

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Reduce government -- This bill creates a new public records exemption.

B. EFFECT OF PROPOSED CHANGES:

Current Law

Section 744.107, F.S., allows the court to appoint a monitor “upon inquiry from any interested person” or upon its own motion. The monitor has authority to “investigate, seek information, examine documents, or interview the ward,” and to present a report of such findings to the court.¹ A family member or any other person with an interest in the proceedings may not serve as a monitor.² A monitor may be paid a reasonable fee from the property of the ward, but no state, county, or municipal employee shall be paid a fee for serving as a monitor.³ The orders appointing court monitors and the reports of court monitors are not currently exempt from disclosure.

HB 191

A court monitor is responsible for providing a court with information regarding how well a ward is functioning under the care of a guardian. HB 191 gives a court the authority to take any action necessary to protect a ward depending upon the information presented to the court by a monitor. The bill also gives authority to a court to appoint an emergency court monitor if the ward appears to be in imminent danger of physical or mental harm; the safety of the ward could be seriously impaired; or the ward’s property is in danger of being wasted, misappropriated, or lost unless immediate action is taken. The bill specifies the powers, compensation, and length of service of an emergency court monitor.

HB 193

This bill makes the order of any court appointing a monitor pursuant to s. 744.107, F.S., and the required reports submitted by such monitors relating to the medical condition, financial affairs, or mental health of the ward, confidential and exempt from the requirements of s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution.⁴ While these reports and orders are confidential⁵, they may be subject to inspection as determined by the court or upon a showing of good cause.

In addition, this bill makes the order of any court appointing a monitor on an emergency basis, pursuant to proposed s. 744.1075, F.S. the reports submitted by such monitors relating to the medical condition, financial affairs, or mental health of the ward, and subsequent court orders finding no probable cause or orders to show cause, confidential and exempt from s. 119.07(1) F.S. and s. 24(a), Art. I of the

¹ Section 744.107, F.S.

² *Id.*

³ *Id.*

⁴ There is a difference between information and records that the Legislature has designated exempt from public disclosure and those the Legislature has deemed confidential and exempt. Information and records classified exempt from public disclosure are still permitted to be disclosed under certain circumstances. See *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 certain information and records confidential and exempt from public disclosure, such information and records may not be released by the records custodian to anyone other than the persons or entities specifically designated in the statutory exemption. See *Attorney General Opinion 85-62*, August 1, 1985.

⁵ S. 744.1076(1)(a)-(b), F.S.

Florida Constitution. These orders and reports, however, may be subject to inspection as determined by the court or upon a showing of good cause.⁶

Additionally, a court determination that no probable cause exists, pursuant to s. 744.107, F.S. or s. 744.1075, F.S. are confidential and exempt from s. 119.07(1) F.S. and s. 24(a), Art. I of the Florida Constitution. However, like the other sections these documents may be subject to inspection as determined by the court or upon a showing of good cause.⁷

C. SECTION DIRECTORY:

Section 1. Creates s. 744.1076, F.S., establishing a public records exemption for the order of any court appointing a court monitor, and any order appointing a court monitor on an emergency basis. Finally, section 1 provides that s. 744.1076, F.S. shall be repealed on October 2, 2011, unless reviewed and saved from repeal by reenactment.

Section 2. Provides a statement of public necessity that the information concerning the appointment of a court monitor and certain court monitor's report remain confidential.

Section 3. Provides that this bill shall take effect on the same date that House Bill 191 or substantially similar legislation takes effect, if such legislation is adopted in this legislative session or an extension thereof and becomes law.

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:

The public records law in general creates a significant, although unquantifiable, increase in government spending. Government employees must locate requested documents and information, and must examine every requested document or piece of information to determine if a public records exemption prohibits release of the document or information. Passage of any new public records exemption will result in a minimal negative non-recurring fiscal impact, because governments will be required to communicate the new exemption to employees responsible for complying with public records requests.

⁶ S. 744.1076(2)(b), F.S.

⁷ S. 744.1076(3), F.S.

Every public records exemption also represents an unknown negative recurring expense to governments, as each exemption slightly increases the number and complexity of the training and management materials required to be maintained by governments, further complicates the process of complying with public records requests, and increases the chances that a government will be involved in litigation. There is no known reliable method for determining the marginal fiscal impact attributable to a single public records exemption.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that counties and municipalities have to raise revenue.

2. Other:

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 public records or public meetings exemption.

Public Records Law

Article I, s. 24(a), of the Florida Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of the government.

In general, "all court records are presumed open."⁸ Subject to the rulemaking power of the Florida Supreme Court, as provided by art. V, s. 2, of the Florida Constitution, the public shall have access to all records of the judicial branch of government and its agencies, except as otherwise provided.⁹ Various court records are presently deemed confidential by court rule, by Florida Statutes, and by prior case law of the state.¹⁰

The Legislature may provide for the exemption of records from the requirements of Art. I, s. 24, by passage of a general law. The general law must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish its purpose.

Public policy regarding access to government records is also addressed in s. 119.07(1), F.S., which guarantees every person a right to inspect, examine, and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act of 1995, s. 119.15, F.S., provides that a public records 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, although only the individual's identity may be exempted under this provision; or 3) protecting trade or business secrets.

B. RULE-MAKING AUTHORITY:

⁸ *Times Publishing Co. v. Ake*, 660 So. 2d 255, 257 (Fla. 1995).

⁹ *In re Amendments to Rule of Judicial Administration 2.051—Public Access to Judicial Records*, 651 So. 2d 1185, 1188 (Fla. 1995).

¹⁰ *Id.* at 1189; Rule of Judicial Administration 2.051(c)(9).

This bill does not grant rule-making authority to any administrative agency.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

n/a