

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 639 Pub. Rec./Judicial Officials  
**SPONSOR(S):** Government Efficiency & Accountability Council and Flores  
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 766

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on State Affairs</u>	<u>6 Y, 1 N</u>	<u>Williamson</u>	<u>Williamson</u>
2) <u>Government Efficiency &amp; Accountability Council</u>	<u>13 Y, 0 N, As CS</u>	<u>Williamson</u>	<u>Cooper</u>
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

Current law provides a public record exemption for identification and location information of certain agency personnel. The following information is exempt from public records requirements:

- The home addresses and telephone numbers;
- The home addresses, telephone numbers, and places of employment of their spouses and children; and
- The names and locations of schools and day care facilities attended by their children.

The bill expands the current public record exemption for the identification and location information of certain agency personnel and their spouses and children. The bill makes the exemption applicable to general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers. The exemption, however, only applies if such magistrates, judges, or hearing officers provide a written statement that they have made reasonable efforts to protect such information from access via other means available to the public.

The bill provides for future legislative review and repeal of the exemption and provides a public necessity statement.

**The bill requires a two-thirds vote of the members present and voting for passage.**

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill decreases access to public records.

### 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 record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.<sup>1</sup>

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., also guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act<sup>2</sup> provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or
- Protecting trade or business secrets.

##### Public Record Exemption for Justices and Judges

Current law provides several public record exemptions for identification and location information regarding certain agency personnel and their spouses and children.<sup>3</sup> The following information regarding those agency personnel is exempt<sup>4</sup> from public records requirements:

- The home addresses and telephone numbers;
- The home addresses, telephone numbers, and places of employment of their spouses and children; and
- The names and locations of schools and day care facilities attended by their children.

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<sup>1</sup> Article I, s. 24(c) of the Florida Constitution.

<sup>2</sup> Section 119.15, F.S.

<sup>3</sup> Examples of such personnel include police officers, firefighters, and certain judges. See s. 119.071(4)(d), F.S.

<sup>4</sup> There is a difference between records that are exempt from public records requirements and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such record cannot be released by an agency to anyone other than to the persons or entities designated in the statute. See Attorney General Opinion 85-62. If a record is made simply exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances. See *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

The exemption provided in current law does not apply to general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, or child support enforcement hearing officers.

### General Magistrates

General magistrates are members of the Florida Bar appointed by judges of the circuit court. The general magistrate can take an oath before taking office and continues in office until removed by order of the court. General magistrates may be appointed in civil, probate, family, and juvenile courts; however, magistrates may not perform duties related to domestic, repeat, dating, and sexual violence.<sup>5</sup>

### Special Magistrates

Special magistrates are like general magistrates except they are not required to make an oath or give a bond unless specifically required by the order appointing them. Non-members of the Florida Bar may be appointed as special magistrates upon a showing that the appointment is advisable.<sup>6</sup>

### Judges of Compensation Claims

The Office of Judges of Compensation Claims is created within the Division of Administrative Hearings (DOAH).<sup>7</sup> A Deputy Chief who is appointed by the Governor for a four-year term heads the office. The Deputy Chief reports to the Chief Administrative Law Judge. The Governor appoints full-time judges of compensation claims. To be nominated, a judge must have been a member of the Florida Bar in good standing for at least five years.

### Administrative Law Judges

DOAH is a division of the Department of Management Services, though it is not subject to its control or supervision. A Chief Administrative Law Judge who is appointed by the Administration Commission and confirmed by the Senate heads DOAH.<sup>8</sup> DOAH must employ administrative law judges to conduct hearings. All administrative law judges, including the chief, must have been a member of The Florida Bar in good standing for the preceding five years.

