The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Judiciary Committee

BILL:	SB 1200
INTRODUCER:	Judiciary Committee
SUBJECT:	Open Government Sunset Review/Guardians ad Litem
DATE:	February 2, 2010 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Daniell	Maclure	JU	**Favorable**
2.			GO	
3.			RC	
4.				
5.				
6.				

I. Summary:

This bill is the result of the Judiciary Committee's Open Government Sunset Review of a public-records exemption for specified personal information relating to current or former guardians ad litem. The exemption will expire on October 2, 2010, unless saved from repeal through reenactment by the Legislature.

Currently, the exemption protects from disclosure under the public-records law the home addresses, telephone numbers, places of employment, and photographs of current and former guardians ad litem. Additionally, the exemption covers the names, home addresses, telephone numbers, and places of employment of the spouses and children of current or former guardians ad litem. This bill reenacts the exemption and expands it to include the names and locations of schools and day care facilities attended by a guardian ad litem's children within the scope of protected information.

This bill amends section 119.071, Florida Statutes.

II. Present Situation:

Florida Public-Records Law

Florida has a long history of providing public access to government records. The Legislature enacted the first public-records law in 1892.[1] In 1992, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional

[1] Sections 1390, 1391, F.S. (Rev. 1892).

level.[2] Article I, section 24 of the Florida Constitution guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.

The Public-Records Act[3] specifies conditions under which public access must be provided to records of the executive branch and other agencies. Unless specifically exempted, all agency[4] records are available for public inspection. Section 119.011(12), F.S., defines the term "public records" very broadly to include "all documents, ... tapes, photographs, films, sounds recordings … made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Unless made exempt, all such materials are open for public inspection at the moment they become records.[5]

Only the Legislature is authorized to create exemptions to open-government requirements. Exemptions must be created by general law, and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption or substantially amending an existing exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.[6]

Records may be identified as either exempt from public inspection or exempt and confidential. If the Legislature makes a record exempt and confidential, the information may not be released by an agency to anyone other than to the persons or entities designated in the statute.[7] If a record is simply made exempt from public inspection, the exemption does not prohibit the showing of such information at the discretion of the agency holding it.[8]

Open Government Sunset Review Act

The Open Government Sunset Review Act[9] provides for the systematic review of exemptions from the Public-Records Act in the fifth year after the exemption's enactment. By June 1 of each year, the Division of Statutory Revision of the Office of Legislative Services is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year. The act states that an exemption may be created, revised, or maintained only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves.[10] An identifiable public purpose is served if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. An identifiable public purpose is served if the exemption:

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[2] FLA. CONST. art. I, s. 24.
[3] Chapter 119, F.S.
[4] An agency includes any state, county, or municipal officer, department, or other separate unit of government that is created or established by law, as well as any other public or private agency or person acting on behalf of any public agency. Section 119.011(2), F.S.
[5] *Tribune Co. v. Cannella*, 458 So. 2d 1075, 1077 (Fla. 1984).
[6] FLA. CONST. art. I, s. 24(c).
[7] *WFTV, Inc. v. School Bd. of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So. 2d 1015 (Fla. 2004).
[8] *Id*. at 54.
[9] Section 119.15, F.S.
[10] Section 119.15(6)(b), F.S.

- 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 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 combination 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.[11]

The act also requires the Legislature, as part of the review process, to consider the following six questions that go to the scope, public purpose, and necessity of the exemption:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect?
- 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?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?[12]

Florida Guardian ad Litem Program

The Florida Guardian ad Litem Program is a partnership of community advocates and professional staff acting on behalf of Florida's abused and neglected children.[13] A guardian ad litem is "a volunteer appointed by the court to protect the rights and advocate the best interests of a child involved in a court proceeding."[14] The court must appoint a guardian to represent the child in any child abuse, abandonment, or neglect proceeding, whether civil or criminal.[15]

