

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Judiciary Committee

BILL: CS/CS/SB 766

INTRODUCER: Governmental Operations Committee, Judiciary Committee, and Senator Rich and others

SUBJECT: Public Records/Judicial Officials

DATE: April 3, 2008 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Maclure	JU	Fav/CS
2.	Rhea	Wilson	GO	Fav/CS
3.			RC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

The bill expands the agency personnel information exempt under the public records law to include the home addresses and telephone numbers of special magistrates, general magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers. Under current law, this information is exempt for district, circuit, and county court judges and justices of the Florida Supreme Court. The bill also exempts the home addresses, telephone numbers, and places of employment of the spouses and children of special magistrates, general magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support hearing officers, as well as the names and locations of schools and day care facilities attended by their children. The bill also requires that special magistrates, general magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers make reasonable efforts to protect the information from being accessible through other means available to the public.

The bill specifies that the exemptions are subject to the Open Government Sunset Review Act and provides a statement of public necessity for the exemptions.

This bill amends section 119.071, Florida Statutes.

II. Present Situation:

Public Records

The State of Florida has a long history of providing public access to governmental records. The Florida Legislature enacted the first public records law in 1892.¹ One hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.² Article I, s. 24 of the State Constitution, provides that:

(a) Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

In addition to the State Constitution, the Public Records Act,³ which pre-dates the State Constitution's public records provisions, specifies conditions under which public access must be provided to records of an agency.⁴ Section 119.07(1)(a), F.S., states:

Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.

Unless specifically exempted, all agency records are available for public inspection. The term "public record" is broadly defined to mean:

all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or

¹ Section 1390, 1391 F.S. (Rev. 1892).

² Article I, s. 24 of the State Constitution.

³ Chapter 119, F.S.

⁴ The word "agency" is defined in s. 119.011(2), F.S., to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Florida Constitution also establishes a right of access to any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except those records exempted by law or the State Constitution.

received pursuant to law or ordinance or in connection with the transaction of official business by any agency.⁵

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or formalize knowledge.⁶ All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.⁷

Only the Legislature is authorized to create exemptions to open government requirements.⁸ Exemptions must be created by general law, and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.⁹ A bill enacting an exemption¹⁰ may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.¹¹

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.¹² If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.¹³

The Open Government Sunset Review Act¹⁴ provides for the systematic review, through a 5-year cycle ending October 2nd of the 5th year following enactment, of an exemption from the Public Records Act or the Public Meetings Law.

The act states that an exemption may be created, revised or expanded only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. An exemption meets the three statutory criteria if it:

- (1) allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;

⁵ Section 119.011(11), F.S.

⁶ *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁷ *Wait v. Florida Power & Light Company*, 372 So. 2d 420 (Fla. 1979).

⁸ Article I, s. 24(c) of the State Constitution.

⁹ *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So. 2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So. 2d 567, 569 (Fla. 1999).

¹⁰ Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

¹¹ Article I, s. 24(c) of the State Constitution.

¹² Florida Attorney General Opinion 85-62.

¹³ *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991), *review denied*, 589 So. 2d 289 (Fla. 1991).

¹⁴ Section 119.15, F.S.

- (2) protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or
- (3) protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.¹⁵

The act also requires consideration of the following:

- (1) What specific records or meetings are affected by the exemption?
- (2) Whom does the exemption uniquely affect, as opposed to the general public?
- (3) What is the identifiable public purpose or goal of the exemption?
- (4) Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- (5) Is the record or meeting protected by another exemption?
- (6) Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

While the standards in the Open Government Sunset Review Act may appear to limit the Legislature in the exemption review process, those aspects of the act that are only statutory, as opposed to constitutional, do not limit the Legislature because one session of the Legislature cannot bind another.¹⁶ The Legislature is only limited in its review process by constitutional requirements.

Further, s. 119.15(8)(e), F.S., makes explicit that:

notwithstanding s. 768.28 or any other law, neither the state or its political subdivisions nor any other public body shall be made party to any suit in any court or incur any liability for the repeal or revival and reenactment of an exemption under this section. The failure of the Legislature to comply strictly with this section does not invalidate an otherwise valid reenactment.

Under s. 119.10(1)(a), F.S., any public officer who violates any provision of the Public Records Act is guilty of a noncriminal infraction, punishable by a fine not to exceed \$500. Further, under paragraph (b) of that subsection, a public officer who knowingly violates the provisions of s. 119.07(1), F.S., relating to the right to inspect public records, commits a first-degree misdemeanor, and is subject to suspension and removal from office or impeachment. Any person who willfully and knowingly violates any provision of the chapter is guilty of a first-degree misdemeanor, punishable by potential imprisonment not exceeding one year and a fine not exceeding \$1,000.

¹⁵ Section 119.15(6)(b), F.S.

¹⁶ *Straughn v. Camp*, 293 So. 2d 689, 694 (Fla. 1974).

