

585-1935A-06

Proposed Committee Substitute by the Committee on Governmental Oversight and Productivity

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A bill to be entitled

An act relating to custodial requirements for public records; amending s. 119.021, F.S.; clarifying the custodial requirements for a record that is confidential and exempt from disclosure pursuant to law; authorizing the custodian of such record to require an agency or other governmental entity that receives the record to acknowledge in writing the confidential and exempt status of the record; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 119.021, Florida Statutes, is amended to read:

119.021 Custodial requirements; maintenance, preservation, and retention of public records.--

(1) MAINTENANCE AND PRESERVATION.--Public records shall be maintained and preserved as follows:

(a) All public records should be kept in the buildings in which they are ordinarily used.

(b) Insofar as practicable, a custodian of public records of vital, permanent, or archival records shall keep them in fireproof and waterproof safes, vaults, or rooms fitted with noncombustible materials and in such arrangement as to be easily accessible for convenient use.

(c)1. Record books should be copied or repaired, renovated, or rebound if worn, mutilated, damaged, or difficult to read.

2. Whenever any state, county, or municipal records

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585-1935A-06

1 are in need of repair, restoration, or rebinding, the head of
2 the concerned state agency, department, board, or commission;
3 the board of county commissioners of such county; or the
4 governing body of such municipality may authorize that such
5 records be removed from the building or office in which such
6 records are ordinarily kept for the length of time required to
7 repair, restore, or rebind them.

8 3. Any public official who causes a record book to be
9 copied shall attest and certify under oath that the copy is an
10 accurate copy of the original book. The copy shall then have
11 the force and effect of the original.

12 (2) RETENTION SCHEDULES.--

13 (a) The Division of Library and Information Services
14 of the Department of State shall adopt rules to establish
15 retention schedules and a disposal process for public records.

16 (b) Each agency shall comply with the rules
17 establishing retention schedules and disposal processes for
18 public records which are adopted by the records and
19 information management program of the division.

20 (c) Each public official shall systematically dispose
21 of records no longer needed, subject to the consent of the
22 records and information management program of the division in
23 accordance with s. 257.36.

24 (d) The division may ascertain the condition of public
25 records and shall give advice and assistance to public
26 officials to solve problems related to the preservation,
27 creation, filing, and public accessibility of public records
28 in their custody. Public officials shall assist the division
29 by preparing an inclusive inventory of categories of public
30 records in their custody. The division shall establish a time
31 period for the retention or disposal of each series of

585-1935A-06

1 records. Upon the completion of the inventory and schedule,
 2 the division shall, subject to the availability of necessary
 3 space, staff, and other facilities for such purposes, make
 4 space available in its records center for the filing of
 5 semicurrent records so scheduled and in its archives for
 6 noncurrent records of permanent value, and shall render such
 7 other assistance as needed, including the microfilming of
 8 records so scheduled.

9 (3) INDEX OF AGENCY ORDERS.--Agency orders that
 10 comprise final agency action and that must be indexed or
 11 listed pursuant to s. 120.53 have continuing legal
 12 significance; therefore, notwithstanding any other provision
 13 of this chapter or any provision of chapter 257, each agency
 14 shall permanently maintain records of such orders pursuant to
 15 the applicable rules of the Department of State.

16 (4)~~(a)~~ TRANSFER OF CUSTODY.--Whoever has custody of
 17 any public records shall deliver, at the expiration of his or
 18 her term of office, to his or her successor or, if there be
 19 none, to the records and information management program of the
 20 Division of Library and Information Services of the Department
 21 of State, all public records kept or received by him or her in
 22 the transaction of official business.

23 (5)~~(b)~~ UNLAWFUL POSSESSION.--Whoever is entitled to
 24 custody of public records shall demand them from any person
 25 having illegal possession of them, who must forthwith deliver
 26 the same to him or her. Any person unlawfully possessing
 27 public records must within 10 days deliver such records to the
 28 lawful custodian of public records unless just cause exists
 29 for failing to deliver such records.

30 (6) CUSTODIAL REQUIREMENTS FOR CONFIDENTIAL AND EXEMPT
 31 RECORDS.--

585-1935A-06

1 (a) A custodian of public records who holds a record
2 that is confidential and exempt from s. 119.07(1) and s.
3 24(a), Art. I of the State Constitution may not release such
4 record except as provided in statute or pursuant to court
5 order.

6 (b) An agency or other governmental entity that is
7 authorized to receive a confidential and exempt record
8 pursuant to statute shall retain the confidential and exempt
9 status of such record, except as otherwise provided by law.

10 (c) A custodian of public records may require the
11 agency or other governmental entity that is authorized to
12 receive a confidential and exempt record pursuant to statute
13 to acknowledge in a written release that:

- 14 1. Such record is confidential and exempt; and
15 2. The receiving agency or other governmental entity
16 is required by law to maintain the confidential and exempt
17 status of such record.

18 (d) This subsection does not limit access to any
19 record:

- 20 1. By an agency or entity acting on behalf of a
21 custodian of public records;
22 2. By the Legislature; or
23 3. Pursuant to court order.

24 Section 2. This act shall take effect July 1, 2006.

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