

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 466

SPONSOR: Committee on Health, Aging, and Long-Term Care

SUBJECT: Review of Public Records Exemption/Statewide Public Guardianship Office

DATE: November 18, 2003 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Parham	Wilson	HC	Favorable/CS
2.	_____	_____	GO	_____
3.	_____	_____	RC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill re-enacts and amends s. 744.7081, F.S., which provides an exemption from chapter 119, F.S., the Public Records Law, and Section 24(a), Article I of the State Constitution for all records held by the Statewide Public Guardianship Office relating to the medical, financial, or mental health of vulnerable adults as defined in ch. 415, F.S., persons with a developmental disability as defined in ch. 393, F.S., or persons with a mental illness as defined in ch. 394, F.S.

The bill amends s. 744.7081, F.S.

II. Present Situation:

Public Records

Florida has a long history of providing public access to the records and meetings of governmental and other public entities. The first law affording access to public records was enacted by the Florida Legislature in 1909. In 1992, Floridians voted to adopt an amendment to the Florida Constitution that raised the statutory right of public access to public records to a constitutional level.

The Public Records Law, ch. 119, F.S., specifies the conditions under which public access must be provided to governmental records. While the state constitution provides that records are to be open to the public, it also provides that the Legislature may create exemptions to these requirements by general law if a public need exists and certain procedural requirements are met. Article I, s. 24, of the State Constitution, governs the creation and expansion of exemptions to provide, in effect, that any legislation that creates a new exemption or that substantially amends an existing exemption must also contain a statement of the public necessity that justifies the exemption. Article I, s. 24, of the State Constitution, provides that any bill that contains an

exemption may not contain other substantive provisions, although it may contain multiple exemptions.

Chapter 95-217, Laws of Florida, repealed the Open Government Sunset Review Act, contained in s. 119.14, F. S., and enacted in its place s. 119.15, F.S., the Open Government Sunset Review Act of 1995. The Open Government Sunset Review Act of 1995 provides for the repeal and prior review of any public records exemptions that are created or substantially amended in 1996 and subsequently. The review cycle began in 2001. The chapter defines the term “substantial amendment” for purposes of triggering a repeal and prior review of an exemption to include an amendment that expands the scope of the exemption to include more records or information or to include meetings as well as records. The law clarifies that an exemption is not substantially amended if an amendment limits or narrows the scope of an existing exemption.

Under the Open Government Sunset Review Act of 1995, an exemption may be created or maintained only if it serves an identifiable public purpose. An identifiable public purpose is served if the exemption:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, the administration of which would be significantly impaired without the exemption;
- Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

The Florida Statewide Public Guardianship Program

Public guardianship programs provide guardianship services for incapacitated persons when a private guardianship is not available. A guardian is a surrogate decision-maker appointed by the court to make personal and/or financial decisions either: (1) for an adult with mental or physical disabilities who has been adjudicated incapacitated; or (2) for a minor in circumstances where the parents die or become incapacitated or if a child receives an inheritance, proceeds of a lawsuit, or insurance policy exceeding the amount allowed by statute.

The legal authority for guardianship in Florida is found in ch. 744, F.S. The court rules that control the relationships among the court, the ward, the guardian, and the attorney are found in Part III, Probate Rules, Florida Rules of Court. Together, these statutes and rules describe the duties and obligations of guardians, attorneys, and the courts, to ensure that they act in the best interests of the ward, minor, or individual who is alleged incapacitated.

Adult guardianship is the process by which the court finds an individual’s ability to make decisions so impaired that the court gives the right to make decisions to another person. Guardianship is an option only when the court finds no less restrictive alternative, such as

durable power of attorney, trust, health care surrogate or proxy, or other form of pre-need directive, to be appropriate and available.

Voluntary and involuntary guardianships are allowed under Florida law. A voluntary guardianship may be established for an adult who, though mentally competent, is incapable of managing his or her own estate and who voluntarily requests the appointment.

Legislative intent establishes that the least restrictive form of guardianship is wanted. Thus, Florida law provides for limited as well as plenary adult guardianship. A limited guardianship is appropriate if the court finds the ward lacks the capacity to do some, but not all, of the tasks necessary to care for his or her person or property; and if the individual does not have pre-planned, written instructions for all aspects of his or her life. A plenary guardian is a person appointed by the court to exercise all delegable legal rights and powers of the adult ward after the court finds an individual to be incapacitated.

