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H 901 GENERAL BILL by Saunders (Similar S 1041)

Public Records/Photograph/Microfilm; specifies application of provisions which authorize photographing of public records & excludes duplication of certain microfilm. Amends 119.08. Effective Date: 06/16/89.

03/17/89 HOUSE Prefiled
03/23/89 HOUSE Referred to Governmental Operations; Appropriations
04/04/89 HOUSE Introduced, referred to Governmental Operations; Appropriations -HJ 86; On Committee agenda—Governmental Operations, 04/06/89, 3:30 pm, 314-HOB—For ratification of referral to subcommittee
04/06/89 HOUSE On subcommittee agenda—Governmental Operations, 04/10/89, 3:30 pm, 217-HOB
04/10/89 HOUSE Subcommittee Recommendation: Favorable; On Committee agenda, pending subcommittee action—Governmental Operations, 04/12/89, 1:15 pm, 314-HOB
04/12/89 HOUSE Preliminary Committee Action by Governmental Operations: Favorable
04/13/89 HOUSE Comm. Report: Favorable by Governmental Operations -HJ 225; Now in Appropriations -HJ 225
04/19/89 HOUSE Withdrawn from Appropriations -HJ 241; Placed on Calendar
04/25/89 HOUSE Placed on Special Order Calendar; Read second time -HJ 269
04/27/89 HOUSE Read third time -HJ 279; Passed; YEAS 111 NAYS 0 -HJ 280
04/28/89 SENATE In Messages
05/05/89 SENATE Received, referred to Governmental Operations -SJ 270
05/11/89 SENATE On Committee agenda—Governmental Operations, 05/17/89, 9:00 am, Room-H-(428)
05/12/89 SENATE Extension of time granted Committee Governmental Operations
05/17/89 SENATE Comm. Report: Favorable by Governmental Operations, placed on Calendar -SJ 380
06/01/89 SENATE Placed on Consent Calendar -SJ 747; Passed; YEAS 36 NAYS 0 -SJ 772
06/01/89 Ordered enrolled
06/13/89 Signed by Officers and presented to Governor
06/16/89 Approved by Governor; Chapter No. 89-57

NOTES: Above bill history from Division of Legislative Information's *FINAL LEGISLATIVE BILL INFORMATION, 1989 SESSIONS*. Staff Analyses for bills amended beyond final committee action may not be in accordance with the enacted law. Journal page numbers (HJ & SJ) refer to daily Journals and may not be the same as final bound Journals.

STORAGE NAME: h0901-f.go
DATE: June 20, 1989

HOUSE OF REPRESENTATIVES
COMMITTEE ON GOVERNMENTAL OPERATIONS
FINAL STAFF ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: HB 901

RELATING TO: Duplication of Microfilmed Public Records

SPONSOR(S): Representative Saunders

EFFECTIVE DATE: Upon becoming law

DATE BECAME LAW: June 16, 1989

CHAPTER #: 89-57, Laws of Florida

COMPANION BILL(S): None

OTHER COMMITTEES OF REFERENCE: (1) Appropriations
(2)

I. SUMMARY:

A. SHORT SUMMARY:

Section 119.08, Florida Statutes, relates to the photographing of public records by persons who use their own equipment to make copies of public records while such records are under the control and supervision of the custodian of the record. This bill would amend s. 119.08, Florida Statutes, to prohibit a person from using his own equipment to duplicate microfilm when it is in the possession of a court clerk so long as the clerk makes a copy of the microfilm available for sale pursuant to s. 24.28, Florida Statutes.

B. PRESENT SITUATION:

In Florida it is the policy of the state that state, county, and municipal records should at all times be subject to inspection by the public. Section 119.08(1), Florida Statutes, provides any person with the right to inspect public records and have access to those records for the purpose of making photographic copies of the records while they remain in the control of the record custodian. Sections 119.08(2) and (3), Florida Statutes, respectively provide that the photographing of records shall be done under the supervision of the record custodian who has the right to adopt reasonable rules to govern photographing; and who, when it is necessary to provide another room for the work or to supervise the work, may charge the person photographing the record for these services.

According to the Florida Association of Court Clerks, two major

problems are presented by allowing individuals to rely on s. 119.08, Florida Statutes, to copy microfilmed records. First, the statute as written requires that an individual use his own reproduction equipment to make a copy. This often results in undue wear and tear on the microfilm, which must pass through a series of rollers and be exposed to projection bulbs in the copying process. The court clerks contend that it is not feasible to require an individual to make his copy from a copy rather than an original because the quality of such a copy is not suitable for resale by individuals in the business of furnishing microfilm copies, and most individuals who make copies are doing it for resale. Also, any damage that may occur goes undetected unless the film is inspected before and after copying, which is very time-consuming and expensive. Even when damage is detected, it is too late to correct the problem.

The second microfilm duplication problem faced by court clerks relates to the duplication process itself. Most machines that are used to duplicate microfilm use ammonia in a diazo-type process. To remedy the resulting environmental and health problems, ammonia must be vented out of the duplication room or people must be removed from the duplication room. This requires either the modification to the facility itself or the inconvenient shuffling of personnel.

The court clerks believe that because s. 24.28, Florida Statutes, already provides an individual with a method for acquiring a microfilm copy--he may purchase one from a clerk--that prohibiting an individual from making his own copy does not thwart the intent of the Public Records Act. The legislation proposed by the clerks would amend s. 119.08, Florida Statutes, so that an individual could continue to make his own copies of documents, paper, books, receipts, paper photographs and similar media through the utilization of a conventional camera device, but would be prohibited from duplicating microfilm in the possession of a clerk when the clerk has copies of the microfilm available under s. 24.28, Florida Statutes.

C. EFFECT OF PROPOSED CHANGES:

This bill would amend s.119.08(1), Florida Statutes, to prohibit individuals from duplicating microfilm in the possession of a court clerk when that clerk makes a copy of the microfilm available for purchase pursuant to s. 24.28, Florida Statutes.

D. SECTION-BY-SECTION ANALYSIS:

Section 1 -- Amends s. 119.08(1), Florida Statutes, to provide that individuals are excluded from duplicating microfilm in the possession of a court clerk so long as the clerk has a copy of the microfilm available for sale.

Section 2 -- Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:

None.

2. Recurring or Annualized Continuation Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Appropriations Consequences:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:

None.

2. Recurring or Annualized Continuation Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Individuals in the private sector would no longer be able to make their own copies of microfilm and so would have to purchase microfilm copies at the prices prescribed in s. 24.28, Florida Statutes.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise, and Employment Markets:

None.

D. FISCAL COMMENTS:

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III. LONG RANGE CONSEQUENCES:

None.

IV. COMMENTS:

The subject of this bill is not addressed by the Governmental Operations Committee's Mission Statement or by the Issues Conference Policy Statement.

V. SIGNATURES:

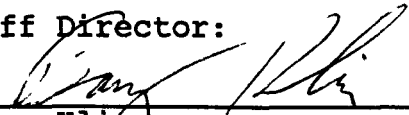
SUBSTANTIVE COMMITTEE:

Prepared by:



Diane Carr

Staff Director:



Barry Kling

SECOND COMMITTEE OF REFERENCE:

Prepared by:

Staff Director:

APPROPRIATIONS:

Prepared by:

Staff Director:

REVISED: _____

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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. Stengle <i>JSB</i>	Stengle <i>JSB</i>	1. <u>GO</u>	<u>Favorable</u>
2. _____	_____	2. _____	_____
3. _____	_____	3. _____	_____
4. _____	_____	4. _____	_____

SUBJECT:

BILL NO. AND SPONSOR:

Public Records;
Microfilm DuplicationHB 901 by
Representative SaundersI. SUMMARY:

A. Present Situation:

Chapter 119, F.S., the Public Records Law, provides that it is the policy of the state that all state, county, and municipal records be open for inspection, except as otherwise specifically provided by law. Public records include all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, or other material, regardless of physical form or characteristics.

In cases in which the public has a right to inspect, take extracts, or make copies of any public record, a person has a right of access to the public records for the purpose of making photographs of them while such records are in the possession, custody, or control of the lawful custodian of the records, as provided in s. 119.08(1), F.S. Section 119.08(2), F.S., provides that the photographing of records shall be done under the supervision of the records custodian, who has the right to adopt reasonable rules to govern photographing. Where at all possible, such photographing must be done in the room where the records are by law kept or, if impossible or impracticable, in an adjacent room. Under s. 119.08(3), F.S., when it is necessary to provide another room for photographing, the expense of same is to be borne by the person desiring to photograph the records, including charges for supervision of the work by the custodian or his deputy.

Section 28.13, F.S., requires the clerk of the circuit court to keep all papers filed in his office "with the utmost care and security." Section 28.19(2), F.S., specifically requires such records to be open to the public, under the clerk's supervision, for inspection thereof and making extracts therefrom, and provides that the clerk is not required to perform any service with respect to same without payment of prescribed service charges.

Section 28.24, F.S., 1988 Supp., sets charges for services rendered by the clerk of the circuit court. For making copies of public records by conventional photographic process, the charges are \$1 per page for records not more than 14 inches by 8-1/2 inches, and \$5 per page for records exceeding that size. For making copies of public records by other than photographic process, the charge is \$4 per page. For making microfilm copies of public records, the charges are \$25 and \$35 per roll, respectively, for 16 mm and 35 mm microfilm. Microfiche copy charges are \$2 per fiche.

Section 119.08, F.S., contemplates that the person with a right of access for the purpose of photographing public records make the photographs himself. To do so, persons obtaining access to the records use their own reproduction equipment. If the

service is performed by the court clerk under s. 28.24, F.S., 1988 Supp., the noted service charges are imposed.

Conventional-image copying of microfilm requires the microfilm to pass through a series of rollers and to be exposed to projection bulbs in the copying process. According to the Florida Association of Court Clerks, this endangers the clerk's original microfilm records, because tears, scratches, and other such damage to the microfilm may result from poorly-maintained or operated or improperly-designed equipment. To detect such damage, the court clerk must inspect the microfilm prior to, and following, the copying process, which is time-consuming to the court clerk and thus expensive for the person making the copies, who bears the expense of same under s. 119.08, F.S.

For making microfilm copies of microfilm records, additional problems arise. A diazo process (which bonds pairs of nitrogen atoms together and to an organic compound) which uses ammonia is the most common method utilized by microfilm duplicating equipment. When this process is used, the ammonia must be vented from the building to prevent indoor environmental problems. To do so properly, modifications must be made to the room or building in which the processing takes place.

According to the association, most of those making their own copies or microfilm copies of public records are engaged in the business of duplicating microfilm records for commercial sale. To achieve as high a quality of copy as possible for the commercial sale, such persons demand access to the original microfilm record for duplicating. Each time the clerks must comply with a request for the original microfilm, the association contends, the original microfilm record is put at risk. This is so even though the clerk could supply copies or microfilm copies of microfilm records under s. 28.24, F.S., 1988 Supp.

B. Effect of Proposed Changes:

Section 119.08, F.S., would be limited to apply expressly to the making of photographs conventionally by the use of a camera device to capture images of documents, papers, books, receipts, paper photographs, and similar media. The section would expressly exclude the duplication of microfilm in the possession of the clerk of the circuit court when a copy of the microfilm may be made available by the clerk.

Thus, persons desiring copies or microfilm copies of microfilm records would be required to obtain them from the clerk under the provisions of s. 28.24, F.S., 1988 Supp., and to pay the service charges therefor.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

Persons seeking copies of microfilm records would be required to pay the prescribed charges therefor under s. 28.24, F.S., 1988 Supp. Such persons would not be required to pay the expenses of same, including charges for supervision by the clerk or deputy clerk, under s. 119.08, F.S., however.

B. Government:

None.

III. COMMENTS:

The Florida Association of Court Clerks considers the proposed modifications to s. 119.08, F.S., to comport with the intent of the Public Records Law, because copies of microfilm records would nonetheless be available through the court clerk under the provisions of s. 28.24, F.S. This conclusion appears to be valid, particularly because the right of access to such records would also continue to be preserved under s. 28.19(2), F.S., which requires records of the clerk of the circuit court to be open to the public.

The Senate companion to the bill is SB 1041, which is substantially similar.

IV. AMENDMENTS:

None.