Agency Personnel Information

Currently, under s. 119.071(4), F.S. specified personal information relating to the employees of agencies is protected from disclosure. Specifically, for justices of the Florida Supreme Court and district, circuit, and county court judges:

- their home addresses and telephone number;
- 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

are exempt from disclosure.¹⁷

It should be noted, however, that pursuant to s. 119.071(4)(a)8., F.S., an agency that is not the employer of the protected person who has custody of this information is authorized to maintain its exempt status only if the employee who is the subject of the exemption submits a written request for maintenance of the exemption to the non-employing agency.

General Magistrates

General magistrates are members of the Florida Bar who are appointed by judges of the circuit court. The general magistrate must take an oath before taking office and continues in office until removed by order of the court. The magistrate performs the duties according to the rules of the particular court. General magistrates can be appointed in civil, probate, family, and juvenile courts. However, magistrates may not perform duties related to domestic, repeat, dating, and sexual violence. The magistrate is empowered to administer oaths and conduct hearings, which may include taking of evidence.¹⁸

Article V, ss. 5 and 6 of the State Constitution vests original jurisdiction in the circuit and county courts over equitable and nonequitable matters. However, despite there being no provision in the State Constitution authorizing magistrates to perform judicial functions, Florida has a long history of appointing magistrates to assist judges in the adjudication of their cases.¹⁹

Special Magistrates

Special magistrates are like general magistrates except that 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.²⁰

Judges of Compensation Claims

¹⁷ Section 119.071(4)(d)1., F.S.

¹⁸ See Fla. R. Civ. P. 1.490, Fla. Prob. R. 5.095, Fla. Fam. L. R. 12.490, and Fla. R. Juv. P. 8.257.

¹⁹ 45 Fla. Jur 2d *References to Magistrate* s. 2 (2008).

²⁰ Florida R. Civ. P. 1.490, Fla. Prob. R. 5.697, and Fla. Fam. L. R. 12.492.

The Office of Judges of Compensation Claims is created within the Division of Administrative Hearings (DOAH).²¹ The office is headed by a Deputy Chief who is appointed by the Governor for a term of 4 years. 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

The Division of Administrative Hearings (DOAH) is a division of the Department of Management Services, though it is not subject to the control or supervision of the Department. The division is headed by a Chief Administrative Law Judge who is appointed by the Administration Commission and confirmed by the Senate.²² The division shall 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 5 years.

Child Support Enforcement Hearing Officers

Child support enforcement hearing officers are appointed by the chief judge of each judicial circuit to expedite child support proceedings. The officers must be members of the Florida Bar unless waived by the chief justice of the Supreme Court. Powers and duties of the 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 promptly making a recommended order to the court.

Child support enforcement hearing officers do not have authority to hear contested paternity cases.²³

III. Effect of Proposed Changes:

The bill expands the agency personnel information exempt under the public records law to include the home addresses and telephone numbers of special magistrates, general magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers. Under current law, this information is exempt for district, circuit, and county court judges and justices of the Supreme Court. The bill also exempts the home addresses, telephone numbers, and places of employment of the spouses and children of special magistrates, general magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support hearing

²¹ Section 440.45, F.S.

²² Section 120.65, F.S.

²³ Florida Fam. L. R. P. 12.491.

officers, as well as the names and locations of schools and day care facilities attended by their children.

The bill also provides that the information of general and special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support hearing officers will be exempt if they have made reasonable efforts to protect the information from being accessible through other means available to the public.

The bill provides that the amendments made by the act are subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and provides that the public-records exemptions will stand repealed on October 2, 1013, unless reviewed and saved from repeal through reenactment by the Legislature.

Justification of public necessity for the exemptions is also provided, stating that release of the information might place judicial officials and their family members in physical and emotional danger from disgruntled criminal defendants or litigants, and, therefore, the harm that would result from the release outweighs any public benefit that might result from the disclosure.

The bill provides an effective date of July 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

There may be minimal costs to agencies of complying with the bill's exemption requirements.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Governmental Operations on April 3, 2008:

The committee substitute for the committee substitute adds judges of compensation claims and administrative law judges of the Division of Administrative Hearings.

CS by Judiciary on March 11, 2008:

The committee substitute differs from SB 766 in the following ways:

- Deletes the requirement that information related to the grandchildren of judges, general magistrates, and child support hearing officers be exempt from public records and adds special magistrates to the list of officials included in the public-records exemption.
- Adds language that provides that the information of general and special magistrates and child support hearing officers will be exempt if they have made reasonable efforts to protect the information from being accessible through other means available to the public.
- Places the language creating the public-records exemption in a slightly different place in the statute in order to keep it separate from language created prior to 1993. The newer constitutional standards governing public-records exemptions adopted by the voters in 1992 include a grandfather clause specifying that exemption statutes in effect prior to July 1, 1993, remain in force.

- B. **Amendments:**

None.