

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 75 Pub. Rec./Judicial Assistants

**SPONSOR(S):** Civil Justice Subcommittee, Smith

**TIED BILLS:**           **IDEN./SIM. BILLS:** SB 50

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	18 Y, 0 N, As CS	Leshko	Jones
2) Ethics, Elections & Open Government Subcommittee			
3) Judiciary Committee			

### SUMMARY ANALYSIS

Judicial assistants provide essential administrative, secretarial, and clerical support functions to justices and judges. As judicial assistants regularly speak and work with attorneys, litigants, self-represented parties, or family members of litigants and defendants, judicial assistants may become the target of acts of retaliation or revenge from disgruntled litigants, defendants, or their associates and family members. Although personally identifying information of current and former justices and judges is exempt from Florida's Public Record laws, personally identifying information of judicial assistants is not exempt.

HB 75 expands the public records exemption pertaining to personally identifying information of justices and judges to also include current judicial assistants. Specifically, the following personally identifying information is exempt under the bill:

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

Per the Open Government Sunset Review Act, this exemption will be automatically repealed on October 2, 2028, unless reenacted by the Legislature.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, 2023.

**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 expands an existing public record exemption to include judicial assistants 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.<sup>1</sup> 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.<sup>2</sup> Authority to grant exemptions from public records is vested solely with the Legislature.<sup>3</sup> 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.<sup>4</sup>

Florida's Public Record laws are codified in ch. 119, F.S. Public records include any physical document or recording, including electronic information.<sup>5</sup> 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."<sup>6</sup> 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.<sup>7</sup>

The Public Record laws allow any person to examine the records.<sup>8</sup> A custodian of public records must make a good faith effort to produce records and respond to requests.<sup>9</sup> A public officer who violates the Public Records laws may be subject to criminal or civil penalties.<sup>10</sup> Chapter 119, F.S., does not apply to legislative<sup>11</sup> or judicial records.<sup>12</sup>

##### *Creation of Exemptions in Florida Statute*

The Legislature has the sole authority to create an exemption to public records requirements.<sup>13</sup> An exemption must be created by general law and must specifically state the public necessity justifying the exemption.<sup>14</sup> 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 public policy interest in open government, and the purpose cannot be accomplished without the exemption:<sup>15</sup>

- The state or political subdivision would be significantly impaired in its ability to carry out a government program without the exemption;<sup>16</sup>

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<sup>1</sup> Art. I, s. 24(a), Fla. Const.

<sup>2</sup> *Id.*

<sup>3</sup> Art. I, s. 24(c), Fla. Const.

<sup>4</sup> *Id.*

<sup>5</sup> S. 119.011, F.S.

<sup>6</sup> *Shevin v. Byron*, 379 So. 2d 633, 640 (Fla. 1980).

<sup>7</sup> *State v. City of Clearwater*, 863 So. 2d 149, 154 (Fla. 2003).

<sup>8</sup> S. 119.01(1), F.S.

<sup>9</sup> S. 119.07(1)(c), F.S.

<sup>10</sup> S. 119.10, F.S.

<sup>11</sup> *Locke v. Hawkes*, 595 So. 2d 32, 37 (Fla. 1992) (holding that Ch. 119.011, F.S. applies to the executive branch and its agencies and entities over which the Legislature has control). 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.

<sup>12</sup> *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.

<sup>13</sup> Art. I, s. 24(c), Fla. Const.

<sup>14</sup> *Id.*

<sup>15</sup> S. 119.15(6)(b), F.S.

<sup>16</sup> S. 119.15(6)(b)1., F.S.

