

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: CS/SB 1176

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Yarborough

SUBJECT: Public Records/Clerks of the Circuit Court, Deputy Clerks, and Clerk Personnel

DATE: February 7, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Collazo</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u>Limonos-Borja</u>	<u>McVaney</u>	<u>GO</u>	Fav/CS
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1176 exempts from public records copying and inspection requirements certain identifying information of current clerks of the circuit court and deputy clerks of the circuit court. The exemption restricts access to information in public records which may identify or locate current clerks of the circuit court, deputy clerks of the circuit court clerk, and their spouses and children.

The bill exempts from public disclosure the following information relating to current clerks of the circuit court and deputy clerks of the circuit court:

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

This exemption applies to information held by an agency before, on, or after July 1, 2024.

The bill provides a statement of public necessity as required by the State Constitution.

Because the bill creates a new public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

The bill is not expected to impact state or local government revenues and expenditures.

The bill takes effect on July 1, 2024.

II. Present Situation:

Access to Public Records - Generally

The State Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the Legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, ch. 119, F.S., known as the Public Records Act, provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

The Public Records Act provides that all state, county, and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

Section 119.011(12), F.S., defines “public records” to include:

[a]ll documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

¹ FLA. CONST. art. I, s. 24(a).

² *Id.* See also, *Sarasota Citizens for Responsible Gov't v. City of Sarasota*, 48 So. 3d 755, 762-763 (Fla. 2010).

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2022-2024) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2022-2024).

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business that are used to “perpetuate, communicate, or formalize knowledge of some type.”⁶

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.⁹ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹⁰

General exemptions from the public records requirements are contained in the Public Records Act.¹¹ Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹²

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Public Records Act *and confidential*.¹³ Records designated as “confidential and exempt” are not subject to inspection by the public and may only be released under the circumstances defined by statute.¹⁴ Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.¹⁵

⁶ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁷ Section 119.07(1)(a), F.S.

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST. art. I, s. 24(c).

¹⁰ *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹¹ *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹² *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹³ *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

¹⁴ *Id.*

¹⁵ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act¹⁶ (the Act), prescribe a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ The Act requires the repeal of such exemption on October 2 of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁹

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.²⁰ An exemption serves an identifiable purpose if the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption and it meets one of the following purposes:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;²¹
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²² or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.²³

The Act also requires specified questions to be considered during the review process.²⁴ In examining an exemption, the Act directs the Legislature to question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are again required.²⁵ If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds

¹⁶ Section 119.15, F.S.

¹⁷ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

¹⁸ Section 119.15(2)(a) and (b), F.S., provides that exemptions required by federal law or applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁹ Section 119.15(3), F.S.

²⁰ Section 119.15(6)(b), F.S.

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

²³ Section 119.15(6)(b)3., F.S.

²⁴ Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

²⁵ See generally s. 119.15, F.S.

vote for passage are *not* required. If the Legislature allows an exemption to expire, the previously exempt records will remain exempt unless otherwise provided by law.²⁶

Public Records Exemptions for Enumerated Personnel

Provisions in s. 119.071(4)(d), F.S., exempt from public disclosure the personal identification and location information of enumerated agency personnel, their spouses, and their children. The employing agency as well as the employee may assert the right to the exemption by submitting a written request to each agency which holds the employee's information.²⁷ Additionally, all of these exemptions have retroactive application.²⁸ In order to have the exemption applied to a court record or an official record held by a clerk of court, the party must make a request specifying the document name, type, identification number, and page number.²⁹ Any enumerated personnel who has his or her public records held exempt may file a written and notarized request to any record custodian to have the records released to an identified party.³⁰

Clerks of the Circuit Court

Each county in Florida has a clerk of the circuit court, a quasi-judicial officer³¹ selected pursuant to the constitutional provision concerning the election of county officers.³² The office of the clerk of the circuit court derives its powers and authority from the State Constitution.³³ The clerk, when acting under the authority of his or her constitutionally granted powers concerning judicial records and other matters related to the administrative operation of the courts, is an arm of the judicial branch and is subject to the oversight and control of the Florida Supreme Court.³⁴

Clerks of the circuit court play a vital role in the state's judicial system. They perform at least 14 key functions:³⁵

- Attend court hearings and trials.
- File indictments, information, and verdicts.
- Process all civil and criminal cases.
- Prepare appellate records.
- Manage juries.
- Collect and disburse fines, court costs, forfeitures, fees, and service charges.
- Conduct mortgage foreclosure sales.
- Maintain custody of all evidence and exhibits entered by the court.
- Assist in completing paperwork required to file a Small Claims action.

