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HOUSE OF REPRESENTATIVES
COUNCIL FOR SMARTER GOVERNMENT
ANALYSIS

BILL #: CS/HB 1679 (PCB SA 02-16)
RELATING TO: Official Records
SPONSOR(S): Council for Smarter Government, Committee on State Administration and Representative(s) Brummer
TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) STATE ADMINISTRATION YEAS 5 NAYS 0
 - (2) COUNCIL FOR SMARTER GOVERNMENT YEAS 12 NAYS 0
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

The Clerks of the Circuit Courts are constitutionally elected officers. The Clerks record all instruments that are required or authorized by law to be officially recorded; *e.g.*, deeds, judgments, marriage licenses, death certificates, and claims of lien. The purpose for recording a document in the official records is to put the public on notice as to its contents.

Clerks are required to provide Internet access to all official records by January 1, 2006; some have already done so. Complaints have been received regarding the Internet disclosure of information made confidential or exempt by law, as well as the disclosure of other sensitive, personal information. The Attorney General has stated that the Clerks must prevent the disclosure of information made confidential or exempt by law in both paper records obtained at the Clerk's office and in electronic records, yet the Clerks are still disclosing this information. Such disclosures raise concerns regarding a person's right to privacy; a person's security and safety; and a person's protection against identify theft.

CS/HB 1679 prohibits any Clerk from placing on a publicly available Internet website an image or copy of 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. CS/HB 1679 provides that any such records that were placed on the Internet prior to the effective date of this bill must be removed if the affected party identifies the document and requests that it be removed. CS/HB 1679 further provides that any affected person may petition the circuit court for an order directing compliance with this provision.

CS/HB 1679 creates a 21-member Study Committee on Public Records. The Committee must address particular issues regarding court records, official records, privacy, and public access, and must submit a report by January 1, 2003. Members are reimbursed for per diem and travel expenses.

CS/HB 1679 does not appear to have a fiscal impact on local governments, and it has a minimal fiscal impact on state government. Please see the "Fiscal Analysis and Economic Impact Statement" for further discussion.

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

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|-----------------------------------|---|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

This bill creates a new committee to study issues regarding public records, privacy, and public access.

This bill allows affected parties to remove certain sensitive records from Internet display.

B. PRESENT SITUATION:

Florida Constitution, Clerks of the Circuit Courts

Article V, Section 16, of the Florida Constitution provides for the Clerks of the Circuit Courts (Clerks). Clerks are selected pursuant to Article VIII, Section 1, of the Florida Constitution, which specifies that they are elected constitutional officers, chosen by the electors of each county. A Clerk serves for a term of four years. There may be a Clerk of the County Court if authorized by general or special law.

Chapter 28, F.S., Clerks of the Circuit Courts

Chapter 28, F.S., sets forth the duties and responsibilities of the Clerk. Section 28.222, F.S., states that the Clerk "shall be the recorder of all instruments¹ that he or she may be required or authorized

¹ Section 28.222(3), F.S., provides that instruments are:

- Deeds, leases, bills of sale, agreements, mortgages, notices or claims of lien, notices of levy, tax warrants, tax executions;
- 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 liens;
- Powers of attorney relating to any of the instruments;
- Notices of lis pendens;
- Judgments, including certified copies of judgments, entered by any court of this state or by a United States court having jurisdiction in this state and assignments, releases, and satisfactions of the judgments;
- That portion of a certificate of discharge, separation, or service which indicates the character of discharge, separation, or service of any citizen of this state with respect to the military, air, or naval forces of the United States;
- 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, in accordance with the laws of the United States;
- Certified copies of petitions, with schedules omitted, commencing proceedings under the Bankruptcy Act of the United States, decrees of adjudication in the proceedings, and orders approving the bonds of trustees appointed in the proceedings; and

by law to record in the county where he or she is Clerk.” The Clerk is to record all instruments in one general series called “official records.”² The Clerk must also maintain a general alphabetical index, direct and inverse, of all recorded instruments.

