission proposal to permit the recording of instruments in branch offices of the clerks of the circuit court. Previously, this section prohibited the official recording of any instrument unless filed at the county seat office although branch offices could be established elsewhere by resolution of the governing county body.

In conformity with the previous version of the constitutional provision, s. 28.07, F.S., provides that the Official Records books of the county must be kept at the county seat although other records and books may be kept in other offices within the county. If a branch office is needed, the clerk of the court can establish one or more at places other than the county seat. The clerk of the circuit court is the official recorder of all instruments that he or she may be required or authorized by law to record in the county. *See* § 28.222, F.S. The clerk must record all instruments in one general series of books called "Official Records." The clerk must keep a register of instruments to be recorded to include the time and date of filing, the filing number of the recorded instrument, the kind of instrument, and the names of the parties to the instrument. The clerk must also maintain a general alphabetical index of all instruments filed for recording.

The clerk must record the following instruments upon presentation and payment for services:

- 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; extensions, assignments, releases, cancellations, or satisfactions of mortgages and lien,; and powers of attorney relating to any of the instruments.

- Notices of lis pendens.
- Judgments, including certified copies of judgments, and assignments, releases, and satisfactions of the judgments.
- That portion of a certificate of military, air force or naval force discharge, separation, or service.
- 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.
- Certified copies of bankruptcy petitions, decrees of adjudication in the proceedings, and orders approving the bonds of trustees appointed in the proceedings.
- Certified copies of death certificates authorized for issuance by the Department of Health and Rehabilitative Services, and certified copies of death certificates issued by another state.
- Any other instruments required or authorized by law to be recorded.

The Official Records books must be open to the public, under the supervision of the clerk.

### **III. Effect of Proposed Changes:**

Section 28.07, F.S., relating to the office of the clerk of the circuit court, and s. 28.222, F.S., relating to the clerk of the circuit court as official recorder, are amended to implement the recent constitutional amendment to lift the restriction against recording at branch offices. Specifically, s. 28.07, F.S., is amended to provide that instruments presented for recording in the Official Records may be accepted for filing and recording at any branch office designated by the governing county body. The bill does not modify the current statutory requirement that the Official Records be kept at the main county seat office. Section 28.222, F.S., is amended to require the register of Official Records to be available at each office where instruments may be filed for recording.

This act shall take effect upon becoming law.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Indeterminate. Currently, persons who want to file and record instruments in the Official Records must travel, which may be relatively difficult and expensive, to the county seat office of the clerk of the court. Since this bill authorizes the recording of instruments at either the county seat or branch office, a person may save expenses in time and travel to record an instrument. Some counties have already established branch offices which use existing computer technology to allow access to the register of recorded instruments from either the county seat or the branch office(s) within the county. However, until or unless the clerk's office has the available computer technology to input immediately copies of the instruments into the Official Records, a person will still have to travel to the main county seat office for purposes of inspection, examination and copying any recorded instruments.

**C. Government Sector Impact:**

No fiscal impact is anticipated on the State Courts System. As is provided with the constitutional amendment, this bill gives the governing county bodies the option to designate and authorize branch offices to officially record instruments. If the option is exercised, the county may incur expenses in establishing and maintaining these branch office facilities. As for staffing expenses, either the clerk's office or the county may incur additional expenses, depending on its current funding sources.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.