

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 781 Public Records

SPONSOR(S): Government Operations Subcommittee, Robinson, W.

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 844

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	15 Y, 0 N, As CS	Roth	Smith
2) Civil Justice & Property Rights Subcommittee	17 Y, 0 N	Mawn	Jones
3) State Affairs Committee			

SUMMARY ANALYSIS

The Florida Constitution gives the public the right to inspect or copy records made or received in connection with official governmental business. Such right applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government. General public records exemptions are set out in the Public Records Act, while specific exemptions are set out in the substantive statutes relating to a particular agency or program.

CS/HB 781 prohibits a county recorder from removing a grantor name, grantee name, or party name from the index on the county recorder's publicly available website on the basis of a public records exemption unless such name includes the street address portion of the home address. The bill expressly provides that home addresses that are exempt from inspection or copying must not be included within the index or otherwise displayed on the county recorder's publicly available website on which images or copies of the county's official records are placed.

The bill provides that information restricted under s. 119.071(4)(d), F.S., including home addresses, must be disclosed to the protected party and may be disclosed to the following persons, upon presentation of photo identification and a sworn affidavit, for the purpose of conducting a title search:

- An authorized title insurer and its affiliates;
- A title insurance agent or title insurance agency; and
- An attorney duly admitted to practice law in this state and in good standing with The Florida Bar.

The bill also:

- Specifies that a person who uses an official record in an unauthorized manner commits a second degree misdemeanor, while a person who unlawfully uses an official record with intent to cause or threaten to cause bodily harm commits a third degree felony.
- Requires that public record exemption maintenance requests under s. 119.071(4)(d), F.S., be notarized and include specified information.
- Requires a county property appraiser or county tax collector to comply with a written request for maintenance of an exemption by taking specified actions.
- Prohibits a county property appraiser or county tax collector from removing the street address, legal description, or other information identifying real property within agency records so long as exempt personal information is not associated with the property or otherwise displayed in the agency's public records.
- Specifies that the exempt status of a home address in the official records is maintained only while the protected party resides at the dwelling location and requires the protected party to submit a written request to release the removed information to the county recorder upon specified events.
- Authorizes any party to file a written request to release protected information upon the death of a protected party by filing a written request that includes a certified death certificate or court order.

The bill may have an indeterminate negative fiscal impact on local governments but does not appear to have a fiscal impact on state government.

The bill provides an effective date of July 1, 2021.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0781b.CIV

DATE: 4/6/2021

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records

Access

The Florida Constitution gives the public the right to inspect or copy records made or received in connection with official governmental business.¹ Such right applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

Additional public records requirements and corresponding exemptions are set out in various statutes and rules. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in law³ and the statutory provisions are adopted in the rules of each house of the legislature.⁴ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁵ Lastly, chapter 119, F.S., provides public record requirements and exemptions for records held by executive agencies.

Executive Agency Records

Chapter 119, F.S., known as the Public Records Act, provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁶

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁷ The Florida Supreme Court has interpreted the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁸

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁹ A violation of the Public Records Act may result in civil or criminal liability.¹⁰

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.¹¹ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ S. 11.0431(2) and (3), F.S.

⁴ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020).

⁵ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁶ S. 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “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.”

⁷ S. 119.011(12), F.S., defines “public record” to mean “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.”

⁸ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁹ S. 119.07(1)(a), F.S.

¹⁰ S. 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹¹ FLA. CONST. art. I, s. 24(c).

stated purpose of the exemption.¹² General exemptions from the public records requirements are contained in the Public Records Act.¹³ Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹⁴

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record. Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically described by the Legislature.¹⁵

General Exemptions

Section 119.071, F.S., provides general categories of public records that are exempt from inspection or copying, including information relating to:

- Agency administration;¹⁶
- Agency investigations;¹⁷
- Security and fire safety;¹⁸
- Agency personnel information;¹⁹ and
- Other personal information.²⁰

Section 119.071, F.S., also provides for disclosure of certain exempt information under specified circumstances. However, the individuals covered by the exemptions found in that section are eligible for redaction of their personal identifying information.

Public Records Exemption for Agency Personnel Information

Section 119.071(4)(d), F.S., exempts from public disclosure certain personal identifying and location information of specified agency personnel and their spouses and children. Personnel covered by these exemptions include:

- Active or former sworn or civilian law enforcement personnel, including correctional and correctional probation officers, certain investigative personnel of the Department of Children and Families and Department of Health, and certain personnel of the Department of Revenue and local governments involved in revenue collection and revenue and child support enforcement;²¹
- Certain current or former nonsworn investigative personnel of the Department of Financial Services;²²

¹² *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹³ *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹⁴ *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹⁵ *See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in statute. *See* Attorney General Opinion 85-62, Aug. 1, 1985.

¹⁶ Section 119.071(1), F.S. Includes information related to (1) examinations administered by an agency for purposes of licensure, certification or employment; (2) certain specified information related to a competitive solicitation; (3) any financial statement of a prospective bidder in submitted to prequalify for bidding or for responding to a proposal for a road or any other public works project; (4) certain attorney work product; (5) videotape or video signals involving a federally licensed radio television station; (6) certain data processing software; and (7) specified United States Census Bureau address and map information.

¹⁷ S. 119.071(2), F.S.

¹⁸ S. 119.071(3), F.S.

¹⁹ S. 119.071(4), F.S.

²⁰ S. 119.071(5), F.S.

²¹ S. 119.071(4)(d)2.a., F.S.

²² S. 119.071(4)(d)2.b., F.S.

- Certain current or former nonsworn investigative personnel of the Office of Financial Regulation's Bureau of Financial Investigations;²³
- Current or former certified firefighters;²⁴
- Current or former justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges;²⁵
- Current or former state attorneys, assistant state attorneys, statewide prosecutors, and assistant statewide prosecutors;²⁶
- General magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers;²⁷
- Certain current or former human resource, labor relations, or employee relations directors, assistant directors, managers, and assistant managers of any local government agency or water management district;²⁸
- Current or former code enforcement officers;²⁹
- Current or former guardians ad litem;³⁰
- Current or former juvenile probation officers, juvenile probation supervisors, detention superintendents, assistant detention superintendents, juvenile justice detention officers I and II, juvenile justice detention officer supervisors, juvenile justice residential officers, juvenile justice residential officer supervisors I and II, juvenile justice counselors, juvenile justice counselor supervisors, human services counselor administrators, senior human services counselor administrators, rehabilitation therapists, and social services counselors of the Department of Juvenile Justice;³¹
- Current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel;³²
- Current or former investigators or inspectors of the Department of Business and Professional Regulation;³³
- County tax collectors;³⁴
- Certain current or former personnel of the Department of Health;³⁵
- Certain current or former impaired practitioner consultants who are retained by an agency and certain current or former employees of an impaired practitioner consultant;³⁶
- Current or former certified emergency medical technicians and paramedics;³⁷
- Certain current or former personnel employed in an agency's office of inspector general or internal audit department;³⁸
- Current or former directors, managers, supervisors, nurses, and clinical employees of an addiction treatment facility;³⁹ and
- Current or former directors, managers, supervisors, and clinical employees of certain child advocacy centers (covered personnel).⁴⁰

To obtain the benefit of the exemption, the employee, employing agency, a judge, or other specified persons must submit a written request for exemption maintenance to each agency holding the

²³ S. 119.071(4)(d)2.c., F.S.

²⁴ S. 119.071(4)(d)2.d., F.S.

²⁵ S. 119.071(4)(d)2.e., F.S.

²⁶ S. 119.071(4)(d)2.f., F.S.

²⁷ S. 119.071(4)(d)2.g., F.S.

²⁸ S. 119.071(4)(d)2.h., F.S.

²⁹ S. 119.071(4)(d)2.i., F.S.