Official Records

The Florida Statutes require that certain documents be recorded with the Clerk’s office. The purpose for recording a document is to put the public on notice about a particular matter. For example, a deed regarding real property must be recorded with the Clerk’s office for proof and authentication of the transfer of the title to that property. Any claims of lien against a property must also be recorded. Other examples of documents that must be recorded with the Clerk’s office are: mortgages, notices of levy, tax executions, powers of attorney, judgments, military discharges, copies of bankruptcy petitions, marriage licenses, death certificates, and wills.³

All official records are public records. Public records, however, include not only official records but all executive, legislative, and judicial branch records.⁴

Public Records⁵ / Court Records

Chapter 119, F.S., governs agency⁶ held public records. Florida’s public records law requires that all state, county, and municipal records must be open for personal inspection and copying by any person. In order to protect, for example, certain personal information, the Florida Statutes contain numerous public records exemptions that prohibit or restrict the disclosure of certain information that appears in public records.

Public records also include court records.⁷ The Florida Supreme Court has recognized the growing concern of the misuse of personal information which is being disclosed in court records, particularly in family, dependency, delinquency and probate case files. An average user of the Internet can potentially find in those records personal and sensitive information, including social security numbers, addresses of minor children, dates of birth, psychological evaluations, credit card numbers, financial account numbers, medical reports, academic records, and child custody and

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- Certified copies of death certificates authorized for issuance by the Department of Health which exclude the information that is confidential under s. 382.008, and certified copies of death certificates issued by another state whether or not they exclude the information described as confidential in s. 382.008.

² Section 28.001, F.S., defines “official records” to mean “each instrument that the clerk of the circuit court is required or authorized to record in one general series called ‘Official Records’ as provided for in s. 28.222.”

³ Booklet (untitled) provided by the Leon County Clerk’s Office, January 7, 2002.

⁴ Art. I, s. 24(a), Fla. Const., provides that “[e]very person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.”

⁵ Section 119.011(1), F.S., defines public records as “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.”

⁶ “Agency” is defined to mean “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.” Section 119.011(2), F.S.

⁷ Art. I, s. 24(a), Fla. Const., guarantees public access to records of local governments and of the legislative, executive, and judicial branches of state government. The section clearly establishes a constitutional right to “inspect” or “copy” any public record and only authorizes the Legislature, by general law, to create exemptions for records held by all three branches of government.

visitation schedules. The information available can also include facts or allegations embarrassing or damaging to one's personal or professional reputation or family or could reveal information threatening the personal safety of parties, relatives, or witnesses. Although historically available, never has this information been so readily and easily accessible on such a scale to the general public.⁸

As a result of the concerns regarding the release of sensitive, personal information contained in court records, the Florida Supreme Court directed the Judicial Management Council (JMC) to make recommendations in regards to balancing the public expectation of access to case information with the growing misuse of personal information.⁹ The JMC organized an ad hoc workgroup comprised of judges, a Clerk of Court representative, court administrators, attorneys, and a representative from the First Amendment Foundation. The JMC ad hoc workgroup recommended a moratorium on electronic access to certain court records until sufficient statewide policies are developed. The workgroup recommends that the restriction apply only to images of court records and that indexes of such images as well as docket and case information should continue to be made available electronically.¹⁰

Although there are many public records exemptions that prevent disclosure of certain information contained in agency and judicial branch public records, there is nonetheless a growing concern regarding disclosure of personal information contained in such records, which is made easier and more efficient because of increased technological capabilities. One of the concerns that has arisen from the disclosure of personal information is the crime of identity theft.

Identity Theft

In July 2000, Governor Bush established a statewide Task Force on Privacy and Technology which was charged with looking at the crime of identity theft as it relates to privacy and the protection of personal information.¹¹ As a result of the task force's work, legislation was passed which provides criminal penalties for any person who willfully and without authorization either fraudulently uses or possesses personal identification information concerning an individual without first obtaining consent from that individual. This legislation was amended in 2001 to expand the scope of protection against identity theft and to provide heightened penalties for a person who unlawfully uses public records information to commit an identity theft crime.¹²

Recently, a statewide grand jury provided a number of recommendations to combat identity theft. One of the recommendations is to exempt from disclosure all personal identifying information of citizens, including social security numbers, birth dates, driver license numbers, phone numbers, mother's maiden name, bank account numbers, and credit card numbers, unless the citizen

⁸ CS/CS/SB 668, Senate Staff Analysis and Economic Impact Statement, Governmental Oversight & Productivity Committee and Judiciary Committee and Senator Burt, February 26, 2002.

