

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 983 Pub. Rec./Clerks of the Circuit Court, Deputy Clerks, and Clerk Personnel

**SPONSOR(S):** Civil Justice Subcommittee, Daley, and others

**TIED BILLS:** IDEN./SIM. BILLS: SB 1176

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	Rando	Toliver
3) Judiciary Committee	19 Y, 0 N	Leshko	Kramer

### SUMMARY ANALYSIS

The circuit court clerks are elected constitutional officers. Circuit court clerks, deputy clerks, and their personnel provide essential administrative and clerical support functions to the Florida circuit courts, including tracking and reviewing cases, working with pro se litigants, auditing child support payments, and processing and assisting with paperwork for protective injunctions.

Currently, neither the personal identifying nor location information of current clerks of the circuit courts, deputy clerks of the circuit courts, or the clerks' personnel is exempt from Florida's public record requirements.

CS/HB 983 amends s. 119.071, F.S., to create a public record exemption for current clerks of the circuit courts, deputy clerks of the circuit courts, clerk personnel, and their families. Specifically, the following personal identifying and location information will be exempt from public record requirements under the bill:

- Home addresses, telephone numbers, dates of birth, and photographs of current clerks of the circuit courts, deputy clerks of the circuit courts, and clerk personnel;
- Names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of current clerks of the circuit courts, deputy clerks of the circuit courts, and clerk personnel; and
- Names and locations of schools and day care facilities attended by the children of current clerks of the circuit courts, deputy clerks of the circuit courts, and clerk personnel.

Pursuant to the Open Government Sunset Review Act, the exemption will be automatically repealed on October 2, 2029, unless reenacted by the Legislature.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.

**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 creates a public record exemption for current clerks of the circuit courts, deputy clerks of the circuit courts, clerk personnel, 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 exemption<sup>1</sup> 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.<sup>2</sup>

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) Act<sup>3</sup> 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."<sup>4</sup> 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.<sup>5</sup>

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

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.<sup>7</sup>

##### Circuit Court Clerks and Clerk Personnel

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<sup>1</sup> 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.

<sup>2</sup> Art. I, s. 24(c), Fla. Const.

<sup>3</sup> S. 119.15, F.S.

<sup>4</sup> S. 119.15(6)(b), F.S.

<sup>5</sup> *Id.*

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

<sup>7</sup> 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).

The circuit court clerks are elected constitutional officers.<sup>8</sup> Circuit court clerks perform a wide range of record keeping, information management, and financial administration services for Florida's judicial system and county government.

In addition to serving as clerks of the circuit courts, most also as serve as the county treasurer, recorder, auditor, finance officer, and ex-officio clerk to the county commission. Florida's clerks of court have hundreds of statutory responsibilities and provide critical public services to their communities.<sup>9</sup>

The clerks' responsibilities include:

- Facilitating the jury process;
- Maintaining court records;
- Providing forms and resources for legal actions;
- Maintaining court finances;
- Managing court appearances;
- Providing resources for pro se litigants;
- Auditing child support payments;
- Handling public record requests, which frequently requires redacting certain personal information of protected parties;
- Processing and assisting with paperwork for protective injunctions, including domestic violence injunctions and injunctions for vulnerable adults;
- Maintaining court evidence; and
- Other administrative functions.<sup>10</sup>

Circuit court clerks may appoint a deputy or deputies who may exercise the same powers as the clerk may exercise, except for the power to appoint deputies.<sup>11</sup>

Currently, neither the personal identifying nor location information of current clerks of the circuit courts, deputy clerks of the circuit courts, or clerk personnel is exempt from Florida's public record requirements.

### **Effect of Proposed Changes**

CS/HB 983 amends s. 119.071, F.S., to create a public record exemption for current clerks of the circuit courts, deputy clerks of the circuit courts, clerk personnel, and their families. Specifically, the following personal identifying and location information will be exempt from public record requirements under the bill:

- Home addresses, telephone numbers, dates of birth, and photographs of current clerks of the circuit courts, deputy clerks of the circuit courts, and clerk personnel;
- Names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of current clerks of the circuit courts, deputy clerks of the circuit courts, and clerk personnel; and
- Names and locations of schools and day care facilities attended by the children of current clerks of the circuit courts, deputy clerks of the circuit courts, and clerk personnel.

Pursuant to the OGSR Act, the 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

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<sup>8</sup> Art. VIII, s. 1(d), Fla. Const.

<sup>9</sup> Florida Court Clerks & Comptrollers, *Role of the Clerk and Comptroller*, <https://www.flclerks.com/page/RoleoftheClerk> (last visited Jan. 25, 2024).

<sup>10</sup> *Id.*

<sup>11</sup> S. 28.06, F.S.

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 clerks of the circuit courts, deputy clerks of the circuit courts, clerk personnel, and their families 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 clerks of the circuit courts, deputy clerks of the circuit courts, and clerk personnel regularly involve legal enforcement of divorce and child support proceedings, which have resulted in threats, including death threats, and harassing telephone calls and emails from disgruntled individuals. Within the public necessity statement, the Legislature finds that release of such personal identifying and location information may increase the danger of such clerks and clerk personnel and their spouses and children being physically or emotionally harmed or stalked; 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 clerks of the circuit courts, deputy clerks of the circuit courts, clerk personnel, and their families, 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 January 18, 2024, the Civil Justice Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment removed former clerks of the circuit court, deputy clerks of the circuit court, and clerk personnel from the newly-created public record exemption.

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