³⁰ S. 119.071(4)(d)2.j., F.S.

³¹ S. 119.071(4)(d)2.k., F.S.

³² S. 119.071(4)(d)2.l., F.S.

³³ S. 119.071(4)(d)2.m., F.S.

³⁴ S. 119.071(4)(d)2.n., F.S.

³⁵ S. 119.071(4)(d)2.o., F.S.

³⁶ S. 119.071(4)(d)2.p., F.S.

³⁷ S. 119.071(4)(d)2.q., F.S.

³⁸ S. 119.071(4)(d)2.r., F.S.

³⁹ S. 119.071(4)(d)2.s., F.S.

⁴⁰ S. 119.071(4)(d)2.t., F.S.

employee's information.⁴¹ A request for maintenance of an exemption must specify the document type, name, identification number, and page number of the official record containing the exempt information.⁴²

All of the provisions in s. 119.071(4)(d)2., F.S., exempt from public record, including the official records, the home addresses, telephone numbers, and dates of birth of covered personnel and their spouses and children. However, exemptions are not uniform for the names, photographs, and places of employment of such personnel and their spouses and children.

In 2019, the legislature defined the term "home address" to mean, "the dwelling location at which an individual resides and includes the physical address, mailing address, street address, parcel identification number, plot identification number, legal property description, neighborhood name and lot number, GPS coordinates, and any other descriptive property information that may reveal the home address."⁴³ The adoption of "home address" definition allows qualifying individuals to redact all property descriptions from a public record, including official records, which may limit the ability of banks, title insurers, and others to determine ownership of or encumbrances on a property.⁴⁴ Thus, redacting this information may limit the effectiveness of the public record to give notice of property ownership to interested parties, which may:

- Create potential issues related to constructive notice and chain of title;
- Increase the possibility of fraud;
- Provide protected parties a false sense of safety;
- Cause problems relating to accurately surveying property; and
- Delay real property transactions.⁴⁵

Civil and Criminal Penalties

The willful and knowing violation of public records laws by any person is a first degree misdemeanor, punishable by up to one year imprisonment and a fine of up to \$1000.⁴⁶ Additionally, the knowing and willful violation of s. 119.105, F.S., which protects information relating to crime or accident victims, is a third degree felony, punishable by up to five years imprisonment and a fine of up to \$5,000.⁴⁷

Further, any public officer who:

- Violates public records law commits a noncriminal infraction, punishable by a fine of up to \$500.⁴⁸
- Knowingly violates s. 119.07, F.S., pertaining to the inspection and copying of records, fees, and public records exemptions, may be suspended and removed or impeached and commits a first degree misdemeanor.⁴⁹

Reasonable attorney fees will be assessed against an agency found to have violated public records law.⁵⁰

Official Records

⁴¹ S. 119.071(4)(d)3., F.S.

⁴² Section 119.0714(2)(f), F.S.

⁴³ S. 119.071(4)(d)1.a., F.S.

⁴⁴ Florida Office of Program Policy Analysis & Government Accountability (OPPAGA), *A Review of Home Address Redaction Processes and Real Property Interests*, Report 20-06, December 2020, <https://oppaga.fl.gov/Documents/Reports/20-06.pdf> (last visited April 2, 2021).

⁴⁵ *Id.* at p. 10.

⁴⁶ S. 119.10(2)(a), F.S.

⁴⁷ S. 119.10(2)(b), F.S.

⁴⁸ S. 119.10(1)(a), F.S.

⁴⁹ S. 119.10(1)(b), F.S.

⁵⁰ S. 286.011(4), F.S.

Clerks of the Courts

Clerks of the circuit courts (clerks) are constitutionally elected officers.⁵¹ A clerk is considered to be the county recorder.⁵² As county recorder, the clerk must record all instruments in one general series called “official records.”⁵³ Official records consist of each instrument that the clerk is required or authorized to record.

