

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 479 Pub. Rec./Judicial Assistants
SPONSOR(S): Fetterhoff
TIED BILLS: IDEN./SIM. BILLS: CS/SB 128

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR or BUDGET/POLICY CHIEF. Row 1: 1) Civil Justice Subcommittee, 12 Y, 0 N, DuShane, Luczynski. Row 2: 2) Oversight, Transparency & Public Management Subcommittee. Row 3: 3) Judiciary Committee.

SUMMARY ANALYSIS

Judicial assistants provide administrative, clerical, and secretarial support to justices and judges. As judicial assistants regularly speak and work with attorneys, litigants, or family members of litigants, judicial assistants can experience acts of retaliation or revenge from disgruntled litigants. Personal identifying information of current and former justices and judges is exempt from Florida's public record laws. However, personal identifying information of current and former judicial assistants is not exempt from Florida's public record laws.

HB 479 expands the public records exemption pertaining to personal identifying information of current and former justices and judges to also include current and former judicial assistants. Specifically, the bill exempts current and former judicial assistants:

- Home addresses, dates of birth, and telephone numbers;
• Name, home addresses, dates of birth, telephone numbers, and place of employment of their spouse and children; and
• Name and location of schools and day care facilities attended by their children.

Per the Open Government Sunset Review Act, this exemption will be automatically repealed on October 2, 2024 unless reenacted by the Legislature. The bill provides a statement of public necessity as required by the Florida Constitution.

The bill provides an effective date of July 1, 2020.

The bill may have a minimal negative fiscal impact on state and local governments. Expanding the public records exemption may increase training and compliance costs for agencies dealing with public records.

Article I, section 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 expands a public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records

Florida's Constitution provides a broad public records law that allows any person to inspect or copy any public record made in connection with government business.¹ This guarantee extends to any document from the legislative, executive, or judicial branches, as well as any agencies, local governments, or person acting with government authority.² Authority to grant exemptions from public records is vested solely with the Legislature.³ A proposed exemption must pass by a two-third vote of each chamber, state with specificity the public necessity to justify the exemption, and be no broader than necessary to accomplish the public purpose.⁴

Florida's Public Record laws are codified in ch. 119, F.S.⁵ Public records include any physical document or recording, including electronic information.⁶ The Florida Supreme Court defined a public record as "any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type."⁷ A public record depends on the actual nature of the record, not the mere fact that the document was used or accessed at a place of employment.⁸

Public record laws apply to any person who wishes to examine the records.⁹ Custodians of the public records must make a good faith effort to produce records and respond to requests.¹⁰ A public officer who violates a portion of the public records law may be subject to criminal or civil penalties.¹¹

Chapter 119, F.S., does not apply to legislative¹² or judicial records.¹³

Creation of exemptions in Florida Statute

The Legislature has the sole authority to create an exemption to public records requirements.¹⁴ An exemption must be created by general law and must specifically state the public necessity justifying the exemption.¹⁵ An exemption serves an identifiable public purpose if it meets one of the following statutory purposes, the Legislature finds that the purpose of the exemption outweighs the interest in open government, and the purpose cannot be accomplished without the exemption:¹⁶

¹ Art. I, s. 24(a), Fla. Const.

² *Id.*

³ Art. I, s. 24(c), Fla. Const.

⁴ *Id.*

⁵ Ss. 119.01-119.15, F.S.

⁶ S. 119.011, F.S.

⁷ *Shevin v. Byron*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ *State v. City of Clearwater*, 863 So. 2d 149,154 (Fla. 2003).

⁹ S. 119.01, F.S.

¹⁰ S. 119.07, F.S.

¹¹ S. 119.10, F.S.

¹² *Locke v. Hawkes*, 595 So. 3d 32, 37 (Fla. 1992) (holding that Ch. 119.011, F.S applies to the executive branch and its agencies and entities that the Legislature has control over). Public record laws pertaining to the Florida Legislature are codified in s. 11.0431, F.S. Section 11.0431, F.S., allows every person to access legislative public records except for specific exemptions.

¹³ *Times Pub. Co. v. Ake*, 660 So. 2d 255, 257 (Fla. 1995). Fla. R. Jud. Admin. 2.420 governs access to public records of the judicial branch.

¹⁴ Art. I, s. 24(c), Fla. Const.

¹⁵ *Id.*

¹⁶ S. 119.15(6)(b), F.S.

- Whether the state or political subdivision would be significantly impaired in their ability to carry out government programs without the exemption;¹⁷
- Whether the exemption protects personal sensitive information where if the information were released it could defame the person or jeopardize the individual's safety;¹⁸ or
- Whether it protects business or trade secrets.¹⁹

General Public Records Exemptions

There are three general statutory exemptions that apply to all state agency personnel. (1) All current and former agency employees are exempt from disclosure of their social security number.²⁰ This applies in all instances except when: the social security number is expressly required by federal or state law; a government agency or entity needs it to fulfill their duties, or the current or former employee consents to the release.²¹ (2) Medical information that would identify a current or former employee is exempt from disclosure.²² (3) Personal identifying information of the dependent children of former and current employees who are insured under an agency group insurance plan is exempt from disclosure.²³

There is a difference between public records that are "exempt" or "confidential and exempt."²⁴ Information that is "confidential and exempt" may be released only under the circumstances defined by the Legislature or pursuant to a court order.²⁵ However, information that is exempt may be released at the discretion of the records custodian under certain circumstances.²⁶

Open Government Sunset Review Act

The Open Government Sunset Review Act mandates the renew and repeal or reenactment of any exemption under constitutional or statutory authority.²⁷ Exemptions are repealed automatically on October 2nd of the fifth year unless reenacted by the Legislature.²⁸ An exemption may be maintained only if it serves an identifiable public purpose and is not broader than necessary.²⁹

Exemptions Pertaining to Justices and Judges

The Florida Legislature carved out a specific exemption for the justices and judges authorized in Article V of the Florida Constitution.³⁰ This exemption applies to current and former justices and judges as well as their families. Specifically, the exemption covers:

- Home addresses, dates of birth, and telephone numbers;
- Names, home addresses, dates of birth, telephone numbers, and places of employment of spouses and children; and
- Names and locations of schools and day care facilities attended by their children.³¹

The exemption for justices and judges was first enacted in 1991 and exempted home addresses and telephone numbers for former or current justices and judges as well as home addresses, telephone

¹⁷ S. 119.15(6)(b)1., F.S.