⁹ Judicial Management Council of Florida, Privacy and Electronic Access to Court Records, Report and Recommendation, November 15, 2001.

¹⁰ *Id.* at 5. The JMC ad hoc workgroup also concluded: The Florida Supreme Court has a broad responsibility under the Florida Constitution for the administrative supervision of all courts, including setting policies regarding court records; the JMC should be directed to oversee development of statewide policy regarding electronic access to court records, and the JMC should create a committee for the purpose of addressing this issue; and the amended definitions for the terms "records of the judicial branch," "court records," and "administrative records," recommended by the Supreme Court Workgroup on Public Records to the Florida Supreme Court should be adopted.

¹¹ According to the task force's report, identity theft is one of the fastest growing crimes in America, affecting nearly half a million people in 1998. Florida accounts for more reported complaints of identity theft to the Federal Trade Commission than any other state, with the exception of California and New York. Task Force on Privacy and Technology: Executive Summary of Policy Recommendations, 2000.

¹² Section 817.568, F.S.

consents to its release, a court order requires it, or a “compelling need” can be shown for its disclosure.¹³ The grand jury stated:

We suggest that rather than assuming everything government collects is automatically a public record unless otherwise exempted, we believe the presumption should be reversed. **That is, private information collected from citizens should be presumed confidential and non-discloseable unless there is a statutory ground for its release.** We are not convinced that doing so would violate the spirit and intent of the First Amendment.¹⁴

Electronic Access to Official Records

The electronic disclosure on the Internet of official records by the Clerks has raised concerns because those records contain information made exempt from disclosure by law as well as other sensitive, personal information. Some Clerks are also placing copies of court records on the Internet; that is, all of the papers filed in a court case.

The Attorney General of Florida issued a 1997 opinion in response to the question of whether or not the Clerk was required to remove from the official records the address of a law enforcement officer, who had made a special request pursuant to s. 119.07(3)(i), F.S.,¹⁵ to have his address kept exempt from public disclosure. The Attorney General clearly states that the Clerk must redact any confidential or exempt information from records released by the Clerk, including records released over the Internet:

Nothing in the Public Records Law or the statutes governing the duties of the Clerk authorizes the Clerk to alter or destroy Official Records. However, the statute does impose a duty on the Clerk to prevent the release of confidential material that may be contained in the Official Records. This would also be applicable when the Clerk is releasing copies of the Official Records by any means, such as via the Internet. Moreover, there is nothing that precludes the Clerk from altering reproductions of the Official Records to protect confidential information.¹⁶

The Legislature, during its 2000 legislative session, passed a bill, a Florida Association of Court Clerks’ initiative, that became law.¹⁷ This law was codified at s. 28.2221, F.S., and requires Clerks¹⁸, by January 1, 2002, to provide, on a publicly available Internet website, a current index of documents recorded in the official records of the county beginning with those documents filed on or after January 1, 1990. By January 1, 2006, the Clerks are required to make available, “on the county’s official records website”, images of those official records that are indexed electronically.

¹³ Statewide Grand Jury Report, Identity Theft in Florida, First Interim Report of the Sixteenth Statewide Grand Jury, Case No: SC 01-1095, January 10, 2002.

¹⁴ *Id.* at 13 (emphasis added).

¹⁵ The exemption at s. 119.07(3)(i), F.S., is unique among most exemptions. It requires the affected person, for example, a law enforcement officer, to make a written request of an agency (other than the employing agency) to not have his or her personal information made public. The requirement that a request be made is necessary because agencies holding personal information regarding that law enforcement officer may not know that he or she is in fact a law enforcement officer.

