

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 Judiciary

BILL: SB 300

INTRODUCER: Senator Rouson

SUBJECT: Public Records/Appellate Court Clerks and their Spouses and Children

DATE: February 17, 2025

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Collazo	Cibula	JU	Pre-meeting
2.			GO	
3.			RC	

I. Summary:

SB 300 exempts, from public records copying and inspection requirements, certain identifying information of current clerks of the appellate court, deputy clerks of the appellate court, and clerk of the appellate court personnel, and their spouses and children. The exemption restricts access to their information in the public records which may identify or locate them. Specifically, the bill exempts from public disclosure the following information:

- The home addresses, telephone numbers, dates of birth, and photographs of current clerks of the appellate court, deputy clerks of the appellate court, and clerk of the appellate court personnel.
- Names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of current clerks of the appellate court, deputy clerks of the appellate court, and clerk of the appellate court personnel.
- The names and locations of schools and day care facilities attended by the children of current clerks of the appellate court, deputy clerks of the appellate court, and clerk of the appellate court personnel.

This exemption applies to information held by an agency before, on, or after July 1, 2025. It is subject to the Open Government Sunset Review Act and will be repealed on October 2, 2030, unless reviewed and saved from repeal through reenactment by the Legislature. The bill also extends, by one year, the repeal date for the existing exemption in s. 119.071(4)(d)2., F.S., applicable to current clerks of the circuit court, deputy clerks of the circuit court, and clerk of the circuit court personnel, and their spouses and children, from October 2, 2029, to October 2, 2030. 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 July 1, 2025.

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 connections 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.”⁶

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.”

⁶ *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 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

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

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).

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.

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 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

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.

²⁶ Section 119.15(7), F.S.

Clerks of the Appellate Court

The Florida Supreme Court²⁷ and each district court of appeal²⁸ are required to appoint a clerk who holds office at the pleasure of the respective courts. The office of the clerk of the Supreme Court is located in the Supreme Court Building.²⁹ The office of the clerk of the district court of appeal is in the headquarters of each district court.³⁰

The clerk of the Supreme Court³¹ and the clerks of the district courts of appeal³² are required to perform such duties as the courts direct. All books, papers, records, files, and seals must be kept in the clerks' offices and in their custody.³³

Additionally, the clerk of each court is required to:

- Keep a docket or equivalent electronic record of all cases that are brought for review to or that originate in the court.³⁴
- Issue such mandates or process as may be directed by the court and notify attorneys of record of such issuance or of the rendition of any final judgment.³⁵
- Return to the clerk of the lower court the original papers or files transmitted to the court for use in the cause.³⁶

Clerks of the Circuit Court

Each county in Florida has a clerk of the circuit court, a quasi-judicial officer³⁷ selected pursuant to the constitutional provision concerning the election of county officers.³⁸ The office of the clerk of the circuit court derives its powers and authority from the State Constitution.³⁹ 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.⁴⁰

Clerks of the circuit court play a vital role in the state's judicial system. They perform at least 14 key functions:⁴¹

- Attend court hearings and trials.
- File indictments, information, and verdicts.

²⁷ FLA. CONST. art V, s. 3(c).

²⁸ FLA. CONST. art V, s. 4(c).

²⁹ Section 25.211, F.S.

³⁰ Section 35.23, F.S.

³¹ FLA. CONST. art V, s. 3(c).

³² FLA. CONST. art V, s. 4(c).

³³ Sections 25.221 and 35.24, F.S.

³⁴ Fla. R. Gen. Prac. & Jud. Admin. 2.205(b)(3); Fla. R. Gen. Prac. & Jud. Admin. 2.210(b)(2).

³⁵ Fla. R. Gen. Prac. & Jud. Admin. 2.205(b)(5); Fla. R. Gen. Prac. & Jud. Admin. 2.210(b)(4).

³⁶ Fla. R. Gen. Prac. & Jud. Admin. 2.205(b)(6); Fla. R. Gen. Prac. & Jud. Admin. 2.210(b)(5).

³⁷ *Givens v. Holmes*, 241 So. 3d 232, 236 (Fla. 2d DCA 2018).

³⁸ FLA. CONST. art. V, s. 16.

³⁹ *Givens*, 241 So. 3d at 236.

⁴⁰ *Times Pub. Co. v. Ake*, 660 So. 2d 255, 255 (Fla. 1995).

