

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: CS/SB 352

INTRODUCER: Judiciary Committee and Senator Bradley

SUBJECT: Self-authentication of Documents

DATE: November 19, 2015 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Maida	Cibula	JU	Fav/CS
2.			GO	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 352 authorizes a person to electronically file with a court self-authenticating documents, such as court records and other public or official records, during legal proceedings. Under existing law and despite requirements that most documents be electronically filed, some court clerks require that self-authenticating records be filed in physical form.¹ Accordingly, the bill minimizes the need to file physical documents.

The bill also provides procedures for challenging the authenticity of an electronically filed document and expressly authorizes the use of existing methods to authenticate self-authenticating documents.

II. Present Situation:

Authentication of Evidence

Under the Florida Evidence Code, evidence offered at trial must be authenticated or identified before it can be admitted.² Thus, the code recognizes a principle that evidence is inadmissible unless accompanied by some showing of its genuineness—that is, there must be a showing that

¹ Real Property, Probate, and Trust Law Section of The Florida Bar, *White Paper: Proposed Changes to Fla. Stat. 90.202, Concerning Authentication of Electronic Records* (Sept. 3, 2015) (on file with the Senate Committee on Judiciary).

² Section 90.901, F.S.

the evidence is, in fact, what the proponent says it is.³ Certain types of evidence, however, need no additional authenticating evidence as a condition precedent to admissibility; they are considered authentic as a matter of law.⁴ This evidence includes a copy of an “official public record, report, or entry or of a document authorized by law to be recorded or filed and actually recorded in a public office” if the record is certified as correct by the custodian of the record.⁵

Electronic Filing of Court Documents

The Florida Rules of Judicial Administration require all court documents to be served electronically.⁶ Facilitating this rule, all clerks of court are required to implement an electronic filing process.⁷ Nevertheless, service of court documents may be made physically in addition to, and not in lieu of, electronic service.⁸ Given the requirement that documents be served electronically, some clerks of court may be ill-equipped or unwilling to accept original paper certified copies of public records, rendering such records difficult to authenticate.

III. Effect of Proposed Changes:

This bill grants self-authenticated status to electronically-filed certified copies of public records. It also provides a means of self-authentication to additional government records maintained online and gives an opposing party the means to contest the authenticity of such documents.

Under the bill, the authenticity of an electronically-filed document can be challenged in two ways. First, the opposing party may provide the court with a different version of the document and claim that their alternative document is the “true,” or authentic document. Second, the opposing party may file an affidavit stating the electronically-filed document does not exist on the website or web address provided. Following this initial step, the court will review the electronically-filed document and deem it authentic unless 1) the document is not filed in conformance with the bill, 2) the court sustains the opposing party’s objection, 3) the electronically-filed document is not virtually identical to how it appears on the website as claimed by the e-filing party, or 4) the court otherwise determines the document is inauthentic.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

³ See, e.g., *Gosciminski v. State*, 132 So. 3d. 678, 700 (Fla. 2013); *DeLong v. Williams*, 232 So. 2d 246 (Fla. 4th DCA 1970).

⁴ Section 90.902, F.S.

⁵ *Id.*

⁶ Rule 2.516, Fla. R. Jud. Admin.

⁷ Section 28.22205, F.S.

⁸ Rule 2.516, Fla. R. Jud. Admin.

C. Trust Funds Restrictions:

None.

V. **Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

By authorizing the electronic filing of self-authenticating documents with a court, the bill appears likely to reduce costs for attorneys and their clients.⁹

C. Government Sector Impact:

The Office of the State Courts Administrator has not yet submitted a fiscal impact statement on this bill. However, negative impact of the bill on the court system is likely minimal. The electronic filing of self-authenticating documents will likely occur using existing e-filing procedures and technology. Moreover, the bill will minimize the need for clerks to accept and store self-authenticating documents in a physical form.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 90.902 and 90.803.

IX. **Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Judiciary on November 17, 2015:

The committee substitute primarily simplifies and clarifies the language in the bill as originally filed. However, the CS provides additional leeway for a court to determine that a challenged electronically-filed document is inauthentic.

⁹ See Real Property Probate and Trust Law Section of The Florida Bar, *supra* note 1.

B. Amendments:

None.

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