¹⁶ Office of the Attorney General, State of Florida, Fla. AGO 97-67, September 25, 1997.

¹⁷ Section 2 of CS/CS/SB 1334, 3rd Engrossed.

¹⁸ The statutory language references “county recorder”; the county recorders, in all but two instances are Clerks of Court, so for consistency, this analysis refers to the county recorder as the Clerk.

To date, approximately 19 of the 67 Clerks, have made images of official records available on their official websites, and confidential or exempt information is not being redacted from these images.¹⁹ Additionally, confidential or exempt information is not being redacted in copies of official records that are provided over the counter.

The bill, as originally filed, required that

[e]ach county recorder shall contract with the Florida Association of Court Clerks to participate in and connect to the statewide official records website developed and operated by the Florida Association of Court Clerks.

The original bill also provided:

The Florida Association of Court Clerks, to support the development, maintenance, and operation of the statewide official records website, may charge a reasonable fee for access and use of the system and to make such other charges as appropriate for commercial use of the system. However, no fee or other charge will be made against a person who accesses the system for less than 1 hour per month.

The first provision requires the Clerks to contract with the Association of Court Clerks to establish a statewide official records website. The second provision allows charging of fees in excess of what Chapter 119, F.S., permits, which is "actual costs." This provision allows a private entity, the Florida Association of Court Clerks, to generate a profit from the sale of records recorded by and placed in databases by elected government officials, pursuant to a mandatory contract with the association.

The members of the House Committee on Utilities and Communications were concerned regarding the legality of requiring a constitutionally elected officer to contract with a private entity, the Florida Association of Court Clerks, and giving that association exclusive Internet rights over official records statewide. Additionally, the members were concerned about the fees the Association would be able to charge. Accordingly, the members removed the above quoted provisions from the bill.

Nonetheless, in 2001, the Florida Association of Court Clerks in conjunction with the Association of Tax Collectors (collectively known as the Florida Local Government Internet Consortium) contracted with the FACC Services Group, LLC (the Services Group),²⁰ to utilize the Internet Electronic Access Portal (the Portal) established by the Services Group. The Portal was established in coordination with the National Information Consortium USA, Inc. (NICUSA). The NICUSA is responsible for providing the management and operational support of the Portal, and the NICUSA established the Portal's website at <myfloridacounty.com>.²¹

¹⁹ Chart provided by staff of the Office of the Orange County Comptroller on January 17, 2002, by electronic transmission. Due to the large volume of official records received by the Clerks' offices, and the diversity of their content, it would be very time consuming to redact all confidential or exempt information from records reviewed by the Clerks. It would require that each record be carefully reviewed to determine what information contained therein has been made confidential or exempt by law. The ability to discern which public record exemptions were applicable – a daunting if not impossible task, except in certain circumstances; *e.g.*, redacting social security numbers or other numbers or possibly redacting fields of information on certain standard-form records – would require appropriate software.

²⁰ In 2000, the Florida Association of Court Clerks Service Corporation merged with the FACC Services Group, LLC, and the surviving entity of the merger was the FACC Services Group, LLC. At the time of the merger, six of the seven managers of the limited liability company were current Clerks of Court, and one of the managers was a former Clerk of Court. The 2001 Uniform Business Report of the FACC Services Group, LLC., indicates that five of the six current managers are Clerks of Court, and one of the six current managers is a former Clerk of Court.

²¹ Pursuant to the "Electronic Access Portal Participation Agreement," received from the Manatee County Clerk of Court by electronic transmission on February 25, 2002.