Guardians ad litem are responsible for making independent recommendations to the court based on the best interests of a child. In order to accomplish this goal, some of the responsibilities of a guardian ad litem include:

- Visiting the child and keeping the child informed about the court proceedings;
- Gathering and assessing independent information on a consistent basis about the child in order to recommend a resolution that is in the child's best interests;

[11] *Id*.
[12] Section 119.15(6)(a), F.S.
[13] Florida Guardian ad Litem Program, http://www.guardianadlitem.org/ (last visited June 24, 2009).
[14] *Id*. at http://www.guardianadlitem.org/vol_faq.asp (last visited June 24, 2009).
[15] Section 39.822(1), F.S.

- Reviewing records, such as medical, mental health, substance abuse, child care, education, law enforcement, court, social services, and financial reports;
- Interviewing appropriate parties involved in the case, including the child;
- Determining whether a permanent plan, which establishes the placement intended to serve as the child's permanent home, has been created for the child in accordance with federal and state laws and whether appropriate services are being provided to the child and family;
- Submitting a signed written report with recommendations to the court on what placement, visitation plan, services, and permanent plan are in the best interests of the child;
- Attending and participating in court hearings and other related meetings to advocate for a permanent plan, which serves the child's best interests; and
- Maintaining complete records about the case, including appointments scheduled, interviews held, and information gathered about the child and the child's life circumstances.[16]

Public-Records Exemption for Guardians ad Litem

There is precedent in the Florida Statutes for affording protection to addresses, telephone numbers, social security numbers, and other personal information relating to certain individuals, such as judges, magistrates, prosecutors, and code enforcement officers.[17] In 2005, the Legislature added subparagraph 6. to s. 119.071(4)(d), F.S., which governed public-records exemptions for agency personnel information.[18] In doing so, the Legislature exempted home addresses, telephone numbers, places of employment, and photographs of current and former guardians ad litem from disclosure under the public-records law.[19] It also exempted the names, home addresses, telephone numbers, and places of employment of the spouses and children of current or former guardians ad litem.[20] As a result of legislation adopted in 2009, the designation for this public-records exemption has changed to s. 119.071(4)(d)1.h., F.S. The exemption defines a guardian ad litem pursuant to s. 39.820, F.S., which provides that a guardian ad litem includes:

> a certified guardian ad litem program, a duly certified volunteer, a staff attorney, contract attorney, or certified pro bono attorney working on behalf of a guardian ad litem or the program; staff members of a program office; a court-appointed attorney; or a responsible adult who is appointed by the court to represent the best interests of a child in a proceeding as provided for by law, including, but not limited to, this chapter, who is a party to any judicial proceeding as a representative of the child, and who serves until discharged by the court.

In order to obtain the public-records exemption, the guardian ad litem, or the guardian's employing agency, must submit a written request to the custodial agency of the records requesting maintenance of the personal information covered by the exemption. Also, the public-

[16] Florida Guardian ad Litem Program, http://www.guardianadlitem.org/vol_faq.asp (last visited August 11, 2009).
[17] *See* s. 119.071(4)(d), F.S.
[18] During the 2009 Regular Session, House Bill 7037 (ch. 2009-169, Laws of Fla.) reorganized s. 119.071(4)(d), F.S., providing new statutory designations for the public-records exemptions found in that statute.
[19] Chapter 2005-213, Laws of Fla.
[20] *Id*.

records exemption is conditioned upon the guardian ad litem submitting a written statement that he or she has made reasonable efforts to protect the covered information from being accessed through other means available to the public.

