

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GEAC 08-33 Information Technology Used To Manage Public Records
SPONSOR(S): Government Efficiency & Accountability Council
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Government Efficiency & Accountability Council	13 Y, 1 N	Williamson/Dykes	Cooper
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The Select Committee to Protect Personal Information (Select Committee) was created, pursuant to House Rule 7.6, on August 2, 2007. The specific charge of the Select Committee was “[t]o examine the various state and federal laws governing the dissemination of private information held by (1) state and local governments.” The Select Committee also was charged with developing, vetting, and recommending legislation “to protect Floridians from the inappropriate distribution of private information to third parties.” This bill is the result of a recommendation made by the Select Committee.

Current law provides the general state policy on public records. It directs an agency to consider an electronic recordkeeping system capable of providing data in a common format. Current law suggests that an agency consider a common format known as the American Standard Code for Information Interchange. The bill relocates this policy statement to the section of law governing custodial requirements for public records. It further recommends that an agency also consider as common formats Extensible Markup Language, Portable Document Format, or ISO/IEC 26300 OASIS Open Document Format.

The bill requires the Division of Library and Information Services (Division) of the Department of State to adopt rules establishing a disposal process for public records. It establishes minimum criteria that the Division must meet when creating those rules. The rules must provide a process for sanitizing or scrubbing hardware prior to agency disposal. In addition, the rules must provide a process for destroying public records containing confidential or exempt information.

The bill could create an unknown fiscal impact on state and local governments. If the Division adopts rules requiring the use of certain types of shredders, software, or sanitizing devices, then state and local governments could incur a fiscal impact associated with purchasing the necessary materials for proper disposal of hardware or confidential or exempt information.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill creates minimum criteria for the disposal of public records that must be addressed in rules adopted by the Division of Library and Information Services of the Department of State.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Public Records Law

Article I, s. 24(a) of the Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record¹ of the legislative, executive, and judicial branches of government. Public policy regarding access to government records is further addressed in the Public Records Act (Act).² Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record.

State Policy on Public Records

The Act provides the general state policy on public records.³ In part, the policy provides that an agency must consider, when designing or acquiring an electronic recordkeeping system, whether such system is capable of providing data in a common format. It suggests that the agency consider as a common format the American Standard Code for Information Interchange, but the agency is not limited to this format.⁴

Custodial Requirements for Public Records

The Act also provides custodial requirements regarding maintenance, preservation, and retention of public records.⁵ For example, public records should be kept in the buildings in which they are ordinarily used.⁶ In addition, a custodian of public records⁷ must keep certain records⁸ in fireproof and waterproof safes, vaults, or rooms fitted with noncombustible materials.⁹

The Division of Library and Information Services of the Department of State must adopt rules to establish retention schedules and a disposal process for public records.¹⁰ Each agency¹¹ is required to

¹ Section 119.011(11), F.S., defines "public records" 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."

² Chapter 119, F.S.

³ See s. 119.01, F.S.

⁴ Section 119.01(2)(b), F.S.

⁵ See s. 119.021, F.S.

⁶ Section 119.021(1)(a), F.S.

⁷ Section 119.011(5), F.S., defines "custodian of public records" to mean "the elected or appointed state, county, or municipal officer charged with the responsibility of maintaining the office having public records, or his or her designee."

⁸ This provision applies to records that are vital, permanent, or archival.

⁹ Section 119.021(1)(b), F.S.

¹⁰ Section 119.021(2)(a), F.S.

¹¹ Section 119.011(2), F.S., defines "agency" 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."

comply with those rules.¹²

The Act does not appear to address agency disposal of public records. Specifically, minimum standards are not provided for the agency to follow when disposing of records containing confidential or exempt information.

Select Committee to Protect Personal Information

The Select Committee to Protect Personal Information (Select Committee) was created, pursuant to House Rule 7.6, on August 2, 2007. The specific charge of the Select Committee was:

To examine the various state and federal laws governing the dissemination of private information held by (1) state and local governments; (2) for-profit businesses; and (3) not-for-profit charitable organizations. The committee will develop, vet and recommend legislation to protect Floridians from the inappropriate distribution of private information to third parties.¹³

The Select Committee was directed to complete its work by March 4, 2008, at which time it was dissolved.¹⁴ As such, the Select Committee held six meetings that focused on issues involving identity theft and government collection, retention, and disposal of personal information.

The Select Committee heard testimony from the Agency for Enterprise Information Technology, the Department of Highway Safety & Motor Vehicles, the Department of State, the Governor's Commission on Open Government Reform, and the Supreme Court Committee on Access to Court Records. The Select Committee also heard from private sector representatives regarding their use of government records and the information contained therein.

The Select Committee approved six proposals, three of which recommended statutory changes. This bill is the result of proposal 3 by the Select Committee.¹⁵

EFFECT OF BILL

The bill removes from the general state policy on public records the provision directing an agency to consider an electronic recordkeeping system capable of providing data in a common format. It relocates the policy statement to s. 119.021, F.S., which provides custodial requirements regarding public records. Current law suggests that an agency consider a common format known as the American Standard Code for Information Interchange. The bill further recommends that an agency also consider as common formats Extensible Markup Language, Portable Document Format, or ISO/IEC 26300 OASIS Open Document Format.

The bill requires the Division of Library and Information Services (Division) of the Department of State to adopt rules establishing a disposal process for public records. Each agency must comply with such rules.

The bill establishes minimum criteria that the Division must meet when creating those rules. The rules must provide a process for sanitizing or scrubbing hardware prior to agency disposal. In addition, the rules must provide a process for destroying public records containing confidential or exempt information. The destruction process must be in a manner that safeguards the interests of the State and the safety, security, and privacy of its citizens. The rule must specify destruction methods preventing unauthorized access to or use of the confidential or exempt information. Further, it must

¹² Section 119.021(2)(b), F.S.

¹³ Letter dated August 2, 2007, from Speaker Rubio to Rep. Proctor, Chair of the Select Committee to Protect Personal Information (on file with the Select Committee).

¹⁴ *Id.*

¹⁵ See letter dated March 4, 2008, from Rep. Proctor, Chair of the Select Committee, to Speaker Rubio (on file with the Select Committee).

ensure that such information cannot be read, reconstructed, or recovered.

Finally, the bill reorganizes s. 119.021, F.S., by grouping like topics.

C. SECTION DIRECTORY:

Section 1 repeals s. 119.01(2)(b), F.S., which provides a policy statement related to designing or acquiring an electronic recordkeeping system.

Section 2 amends s. 119.021, F.S., to revise the custodial requirements related to maintenance, preservation, retention, and disposal of public records.

Section 3 provides an effective date of October 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The disposal process adopted by the Division of Library and Information Services (Division) of the Department of State could create an unknown fiscal impact on state agencies.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The disposal process adopted by the Division could create an unknown fiscal impact on local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

If the Division adopts rules requiring the use of certain types of shredders, software, or sanitizing devices, then state and local governments could incur a fiscal impact associated with purchasing the necessary materials for proper disposal of hardware or confidential or exempt information.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision does not appear to apply because this bill is not expected to require counties and municipalities to spend funds or to take an action requiring the expenditure of funds, reduce the percentage of a state tax shared with counties or municipalities, or reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Current law requires the Division to adopt rules to establish retention schedules and a disposal process for public records.¹⁶ The bill creates minimum criteria the Division must consider when developing rules. At a minimum, the Division must provide a process for sanitizing or scrubbing hardware prior to agency disposal. In addition, the Division must provide a process for destroying public records containing confidential or exempt information. The bill directs the Division to specify in rule destruction methods that prevent unauthorized access to or use of the confidential or exempt information and to ensure that such information cannot be read, reconstructed, or recovered.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

Not applicable.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On April 22, 2008, the Government Efficiency & Accountability Council heard PCB GEAC 08-33 and adopted one amendment to the PCB. The amendment removed from the PCB examples of common formats an agency can consider, but is not required to use when designing or acquiring an electronic recordkeeping system.

¹⁶ Section 119.021(2)(a), F.S.