All three entities - the Consortium, the Services Group, and the NICUSA, collectively known as the "Portal Providers" - entered into the "Electronic Access Portal Participation Agreement," which sets forth the terms and conditions for the utilization of the Portal. The Portal has e-commerce capabilities, and any Clerk of Court may join the agreement at no cost. If a Clerk signs the agreement, the Clerk must place a link to the <myfloridacounty.com> website on his or her county website, and in return the Portal will contain a link to the Clerk's website. The <myfloridacounty.com> website contains a centralized official records index, which is a compilation of all official record indices from those counties that are participating in the agreement. The <myfloridacounty.com> website also permits individuals to order official records on-line.²²

If an individual places an order for an official record, he or she is charged a convenience fee of \$3.50²³, which is in addition to the fees charged for copying, certification, and shipping.²⁴ If an order is placed for a document from a specific county, the Clerk's office is electronically notified, and is then responsible for mailing the document. The orders are processed by the Portal and the convenience fee is retained by the Portal Providers, and distributed according to a mutual agreement.²⁵ The statutory fees and any fees associated with the shipping of the document are distributed to the Clerk's office responsible for shipping the document.²⁶

The <myfloridacounty.com> homepage asserts that it is the "Official Website for Local Government Services & Information." However, the Portal Providers have not received authority as the "official website" for the dissemination of such records.²⁷ The Portal Providers proposed that the State Technology Office authorize the <myfloridacounty.com> website as its exclusive portal to local government records. The State Technology Office did not accept this proposal.²⁸ Furthermore, it is unclear as to whether the State Technology has the authority to enter into such an agreement. Additionally, certain statutory and constitutional concerns might arise.²⁹

Privacy and Confidentiality Task Force

²² Seventeen counties' official records appear to be accessible through this website.

²³ Section 215.322(3)(b), F.S., allows an agency to charge a "convenience fee" if a agency or officer is accepting payment by credit card, charge card or debit card. However, the total amount of such convenience fees cannot exceed the total cost to the state agency. The Consortium - that is the Florida Association of Court Clerks and the Association of Tax Collectors--are private entities and thus not constrained by fee limits.

²⁴ The convenience fee is a per transaction fee which is a composite of the total of a Merchant fee, Portal Use Charge, and an Application Fee. The Merchant Fee is a fee charged for the use of any credit cards. The Portal Use Charge of \$0.75 per transaction is a cost levied by the Services Group and the NICUSA for the support, maintenance, and operation of the Portal baseline infrastructure levied against each e-commerce transaction. The Application Fee is a \$2.00 per transaction fee levied by the Services Group and the NICUSA which is associated with the expansion or modification of the Portal capability and functionality for the provision of the specific Application Services.

²⁵ According to the "Electronic Access Portal Participation Agreement," these fees are distributed according to the "Master Contract" between the FACC Services Group, LLC, and the NICUSA.

²⁶ Pursuant to the "Electronic Access Portal Participation Agreement," received from the Manatee County Clerk of Court by electronic transmission on February 25, 2002.

²⁷ The <myfloridacounty.com> website did carry the Office of the Governor's <MyFlorida.com> logo, which is an official trademark. However, the Portal Providers do not have an agreement with the Office of the Governor authorizing use of the logo (Conference, Staff, Office of the Governor, 02/01/02). Accordingly, the logo was removed at the request of the Office of the Governor.

²⁸ Telephone conference, Staff, STO, 01/31/02. STO staff raised the same concerns as were raised by members of the Committee on Utilities and Communications, who previously had not agreed to such exclusivity.

²⁹ Concerns regarding Art. 1, s. 24, Fla. Const., access; Ch. 119, F.S., fee provisions; confidential and exempt information being disseminated on an official website that the law requires not to be disseminated to the public, as confirmed by the Attorney General; and sole provider/competition in the marketplace issues. Also, if the Consortium is "acting on behalf of" the Clerks in this capacity, then, like the Clerks, the Consortium would be subject to the public records and public meetings laws that govern governmental officers. *See also*, s. 287.058(1)(c), F.S. (governing access to records made or received by a contractor in conjunction with a contract).

