

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 869 Pub. Rec./Appellate Court Clerks

**SPONSOR(S):** Gottlieb

**TIED BILLS:** IDEN./SIM. BILLS: SB 906

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Leshko	Jones
2) Ethics, Elections & Open Government Subcommittee			
3) Judiciary Committee			

**SUMMARY ANALYSIS**

Appellate court clerks provide essential administrative and clerical support functions to the Florida Supreme Court and the Florida district courts of appeal, including tracking and reviewing cases, recommending action on pending matters, and issuing orders as directed by the court. Additionally, appellate court clerks respond to inquiries and help resolve procedural issues for attorneys and litigants. As appellate court clerks regularly interact with attorneys, litigants, self-represented parties, and family members of parties, appellate court clerks may incur the ill will of such individuals and become the target of acts of revenge by disgruntled litigants or their associates and family members.

Currently, neither the personal identifying nor location information of current appellate court clerks is exempt from Florida’s public record requirements.

HB 869 amends s. 119.071, F.S., to expand the public record exemption for current and former justices and judges and current judicial assistants to include current appellate court clerks. Specifically, the following personal identifying and location information will be exempt from public record requirements under the bill:

- Home addresses, dates of birth, and telephone numbers of current appellate court clerks;
- Names, home addresses, telephone numbers, dates of birth, and places of employment of spouses and children of current appellate court clerks; and
- Names and locations of schools and day care facilities attended by the children of current appellate court clerks.

Pursuant to the Open Government Sunset Review Act, this expanded exemption will be automatically repealed on October 2, 2029, unless reenacted by the Legislature.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 expands an existing public record exemption to include current appellate court clerks 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 government records access policy, guaranteeing every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. However, the Legislature may provide a public record exemption by general law if the exemption passes by a two-thirds vote of each chamber, states with specificity the public necessity justifying the exemption ("public necessity statement"), and is no broader than necessary to meet its public purpose.<sup>1</sup>

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 Act<sup>2</sup> provides that a public record exemption may be created 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>3</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>4</sup>

Pursuant to s. 119.15, F.S., a new public record exemption or substantial amendment of an existing public record exemption is repealed on October 2 of the fifth year following enactment, unless the Legislature reenacts the exemption.<sup>5</sup>

Furthermore, there is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. However, 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>6</sup>

##### Appellate Court Clerks and Deputy Clerks

The Florida Constitution requires the Florida Supreme Court and each district court of appeal in the state to appoint a clerk to hold office at the pleasure of the appointing court and perform such duties as the appointing court directs.<sup>7</sup> Additionally, each appointed clerk of court may appoint or employ a chief

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<sup>1</sup> Art. I, s. 24(c), Fla. Const.

<sup>2</sup> S. 119.15, F.S.

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

<sup>4</sup> *Id.*

<sup>5</sup> S. 119.15(3), F.S.

<sup>6</sup> See *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48, 53 (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 1994); *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991); see Attorney General Opinion 85-62 (August 1, 1985).

<sup>7</sup> Art. 5, ss. 3(c) and 4(c), Fla. Const.

deputy clerk.<sup>8</sup> The chief deputy clerks discharge the duties of the clerk of court during his or her absence and regularly perform duties complementary to those of the clerk of court.<sup>9</sup>

Each clerk of court and his or her chief deputy clerk have administrative and clerical responsibilities, including maintaining all case files and tracking the progress of all cases.<sup>10</sup>

#### *Florida Supreme Court Chief Deputy Clerk Responsibilities*

Additional duties of the chief deputy clerk of the Florida Supreme Court include the following:

- Reviewing filings;
- Determining whether active case files and their dockets are in compliance with court policies and procedures;
- Determining action on certain jurisdictional questions;
- Identifying cases requiring further action and initiating such action, including having the case dismissed or having orders issued to correct any deficiencies identified;
- Reviewing non-standard filings and pleadings;
- Giving direction on motions and other pleadings;
- Responding to written and verbal inquiries regarding court policies, procedures, and cases from the court's judges, attorneys, other courts, and self-represented litigants, including inmates;
- Interacting with and providing information to other court personnel, Florida Bar members, and the general public;
- Promulgating policies and procedures pertaining to the court's activities; and
- Performing other administrative functions.<sup>11</sup>

