

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 635 Pub. Rec./Judicial Assistants

SPONSOR(S): Fetterhoff

TIED BILLS: **IDEN./SIM. BILLS:** SB 746

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	15 Y, 0 N	Deatherage	Poche
2) Oversight, Transparency & Public Management Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Judicial assistants are the front line of communication for attorneys, litigants, and their family members who wish to speak to justices and judges. Parties may associate negative decisions with judicial assistants as a result of their communications. Consequently, judicial assistants may be the target of threats from disgruntled parties. While personal identifying information of current and former judges and justices is exempt from public records requirements under current law, the personal identifying information of current and former judicial assistants is public record.

HB 635 expands the public records exemption for certain personal identifying information for current or former justices and judges to current and former judicial assistants. The exemption for judicial assistants applies to:

- Their home address, date of birth, and telephone number;
- The name, home address, date of birth, telephone number, and place of employment of their spouse and children; and
- The name and location of schools and day care facilities attended by their children.

The bill provides for repeal of the exemption on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature. The bill provides a statement of public necessity as required by the Florida Constitution.

The bill provides an effective date of July 1, 2019.

The bill may have a minimal negative fiscal impact on state and local governments. Expanding the public records exemption may increase training and compliance costs for agencies dealing with public records.

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 or public meeting exemption. The bill expands a public record exemption; 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, s. 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. This section guarantees 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 for the exemption of records from the requirements of Art. I, s. 24(a) provided the exemption passes by 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.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 only be created or maintained 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 However, the exemption may be no broader than is necessary to meet 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 information that would identify an individual may be exempted under this provision; or
- Protect trade or business secrets.⁴

The Open Government Sunset Review Act requires the automatic repeal of a newly created exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.⁵

Exemption for Personal Identifying Information of Justices and Judges

Section 119.071, F.S. provides exemptions from inspection or copying of public records. The following personal identifying information for current or former justices and judges is exempt⁶ from public record requirements:

- Their home addresses, dates of birth, and telephone numbers;
- The names, home addresses, dates of birth, telephone numbers, and places of employment of their spouses and children; and
- The names and locations of schools and day care facilities attended by their children.⁷

¹ Art. 1, s. 24(c), Fla. Const.

² S. 119.15, F.S.

³ S. 119.15(6)(b), F.S.

⁴ *Id.*

⁵ S. 119.15(3), F.S.

⁶ There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates as *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 (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 2004); and *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, the record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See 85-62 Fla. Op. Att'y Gen. (1985).

⁷ S. 119.071(4)(d)2.e., F.S.

Judicial Assistants

Judicial assistants provide administrative, secretarial, and clerical support to justices and judges.⁸ The responsibilities of a judicial assistant may include:

- Coordinating a judge's court and professional calendar;
- Providing organizational support for a judge's caseload;
- Screening phone calls and visitors to the judge's office; and
- Interacting with attorneys, litigants, and their family members.⁹

Judicial assistants are the front line of communication for attorneys, litigants, and their family members who wish to speak to judges and justices. Parties may associate negative decisions with judicial assistants as a result of their communications. Consequently, judicial assistants may be the target of threats from disgruntled parties. Anecdotal evidence from judicial assistants in several circuits reveal numerous instances where parties obtained and used the personal identifying information of judicial assistants to threaten them at their homes or on their personal phones.

Effect of Proposed Changes

HB 635 expands the public records exemption for current and former judges and justices to current and former judicial assistants. The bill provides that certain personal identifying information of current and former judicial assistants is exempt from s. 119.07(1), F.S. and art. I, s. 24(a) of the Florida Constitution, including:

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

The bill provides for repeal of the exemption for personal identifying information of current and former justices, judges, and judicial assistants on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill provides a public necessity statement as required by the Florida Constitution, recognizing that identifying information of judicial assistants can be used to perpetuate fraud and acquire sensitive personal, financial, medical, and familial information which could cause great financial harm to the individual. Additionally, the public necessity statement states that judicial assistants frequently do not create good will with litigants, accused, convicted, and their associates and families. Consequently, judicial assistants and their families may become targets for acts of revenge.

The bill provides an effective date of July 1, 2019.

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, 2019.

⁸ Florida Courts, Florida State Courts System Class Specification, Class Title: Judicial Assistant – Circuit Court, <https://www.flcourts.org/content/download/217825/1972896/Judicial-Assistant-Circuit-Court-508.pdf> (last visited Feb. 28, 2019).

⁹ *Id.*

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 a minimal negative fiscal impact on agencies 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 a record. However, the costs would be absorbed as they are part of the day-to-day agency responsibilities.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

Vote Requirement

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 or public meeting exemption. The bill expands a public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement and Breadth of Exemption.

Article I, s. 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 expands a public record exemption; thus, it includes a public necessity statement.

Breadth of Exemption

Article 1, s. 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 the public records exemption for personal identifying information of current or former justices and judges to apply to judicial assistants, which does not appear to be broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES