

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1433 Pub. Rec./Petitions to Determine Incapacity
SPONSOR(S): Schwartz
TIED BILLS: HB 1431, HB 1435 IDEN./SIM. BILLS: SB 2628

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Civil Justice & Courts Policy Committee, 14 Y, 0 N, Bond, De La Paz. Row 2: Governmental Affairs Policy Committee, Williamson, Williamson. Rows 3-5 are empty.

SUMMARY ANALYSIS

Guardianship is a legal process by which a guardian is appointed by a court with the legal right and duty to care for an incapacitated individual known as a ward. A guardianship is established because of the ward's inability to act on his or her own behalf due to minority or due to physical or mental incapacity. Guardianship is commenced by the filing of a petition for guardianship.

This bill creates a public record exemption for a petition for guardianship held by the clerk of the court. The petition is made confidential and exempt. The bill also provides for repeal of the exemption on October 2, 2015, unless reviewed and saved from repeal by the Legislature. It provides a statement of public necessity as required by the State Constitution.

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public record or public meeting exemption. The bill creates a public records exemption; thus, it requires a two-thirds vote for final passage.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### Public Records Law

Article I, s. 24(a) of the State 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 government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.<sup>1</sup>

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act<sup>2</sup> 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.

##### Guardianship

Guardianship is a legal process by which a guardian is appointed by a court with the legal right and duty to care for an incapacitated individual known as a ward. A guardianship is established because of the ward's inability to act on his or her own behalf due to minority or due to physical or mental incapacity. Guardianship is commenced by the filing of a petition for guardianship. The petition for guardianship must specify the grounds justifying guardianship and, therefore, the petition will typically

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<sup>1</sup> Article I, s. 24(c) of the State Constitution.

<sup>2</sup> Section 119.15, F.S.

contain sensitive medical, personal and financial information regarding the potential ward. Specifically, the petition must be verified and must contain<sup>3</sup>:

- The name, age, and present address of the petitioner and the petitioner's relationship to the alleged incapacitated person;
- The name, age, county of residence, and present address of the alleged incapacitated person, and specify the primary language spoken by the alleged incapacitated person, if known;
- A statement that the petitioner believes the alleged incapacitated person to be incapacitated, the facts on which such belief is based, and the names and addresses of all persons known to the petitioner who have knowledge of such facts through personal observation;
- The name and address of the alleged incapacitated person's attending or family physician, if known;
- Which rights the alleged incapacitated person is incapable of exercising to the best of the petitioner's knowledge; and, if the petitioner has insufficient experience to make that judgment, the petitioner shall so indicate;
- Whether plenary or limited guardianship is sought for the alleged incapacitated person; and
- The names, relationships, and addresses of the next of kin of the alleged incapacitated person, specifying the dates of birth of any who are minors, to the extent known to the petitioner.

### **Effect of Bill**

The bill creates a public record exemption for a petition to determine incapacity of an individual filed with the clerk of a court. Such information is made confidential and exempt from public records requirements.<sup>4</sup>

The bill provides for repeal of the exemption on October 2, 2015, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.<sup>5</sup>

#### **B. SECTION DIRECTORY:**

Section 1 amends s. 744.3201, F.S., to create a public record exemption for petitions to determine the incapacity of an individual.

Section 2 provides a public necessity statement.

Section 3 provides an effective date of October 1, 2010.

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

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

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

None.

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<sup>3</sup> Probate Rule 5.550(a).

<sup>4</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>5</sup> Section 24(c), Art. I of the State Constitution.

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.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public record or public meeting exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution, requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

This bill makes a petition for incapacity confidential and exempt from public disclosure. A record that is confidential may not be disclosed to anyone not authorized in the law. The bill may be problematic in practice because it does not specify anyone to which the petition can be disclosed. In practice, the petition needs to be disclosed to the presiding judge, the individual that the petition is filed against, any attorney for the individual, and the examining committee. The bill perhaps should either be amended to make the document only exempt, or should be amended to specify all of the authorized parties to which the petition may be disclosed.

### IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

None.