Additionally, the clerk is responsible for:

- Keeping and maintaining all court documents and electronic filings in the clerk’s office;⁵⁴
- Affixing a stamp, which may be electronic, to each document indicating the date and time that the submission was filed;⁵⁵
- Maintaining a progress docket on which the filing of each pleading or motion is noted;⁵⁶
- Maintaining a general alphabetical index, direct and inverse of all instruments filed for recordation;⁵⁷
- Implementing an electronic filing process;⁵⁸ and
- Keeping and furnishing to respective county property appraisers a daily schedule of the deeds and conveyances filed for recordation, which schedule should set forth the name of the grantor, the names and addresses of each grantee and a description of the land as specified in each instrument filed.⁵⁹

Official Records as Public Records

The purpose of recording a document is to put the public on notice of a particular matter. Thus, all instruments recorded in the official records must always be available to the public for inspection under the clerk’s supervision,⁶⁰ and the term “public records” includes each official record.⁶¹ However, clerks record numerous documents that are eligible for redaction or removal under s. 119.071, F.S.

A person who prepares or files a record for recording in the official records may not include in that record a social security number or a bank account, debit, charge, or credit card number (card number) unless otherwise expressly required by law.⁶² If the social security number or card number is in an electronic format, the county recorder must use his or her best efforts to keep the social security numbers confidential and exempt under s. 119.071(5)(a), F.S., and to keep the complete card numbers exempt under s. 119.071(5)(b), F.S., without any person having to request redaction.⁶³ A holder of a social security number or a card number, or the attorney or legal guardian thereof, may also request that a county record redact the social security number or card number that is part of an official record and made publicly available.⁶⁴ A request for redaction must be signed, legibly written, and delivered by mail, facsimile, electronic transmission, or in person to the county recorder. The request must also specify the identification page number of the record that contains the number to be redacted.⁶⁵ The county recorder does not have a duty to inquire beyond the written request to verify the identity of a person requesting redaction.

Further, since October 1, 2002, any person has a right to request that a county recorder remove from a publicly available website any social security number contained in an official record. Such request must be made in writing and delivered by mail, facsimile, or electronic transmission, or delivered in person, to

⁵¹ See, FLA. CONST., art. V, s. 16 and art. VIII, s. 1.

⁵² S. 28.222(1), F.S.

⁵³ S. 28.222(2), F.S.

⁵⁴ S. 28.13, F.S.

⁵⁵ *Id.*

⁵⁶ S. 28.211, F.S.

⁵⁷ S. 28.222(2), F.S.

⁵⁸ S. 28.22205, F.S.

⁵⁹ S. 695.22, F.S.

⁶⁰ S. 28.222(7), F.S.

⁶¹ S. 28.001(2), F.S.

⁶² S. 119.0714(3), F.S.

⁶³ S. 119.0714(3)(a)1., F.S.

⁶⁴ S. 119.0714(3)(b), F.S.

⁶⁵ S. 119.0714(3)(b)1., F.S.

the county recorder. The request must specify the identification page number containing the social security number to be redacted. The clerk may not charge a fee for the redaction of a social security number pursuant to such a request.⁶⁶ However, the county recorder is not liable for the inadvertent release of social security numbers or card numbers filed with the county recorder.⁶⁷

OPPAGA Report

In December 2020, the Florida Office of Program Policy Analysis and Government Accountability (OPPAGA) issued a report entitled *A Review of Home Address Redaction Processes and Real Property Interests*. The OPPAGA Report states that the Florida Association of Court Clerks & Comptrollers has identified best practices for redaction requests.⁶⁸ Under such practices, each requestor, even those residing in the same home, must complete a request form identifying themselves, stating what makes them eligible for redaction, and enumerating the specific documents and pieces of information to be redacted, including the specific instrument number, book, and page of the document.⁶⁹