The Clerks have recognized the issues regarding privacy, the release of confidential or exempt information, and the public's right to access records. The Florida Association of Court Clerks and Comptrollers created a Privacy and Confidentiality Task Force which has been meeting since June 2001. To date, the Task Force recommends use of a universal information form which allows a person to request the redaction of confidential or exempt information contained in specifically listed documents.³⁰ The form idea was as a result of a court case wherein the Orange County Clerk was sued for revealing exempt information over the Internet regarding police.³¹ The form must be notarized, and the requestor must list the book and page number of all the recorded documents that contain the exempt information the requestor seeks to have redacted from public disclosure. Some of the issues arising regarding the use of such a form are:

- The requestor is required to make repeated requests for redaction as he or she becomes aware of new documents recorded that contain confidential or exempt information;
- There is no independent check done by the Clerk's office to verify that the person making the request is indeed who he or she purports to be;
- There is no independent verification done by the Clerk's office as to whether the records requested to be redacted are really made confidential or exempt from disclosure by law; and
- People with greater knowledge regarding the law and official records will more likely take advantage of such a form than others who are less educated and less well-informed.

C. EFFECT OF PROPOSED CHANGES:

CS/HB 1679 amends s. 28.2221, F.S., regarding electronic access to official records. Currently, this section of law states that the Legislature finds that a proper and legitimate state purpose is served in providing electronic access to official records. CS/HB 1679 amends this section to include that a proper and legitimate state purpose is also served by preventing disclosure of records and information made exempt from public disclosure.

Current law requires that the Clerk in each county provide a current index of documents recorded in the official records on a publicly available Internet website by January 1, 2002, and by January 1, 2006, each Clerk must provide for electronic retrieval of images referenced in the index. CS/HB 1679 limits what can be in the index that is published on the publicly available Internet website. The index may include grantor and grantee names, party names, date, book and page number, comments, and type of record.

CS/HB 1679 prohibits any Clerk from placing an image or copy of a public record, including an official record, on a *publicly available Internet website for general public display*, if that copy or image 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.

³⁰ Privacy Issues White Paper, Florida Association of Court Clerks Privacy Task Force, October 2001.

³¹ Orange County Case No. CI 97-8581. The form resulted from a settlement agreement between the Orange County Comptroller and the Fraternal Order of Police. The Office of the Orange County Comptroller stated that a number of other Clerks' offices use such a form, though the exact number is unknown.

The Florida Rules of Family Law govern domestic and repeat violence, dissolution of marriage, annulment, support unconnected with dissolution of marriage, paternity, child support, custodial care of or access to children, adoption, proceedings for emancipation of a minor, declaratory judgment actions related to premarital, marital, or post-marital agreements, injunctions for domestic and repeat violence, and all proceedings for modification, enforcement, and civil contempt of these actions.³² The Florida Rules of Juvenile Procedure govern delinquency and dependency cases in the juvenile court.³³ The Florida Probate Rules govern the procedure in all probate and guardianship proceedings.³⁴

CS/HB 1679 expressly provides that such documents must not be placed on a *publicly available Internet website for general public display*. Accordingly, business entities may still receive such information through remote electronic access, as provided for in Chapter 119, F.S.³⁵ CS/HB 1679 additionally provides that any of the above-described records placed on the Internet prior to the effective date of this act must be removed if the affected party identifies the document and requests that it be removed. Furthermore, any affected person may petition the circuit court for an order directing compliance with this provision.

CS/HB 1679 additionally creates a Study Committee (the Committee) on Public Records. The Committee is comprised of the following 21 individuals, 8 of which serve in an advisory, non-voting capacity:

- Seven persons appointed by the Governor, three of which will serve in an advisory capacity. The four voting members appointed by the Governor are: one public citizen; one attorney with expertise in Florida's public records and privacy laws; one representative from the First Amendment Foundation; and one representative from the Florida Department of Law Enforcement. The three members serving in an advisory capacity are: one representative from the Department of Children and Family Services; one representative from the Department of Juvenile Justice; and one representative from the Department of Education;
- Five persons appointed by the Speaker of the House of Representatives, two of which will serve in an advisory capacity. The three voting members are: one member of the House of Representatives interested in and knowledgeable regarding 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. The two members serving in an advisory capacity are two representatives from the local or community service providers sector;
- Five persons appointed by the President of the Senate, two of which will serve in an advisory capacity. The three voting members are: one member of the Senate interested in and knowledgeable regarding 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. The two members serving in an advisory capacity are a domestic violence advocate and a child and family advocate;
- Three persons appointed by the Chief Justice of the Supreme Court, one of which will serve in an advisory capacity. The two voting members are two judges or justices who are interested and knowledgeable regarding public records law and who

³² Family Law Rules of Procedure, Florida Rules of Court, 1999.