Whether the court is dealing with a minor whose assets must be managed by another or an adult with a disability who is not capable of making decisions for him or herself, when the court removes an individual's right to manage his or her own affairs there is an additional duty to protect the individual. One of the court's duties is to appoint a guardian. All adult and minor guardianships are subject to court oversight.

Statewide Public Guardianship Office

Section 744.7021, F.S., created the Statewide Public Guardianship Office, which is housed within the Department of Elder Affairs (DOEA). Local offices, directed by statute, provide guardianship services to persons who do not have adequate income or assets to afford a private guardian and when there is no private guardian willing to serve. The purpose of the legislation was to provide a public guardian only to those persons whose needs could not be met through less drastic means of intervention.

Originally, the Guardianship Office was located in Tampa, Florida, and although created within DOEA, was not subject to control, supervision, or direction by DOEA. The Director of the Office was appointed by the Governor. During the 2003 Legislative Session, the Guardianship Office was moved to DOEA headquarters in Tallahassee from its location in Tampa. The director is now appointed by the Secretary of DOEA, reports to and serves at the pleasure of the Secretary, and is subject to direction by DOEA. The director has oversight responsibility for all public guardians in the state. The offices of the public guardian were serving 1,584 wards statewide as of September 2003.

Exemptions from Public Records Requirements

Section 744.7081, F.S., specifies that all records held by the Statewide Public Guardianship Office relating to the medical, financial, or mental health of vulnerable adults as defined in ch. 415, F.S., persons with a developmental disability as defined in ch. 393, F.S., or persons with a mental illness as defined in ch. 394, F.S., shall be confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.

Section 744.7081, F.S., does not prevent disclosure of the records if they are subpoenaed or if subpoenaed followed by a court order; and does not prevent the records from being used in court.

Section 744.3701(1), F.S., provides that “Unless otherwise ordered by the court, any initial, annual, or final guardianship report or amendment thereto is subject to inspection only by the court, the clerk or the clerk's representative, the guardian and the guardian's attorney, and the ward, unless he or she is a minor or has been determined to be totally incapacitated, and the ward's attorney.” However, s. 744.708(4), F.S., requires guardians to report to the Statewide Public Guardianship Office certain information that may contain the personal medical, financial, and/or mental health information of vulnerable adults.

Notwithstanding any other provision of law to the contrary, any medical, financial, or mental health records held by an agency, or the court and its agencies, which are necessary to evaluate the public guardianship system, to assess the need for additional public guardianship, or to develop required reports, shall be provided to the Statewide Public Guardianship Office upon that office's request. Any confidential or exempt information provided to the Statewide Public Guardianship Office shall continue to be held confidential or exempt as otherwise provided by law.

Public Records Exemption Review

The Senate staff reviewed the Statewide Public Guardianship Office public records exemption pursuant to the Open Government Sunset Review Act of 1995. As part of the review process, s. 119.15(4)(a), F.S., requires the consideration of the following specific questions:

- 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?

The exemptions, viewed against the Open Government Sunset Review criteria, do protect information of a sensitive personal nature as documented in files held by the Statewide Public Guardianship Office. The exemptions allow the Statewide Public Guardianship Office to effectively and efficiently administer the guardianship program by assuring the confidentiality of sensitive personal information that could affect those served by the office. Staff found that the exemption is narrowly tailored to balance the state's strong public policy of open government and the need for assurance of personal privacy for individuals served by the Statewide Public Guardianship Office.

Senate interim project report 2004-202 recommended that the exemption to the public records requirements in s. 744.7081, F.S., be reenacted without substantive changes.

III. Effect of Proposed Changes:

Section 1. Re-enacts and amends s. 744.7081, F.S., to continue the public records exemption for all records held by the Statewide Public Guardianship Office relating to the medical, financial, or

mental health of vulnerable adults as defined in ch. 415, F.S., persons with a developmental disability as defined in ch. 393, F.S., or persons with a mental illness as defined in ch. 394, F.S.

Section 2. Provides an effective date of October 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The bill re-enacts s. 744.7081, F.S., which provides a public records exemption for the Statewide Public Guardianship Office.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill will allow the Statewide Public Guardianship Office, under the supervision of DOEA, to safeguard identifying information contained in guardianship records, to ensure efficient administration of the program, and the safety of the vulnerable adults the program serves.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