²⁶ Section 119.15(7), F.S.

²⁷ Section 119.071(4)(d)3., F.S.

²⁸ Section 119.071(4)(d)6., F.S.

²⁹ Section 119.0714(2)(f) and (3)(f), F.S.

³⁰ Section 119.071(4)(d)5., F.S.

³¹ *Givens v. Holmes*, 241 So. 3d 232, 236 (Fla. 2d DCA 2018).

³² FLA. CONST. art. V, s. 16.

³³ *Givens*, 241 So. 3d at 236.

³⁴ *Times Pub. Co. v. Ake*, 660 So. 2d 255, 255 (Fla. 1995).

³⁵ MGT Consulting Group, *Florida Clerks of Court Study* (Nov. 15, 2019), available at <https://oppaga.fl.gov/Documents/Reports/19-CLERKS.pdf>; see also Florida Court Clerks & Comptrollers, *Role of the Clerk and Comptroller*, <https://www.flclerks.com/page/RoleoftheClerk> (last visited Feb. 6, 2024).

- Assist in completing paperwork required to file petitions for protective injunctions (domestic, repeat, sexual, and dating violence).
- Issue process service documents.
- Maintain the court registry.
- Audit guardianship reports.
- Audit child support payments.

Deputy Clerks of the Circuit Court

The clerk of the circuit court may appoint a deputy or deputies, for whose acts the clerk shall be liable. The deputies shall have and exercise each and every power of whatsoever nature and kind as the clerk may exercise, except for the power to appoint a deputy or deputies.³⁶

III. Effect of Proposed Changes:

Section 1 amends s. 119.071(4)(d)2., F.S., to exempt certain information relating to current clerks of the circuit court and deputy clerks of the circuit court from public records disclosure requirements.³⁷ The following information will be exempt:

- The home addresses, telephone numbers, dates of birth, and photographs.
- The names, home addresses, telephone numbers, dates of birth, and places of employment of their spouses and children.
- The names and locations of schools and day care facilities attended by their children.

The exemption applies to information held by an agency before, on, or after July 1, 2024.

The bill provides that this exemption is subject to the Open Government Sunset Review Act³⁸ and will be repealed on October 2, 2029, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2 provides the public necessity statement, as required by the State Constitution. The public necessity statement provides that the responsibilities of clerks of the circuit court and deputy clerks of the circuit court regularly include involvement in legal enforcement, divorce, and child support proceedings. As a result, they have received death threats, harassing telephone calls and e-mails, and threats of physical violence from disgruntled individuals. For these reasons, the release of personal identifying and location information may place clerks of the circuit court and deputy clerks of the circuit court in danger of being physically or emotionally harmed or stalked. The harm that may result from the release of such personal identifying and location information outweighs any public benefit that may be derived from the disclosure of the information.

Section 3 provides that the bill takes effect July 1, 2024.

³⁶ Section 28.06, F.S.

³⁷ Section 119.07(1), F.S.; FLA. CONST. art I, s. 24(a).

³⁸ See s. 119.15, F.S.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

Not applicable. The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:**Vote Requirement**

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill enacts a new exemption for clerks of the circuit court and deputy clerks of the circuit court; thus, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. Section 2 of the bill contains a statement of public necessity for the exemption.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect clerks of the circuit court and deputy clerks of the circuit court. This bill exempts only records pertaining to clerks of the circuit court and deputy clerks of the circuit court from the public records requirements. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The private sector will be subject to the cost associated with an agency's review and redactions of exempt records in response to a public records request.

C. Government Sector Impact:

This bill may have a minimal negative fiscal impact on agencies holding records that contain personal identifying information of clerks of the circuit court and deputy clerks of the circuit court, because staff responsible for complying with public record requests may require training related to the new public record exemption. Additionally, agencies may incur costs associated with redacting the exempt information prior to releasing a record. However, the costs should be absorbed as part of the day-to-day responsibilities.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 119.071 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Governmental Oversight and Accountability on February 6, 2024:

This committee substitute removes references to former clerks of the circuit court and all other court personnel, thereby limiting the public record exemption to only current clerks of court and deputy clerks of court, and their families.

B. Amendments:

None.