- The exemption protects sensitive, personally identifying information which, if released, could defame the person or jeopardize his or her safety;<sup>17</sup> or
- The exemption protects business or trade secrets.<sup>18</sup>

### *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.<sup>19</sup>
- Medical information that would identify a prospective, current, or former employee is exempt from disclosure.<sup>20</sup>
- Personally identifying information of the dependent children of current or former employees, which children are insured under an agency group insurance plan, is exempt from disclosure.<sup>21</sup>

There is a difference between records the Legislature has determined to be exempt from the Florida Public Records Act and those which the Legislature has determined to be exempt from the Florida Public Records Act and confidential.<sup>22</sup> Information deemed confidential in the statutes is not subject to inspection and may only be released to the persons or organizations designated in the statute.<sup>23</sup> On the other hand, information that is exempt but not confidential may be displayed at the discretion of the records custodian under certain circumstances.<sup>24</sup>

### *Open Government Sunset Review Act*

The Open Government Sunset Review Act (OGSR) mandates the renewal and repeal or reenactment of any exemption under constitutional or statutory authority.<sup>25</sup> Exemptions are repealed automatically on October 2 of the fifth year after enactment unless reenacted by the Legislature.<sup>26</sup> An exemption may be maintained only if it serves an identifiable public purpose and is not broader than necessary.<sup>27</sup> However, the OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System.<sup>28</sup>

### *Exemptions Pertaining to Justices and Judges*

The Florida Legislature has provided a specific exemption for justices and judges.<sup>29</sup> This exemption applies to current and former justices and judges, and their families. Specifically, the exemption covers the following:

- Home addresses, dates of birth, and telephone numbers;
- Names, home addresses, dates of birth, telephone numbers, and places of employment of their spouses and children; and
- Names and locations of schools and day care facilities attended by their children.<sup>30</sup>

The exemption for justices and judges was first enacted in 1991 and exempted home addresses and telephone numbers for justices and judges; home addresses, telephone numbers, and places of

<sup>17</sup> S. 119.15(6)(b)2., F.S.

<sup>18</sup> S. 119.15(6)(b)3., F.S.

<sup>19</sup> S. 119.071(4)(a), F.S.

<sup>20</sup> S. 119.071(4)(b)1., F.S.

<sup>21</sup> S. 119.071(4)(b)2., F.S.

<sup>22</sup> *WFTV, Inc. v. School Bd. of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

<sup>23</sup> *Id.*

<sup>24</sup> *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).

<sup>25</sup> S. 119.15(2), F.S.

<sup>26</sup> S. 119.15(3), F.S.

<sup>27</sup> S. 119.15(6)(b), F.S.

<sup>28</sup> S. 119.15(2), F.S.

<sup>29</sup> S. 119.071(4)(d)2.e., F.S.

<sup>30</sup> *Id.*

employment of spouses and children; and the names and locations of schools and day care facilities attended by their children.<sup>31</sup> In 2012, the Legislature expanded the exemption to include dates of birth of justices and judges and their spouses and children and to include former justices and judges in the exemption.<sup>32</sup> The Legislature found that dates of birth could be used to perpetuate fraud and acquire sensitive personal information, the release of which could cause great financial harm to an individual. The Legislature further found that the risk to the safety of justices and judges and their families continues after the justices and judges complete their public service.<sup>33</sup> Most recently, in 2017, the Legislature further expanded the exemption to include the names of children and spouses of current and former justices and judges.<sup>34</sup> In the public necessity statement, the Legislature found that allowing public access to the names of children and spouses would make them easy to find and expose them to threats or acts of revenge, and this possibility could compromise a justice's or judge's ability to carry out his or her duties without fear of retaliation against his or her family.<sup>35</sup>

### *Judicial Assistants*

Judicial assistants provide essential administrative, secretarial, and clerical support functions to justices and judges.<sup>36</sup> Specifically, their responsibilities may include:

- Preparing and maintaining justices' or judges' calendars;
- Maintaining trial dockets;
- Screening phone calls and visitors to a justice's or judge's chambers;
- Preparing correspondence and orders; and
- Interacting with attorneys and litigants and their family members to resolve problems such as scheduling conflicts or other case-related issues.<sup>37</sup>

Because of their interactions with various parties, judicial assistants may be exposed to ill will or acts of revenge by disgruntled litigants, defendants, or their associates and family members. Numerous judicial assistants have reported such incidents. These threats include appearing at the judicial assistant's home, making threatening phone calls or sending text messages on personal devices, and making threats via personal e-mail.<sup>38</sup>

### **Effect of Proposed Changes**

HB 75 expands the public records exemption for former and current justices and judges to include current judicial assistants. Specifically, the following personally identifying information will be exempt under the bill:

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

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<sup>31</sup> Ch. 91-149, Laws of Fla.

