

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 639  
SPONSOR(S): Flores  
TIED BILLS:

Pub. Rec./Judicial Officials

IDEN./SIM. BILLS: CS/SB 766

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></u>	<u></u>	<u></u>
3) <u></u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

Current law provides a public record exemption for identification and location information regarding Supreme Court justices and judges of the district court of appeals, circuit court, and county court (justices and judges). The following information is exempt from public records requirements:

- The home addresses and telephone numbers of the justices and judges;
- 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 identification and location information of justices and judges to include the home addresses, telephone numbers, and places of employment of their grandchildren; and the names and locations of schools and day care facilities attended by the grandchildren.

The bill also creates a public record exemption for:

- The home addresses and telephone numbers of general magistrates and child support enforcement hearing officers;
- The home addresses, telephone numbers, and places of employment of their spouses, children, and grandchildren; and
- The names and locations of schools and day care facilities attended by their children and grandchildren.

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 further addressed 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 employees and their spouses and children.<sup>3</sup> Specifically for Supreme Court justices and judges of the district court of appeals, circuit court, and county court (justices and judges), the following information is exempt<sup>4</sup> from public records requirements:

- The home addresses and telephone numbers of the justices and judges;
- 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.<sup>5</sup>

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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> 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 simply made 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).

<sup>5</sup> Section 119.071(4)(d)1., F.S.

There is, however, no such exemption for general magistrates 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>6</sup>

### 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>7</sup>

## **EFFECT OF BILL**

The bill expands the current public record exemption for identification and location information of justices and judges to include the home addresses, telephone numbers, and places of employment of their grandchildren; and the names and locations of schools and day care facilities attended by the grandchildren.

The bill also creates a public record exemption for:

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

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 general magistrate 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 certain information regarding general magistrates and child support enforcement hearing officers.

Section 2 provides a public necessity statement.

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

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<sup>6</sup> See Florida Rule of Civil Procedure 1.490, Florida Family Law Rule 12.490, and Florida Rule of Juvenile Procedure 8.257.

<sup>7</sup> Florida Family Law Rule of Procedure 12.491.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### 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, because staff responsible for complying with public records requests could require training related to the expansion of the current public record exemption. In addition, courts 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.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not 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.

## Overly Broad

Article I, s. 24(c) of the Florida Constitution, requires that an exemption be drafted as narrowly as possible. The bill could raise constitutional concerns, because the exemption could be considered overly broad in that it is unclear if the employing agency collects information regarding the grandchildren of justices, judges, general magistrates, or hearing officers. *The sponsor has filed a strike-all amendment to address this issue.*

### B. RULE-MAKING AUTHORITY:

None.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

#### Drafting Issues

The public record exemption provides that the identification and location information is exempt only; however, the public necessity statement provides that the information is confidential and exempt. As such, an amendment is required to comport the public necessity statement with the exemption. *The sponsor has filed a strike-all amendment to address this issue.*

### D. STATEMENT OF THE SPONSOR

No statement submitted.

## **IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

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.

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.