³³ Juvenile Procedure Rules, Florida Rules of Court, 1999.

³⁴ Probate Rules, Florida Rules of Court, 1999.

³⁵ Section 119.085, F.S., provides for remote electronic access to public records. Specifically, this section provides that "as an additional means of inspecting, examining, and copying public records of the executive branch, judicial branch, or any political subdivision of the state, public records custodians may provide access to the records by remote electronic means."

are familiar with the variety and types of judicial records. The member serving in an advisory capacity is a representative from the judicial branch.

- One Clerk of the Circuit Court appointed by the Florida Association of Circuit Court Clerks and Comptrollers to serve as a voting member.

The attorney appointed by the Governor will serve as chair of the Committee. Committee members serve without compensation, but are entitled to reimbursement for per diem and travel expenses. CS/HB 1679 further directs that the Speaker of the House of Representatives and the President of the Senate must designate legislative staff to assist the Committee. The Committee must be appointed within 30 days after the passage of this legislation, and within 40 to 60 days after the passage of this legislation, the first meeting must be held and a co-chair elected. A majority of the Committee constitutes a quorum, and a quorum is necessary for the purpose of voting on any action or recommendation of the Committee. The Committee meets at the call of the chair, but no less frequently than every two months, and all meetings are to be held in Tallahassee, unless otherwise decided by the Committee.

CS/HB 1679 requires the Committee to address issues involving court records and official records. In regards to court records, the Committee must address:

- How the collection, storage, retrieval of court records through advanced technologies has affected: the expectation of privacy to sensitive, personal, or other evidentiary information contained in court records; the role and effectiveness of the court and the clerks of the court over these records; the operations of other governmental entities that use information in court records; the security and safety of citizens; and the interests of business, research, and media industries in these records;
- How best to balance the positive and negative affects of electronic access to court records;
- Whether the courts and participants in the judicial process require or provide excessive and unnecessary information;
- 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 in part or in totality from public disclosure;
- What information is and should be accessible and whether levels of accessibility should be established depending on the nature of the information and the user of the information and under what circumstances or restrictions;
- 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;
- 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; and
- What impediments exist with regard to preventing the unauthorized or inadvertent disclosure of confidential or exempt information in current and future court records; whose responsibility should it be to ensure that such information is kept exempt from public disclosure; and what penalties, if any, should be in place if disclosure occurs.

In regards to court records, the Committee must address:

- How the storage, retrieval, dissemination, and accessibility of official records through advanced technologies has affected: the expectation of privacy to sensitive or personal information contained in official records; the role and effectiveness of the county recorder; the operations of other governmental entities who use official

records; the security and safety of citizens; and the interests of business, research, and media industries;

- How best to balance the positive and negative effects of access to official records regardless of the medium;
- Should confidential or exempt information contained in official records continue to be disclosed to the public in copies of records disclosed at the county recorder's office or obtained through electronic means;
- Whose responsibility should it be to ensure that confidential or exempt information is identified, kept out of official records, and kept exempt from public disclosure; and, what changes to the law, practices, and procedures need to occur in order to keep confidential or exempt information out of official records;
- How the public and legal and business communities can be educated with regard to limiting what personal information is put in official records;
- How to promote greater communication between all branches of government;
- 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; and
- Should sanctions be created with regard to what is placed in official records as well as for disclosing confidential or exempt information.

Those members serving in an advisory capacity are to provide information to the Committee as requested. Advisory members are also responsible for reporting back to the Committee any recommendations on the following issues:

- What information contained in agency records pertaining to minors and family issues of a sensitive nature should be exempt from public disclosure, and how to protect against the unlawful dissemination of such information when these records are used for court proceedings; and
- 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.

