

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1355 Pub. Rec./County Attorneys and Assistant County Attorneys

SPONSOR(S): Arrington and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 1602

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Property Rights Subcommittee	17 Y, 0 N	Walsh	Jones
2) Government Operations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

County attorneys and assistant county attorneys perform legal work in a variety of practice areas, representing and providing legal advice to various county entities and officials. Personal identifying information of current and former county attorneys and assistant county attorneys is not exempt from Florida’s public record laws.

HB 1355 creates a public records exemption for current and former county attorneys and assistant county attorneys. Specifically, the bill exempts:

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

Per the Open Government Sunset Review Act, this exemption will be automatically repealed on October 2, 2026, unless reenacted by the Legislature. The bill provides a statement of public necessity as required by the Florida Constitution.

The bill may have an insignificant negative fiscal impact on state and local governments.

The bill provides an effective date of July 1, 2021.

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 records or public meeting exemption. The bill creates a new public record exemption for county attorneys and assistant county attorneys and their families; 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-thirds 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 has 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 Whether a document is 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 A custodian of public records must make a good faith effort to produce records and respond to requests.¹⁰ A public officer who violates 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 the Legislature finds that the purpose of the exemption outweighs the interest in open government, the purpose cannot be accomplished without the exemption, and it meets one of the following statutory purposes:¹⁶

- The state or political subdivision would be significantly impaired in its ability to carry out government programs without the exemption;¹⁷

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.

¹⁷ S. 119.15(6)(b)1., F.S.

- The exemption protects personal sensitive information which, if released, could defame the person or jeopardize his or her safety;¹⁸ or
- The exemption protects business or trade secrets.¹⁹

General Public Records Exemptions

There are three general statutory exemptions that apply to all state agency personnel:

- All current and former agency employees are exempt from disclosure of their social security numbers.²⁰
- Medical information that would identify a current or former employee is exempt from disclosure.²¹
- 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.²²

There is a difference between public records that are “exempt” or “confidential and exempt.”²³ Information that is “confidential and exempt” may be released only under the circumstances defined by the Legislature or pursuant to a court order.²⁴ However, information that is exempt may be released at the discretion of the records custodian under certain circumstances.²⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act mandates the renewal and repeal or reenactment of any exemption under constitutional or statutory authority.²⁶ Exemptions are repealed automatically on October 2 of the fifth year unless reenacted by the Legislature.²⁷ An exemption may be maintained only if it serves an identifiable public purpose and is not broader than necessary.²⁸

County Attorneys and Assistant County Attorneys

County attorneys and assistant county attorneys perform legal work in a variety of practice areas, representing and providing legal advice to various county entities and officials.²⁹ The duties of county attorneys and assistant county attorneys vary by county, but generally their duties include:³⁰

- Acting as lead counsel in litigation;
- Preparing resolutions, ordinances, and other proposed legislation;
- Representing departments, officials, boards and commissions;
- Conducting independent investigations of facts, including interviews, based upon alleged or potential legal problems;
- Conducting legal research regarding complex problems and projects;
- Preparing reports, memoranda, and drafting opinions containing proposed or recommended courses of action or solutions; and
- Preparing leases and contracts.

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 S. 119.071(4)(b)1., F.S.

²² S. 119.071(4)(b)2., F.S.

²³ *WFTV, Inc. v. School Bd. of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

²⁴ *Id.*

²⁵ *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).

²⁶ S. 119.15(2), F.S.

²⁷ S. 119.15(3), F.S.

²⁸ S. 119.15(6)(b), F.S.

²⁹ Florida Association of Counties, *Senior Assistant County Attorney/Assistant County Attorney*, <https://www.fl-counties.com/senior-assistant-county-attorneyassistant-county-attorney> (last visited Mar. 26, 2021); Hillsborough County, *Office of the County Attorney*, <https://www.hillsboroughcounty.org/en/government/leadership/county-attorney> (last visited Mar. 26, 2021).

³⁰ *Id.*

The personal identifying information of current and former county attorneys and assistant county attorneys is currently not exempt from Florida's public record laws. Concerns have recently arisen over the safety of county personnel and various incidents of anti-government activity from both individuals and groups, including the stalking of a county attorney.

Effect of Proposed Changes

HB 1355 creates a public records exemption for current and former county attorneys and assistant county attorneys. Specifically, the following personal identifying information will be exempt under the bill:

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

Per the Open Government Sunset Review Act, this exemption will be automatically repealed on October 2, 2026, unless the Legislature reenacts the exemption.

The public necessity statement recognizes that the release of personal identifying information of current or former county attorneys and assistant county attorneys could place county attorneys and assistant county attorneys in danger of being physically and emotionally harmed or stalked. Based on these findings, the statement indicates the Legislature finds that the harm that may result from the release of the personal identification information of current and former county attorneys and assistant county attorneys and their families outweighs any public benefit that may be derived from the release of such information.

B. SECTION DIRECTORY:

Section 1: Amends s. 119.071, F.S., relating to 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, 2021.

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 may have an insignificant negative fiscal impact on agencies holding records that contain personal identifying information of county attorneys and assistant county attorneys, 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. However, these additional costs will likely be absorbed within existing resources.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES