

## **FINAL BILL ANALYSIS**

**BILL #:** HB 7081

**FINAL HOUSE FLOOR ACTION:**

114 Y's      0 N's

**SPONSOR:** Rep. Bileca

**GOVERNOR'S ACTION:** Approved

**COMPANION BILLS:** CS/SB 572

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### **SUMMARY ANALYSIS**

HB 7081 passed the House on April 28, 2011, and subsequently passed the Senate on April 29, 2011. The bill was approved by the Governor on June 24, 2011, chapter 2011-228, Laws of Florida, and takes effect October 1, 2011.

The bill reenacts the public record exemption for the direct-support organization (DSO) for the Statewide Public Guardianship Office (office).

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The office is established within the Department of Elderly Affairs (department) and an executive director serves as head of the office. The executive director has oversight responsibilities for all public guardians. The office may enter into a written contract with a DSO for the sole purpose of supporting the office. The DSO is operated by a board of directors appointed by the secretary of the department.

Current law provides a public record exemption for the identity of a donor or prospective donor of funds or property to the DSO who desires to remain anonymous, and all information identifying that donor or prospective donor.

The bill reenacts the public record exemption, which will repeal on October 2, 2011, if this bill does not become law. It also removes duplicative and superfluous provisions.

The bill does not appear to have a fiscal impact on state or local governments.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### Background

##### Open Government Sunset Review Act

The Open Government Sunset Review Act<sup>1</sup> sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet 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.
- Protects trade or business secrets.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.<sup>2</sup> If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created<sup>3</sup> then a public necessity statement and a two-thirds vote for passage are not required.

##### Statewide Public Guardianship Office

The Statewide Public Guardianship Office (office) is established within the Department of Elderly Affairs (department).<sup>4</sup> An executive director appointed by the secretary of the department serves as head of the office.<sup>5</sup> The executive director has oversight responsibilities for all public guardians.<sup>6</sup>

The executive director, after consultation with certain persons, may establish local public guardian offices<sup>7</sup> to provide guardianship services when a person does not have adequate income or assets to afford a private guardian and when there is no willing relative or friend to

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<sup>1</sup> Section 119.15, F.S.

<sup>2</sup> Section 24(c), Art. I of the State Constitution.

<sup>3</sup> An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

<sup>4</sup> Section 744.7021, F.S.

<sup>5</sup> Section 744.7021(1), F.S.

<sup>6</sup> Section 744.7021(2), F.S.

<sup>7</sup> Section 744.703(1), F.S.

serve.<sup>8</sup> The office registers annually professional guardians<sup>9</sup> and reviews and approves courses for instruction and education for such guardians.<sup>10</sup>

#### Direct-Support Organization

Current law authorizes the office to enter into a written contract<sup>11</sup> with a direct-support organization (DSO)<sup>12</sup> for the sole purpose of supporting the office. The DSO is operated by a board of directors appointed by the secretary of the department.<sup>13</sup> The Foundation for Indigent Guardianship serves as the DSO for the office and was incorporated in December 2005.<sup>14</sup>

#### Public Record Exemption under Review

Current law provides a public record exemption for the DSO.<sup>15</sup> The following information is confidential and exempt<sup>16</sup> from public records requirements:

- The identity of a donor or prospective donor of funds or property to the DSO who desires to remain anonymous; and
- All information identifying that donor or prospective donor.

The public record exemption for the identity of a donor or prospective donor and the exemption for all information identifying that donor appear duplicative. Protecting the personal identifying information of such donor or prospective donor would accomplish the same goal.

Current law also provides that donor anonymity must be maintained in any publication concerning the DSO. This provision is superfluous as the information cannot be released because it is confidential and exempt from public records requirements.

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2011, unless reenacted by the Legislature.<sup>17</sup>

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<sup>8</sup> Open Government Sunset Review of s. 744.7082(6), F.S., relating to the public record exemption for the DSO, joint questionnaire by Senate and House staff, July 14, 2010, at question 1. (on file with the Government Operations Subcommittee).

<sup>9</sup> Section 744.1083(1) and (2), F.S.

<sup>10</sup> Section 744.1085(3), F.S.

<sup>11</sup> See s. 744.7082(2), F.S.

<sup>12</sup> The DSO is a not-for-profit corporation incorporated under chapter 617, F.S., and approved by the Department of State. It is organized and operated to: conduct programs and activities; raise funds; request and receive grants, gifts, and bequests of moneys; acquire, receive, hold, invest, and administer, in its own name, securities, funds, objects of value, or other real or personal property; and make expenditures to or for the direct or indirect benefit of the office. Section 744.7082(1)(a) and (b), F.S.

<sup>13</sup> Section 744.7082(3), F.S.

<sup>14</sup> Open Government Sunset Review of s. 744.7082(6), F.S., relating to the public record exemption for the DSO, joint questionnaire by Senate and House staff, July 14, 2010, at question 2. (on file with the Government Operations Subcommittee).

<sup>15</sup> Chapter 2006-179; codified as s. 744.7082(6), F.S.

<sup>16</sup> 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. (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). 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 the statutory exemption. (See Attorney General Opinion 85-62, August 1, 1985).

<sup>17</sup> Section 2, chapter 2006-179, L.O.F.

## **Effect of Proposed Changes**

The bill removes the repeal date, thereby reenacting the public record exemption for the DSO. It revises the exemption to provide that personal identifying information of a donor or prospective donor who wishes to remain anonymous is confidential and exempt. This revision merely eliminates any duplication provided in the current exemption. The bill also removes the unnecessary provision that reiterates that anonymity must be maintained.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

### **D. FISCAL COMMENTS:**

None.