The Committee is to make recommendations concerning needed changes to current laws, procedures, and policies governing all public records. The Committee must submit a final report to the Governor, the Chief Justice of the Supreme Court, the Speaker of the House of Representatives, and the President of the Senate by January 1, 2003. The Committee is terminated on June 30, 2003.

CS/HB 1679 appropriates \$25,000 from the General Revenue Fund to the Executive Office of the Governor for the purpose of reimbursement for per diem and travel expenses as authorized by this act.

D. SECTION-BY-SECTION ANALYSIS:

See "Effect of Proposed Changes."

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

CS/HB 1679 appropriates \$25,000 from the General Revenue Fund to the Executive Office of the Governor for the purpose of reimbursement for per diem and travel expenses as authorized by this act. In addition, any per diem and travel expenses of any member of the Committee who is a government employee must be reimbursed by their employer.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This council substitute does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This council substitute does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This council substitute does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

The Florida Association of Court Clerks issued the following statement about PCB SA 02-16:

The Clerks of Court appreciate the purpose of the study committee and strongly support the inclusion of Clerks of Court on such a group . . . Instead of a wholesale removal of the records from the Internet, the association would support a requirement to block certain specified sensitive information from records, either by using and filing a separate attachment for certain sensitive information or using software to block specified information.³⁶

In response to this concern, the Committee on State Administration removed the language that prohibited Clerks from placing on the Internet any official records. Accordingly, CS/HB 1679 only prohibits placing on a publicly available Internet website any copy or image of official records that fall under specific categories.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On January 30, 2002, the Committee on State Administration adopted one amendment to PCB SA 02-16. The amendment does not reinstate the requirement that Clerks place official records on a publicly available Internet website by January 1, 2006, but it does not prohibit them from doing so. However, the amendment prohibits Clerks from placing on a publicly available Internet website an image or copy of an official record if that image or copy is of a

- Military discharge;
- Death certificate;
- Documents filed under Chapter 61, F.S., or the Family Law Rules of Procedure, including pleadings, discovery, psychological evaluations, financial affidavits, and any order or judgments entered by the court; and
- Documents filed under the laws of Florida or the Florida Probate Rules, related to probate and guardianship proceedings.

The amendment provides that the above-described records placed on the Internet prior to the effective date of this act must be removed.

On February 26, 2002, the Council for Smarter Government heard HB 1679, and adopted one strike-all amendment, and one amendment to the strike-all amendment. The strike-all amendment differs from the original bill in that the strike-all:

- Adds language that the requirement to have the Clerks remove certain records from websites only applies to publicly available Internet websites;

³⁶ Pursuant to an email received by committee staff of the Florida Association of Court Clerks on January 17, 2002.

- Adds that the index of documents that is to be placed on the publicly available Internet website can include a “comments” section;
- Expands the scope of the study committee to include examination of court records and the information contained in such records. More specifically, the committee must address information contained in court records dealing with family law, and how to better protect children and families in regards to the disclosure of sensitive, potentially damaging, information.
- Increases the number of members on the study committee from 17 to 21 to correspond to the enhanced responsibilities of the commission. Eight of the 21 members serve in an advisory capacity and they are responsible for examining certain issues pertaining to the use of agency records for family court proceedings.
- Appropriates \$25,000 from the General Revenue Fund to the Office of the Governor for the purpose of reimbursement for per diem and travel expenses.

Both the original bill and the strike-all amendment removed from statute the requirement that, by January 1, 2006, county recorders must provide for electronic retrieval of documents on the county’s official records website. At the Council for Smarter Government meeting on February 26, 2002, an amendment to the strike-all amendment was adopted that reinstated this requirement. The bill, as amended, was reported favorably as a council substitute.

VII. SIGNATURES:

COMMITTEE ON STATE ADMINISTRATION:

Prepared by:

Lauren Cyran, M.S.

Staff Director:

J. Marleen Ahearn, Ph.D., J.D.

AS REVISED BY THE COUNCIL FOR SMARTER GOVERNMENT:

Prepared by:

Lauren Cyran, M.S.

Council Director:

Don Rubottom