A public-records exemption must serve an identifiable public purpose and may be no broader than necessary to meet the public purpose it serves. The statement of public necessity offered by the Legislature when it created the public-records exemption under review provided, in part, that guardians ad litem:

> provide a valuable service to the community. They interact with victims of child abuse and neglect and, at times, the perpetrators of that abuse or neglect. The capacity in which they work or volunteer their time does not always create good will. Different persons may be disgruntled with the testimony, report, or recommendation made by guardians ad litem. The testimony of guardians ad litem could create a safety risk. Thus, the guardians ad litem, or the spouses and children of guardians ad litem, could become a potential target for acts of revenge. If the information specified in this act remains available, the safety and welfare of guardians ad litem, and their spouses and children, could be seriously jeopardized. Accordingly, it is a public necessity that identifying and location information of guardians ad litem, and their spouses and children, be made exempt from public disclosure.[21]

This public-records exemption will expire October 2, 2010, unless reviewed and saved from repeal through reenactment by the Legislature.

Committee on Judiciary's Open Government Sunset Review

Based on an Open Government Sunset Review of this exemption, Senate professional staff of the Judiciary Committee recommended in September 2009 that the Legislature retain the public-records exemption established in s. 119.071(4)(d)1.h., F.S., which makes specified personal information relating to current or former guardians ad litem exempt from disclosure.[22] This recommendation was made in light of the information gathered for this Open Government Sunset Review which indicated that there is a public necessity to continue to protect guardians ad litem from potential threats, as well as to facilitate the recruitment and retention of guardians for the effective administration of the Florida Guardian ad Litem Program.

Senate professional staff also recommended that the Legislature consider amending the public-records exemption to include the names and locations of schools and day care facilities attended by a guardian ad litem's children within the protected information. This recommendation was made in light of the fact that comparable exemptions for specified agency investigators, magistrates, human resource directors, United States judicial officers, code enforcement officers,

[21] Chapter 2005-213, Laws of Fla.

[22] Committee on Judiciary, Fla. Senate, *Open Government Sunset Review of Section 119.071(4)(d)6., F.S., Personal Information Relating to Guardians ad Litem* (Interim Report 2010-223) (Sept. 2009), *available at* http://www.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-223ju.pdf (last visited Nov. 18, 2009). At the time of the initial recommendation, the exemption relating to personal information of guardians ad litem was found in subparagraph 6. of s. 119.071(4)(d), F.S. See note 18 for more details.

and juvenile probation officers all include the names and locations of schools and day care facilities as personal information exempt from disclosure.[23]

III. Effect of Proposed Changes:

This bill is the result of the Judiciary Committee's Open Government Sunset Review of the public-records exemption for specified personal information relating to current or former guardians ad litem found in s. 119.071(4)(d)1.h., F.S. Currently, the exemption protects from disclosure under the public-records law the home addresses, telephone numbers, places of employment, and photographs of current and former guardians ad litem. Additionally, the exemption covers the names, home addresses, telephone numbers, and places of employment of the spouses and children of current or former guardians ad litem. This exemption will expire on October 2, 2010, unless saved from repeal through reenactment by the Legislature.

This bill reenacts the exemption and expands it to include the names and locations of schools and day care facilities attended by a current or former guardian ad litem's children within the scope of protected information. As noted in the Present Situation, comparable public-records exemptions exist for specified individuals, such as judges, magistrates, and code enforcement officers, which exempt from disclosure the names and locations of schools and day care facilities attended by the specified individuals' children.

The bill also includes a statement of public necessity, providing that the expansion of the exemption is necessary in order to protect the safety and welfare of the children of current or former guardians ad litem.

This bill provides an effective date of October 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

This bill retains and expands the public-records exemption for specified personal information relating to current or former guardians ad litem. This bill appears to comply with the requirements of article I, section 24 of the Florida Constitution that public-records exemptions state the public necessity justifying the exemption, be no broader than necessary to accomplish the stated purpose, and be addressed in legislation separate from substantive law changes.

Additionally, this bill expands the current public-records exemption, and therefore it is subject to a two-thirds vote of each house of the Legislature for enactment as required by article I, section 24 of the Florida Constitution.

[23] See ss. 119.071(4)(d)1.a.-i. and (5)(i), F.S. (formerly ss. 119.071(4)(d)1.-7., F.S.).

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.