⁴¹ 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. 10, 2025).

- 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.
- 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 is liable. The deputies have the same powers that clerk may exercise, except for the power to appoint a deputy or deputies.⁴²

III. Effect of Proposed Changes:

The bill amends s. 119.071(4)(d)1., F.S., to exempt certain information relating to current clerks of the appellate court, deputy clerks of the appellate court, and clerk of the appellate court personnel from public records disclosure requirements.⁴³ The following information will be exempt:

- The home addresses, telephone numbers, dates of birth, and photographs of current clerks of the appellate court, deputy clerks of the appellate court, and clerk of the appellate court personnel.
- Names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of current clerks of the appellate court, deputy clerks of the appellate court, and clerk of the appellate court personnel.
- The names and locations of schools and day care facilities attended by the children of current clerks of the appellate court, deputy clerks of the appellate court, and clerk of the appellate court personnel.

For purposes of the bill, “appellate court” means the Florida Supreme Court or a district court of appeal. The exemption applies to information held by an agency before, on, or after July 1, 2025.

The bill revises the statute to provide that this new exemption is subject to the Open Government Sunset Review Act⁴⁴ and will be repealed on October 2, 2030, unless reviewed and saved from repeal through reenactment by the Legislature. The bill also extends, by one year, the repeal date for the existing exemption applicable to current clerks of the circuit court, deputy clerks of the

⁴² Section 28.06, F.S.

⁴³ Section 119.07(1), F.S.; FLA. CONST. art I, s. 24(a).

⁴⁴ See s. 119.15, F.S.

circuit court, and clerk of the circuit court personnel, and their spouses and children, from October 2, 2029 to October 2, 2030.

The bill includes a public necessity statement, as required by the State Constitution. The public necessity statement provides that while performing their duties to issue court orders, maintain case dockets, answer telephone calls, respond to correspondence, and interact with visitors to the courthouse, appellate court clerks may incur the ill will of litigants and their associates and families. As a result, current appellate court clerks and their spouses and children may be targets for acts of revenge. If such identifying and location information is released, the safety of current appellate court clerks and their spouses and children could be seriously jeopardized. For this reason, the bill provides that it is a public necessity that such information be exempt from public records requirements.

The bill takes effect July 1, 2025.

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 to process requests for exemptions (except perhaps to a de minimis extent), 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 appellate court, deputy clerks of the appellate court, and clerk of the appellate court personnel, and their spouses and children; 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 3 of the bill contains a statement of public necessity for appellate court clerks and their spouses and children. However, neither deputy clerks of the appellate court, nor clerk of the appellate court personnel, nor their spouses and children, are directly addressed. The public necessity statement should be revised to also justify the inclusion of deputy clerks of the appellate court, clerk of the appellate court personnel, and their spouses and children, as within the scope of the public records 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 appellate court, deputy clerks of the appellate court, and clerk of the appellate court personnel, and their spouses and children. This bill exempts records pertaining to the clerks of the appellate court, deputy clerks of the appellate court, and clerk of the appellate court personnel, and their spouses and children, from the public records requirements.

Enacted last year,⁴⁵ CS/HB 983 created a public records exemption for clerks of the circuit court, deputy clerks of the circuit court, and clerk of the circuit court personnel, and their spouses and children. The bill amends this public records exemption to also include appellate clerks of the appellate court, deputy clerks of the appellate court, and clerk of the appellate court personnel, and their spouses and children. Notably, CS/HB 983's companion bill in the Senate, CS/SB 1176, did not include clerk of the circuit court personnel or their spouses and children within the scope of the exemption.

Although both existing law and the bill include a public records exemption for clerk of the appellate and circuit courts personnel and their spouses and children, it is unclear whether including these categories of individuals might render the exemption overly broad. The term "personnel" is undefined and could include persons (e.g. building maintenance staff, custodians, receptionists, etc.) whose responsibilities will not incur the "ill will of litigants and their associates and families" as contemplated by the public necessity statement.

Consequently, there are arguments that both existing law and the bill are 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.

⁴⁵ See Ch. 2024-239, L.O.F.

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 appellate court, deputy clerks of the appellate court, and clerk of the appellate court personnel, and their spouses and children, because staff responsible for complying with public records 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 sections 119.071 and 744.21031 of the Florida Statutes.

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.