¹⁸ S. 119.15(6)(b)2., F.S.

¹⁹ S. 119.15(6)(b)3., F.S.

²⁰ S. 119.071(4)(a), F.S.

²¹ *Id.*

²² S. 119.071(4)(b)1., F.S.

²³ S. 119.071(4)(b)2., F.S.

²⁴ *WFTV, Inc. v. School Bd. of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

²⁵ *Id.*

²⁶ *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991) (holding that information that is "exempt" and not "confidential and exempt" is not prohibited from being displayed at the discretion of the custodian).

²⁷ S. 119.15(2), F.S.

²⁸ S. 119.15(3), F.S.

²⁹ S. 119.15(6)(b), F.S.

³⁰ S. 119.071(4)(e), F.S.

³¹ S. 119.071(4)(d)2.e., F.S.

numbers, and places of employment of spouses and children.³² In 2012, the Legislature expanded the exemption to include dates of birth for these individuals.³³ The Legislature found that justices and judges have to make decisions that do not always foster good will, which could make their spouses or children a target for revenge and subject to potential fraud.³⁴ Most recently, in 2017 the Legislature exempted the names of children and spouses of current and former justices and judges.³⁵ In the public necessity statement, the Legislature found that that these individuals could be easy targets for disgruntled litigants and this could potentially interfere with a justices or judges official duties.³⁶

Judicial Assistants

Judicial assistants provide essential functions to justices and judges including administrative, secretarial, and clerical support.³⁷ Specifically, responsibilities may include:

- Preparing and maintaining justices or judges calendar;
- Maintaining trial dockets;
- Preparing correspondence and office communication; and
- Interacting “with attorneys and litigants and their family members to resolve problems.”³⁸

Based on interactions with the various parties, judicial assistants are often exposed to ill-will or attempted acts of revenge by disgruntled litigants. These disgruntled litigants will often make the judicial assistant the brunt of their revenge. Numerous judicial assistants from across the state have reported such incidents. These threats include showing up at the judicial assistant’s home, receiving threatening phone calls and text messages on personal devices, harassment at home, and threats on personal e-mail.³⁹

Effect of Proposed Changes

HB 479 expands the public records exemption for former and current justices and judges to current and former judicial assistants. Specifically, the following personal identifying information will be exempt under the bill:

- Home addresses, dates of birth, and telephone numbers;
- Names, home addresses, telephone numbers, dates of birth, and places of employment of spouses and children; and
- Names and locations of schools and day care facilities attended by the children.

The bill is subject to the Open Government Sunset Review Act and shall be repealed on October 2, 2024, unless the Legislature chooses to reenact the exemption.

The public necessity statement recognizes that the personal identifying information of judicial assistants can be used to perpetuate fraud, and acquire personal sensitive information that could be used to cause financial harm. Additionally, since judicial assistants assist in the rulings and judgments of justices and judges, this can make them a target of revenge from litigants. This threat continues after their employment with a particular judge has ended. Therefore, the Legislature finds a compelling need to protect the personal identifying information of judicial assistants to protect the safety of judicial assistants and their families.

³² Ch. 91-149, Laws of Fla.

³³ Ch. 2012-149, Laws of Fla.

³⁴ *Id.*

³⁵ Ch. 2017-66, Laws of Fla.

³⁶ *Id.*

³⁷ Florida Courts, Florida State Courts System Class Specification, Class Title: Judicial Assistant – Circuit Court, <https://www.flcourts.org/content/download/217825/1972896/Judicial-Assistant-Circuit-Court-508.pdf> (last visited Nov. 22, 2019).

³⁸ *Id.*

³⁹ See Judicial Assistants Association of Florida, *JA Threats* (2019) (on file with House Civil Justice Subcommittee).

B. SECTION DIRECTORY:

Section 1: Amends s. 119.071, F.S., general exemptions from inspection or copying of public records.

Section 2: Provides a public necessity statement.

Section 3: Provides an effective date of July 1, 2020.

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.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have a minimal negative fiscal impact on agencies holding records that contain personal identifying information of judicial assistants because staff responsible for complying with public record requests may require training related to the expansion of the public record exemption. Additionally, agencies could incur costs associated with redacting the confidential and exempt information prior to releasing records.⁴⁰

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal government.

⁴⁰ At this time, the Florida Court Clerks & Comptrollers have not submitted a bill analysis. However, they did submit a bill analysis for HB 635 in 2019, which is virtually identical to this bill. The analysis indicated they did not anticipate any significant operational, policy, or fiscal impact with the proposed bill. Florida Court Clerks & Comptrollers, Agency Analysis of 2019 House Bill 635, p. 2 (Apr. 9, 2019).

2. Other:

Vote Requirement

Article I, section 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 expands a public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, section 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 expands a public record exemption; thus, it includes a public necessity statement.

Breadth of Exemption

Article 1, section 24(c) of the Florida Constitution requires a newly created or expanded public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill expands the public records exemption for personal identifying information of current or former justices and judges to apply to judicial assistants, which does not appear to be broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES