

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 103 Pub. Rec./County and City Attorneys

SPONSOR(S): Civil Justice Subcommittee, Arrington and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 712

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	14 Y, 0 N	Skinner	Toliver
3) Judiciary Committee	21 Y, 0 N	Leshko	Kramer

SUMMARY ANALYSIS

County and city attorneys provide legal counsel and representation to their respective elected and appointed officials, departments, authorities, boards, and committees. Both county and city attorneys handle sensitive matters such as eminent domain, land use and zoning, and labor and employment, and have reported receiving violent threats, including death threats, via phone calls and emails, based on the nature of their work. Currently, neither the personal identifying nor location information of current county attorneys, assistant county attorneys, deputy county attorneys, city attorneys, assistant city attorneys, or deputy city attorneys or such information of their spouses and children are exempt from Florida's public record requirements.

CS/HB 103 creates a public record exemption for current county attorneys, assistant county attorneys, deputy county attorneys, city attorneys, assistant city attorneys, and deputy city attorneys and the spouses and children of such attorneys. The following personal identifying and location information is exempt from public record requirements under the bill:

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

However, the exemption does not apply to a county attorney, assistant county attorney, deputy county attorney, city attorney, assistant city attorney, or deputy city attorney who qualifies as a candidate for election to public office. Additionally, pursuant to the Open Government Sunset Review Act, this exemption will be automatically repealed on October 2, 2029, unless reenacted by the Legislature. The bill also includes the constitutionally required public necessity statement.

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

The bill provides an effective date of July 1, 2024.

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 exemption. The bill creates a public record exemption for current county attorneys, assistant county attorneys, deputy county attorneys, city attorneys, assistant city attorneys, and deputy city 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

Article I, section 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records, guaranteeing 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 an exemption¹ from public record requirements provided that the exemption passes by a two-thirds vote of each chamber, states with specificity the public necessity justifying the exemption, and is no broader than necessary to meet its public purpose.²

Section 119.01, F.S., also addresses the public policy regarding access to government records, guaranteeing 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 (OGSR) Act³ provides that a public record exemption may be created, revised, 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."⁴ An identifiable public purpose is served if the exemption meets one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects 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
- Protects trade or business secrets.⁵

Pursuant to the OGSR Act, a new public record exemption, or the substantial amendment of an existing public record exemption, is repealed on October 2nd of the fifth year following enactment, unless the Legislature reenacts the exemption.⁶

Furthermore, there is a difference between records the Legislature designates *exempt* from public record requirements and those the Legislature designates *confidential and exempt*. A record classified as exempt from public disclosure may be disclosed under certain circumstances. If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute.⁷

County Attorneys

¹ A "public record exemption" means a provision of general law which provides that a specified record, or portion thereof, is not subject to the access requirements of s. 119.07(1), F.S., or s. 24, Art. I of the Florida Constitution. See s. 119.011(8), F.S.

² Art. I, s. 24(c), FLA. CONST.

³ S. 119.15, F.S.

⁴ S. 119.15(6)(b), F.S.

⁵ *Id.*

⁶ S. 119.15(3), F.S.

⁷ See *WFTV, Inc. v. Sch. Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So.2d 1015 (Fla. 2004); *State v. Wooten*, 260 So. 3d 1060, 1070 (Fla. 4th DCA 2018); *City of Rivera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991); See Op. Att'y Gen. Fla. 04- 09 (2004).

County attorneys provide representation and legal counsel to the county's constitutionally-elected officers, the Board of County Commissioners, and various other county departments, agencies, officers, boards, and committees.⁸ County attorneys practice in a vast range of topic areas, including, but not limited to, real estate and commercial transactions, commercial and construction litigation, land use and zoning law, eminent domain, economic development, and employment and labor law.⁹ The duties of county attorneys vary by county, but generally their duties include:

- Litigating on behalf of various county entities and officials;
- Preparing and negotiating the terms and conditions of contracts;
- Preparing resolutions, ordinances, and proposed legislation;
- Explaining and interpreting ordinances;
- Reviewing various matters for compliance with applicable laws and ordinances;
- Investigating and negotiating on behalf of the county to resolve legal matters; and
- Conducting legal research and drafting legal opinions.