<sup>32</sup> Ch. 2012-149, Laws of Fla.

<sup>33</sup> *Id.*

<sup>34</sup> Ch. 2017-66, Laws of Fla.

<sup>35</sup> *Id.*

<sup>36</sup> Florida Courts, *Florida State Courts System Classification Specification, Classification Title: Judicial Assistant – County Court*, <https://www.flcourts.gov/content/download/751310/file/Judicial-Assisant-County-Court.pdf> (last visited Jan. 20, 2023); Florida Courts, *Florida State Courts System Classification Specification, Classification Title: Judicial Assistant – Circuit Court*, <https://www.flcourts.gov/content/download/751317/file/Judicial-Assistant-Circuit-Court.pdf> (last visited Jan. 19, 2023); Florida Courts, *Florida State Courts System Classification Specification, Classification Title: Appellate Judicial Assistant – District Court*, <https://www.flcourts.gov/content/download/751180/file/appellate-judicial-assistant-district-court.pdf> (last visited Jan. 20, 2023); Florida Courts, *Florida State Courts System Classification Specification, Classification Title: Appellate Judicial Assistant – Supreme Court*, <https://www.flcourts.gov/content/download/751181/file/appellate-judicial-assistant-supreme-court.pdf> (last visited Jan. 20, 2023).

<sup>37</sup> *Id.*

<sup>38</sup> See Judicial Assistants Association of Florida, *JA Threats* (2023) (on file with House Civil Justice Subcommittee).

Per the Open Government Sunset Review Act, this exemption will be automatically repealed on October 2, 2028, unless reenacted by the Legislature.

The public necessity statement recognizes that the personally identifying information and location information of judicial assistants can be used to perpetuate fraud or to acquire sensitive personal information that could be used to cause financial harm. It also states that since judicial assistants assist in such tasks as assisting in reviewing cases, maintaining the court docket, screening phone calls and visitors to a justice's or judge's chambers, preparing orders, and coordinating and problem solving with attorneys and litigants, they may incur the ill will of litigants, the accused, the convicted, and their associates and families and thus become a target of revenge. The statement indicates that if such personally identifying information is released, it may put judicial assistants' and their families' safety in great risk. The bill states that based on these findings, the Legislature finds a compelling need to protect the personally identifying information of judicial assistants and their families.

The bill provides an effective date of July 1, 2023.

**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, 2023.

**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 an insignificant negative fiscal impact on entities 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. However, any additional costs will likely be absorbed within existing resources.<sup>39</sup>

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<sup>39</sup> See Justice Administrative Commission, *Bill Analysis Response for Senate Bill 0050* (Dec. 14, 2022), available through the Legislature's Agency Bill Analysis Request System (last visited Jan. 23, 2023); Office of the State Courts Administrator, *Senate Bill 50 2023 Judicial Impact Statement* (Jan. 9, 2023), <http://abar.laspbs.state.fl.us/ABAR/Attachment.aspx?ID=33831> (last visited Jan. 23, 2023).

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

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

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

##### 2. Other:

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 expands an existing public record exemption to include judicial assistants and their families; thus, it requires a two-thirds vote for final passage.

#### B. RULE-MAKING AUTHORITY:

The bill neither provides authority for nor requires rulemaking by executive branch agencies.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 26, 2023, the Civil Justice Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment provided a definition for “judicial assistant,” removed former judicial assistants from the exemption, provided an Open Government Sunset Review date for the exemption, and amended language in the statement of public necessity.

This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.