

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: March 18, 1998 Revised: \_\_\_\_\_

Subject: Recording of Instruments/County Seat

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Wiehle</u>	<u>Moody</u>	<u>JU</u>	<u>Favorable</u>
2.	_____	_____	<u>RC</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

**I. Summary:**

The resolution proposes amending the Florida Constitution to allow county governing bodies to designate branch county offices for the recording of instruments.

The resolution proposes amending section 1, Article VIII of the Florida Constitution.

**II. Present Situation:**

**A. Constitution Amendment Process**

Article XI of the Florida Constitution sets forth the various methods of proposing amendments to the State Constitution and the method of approval or rejection of those proposals. One method by which constitutional amendments may be proposed is by joint resolution agreed to by three-fifths of the membership of each house of the Legislature. s. 1, Art. XI, Fla. Const. Any such proposal must be submitted to the electors, either at the next general election held more than 90 days after the joint resolution is filed with the secretary of state, or, if pursuant to law enacted by the affirmative vote of three-fourths of the membership of each house of the Legislature and limited to a single amendment or revision, at an earlier special election held more than 90 days after such filing. s. 5, Art. XI, Fla. Const. If the proposed amendment is approved by a vote of the electors, it becomes effective as an amendment to the State Constitution on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment. *Id.*

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**B. Recording of Instruments - Clerk of Court**

Section 1, Article VIII of the Florida Constitution provides for county government. The section provides that every county must have a county seat at which the principal offices and permanent records of all county officers are to be located. Branch offices may be established elsewhere in the county by resolution of the governing body of the county.

Section 28.07, F.S., provides that the clerk of the circuit court must keep his or her office at the county seat. If the clerk finds a need for branch offices, the offices may be located in the county at places other than the county seat. One or more deputy clerks authorized to issue process may be employed for such branch offices. The Official Records books of the county must be kept at the county seat. Other records and books must be kept within the county, but need not be kept at the county seat.

Section 28.222, F.S., provides that the clerk of the circuit court is to be the recorder of all instruments that he or she may be required or authorized by law to record in the county where he or she is clerk. The clerk must record all instruments in one general series of books called "Official Records." The clerk must keep a register in which he or she enters at the time of filing the filing number of each instrument filed for record, the date and hour of filing, the kind of instrument, and the names of the parties to the instrument. The clerk must maintain a general alphabetical index, direct and inverse, of all instruments filed for record.

The section also provides that the clerk of the circuit court must record the following kinds of instruments presented to him or her for recording, upon payment of the service charges prescribed by law:

- Deeds, leases, bills of sale, agreements, mortgages, notices or claims of lien, notices of levy, tax warrants, tax executions, and 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; and powers of attorney relating to any of the instruments.
- Notices of lis pendens, including notices of an action pending in a United States court having jurisdiction in this state.
- 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. Each certificate shall be recorded without cost to the veteran, but the clerk shall receive from the board of county commissioners or other governing body of the county, the service charge prescribed by law for the recording.
- 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 Code of the United States, decrees of adjudication in the proceedings, and orders approving the bonds of trustees appointed in the proceedings.
- Certified copies of death certificates authorized for issuance by the Department of Health and Rehabilitative Services which exclude the information that is confidential under s. 382.008(6), F.S., and certified copies of death certificates issued by another state, whether or not they exclude the information described as confidential in s. 382.008(6), F.S.
- Any other instruments required or authorized by law to be recorded.

All instruments recorded in the Official Records books must always be open to the public, under the supervision of the clerk, for the purpose of inspection thereof and of making extracts therefrom; but the clerk shall not be required to perform any service in connection with such inspection, or making of extracts without payment of service charges.

### **III. Effect of Proposed Changes:**

The resolution proposes amending s. 1, Art. VIII, Fla. Const., to provide that an instrument is deemed recorded if filed at a branch office designated by the governing body of the county for the recording of instruments.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

### **V. Economic Impact and Fiscal Note:**

#### **A. Tax/Fee Issues:**

None.

#### **B. Private Sector Impact:**

Indeterminate. Currently, those persons dealing with the Official Records have to travel to the county seat to do so, which may be relatively difficult and expensive. If the constitutional

amendment is adopted, counties can designate a branch office for recording of instruments. *If* a recording system is put into place that allows these persons to have complete access to all Official Records in that county from either the county seat or the branch office, this should save these persons time and money. If, however, the record-keeping system that is established does not allow such complete access, these persons would have to travel to *both* the county seat and the branch office to fully protect their interests.

**C. Government Sector Impact:**

None. The proposed constitutional amendment would allow the governing body of a county to designate a branch office for the recording of instruments. As such, counties would not incur any expense resulting from this resolution unless the governing body chose to do so.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Assuming the recording of an instrument at a branch office is electronically transmitted to the county seat, an issue could arise as to the time the recording took place for legal purposes. If, for example, a county had several branch offices, two or more people could attempt to record competing instruments at approximately the same time. The electronic system would have to have a component that would provide legal certainty as to which instrument was filed first.

**VIII. Amendments:**

None.