#### *District Courts of Appeal Chief Deputy Clerk Responsibilities*

Additional duties of the chief deputy clerks of the district courts of appeal include the following:

- Screening new cases to identify untimely appeals and appeals taken from non-appealable orders;
- Making judgments on non-standard filings and pleadings;
- Identifying cases requiring further action, and initiating that action, including having the case dismissed or having orders issued to correct any deficiencies identified;
- Issuing orders on motions as directed by the court;
- Processing incoming mail;
- Responding to written and verbal inquiries regarding court policies, procedures, and cases from the court's judges, attorneys, other courts, and pro se litigants, including inmates;
- Resolving problems regarding procedural questions from pro se litigants by telephone and in person; and
- Performing other administrative functions.<sup>12</sup>

Because of their interactions with various parties and their duties involving issuing orders, appellate court clerks and deputy clerks may be exposed to the ill will or acts of revenge by disgruntled litigants or their associates or family members.

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<sup>8</sup> Ss. 25.201 and 35.22(1), F.S.

<sup>9</sup> Florida Courts, *Florida State Courts System Classification Specification, Classification Title: Chief Deputy Clerk – Supreme Court*, <https://www.flcourts.gov/content/download/751200/file/Chief-Deputy-Clerk-Supreme-Court.pdf> (last visited Jan. 15, 2024); Florida Courts, *Florida State Courts System Classification Specification, Classification Title: Chief Deputy Clerk – District Court*, <https://www.flcourts.gov/content/download/751199/file/Chief-Deputy-Clerk-District-Court.pdf> (last visited Jan. 15, 2024).

<sup>10</sup> Florida Supreme Court, *Clerk's Office*, <https://supremecourt.flcourts.gov/About-the-Court/Departments-of-the-Court/Clerk-s-Office> (last visited Jan. 15, 2024).

<sup>11</sup> Florida Courts, *Florida State Courts System Classification Specification, Classification Title: Chief Deputy Clerk – Supreme Court*, <https://www.flcourts.gov/content/download/751200/file/Chief-Deputy-Clerk-Supreme-Court.pdf> (last visited Jan. 15, 2024).

<sup>12</sup> Florida Courts, *Florida State Courts System Classification Specification, Classification Title: Chief Deputy Clerk – District Court*, <https://www.flcourts.gov/content/download/751199/file/Chief-Deputy-Clerk-District-Court.pdf> (last visited Jan. 15, 2024).

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

### **Effect of Proposed Changes**

HB 869 amends s. 119.071, F.S., to expand the public record exemption for current and former justices and judges and current judicial assistants to include current appellate court clerks. Specifically, the following personal identifying and location information will be exempt from public record requirements under the bill:

- Home addresses, dates of birth, and telephone numbers of current appellate court clerks;
- Names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of current appellate court clerks; and
- Names and locations of schools and day care facilities attended by the children of current appellate court clerks.

The bill defines "appellate court clerk" to mean a person appointed as a clerk of the Florida Supreme Court pursuant to s. 3(c), Art. V of the State Constitution, a person appointed as a clerk of a district court of appeal pursuant to s. 4(c), Art. V of the State Constitution, or a court employee assigned to the 2610 or 2620 class code, which are chief deputy clerks of the district courts and chief deputy clerk of the Florida Supreme Court, respectively.

Pursuant to the Open Government Sunset Review Act, this expanded 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 makes additional technical changes.

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 public records.

**Section 2:** Amends s. 744.21031, F.S., relating to public records exemption.

**Section 3:** Provides a public necessity statement.

**Section 4:** 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 appellate court clerks and their families, because staff responsible for complying with public record requests may require training related to the expanded 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 expands 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 expands 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 appellate court clerks regularly involve issuing court orders, maintaining case dockets, answering telephone calls, responding to correspondence, and interacting with visitors to the court house, which may result in the clerks incurring the ill will of litigants and their associates and families. The Legislature finds that as a result of this ill will, current appellate court clerks and their spouses and children may be targets for acts of revenge and that the release of such personal identifying and location information may seriously jeopardize the safety of current appellate court clerks and their spouses and children.

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 expands a public record exemption for specified information concerning current appellate court clerks, 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**