

STORAGE NAME: h0219s1a.go

DATE: March 30, 1999

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
GOVERNMENTAL OPERATIONS
ANALYSIS**

BILL #: CS/HB 219

RELATING TO: Public Record Exemption/Guardianship

SPONSOR(S): Committee on Real Property and Probate, Representative Crow and others

COMPANION BILL(S): CS/HB 213 (compare), CS/SB 702 (compare), and CS/SB 704 (compare)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) ELDER AFFAIRS & LONG TERM CARE YEAS 10 NAYS 0
 - (2) REAL PROPERTY AND PROBATE YEAS 8 NAYS 0
 - (3) GOVERNMENTAL OPERATIONS YEAS 5 NAYS 0
 - (4)
 - (5)
-

I. SUMMARY:

CS/HB 219 requires agencies, and the court and its agencies, to provide the Statewide Public Guardianship Office with any medical, financial, or mental health records necessary for that office to perform certain specified duties. Any confidential or exempt information so received by that office must continue to be held confidential or exempt, as otherwise provided by law.

CS/HB 219 also creates a public records exemption for all other records held by the Statewide Public Guardianship office relating to the medical, financial, or mental health of vulnerable citizens who are elderly persons or disabled adults, persons with a developmental disability, or persons with a mental illness.

Additionally, this bill provides a public necessity statement for the exemption created, as is required by Article I, section 24, Florida Constitution.

The effective date of this bill is tied to the passage of HB 213, or similar legislation, creating the Statewide Public Guardianship Office.

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

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Public Records Law

Article I, section 24(a), Florida Constitution, expresses Florida's public policy regarding access to government records. This section provides that:

Every person has the right to inspect or copy any public records made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

Section 119.15, F.S., the Open Government Sunset Review Act of 1995, states that an exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than necessary to meet that public purpose. An identifiable public purpose is served if the exemption meets one of the following purposes, and the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and that such purpose cannot be accomplished without the exemption:

1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
2. 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. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; or
3. 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.

Public Guardians

Currently each office of public guardian is administered by the chief judge of the circuit court. CS/HB 213, now before the Legislature, creates the Statewide Public Guardianship Office and requires that office to conduct research including but not limited to the need for public guardianship services, and to provide oversight of the state's public guardians. In order for the Statewide Public Guardianship Office to perform its statutorily assigned duties, that office will need access to sensitive medical, financial, and mental health records of the states' vulnerable citizens who are elderly, disabled, developmentally disabled, or who have a mental illness.

Public guardians are currently prohibited from disclosing the personal or medical records of their ward, except as authorized by law. See s. 744.708 (2), F.S. (This exemption was created by Ch.. 86-120, the Public Guardianship Act, which preceded the adoption of Art. I, sec. 24 (a), Fla. Const.). There are more than 250 provisions in law relating to the confidentiality of medical records. Under state law, patient information that is in the possession of a health care practitioner or a state agency is confidential, except under certain specific circumstances. See s. 455.667, F.S.

B. EFFECT OF PROPOSED CHANGES:

This bill requires agencies, and the court and its agencies, to provide the Statewide Public Guardianship Office with any medical, financial, or mental health records necessary for that office to perform certain specified duties, notwithstanding any other provision of the law to the contrary. Any confidential or exempt information so received by that office must continue to be held confidential or

exempt, as otherwise provided by law. Accordingly, for example, if certain information received from the Department of Health is by statutory law confidential or exempt for only a specified period of time, then upon expiration of that time period not only the Department of Health but the receiving Statewide Public Guardianship Office must release that information pursuant to a public records request. Furthermore, if existing law does not make the entire record confidential or exempt, but only certain information, then like the sending agency, the Statewide Public Guardianship Office must produce the record pursuant to a public records request, but must redact (blacken out) the confidential or exempt information.

CS/HB 219 also creates a public records exemption "for all *other* records held by the Statewide Public Guardianship office relating to the medical, financial, or mental health of vulnerable citizens who are elderly persons or disabled adults ... persons with a developmental disability ... or persons with a mental illness" "All other records" implies records not received from an agency, or the court and its agencies, because any information received from such agencies that is sensitive medical, financial, or mental health information should already be made confidential or exempt by existing statutory law. If medical, financial, or mental health information received by an agency, or the court and its agencies, is not otherwise made confidential or exempt by law, then CS/HB 219 does not appear to create such an exemption.¹

"All other records" relating to medical, financial or mental health, would therefore be received from, for example, the private sector or perhaps the federal government. Such records received are to be held confidential and exempt by the Statewide Public Guardianship Office.

CS/HB 219 provides a public necessity statement for the exemption, as is required by Article I, section 24, Florida Constitution. The public necessity statement provides that if such sensitive information is not held confidential and exempt, or kept confidential or exempt as otherwise provided by law, then affected citizens could become reluctant to seek assistance, thereby negatively affecting the effective and efficient operation of the Statewide Public Guardianship Office.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

An agency or program is not eliminated or reduced.

¹ The Public Records Act is to be liberally construed in favor of open government, and exemptions from disclosure are to be narrowly construed so they are limited to their stated purpose. *Krischer v. D'Amato*, 674 So. 2d 909, 911 (Fla. 4th DCA 1996).

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

- (2) what is the cost of such responsibility at the new level/agency?

N/A

- (3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

This bill does not purport to provide services to families or children.

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

No

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

This bill does not create or change a program providing services to families or children.

- (1) parents and guardians?

N/A

- (2) service providers?

N/A

- (3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Creates s. 744.7081, F.S.

E. SECTION-BY-SECTION ANALYSIS:

See "Effect of Proposed Changes".

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None

2. Recurring Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

4. Total Revenues and Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None

2. Recurring Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None

2. Direct Private Sector Benefits:

None

3. Effects on Competition, Private Enterprise and Employment Markets:

None

D. FISCAL COMMENTS:

None

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

Comments of the Committee on Governmental Operations

The use of the phrase "All other records" on page 1, line 26, raises concerns over the scope of the public record exemption. If it means all records from some entity other than courts or agencies, then it would not provide an exemption for certain records which relate to the ward's medical, financial or mental health received from courts and agencies, which would be exempt if received from another source. If it means all records which were not originally exempt or confidential, then it would allow certain records from any source to become exempt when received by the guardianship office if they relate to the ward's medical, financial or mental health.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 1, 1999, the Committee on Elder Affairs and Long Term Care adopted one technical amendment which added a reference to HB 213 in the effective date. The effective date of this bill is tied to the passage of HB 213.

On March 9, 1999, the Committee on Real Property and Probate adopted one amendment. That amendment simply rephrases the first sentence of the bill and clarifies that "notwithstanding any other provision of law to the contrary," certain medical, financial, or mental health records must be provided to the Statewide Public Guardianship Office. The bill, as amended, was reported favorably as a committee substitute.

On March 30, 1999, the Committee on Governmental Operations adopted a technical amendment which addressed the concerns over the phrase "All other records." The amendment clarifies the scope of the public record exemption, to include all records which were not originally exempt or confidential from any source when received by the guardianship office if they relate to the ward's medical, financial or mental health. But for the circumstances of public guardianship, such records held by the individual would be private and not subject to Florida's public records laws.

VII. SIGNATURES:

COMMITTEE ON Elder Affairs & Long Term Care:

Prepared by:

Melanie Meyer

Staff Director:

Tom Batchelor, Ph.D.

AS REVISED BY THE COMMITTEE ON Real Property and Probate:

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