If an eligible individual seeks additional redactions in the future, he or she must complete a new redaction request each time.⁷⁰ Most requestors self-attest that they meet the eligibility criteria for redaction,⁷¹ but the OPPAGA Report states that several clerks require individuals to show identification or have the request form notarized. However, most clerks interviewed by OPPAGA indicated that they do not further verify redaction eligibility because they do not believe they have the authority or the ability to do so.⁷²

Electronic Access to Official Records

Since January 1, 2002, the county recorder or clerk must provide, on a publicly accessible website, a current index of documents in the official records recorded on or after January 1, 1990, limited to grantor and grantee names, party names, date, book and page number, comments, and type of record.⁷³ Since January 1, 2006, the clerk must also provide electronic retrieval of images of the indexed documents.⁷⁴

Florida law prohibits a county recorder or a clerk from placing certain images or copies of public records, including an official record, on a publicly available website if the 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.⁷⁵

An affected party must be given notice of the right to request removal or redaction of any image or copy of a public record, including 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.⁷⁶ The request must be in writing and delivered by mail, facsimile, electronic transmission, or in person to the county recorder or clerk. The request must also identify the document identification page number of the document to be removed. The clerk may not charge a fee for the removal or redaction of a document pursuant to such a request.⁷⁷ An affected person may petition the circuit court for an order directing compliance with the law.⁷⁸

⁶⁶ S. 119.0714(3)(c)2., F.S.

⁶⁷ S. 119.0714(3)(e), F.S.

⁶⁸ OPPAGA, *supra* note 44 at p. 8.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ Section 28.2221(2), F.S.

⁷⁴ Section 28.2221(5)(e), F.S.

⁷⁵ Section 28.2221(5)(a), F.S.

⁷⁶ Section 28.2221(5)(c), F.S.

⁷⁷ *Id.*

⁷⁸ S. 28.2221(5)(d), F.S.

Court Records as Public Records

To implement Article I, section 24(a) of The Florida Constitution, the Florida Supreme Court adopted Florida Rule of Judicial Administration 2.051, which has since been renumbered to rule 2.420. Rule 2.420 governs public access to judicial branch records and provides that “[t]he public shall have access to all records of the judicial branch of government” except in limited circumstances.”⁷⁹

County Property Appraisers and County Tax Collectors

A “county property appraiser” is “the county officer charged with determining the value of all property within the county, with maintaining certain records connected therewith, and with determining the tax on taxable property after taxes have been levied.”⁸⁰ A “county tax collector” is “the county officer charged with the collection of ad valorem taxes levied by the county, the school board, any special taxing districts within the county, and all municipalities within the county.”⁸¹ The county officers maintain records, such as property records, containing information exempt under s. 119.071, F.S. For example, a county property appraiser’s website may have a property owner name and a legal description of the property.⁸² A county property appraiser’s website can also include courtesy web-links to images of deeds found on the clerk’s internet-based index of official records.⁸³

Effect of the Bill

Official Records

HB 781 prohibits a county recorder, unless otherwise required by the court, from removing a grantor name, grantee name, or party name from the register of the official records and the index on the publicly available website on the basis of a public records exemption unless such name includes the street address portion of the home address. Additionally, the bill provides that home addresses, as defined in s. 119.071(4)(d), F.S., that are exempt from inspection or copying under s. 119.071, F.S., must be included within the official records but must not be included within the index or otherwise displayed on the county recorder’s publicly available website on which images or copies of the county’s official records are placed. The bill also prohibits a county recorder from placing information made exempt from inspection or copying under s. 119.071, F.S., on a publicly available website for general public display.

The bill requires that a request for removal of information or records must identify the official records book and page number, instrument number, or clerk’s file number for any information or document to be removed and specifies that, for a public records exemption under s. 119.071, F.S., the request must be written, notarized, and state under oath the statutory basis for removal of the information, image, or copy and confirm the requestor’s exemption eligibility. Under the bill, a party who makes a false attestation in such a request is subject to the penalty of perjury.