City Attorneys

City attorneys provide representation and legal counsel to the city's elected and appointed public officials and various city departments, authorities, boards, and committees.¹⁰ City attorneys provide legal counsel on many topics, including, but not limited to, civil rights, government contracting and procurement, land use, rezoning, easements, eminent domain, and labor and employment.¹¹ The duties of city attorneys vary by city, but generally their duties include:

- Contract drafting and negotiations;
- Drafting and reviewing development agreements, restrictive covenants, easements, and planning and zoning applications;
- Drafting ordinances and resolutions;
- Advising city staff and city council on all legal issues, including the city code; and
- Providing legal representation for all city departments, boards, and agencies.^{12,13}

Both county and city attorneys have reported receiving violent threats, including death threats, via phone calls and emails, relating to their handling of code enforcement matters and other litigation.¹⁴

Currently, neither the personal identifying nor location information of current county attorneys, assistant county attorneys, deputy county attorneys, city attorneys, assistant city attorneys, or deputy city attorneys or such information of their spouses or children are exempt from Florida's public record requirements.

Effect of the Bill

CS/HB 103 creates a public record exemption for current county attorneys, assistant county attorneys, deputy county attorneys, city attorneys, assistant city attorneys, and deputy city attorneys and the spouses and children of such attorneys. The following personal identifying and location information is exempt from public record requirements under the bill:

⁸ Pinellas County, *County Attorney Quick Facts*, <https://pinellas.gov/department/county-attorney/> (last visited Jan. 25, 2024).

⁹ Miami-Dade County, *County Attorney's Office*, <https://www.miamidade.gov/attorney/> (last visited Jan. 25, 2024).

¹⁰ Miami, *Office of the City Attorney*, <https://www.miami.gov/My-Government/Departments/Office-of-the-City-Attorney> (last visited Jan. 25, 2024).

¹¹ *Id.*

¹² *Id.*

¹³ Clearwater, *City Attorney*, <https://www.myclearwater.com/My-Government/City-Departments/City-Attorney> (last visited Jan. 25, 2023).

¹⁴ See Email from Zoe Karabenick, Legislative Aide to Representative Arrington, RE: Resources Regarding HB 103 (Nov. 1, 2023) (on file with the House Civil Justice Subcommittee).

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

However, the exemption does not apply to a county attorney, assistant county attorney, deputy county attorney, city attorney, assistant city attorney, or deputy city attorney who qualifies as a candidate for election to public office.

Pursuant to the OGSR Act, this exemption will be automatically repealed on October 2, 2029, unless reenacted by the Legislature. The bill includes the constitutionally required public necessity statement.

The bill provides an effective date of July 1, 2024.

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, 2024.

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 agencies holding records that contain personal identifying and location information of current county attorneys, assistant county attorneys, deputy county attorneys, city attorneys, assistant city attorneys, and deputy city attorneys and their spouses and children, because staff responsible for complying with public record requests may require training related to the public record exemption. Additionally, agencies could incur costs associated with

redacting the 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:

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 creates 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 responsibilities of county and city attorneys regularly involve legal enforcement proceedings related to violations of codes and ordinances, which have resulted in threats, including death threats, from defendants and other associated parties. Additionally, it states that there have also been reported incidents of stalking of such attorneys and their spouses and children. Within the public necessity statement, the Legislature finds that release of such personal identifying and location information may increase the danger of such attorneys and their spouses and children being stalked or otherwise physically and emotionally harmed by a defendant or associated party; and that the harm that may result from release of such information outweighs any public benefit that may be derived from the disclosure of such information.

Breadth of Exemption

Article I, 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 creates a public record exemption for specified information concerning current county attorneys, assistant county attorneys, deputy county attorneys, city attorneys, assistant city attorneys, and deputy city attorneys and their spouses and children, 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 December 6, 2023, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment revised language in the public necessity statement and made a technical change.

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