

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1735 (PCB SA 04-06) Statewide Guardianship Office/OGSR
SPONSOR(S): State Administration and Benson
TIED BILLS: none **IDEN./SIM. BILLS:** CS/SB 466 (i)

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) State Administration	4 Y, 0 N	Bond	Everhart
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

The Open Government Sunset Review Act of 1995 requires the Legislature to review each public records and each public meetings exemption five years after enactment. If the Legislature does not reenact the exemption, it is automatically repealed on October 2nd of the fifth year after enactment.

This bill reenacts without change the public records exemption for certain medical and financial records of wards that are held by the Statewide Public Guardian, which will repeal on October 2, 2004, if this bill does not become law.

This bill may have a minimal non-recurring positive fiscal impact on state government expenditures. This bill does not appear to have a fiscal impact on local governments.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1735.sa.doc
DATE: March 8, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

Not applicable.

B. EFFECT OF PROPOSED CHANGES:

Background

The Statewide Public Guardianship Office is a division of the Department of Elderly Affairs.¹ A public guardian is a government employee who provides guardianship services to incapacitated persons (known as "wards") who are indigent and have no friend or family member who will volunteer to act as guardian for the ward. The Statewide Public Guardianship Office appoints local public guardians² and has oversight responsibilities over such public guardians. The office also reports annually to the legislature on guardianship law and guardianship issues, creates guardianship training programs, pursues federal and charitable grant monies, and recently has started mandatory registration of professional guardians.

A legal guardian must obtain, review, and maintain comprehensive medical and financial files relating to wards under the guardian's care. In order to protect wards from abuse, neglect, or embezzlement by guardians, Florida law provides for extensive oversight over guardians. That oversight requires that sensitive medical and financial records be reviewed in order to determine the propriety of a guardian's actions. Significantly, the sensitive medical and financial records held by a public guardian, and reviewed by the Statewide Public Guardian, are taken without the consent of the wards.

Compilations of such records are also important to the annual reporting required of the Statewide Public Guardian. Current law provides that the Statewide Public Guardianship Office must be granted access to records necessary to the oversight and reporting roles of the Statewide Public Guardian.

The public records exemption reads:

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. All records held by the Statewide Public Guardianship Office relating to the medical, financial, or mental health of vulnerable adults as defined in chapter 415³, persons with a

¹ See generally, part IX of ch. 744, F.S., entitled "Public Guardianship".

² Six of the state's 20 judicial circuits have an appointed public guardian.

³ Section 415.102(26), F.S., defines a "vulnerable adult" as "a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, physical, or developmental disability or dysfunctioning, or brain damage, or the infirmities of aging."

developmental disability as defined in chapter 393⁴, or persons with a mental illness as defined in chapter 394⁵, shall be confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

Section 744.7081, F.S. (footnotes added). Current law provides for future review and repeal of the public records exemption. Pursuant to the Open Government Sunset Review Act of 1995, s. 744.7081, F.S., will repeal on October 2, 2004, unless otherwise reenacted by the Legislature.

The Department of Elderly Affairs timely replied to a request for information on this exemption. They indicated that 1,540 wards were served by public guardians in 2002, and that confidential and exempt medical and financial records of such wards is held by public guardians and reviewed by the Statewide Public Guardianship Office. The Department of Elderly Affairs recommends reenactment of the exemption.

Effect of Bill

This proposed committee bill removes the repeal date, thereby reenacting the public records exemption.

C. SECTION DIRECTORY:

Section 1 amends s. 744.7081, F.S., to reenact the public records exemption.

Section 2 provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. This bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

This bill may represent a minimal non-recurring positive impact on state government expenditures. A bill enacting or amending public records law causes a non-recurring negative fiscal impact in the year of enactment for training employees who are responsible for replying to public records requests. In the case of bills being reviewed under the Open Government Sunset Review process, the cost of such training will be incurred if the bill does not pass, as employees would have to be informed that formerly exempt records are now open. Because this bill eliminates the repeal, employee training activities will be avoided, and state government may recognize a minimal nonrecurring decrease in expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

⁴ Section 393.063(12), F.S., defines a "developmental disability" as "a disorder or syndrome that is attributable to retardation, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely."

⁵ Section 394.455 18), F.S., defines "mental illness" as "an impairment of the mental or emotional processes that exercise conscious control of one's actions or of the ability to perceive or understand reality, which impairment substantially interferes with a person's ability to meet the ordinary demands of living, regardless of etiology. For the purposes of this part, the term does not include retardation or developmental disability as defined in chapter 393, intoxication, or conditions manifested only by antisocial behavior or substance abuse impairment."

None. This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

None. This bill does not create, modify, amend, or eliminate a local revenue expenditure.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Open Government Sunset Review Act of 1995

The Open Government Sunset Review Act of 1995,⁶ provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes: 1. Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; 2. Protecting 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, 3. Protecting trade or business secrets.

Section 119.15, F.S., also sets forth a Legislative review process that requires newly created or expanded exemptions to include an automatic repeal of the exemption on October 2nd of the fifth year after enactment or substantial amendment, unless the Legislature reenacts the exemption.

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 is required, as a result of the requirements of Art. 1, s. 24, Florida Constitution. 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 (*e.g.*, allowing another agency access to the confidential or exempt records), then a public necessity statement is not required.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.

⁶ Section 119.15, F.S.