However, the bill provides that any information restricted from general public display pursuant to a request for removal must be provided at any time to a person whose information was removed. The written request for the restricted information must be notarized and identify the official records book and page number, instrument number, or clerk’s file number for any information or document to be released. A party making a false attestation in such a request is subject to the penalty of perjury. Further, the clerk may not charge a fee for the production of any document pursuant to such a request.

Further, the bill provides that information restricted under s. 119.071(4)(d), F.S., including home addresses, may be disclosed to the following persons, upon presentation of photo identification and affirmation by sworn affidavit to the county recorder, for the purpose of conducting a title search:

- An authorized title insurer and its affiliates;

⁷⁹ Fla. R. Jud. Admin. 2.420(a).

⁸⁰ S. 192.001(3), F.S.

⁸¹ S. 192.001(4), F.S.

⁸² OPPAGA, *supra* note 44 at p. 6.

⁸³ *Id.*

- A title insurance agent or title insurance agency; and
- An attorney duly admitted to practice law in this state and in good standing with The Florida Bar.

Under the bill, the photo identification and affirmation by sworn affidavit may be delivered in person, by mail, or by electronic transmission to the county recorder. The affiant requestor must attest to his or her authority and the authorized purpose to access exempt information pursuant to law for the property specified within the sworn affidavit and identify in the affidavit the official records book and page number, instrument number, or clerk's file number for each document requested. An affidavit submitted by a title insurer, title insurance agent, or title insurance agency must include the Florida Company Code or the license number, as applicable, and an attestation to the affiant requestor's authorization to transact business in this state. Affidavits submitted by an attorney must include the affiant requestor's Florida Bar number and a statement that the affiant requestor has an agency agreement with a title insurer directly or through his or her law firm. A party making a false attestation is subject to the penalty of perjury. Moreover, a person who unlawfully uses any official record in a manner not authorized commits a second degree misdemeanor, while a person who unlawfully uses any official record with intent to cause bodily harm or threaten to cause bodily harm commits a third degree felony.

Finally, the bill requires the county recorder to record the affidavit in the official records but prohibits the county recorder from placing an image or copy of the affidavit on a publicly available website for general public display. Upon providing a document disclosing redacted information to an affiant requestor, the county recorder must provide a copy of the affidavit requesting disclosure or redacted information to each affected party at the address listed on the document or on the request for removal made by the affected party. The county recorder must prepare a certificate of mailing to be affixed to the affidavit and must receive the usual statutory service charges as prescribed by s. 28.24 from the affiant requestor.

Agency Personnel Information

The bill requires that a request for maintenance of an exemption of agency personal information under s. 119.071(4)(d), F.S., be notarized, state under oath the statutory basis for the individual's exemption request, and confirm the individual's status as a party eligible for exempt status. The bill also requires a county property appraiser or county tax collector who receives such a request to remove the name of the individual with exempt status and the instrument number or official record book and page number identifying the property with the exempt status from all publicly available records maintained by the property appraiser or tax collector.

For written requests received on or before July 1, 2021, a county property appraiser or county tax collector must comply by October 1, 2021. However, under the bill, a county property appraiser or county tax collector may not remove the street address, legal description, or other information identifying real property within the agency's records if the name or personal information otherwise exempt from inspection and copying is not associated with the property or otherwise displayed in the public records of the agency. Further, any information restricted from general public display, inspection, or copying under this section:

- Must be provided to the individual whose information was removed upon written request.
- May be disclosed to an authorized title insurer and its affiliates, a title insurance agent or title insurance agency, or an attorney duly admitted to practice law in this state and in good standing with The Florida Bar.

The bill also:

- Provides that the exempt status of a home address is maintained only during the period when a person entitled to the exemption resides at the dwelling location and requires that the protected party submit a written request to release the removed information upon conveyance of the real property after October 1, 2021, and when it is no longer the home address of the protected party. Such written request must be notarized, confirm the protected party's request for release is pursuant to the conveyance of the residence, and specify the official records book and page, instrument number, or clerk's file number for each document containing the information to be

released. The county recorder may not charge a fee for the release of any document made pursuant to such a request.

