

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

SPONSOR(S): Civil Justice Subcommittee; Smith; and others

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	18 Y, 0 N	Shapiro	Toliver
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 personal identifying information of current and former justices and judges is exempt from public record requirements, personal identifying information of judicial assistants is not exempt.

HB 75 expands the public records exemption pertaining to personal identifying information of justices and judges to also include current judicial assistants. Specifically, the following personal 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.

Pursuant to the Open Government Sunset Review Act, this exemption will be automatically repealed on October 2, 2028, unless reenacted by the Legislature.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. See Fiscal Comments.

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 current 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

Article I, section 24(a) of the Florida Constitution sets forth the state's government records access policy, guaranteeing every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. However, the Legislature may provide a public records exemption by general law if the exemption passes by a 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.¹

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 Act² 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."³ An identifiable public purpose is served if the exemption meets 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.⁴

Pursuant to s. 119.15(3), F.S., a new public records exemption or substantial amendment of an existing public records exemption is repealed on October 2 of the fifth year following enactment, unless the Legislature reenacts the exemption.

Exemptions Pertaining to Justices and Judges

The Florida Legislature has provided a specific exemption for justices and judges.⁵ 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.⁶

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 employment of spouses and children; and the names and locations of schools and day care facilities attended by their children.⁷ In 2012, the Legislature expanded the exemption to include dates of birth of

¹ Art. I, s. 24(c), Fla. Const.

² Section 119.15, F.S.

³ Section 119.15(6)(b), F.S.

⁴ *Id.*

⁵ S. 119.071(4)(d)2.e., F.S.

⁶ *Id.*

⁷ Ch. 91-149, Laws of Fla.

justices and judges and their spouses and children and to include former justices and judges in the exemption.⁸ 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.⁹ 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.¹⁰ 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.¹¹

Judicial Assistants

Judicial assistants provide essential administrative, secretarial, and clerical support functions to justices and judges.¹² 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.¹³

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.¹⁴

Effect of Proposed Changes

HB 75 expands the public records exemption for current and former justices and judges to include *current* judicial assistants.¹⁵ Specifically, the following personal identifying information will be exempt¹⁶ from public record requirements 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

⁸ Ch. 2012-149, Laws of Fla.

⁹ *Id.*

¹⁰ Ch. 2017-66, Laws of Fla.

¹¹ *Id.*

¹² Florida Courts, *Florida State Courts System Classification Specification, Classification Title: Judicial Assistant – County Court*, <https://www.flcourts.gov/content/download/751310/file/Judicial-Assisnant-County-Court.pdf> (last visited Feb. 02, 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 Feb. 02, 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 Feb. 02, 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 Feb. 02, 2023).

¹³ *Id.*

¹⁴ See Judicial Assistants Association of Florida, *JA Threats* (2023) (on file with House Civil Justice Subcommittee).

¹⁵ The bill defines "Judicial assistant" to mean a court employee assigned to a specific justice's or judge's office and responsible for providing administrative, secretarial, and clerical support to the assigned justice or judge.

¹⁶ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems 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, 53 (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 1994); *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, such record may not be

- Names and locations of schools and day care facilities attended by the children of judicial assistants.

The bill includes the constitutionally required public necessity statement.¹⁷ Pursuant to the Open Government Sunset Review Act, this exemption will be automatically repealed on October 2, 2028, unless reenacted by the Legislature.

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.¹⁸

released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See Attorney General Opinion 85-62 (August 1, 1985).

¹⁷ Art. I, s. 24(c), Fla. Const., requires each public record exemption to “state with specificity the public necessity justifying the exemption.”

¹⁸ See Justice Administrative Commission, *Bill Analysis Response for Senate Bill 0050* (Dec. 14, 2022), on file with the House Civil Justice Subcommittee; Office of the State Courts Administrator, *Senate Bill 50 2023 Judicial Impact Statement* (Jan. 9, 2023), on file with the House Civil Justice Subcommittee; Florida Court Clerks and Comptrollers, *Senate Bill 50 Bill Analysis* (Jan. 11, 2023), on file with the House Civil Justice Subcommittee.

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:

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 creates a public record exemption; thus, it includes a public necessity statement. The public necessity statement provides, in part, that the Legislature finds that the personal 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.

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 a public record exemption for specified information concerning current and former justices and judges to include *current* judicial assistants, which does not appear to be broader than necessary to accomplish its purpose.

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.