

**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.)

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: SB 906

INTRODUCER: Senator Rouson

SUBJECT: Public Records/Appellate Court Clerks

DATE: January 12, 2024

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	<b>Pre-meeting</b>
2.			GO	
3.			RC	

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**I. Summary:**

SB 906 creates a public records exemption for the personal identification and location information of current appellate court clerks, their spouses, and their children. The exemption takes effect July 1, 2024, and will be automatically repealed on October 2, 2029, unless reviewed and saved from repeal by reenactment of the Legislature.

The bill defines “appellate court clerk” as a person who is appointed as a clerk of the Florida Supreme Court, a person appointed as a clerk of a district court of appeal, or a court employee assigned as a chief deputy clerk.

The bill exempts from public disclosure the following information that relates to current appellate court clerks:

- A clerk’s home address, date of birth, and telephone number.
- The names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of a current appellate court clerk.
- The names and locations of schools and day care facilities attended by the children of current appellate court clerks.

The bill contains the statement of public necessity as required by statute.

The bill takes effect July 1, 2024.

## II. Present Situation:

### Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup> Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.<sup>4</sup> Lastly, ch. 119, F.S., known as the Public Records Act, provides requirements for public records held by executive branch and local government 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.<sup>5</sup>

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.

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.”<sup>6</sup>

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<sup>1</sup> FLA. CONST. art. I, s. 24(a).

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

<sup>3</sup> 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 1, (2022-2024).

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

<sup>5</sup> 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.”

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

The Florida Statutes specify conditions under which public access to governmental 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.<sup>7</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>8</sup>

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.<sup>9</sup> 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.<sup>10</sup>

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

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*.<sup>13</sup> 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.<sup>14</sup> Records designated as "exempt" may be released at the discretion of the records custodian under certain circumstances.<sup>15</sup>

### **Open Government Sunset Review Act**

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act<sup>16</sup> (the Act), prescribe a legislative review process for newly created or substantially amended<sup>17</sup> public records or open meetings exemptions, with specified exceptions.<sup>18</sup> The Act requires the repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment; in

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<sup>7</sup> Section 119.07(1)(a), F.S.

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

<sup>9</sup> FLA. CONST. art. I, s. 24(c).

<sup>10</sup> *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).

<sup>11</sup> *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).

<sup>12</sup> *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).

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

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

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

<sup>16</sup> Section 119.15, F.S.

<sup>17</sup> 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.

<sup>18</sup> Section 119.15(2)(a) and (b), F.S., provide 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.

order to save an exemption from repeal, the Legislature must reenact the exemption or repeal the sunset date.<sup>19</sup> In practice, many exemptions are continued by repealing the sunset date, rather than reenacting the exemption.

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.<sup>20</sup> 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 program, and administration would be significantly impaired without the exemption;<sup>21</sup>
- 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;<sup>22</sup> or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.<sup>23</sup>

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

If, in reenacting an exemption or repealing the sunset date, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.<sup>25</sup> 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 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.<sup>26</sup>

### **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

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<sup>19</sup> Section 119.15(3), F.S.

<sup>20</sup> Section 119.15(6)(b), F.S.

<sup>21</sup> Section 119.15(6)(b)1., F.S.

<sup>22</sup> Section 119.15(6)(b)2., F.S.

<sup>23</sup> Section 119.15(6)(b)3., F.S.

<sup>24</sup> 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?

<sup>25</sup> See *generally* s. 119.15, F.S.

<sup>26</sup> Section 119.15(7), F.S.

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.<sup>27</sup> Additionally, all of these exemptions have retroactive application.<sup>28</sup> 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.<sup>29</sup> 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.<sup>30</sup>

### **Appellate Court Clerk Employees**

The State Constitution requires the Supreme Court to appoint a clerk who holds office at the pleasure of the court and performs the duties that the court directs.<sup>31</sup> Similarly, the State Constitution requires that each of the six district courts of appeal appoint a clerk who holds office at the pleasure of the court and perform the duties that the court directs.<sup>32</sup>

In addition to these positions, one person is employed in the court system as the chief deputy clerk of the Supreme Court. This position is assigned to the 2620 class code in the Florida State Court System. The primary function of that position "is to provide support in the planning, organizing, coordinating, and directing of operations of the Office of the Clerk of the Supreme Court." The position is also responsible for additional tasks including supervising staff, developing policies and procedures pertaining to court activities, performing administrative functions, and performing the duties of the Clerk of Court in his or her absence.<sup>33</sup>

