

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 507 Pub. Rec./E-mail Addresses of Current Justices and Judges  
**SPONSOR(S):** Civil Justice & Claims Subcommittee; Shaw  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1202

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee	11 Y, 4 N, As CS	Tuszynski	Bond
2) Oversight, Transparency & Administration Subcommittee			
3) Judiciary Committee			

### SUMMARY ANALYSIS

CS/HB 507 exempts from public record requirements the direct business e-mail addresses of current justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges.

The bill provides a public necessity statement as required by the Florida Constitution.

The bill may have a minimal fiscal impact on the state and does not appear to have a fiscal impact on local governments.

The effective date of the bill is July 1, 2018.

**Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption for certain records of e-mail addresses; thus, it requires a two-thirds vote for final passage.**

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### Public Records

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 Art. I, s. 24(a) of the Florida Constitution provided the exemption passes by two-thirds vote of each chamber, states with specificity the public necessity justifying the exemption (public necessity statement), and is no broader than necessary to meet its public purpose.<sup>1</sup>

The Florida Statutes also address the public policy regarding access to government records. Section 119.07(1), F.S. guarantees every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt. Furthermore, the Open Government Sunset Review Act<sup>2</sup> provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose and 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."<sup>3</sup> However, the exemption may be no broader than is necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protect 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
- Protect trade or business secrets.<sup>4</sup>

The Open Government Sunset Review Act does not apply to an exemption that applies solely to the Legislature or the State Court System.<sup>5</sup>

##### Public Records and Members of the Judiciary

Currently, s. 119.071(4)(d)2.e., F.S. exempts several types of information from ch. 119, F.S. for current or former members of the judiciary, namely:

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

##### Communication with Members of the Judiciary

Due process requires that generally, when a party to a lawsuit wishes to communicate with a presiding judge or justice, the other party must be present whether in person or by copy of a written communication. A communication between a party and the presiding judge or justice outside the

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<sup>1</sup> FLA. CONST. art. I, s. 24(c).

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

<sup>3</sup> S. 119.15(6)(b), F.S.

<sup>4</sup> Id.

<sup>5</sup> S. 119.15(2)(b), F.S.

presence of the other party is "*ex parte* communication" and highly disfavored, usually resulting in a breach of the rules regulating attorneys and judges.<sup>6</sup> An important role of a judicial assistant is his or her ability block *ex parte* communication with a judge, whether via telephone or written communication. However, e-mail communication presents a special problem in that a party to a case may send an e-mail directly to a judge, not realizing that such *ex parte* communication is prohibited and can compromise the integrity of the proceedings.

### Effect of the Bill

CS/HB 507 amends s. 119.071, F.S. to provide that the direct business e-mail addresses of current justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges are exempt<sup>7</sup> from s. 119.07(1), F.S. and art. I, s. 24(a) of the Florida Constitution.

The bill provides a public necessity statement as required by the Florida Constitution, specifying that it is a public necessity to protect business e-mail addresses of current Florida justices and judges, because public release of such addresses could result in improper *ex parte* communications necessitating recusal or other action that could negatively affect the judiciary; that the harm that may result from the release of such addresses outweighs any public benefit; and that the public can contact the judicial member via e-mail through the judicial member's judicial assistant without the need for the judicial member's business e-mail address.

#### B. SECTION DIRECTORY:

- Section 1:** Amends s. 119.071, F.S. regarding the e-mail addresses of current justices and judges.  
**Section 2:** Provides a public necessity statement.  
**Section 3:** Provides an effective date of July 1, 2018.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:  
None.
2. Expenditures:  
See fiscal comments.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:  
None.

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<sup>6</sup> See Canon 3(B)(7), Code of Judicial Conduct (a judge generally must not "initiate, permit, or consider *ex parte* communications, or consider other communications outside the presence of the parties concerning a pending or impending proceeding . . ."); R. Regulating Fla. Bar 4-3.5(b).

<sup>7</sup> There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates as *confidential and exempt*. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, the record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See 85-62 Fla. Op. Att'y Gen. (1985).

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill could have an insignificant negative fiscal impact on courts because staff responsible for complying with public records requests may require training related to the creation of the public record exemption.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

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 final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; therefore, it requires a two-thirds vote for final passage.

Public Necessity Statement and Breadth of Exemption

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; therefore, it includes a public necessity statement. Article I, s. 24(c) of the Florida Constitution also requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 30, 2018, the Civil Justice and Claims Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment limited the application of the exception to the direct business email address of a justice or judge. This analysis is drafted to the committee substitute as passed by the Civil Justice and Claims Subcommittee.