- Specifies that, upon the death of a protected party, any party can request to release the decedent's removed information unless there is a related request for confidentiality on file with the county recorder or unless otherwise prohibited by statute or court order. Such written request must include a certified death certificate or court order and must be notarized, confirm the request for release due to the protected party's death, and specify the official records book and page number, instrument number, or clerk's file number for each document containing information to be released. The county recorder may not charge a fee for the release of any document made pursuant to such a request.
- Requires that the daily schedule of deeds and conveyances include notification of any information therein that is subject to a request for removal on file with the county recorder.
- Substitutes the word "copies" for "extracts" in reference to instruments recorded in the official records.
- Deletes past implementation dates regarding notice and makes clarifying changes.

The bill provides an effective date of July 1, 2021.

B. SECTION DIRECTORY:

Section 1: Amends s. 28.222, F.S., relating to clerk to be county recorder.

Section 2: Amends s. 28.2221, F.S., relating to electronic access to official records.

Section 3: Amends s. 119.071, F.S., relating to general exemptions from inspection or copying of public records.

Section 4: The bill amends s. 695.22, F.S., relating to daily schedule of deeds and conveyances filed for record to be furnished property appraiser.

Section 5: Provides an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate negative fiscal impact on clerks as they process requests for access, facilitate limited access license agreements, include notification of removal requests on file within the daily schedule, and process requests to release home address information. However, these costs will likely be absorbed within existing resources.

County property appraisers and county tax collectors may see an indeterminate negative fiscal impact in removing restricted information from general public display to comply with a request for maintenance of an exemption. However, these costs will likely be absorbed within existing resources.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither provides rulemaking authority nor requires rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 24, 2021, the Government Operations Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS differed from HB 781 in that it:

- Required that any affected party who requests removal of information or records must be provided a notice that states that information removed as exempt under s. 119.071, F.S., will not be removed from the official records.
- Limited the exempt status of a home address to the period when a person entitled to the exemption resides at the dwelling location.
- Authorized access of restricted information to specified entities for described purposes upon presentation of identification and an affidavit.
- Authorized county recorders to enter into limited access license agreements with specified parties for described purposes.
- Provided that an individual whose information was removed from general public display (or guardian of an incapacitated person or if deceased, his or her personal representative, heirs, or devisees) can access his or her restricted information, at any time.
- Required a county property appraiser and tax collector to comply with a written request for maintenance of an exemption.
- Prohibited a county property appraiser or tax collector from removing a street address, legal description, or other information identifying real property within agency records, so long as a name or personal information otherwise exempt are not associated with the property or otherwise displayed in the public records of the agency.
- Prohibited a county recorder from removing a grantor, grantee, or party name from the register of the official records and the index on a publicly available website unless the street address portion of a home address is included.
- Provided that a home address as defined in s. 119.071(4)(d), F.S., must be included within the official records, but must not be included within the index or otherwise displayed on a publicly available Internet website.

On April 6, 2021, the Civil Justice and Property Rights Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Required the clerk to mail a copy of each information disclosure request it receives to the protected party and collect a statutory fee from the information requestor for doing so.
- Deleted financial institutions from the list of persons and entities that may access protected information.
- Deleted a provision authorizing the clerk to enter into a licensing agreement with parties and entities authorized to access protected information.
- Required the protected party to file a written request to release the protected information upon conveying his or her property and when the property is no longer his or her place of residence.
- Specified that, upon the death of a protected party, any party may file a written request to release the protected information if no other exemption applies and such action is not otherwise prohibited by law or court order.
- Deleted provisions giving the legal guardian of an incapacitated protected party and the personal representative, heirs, and devisees of a protected party the right to access protected information.
- Deleted the requirement that the notice of the right to request information removal on the clerk's website include a statement that the information won't be removed from the official records.

This analysis is drafted to the committee substitute as passed by the Civil Justice and Property Rights Subcommittee.