Similarly, each of the six district courts of appeal has a chief deputy clerk. This position is assigned to the 2610 class code in the Florida State Courts System. The main function of the position is to manage the operations of the Clerk of the District Court of Appeal under the direction of the Clerk of Court.<sup>34</sup>

### **Difficult Situations Encountered by Appellate Court Clerks**

According to the Office of the State Courts Administrator (OSCA), appellate court clerks have experienced abusive and inappropriate conduct from litigants and members of the public while working in their official capacities. Some of the incidents reported include:

- Phone calls that threaten death and physical violence and accuse the clerks of misconduct.
- Litigants who research personal information about the clerks online and later visit the clerks' offices and question the clerks with regard to personal information that has been found online.
- Litigants who mail documents to the residential address of the clerk.

<sup>27</sup> Section 119.071(4)(d)3., F.S.

<sup>28</sup> Section 119.071(4)(d)6., F.S.

<sup>29</sup> Section 119.0714(2)(f) and (3)(f), F.S.

<sup>30</sup> Section 119.071(4)(d)5., F.S.

<sup>31</sup> FLA. CONST. art. V, s. 3(c).

<sup>32</sup> FLA. CONST. art. V, s. 4(c).

<sup>33</sup> Florida State Courts System Classification Specification, Classification Title: Chief Deputy Clerk – Supreme Court [Microsoft Word - Chief Deputy Clerk - Supreme Court \(eff. 6.21.21\) \(flcourts.gov\)](#).

<sup>34</sup> Florida State Courts System Classification Specification, Classification Title: Chief Deputy Clerk – Supreme Court [Microsoft Word - Chief Deputy Clerk - District Court \(eff. 6.21.21\) \(flcourts.gov\)](#).

- An imprisoned litigant who sent sexually explicit correspondence to a clerk which contained what was believed to be bodily fluids.<sup>35</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 119.071(4)(d)2.e., F.S., to exempt certain personal information of appellate court clerks from public disclosure requirements. The bill creates a public records exemption for the personal identification and location information of current appellate court clerks, their spouses, and their children. The exemption takes effect July 1, 2024, and will be automatically repealed on October 2, 2029, unless reviewed and saved from repeal by reenactment of the Legislature.

The bill defines an “appellate court clerk” as a person who is appointed as a clerk of the Florida Supreme Court, a person appointed as a clerk of a district court of appeal, or a court employee assigned as a chief deputy clerk in the 2610 or 2620 class code.

The bill exempts from public disclosure the following information that relates to current appellate court clerks:

- A clerk’s home address, date of birth, and telephone number.
- The names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of a current appellate court clerk.
- The names and locations of schools and day care facilities attended by the children of current appellate court clerks.

**Section 2** amends a cross reference for the definition of “telephone numbers.”

**Section 3** provides the public necessity statement, as required by the State Constitution. The public necessity statement provides that appellate court clerks may incur the ill will of litigants and their associates and families while performing their duties. As a result of this, current appellate court clerks and their spouses and children may be targets for acts of revenge. If their identifying and location information is released publicly, their safety and that of their spouses and children could be seriously jeopardized. Because of this, the Legislature finds that it is public necessity that such information be made exempt from public records requirements.

The bill takes effect July 1, 2024.

### 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.

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<sup>35</sup> Office of the State Courts Administrator, *2024 Judicial Impact Statement for SB 906*, (on file with the Senate Committee on Judiciary).

**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 records pertaining to court clerks; therefore, the bill requires a two-thirds vote of each chamber for enactment.

**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 3 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 appellate clerks. This bill exempts only records pertaining to current appellate clerks and their families 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:**

None.

**C. Government Sector Impact:**

This bill may have a minimal negative fiscal impact on agencies holding records that contain personal identifying information of appellate clerks 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 agency responsibilities.

The Office of the State Courts Administrator (OSCA) submitted a 2024 Judicial Impact Statement for this bill. The office noted that this newly created public records exemption would apply to approximately 14 FTE in the State Courts System and an undetermined number of people who would be characterized as the spouse or child of the court personnel. The positions are:

- 1 Clerk of the Florida Supreme Court.
- 6 Clerks of the district courts of appeal.
- 6 Court employees assigned to the 2610 class code (Chief Deputy Clerk - DCAs).
- 1 Court employee assigned to the 2620 class code (Chief Deputy Clerk – Supreme Court).<sup>36</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 119.071 and 744.21031.

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

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

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>36</sup> *Id.*