### Child Support Enforcement Hearing Officers

Child support enforcement hearing officers (hearing officers) are appointed by the chief judge of each judicial circuit to expedite child support proceedings. The hearing officers must be members of the Florida Bar unless waived by the Chief Justice of the Supreme Court. Powers and duties of the hearing officers include issuing process, assigning the time and place for hearings, taking testimony and establishing a record, accepting voluntary acknowledgement of paternity and support liability and stipulated agreements, and evaluating the evidence and making a recommended order to the court. Hearing officers do not have the authority to hear contested paternity cases.<sup>9</sup>

## **EFFECT OF BILL**

The bill expands the current public record exemption for identification and location information of certain agency personnel to include general magistrates, special magistrates, judges of compensation claims, administrative law judges, and child support enforcement hearing officers (magistrates, judges, and hearing officers). The following information is exempt from public records requirements:

- The home addresses and telephone numbers of magistrates, judges, and hearing officers;

<sup>5</sup> See Florida Rule of Civil Procedure 1.490, Florida Family Law Rule 12.490, and Florida Rule of Juvenile Procedure 8.257.

<sup>6</sup> See Florida Rule of Civil Procedure 1.490, Florida Probate Rule 5.697, and Florida Family Law Rule 12.492.

<sup>7</sup> Section 440.45, F.S.

<sup>8</sup> Section 120.65, F.S.

<sup>9</sup> Florida Family Law Rule of Procedure 12.491.

- The home addresses, telephone numbers, and places of employment of their spouses and children; and
- The names and locations of schools and day care facilities attended by their children.

The exemption only applies if the magistrate, judge, or hearing officer provides a written statement that he or she has made reasonable efforts to protect such information from access via other means available to the public.

An agency, other than the employing agency, who is the custodian of such information, must maintain the exempt status of that information only if the magistrate, judge, or hearing officer, or his or her employer, submits a written request to the custodial agency.

The bill provides for future review and repeal of the exemption on October 2, 2013, pursuant to the Open Government Sunset Review Act. It also provides a public necessity statement as required by the Florida Constitution.

C. SECTION DIRECTORY:

Section 1 amends s. 119.071, F.S., to create a public record exemption for identification and location information regarding magistrates, judges, and hearing officers.

Section 2 provides a public necessity statement.

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

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill likely could create a minimal fiscal impact on the courts and DOAH, because staff responsible for complying with public records requests could require training related to the expansion of the current public record exemption. In addition, the courts and DOAH could incur costs associated with redacting the exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the court and DOAH.

### 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:

###### Vote Requirement

Article I, s. 24(c) of the Florida Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, it requires a two-thirds vote for passage.

###### Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution, requires a statement of public necessity (public necessity statement) for a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, it includes a public necessity statement.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

###### Other Comments – Written Statement

The bill requires the magistrate, judge, and hearing officer to submit a written statement that he or she has made reasonable efforts to protect the exempt information from public access via other means. For example, such personnel would need to confirm that he or she has protected release of the information through the Internet and the telephone book. Of the categories of employees who are provided this same public records exemption, only one group is required to provide a similar statement.<sup>10</sup> This exemption would put magistrates, judges, and hearing officers in the minority and would create an additional burden on such personnel in order to protect access to his or her identification and location information.

#### D. STATEMENT OF THE SPONSOR

No statement submitted.

### IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

###### Committee on State Affairs

On March 19, 2008, the Committee on State Affairs adopted a strike-all amendment and reported the bill favorable with amendment.

The strike-all amendment narrows the public record exemption in the bill by removing the exemption for the identification and location information of grandchildren of Supreme Court justices; judges of the district court of appeals, circuit court, and county court; general magistrates; and hearing officers.

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<sup>10</sup> Section 119.071(4)(d)6., F.S., public records exemption for current and former guardians ad litem.

The bill created a public record exemption for identification and location information of general magistrates and hearing officers, and their spouses and children. The strike-all amendment adds to that list special magistrates and their spouses and children. The amendment also requires such magistrates and hearing officers to provide a written statement to their employer stating they have made reasonable efforts to protect their identification and location information from being accessible through other means available to the public. The public record exemption is triggered only after receipt of that statement.

#### Government Efficiency & Accountability Council

On April 8, 2008, the Government Efficiency & Accountability Council (Council) adopted an amendment to the strike-all amendment recommended by the Committee on State Affairs. The amendment expands the public record exemption to include the same identification and location information of judges of compensation claims and administrative law judges of the Division of Administrative Hearings, and their spouses and children.

The Council reported the bill favorably as a Council Substitute.