

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1435 Pub. Rec./Reports of Examining Committee Members
SPONSOR(S): Governmental Affairs Policy Committee and Schwartz
TIED BILLS: HB 1431, CS/HB 1433 IDEN./SIM. BILLS: SB 2624

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Rows include Civil Justice & Courts Policy Committee, Governmental Affairs Policy Committee, Criminal & Civil Justice Policy Council, and empty rows.

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.

A guardianship court is required to appoint 3 medical professionals as an examining committee. Those 3 professionals are each required to examine the alleged incapacitated person and are each required to file a report with the court to be used as evidence when determining whether such individual is to be placed into guardianship.

This bill creates a public record exemption for the reports of the examining committee members. These records are held by the clerk of the court. The reports are made confidential and exempt. The clerk of the court must release the confidential and exempt report to certain persons as authorized by the bill. 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.¹

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 Act² 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.

¹ Article I, s. 24(c) of the State Constitution.

² Section 119.15, F.S.

A guardianship is usually an involuntary proceeding against the ward. The case is started with a petition for guardianship, which must specify the grounds justifying guardianship.³ Within 5 days after the filing of the petition, the court must appoint an examining committee of 3 persons. The 3 must all be medical professionals, and 1 must be a psychiatrist or physician.⁴

Each member of the examining committee must examine the individual alleged to be incapacitated, and may examine any medical records of the individual alleged to be incapacitated.⁵ Each member of the examining committee must conduct a physical examination, a mental health examination, and a functional assessment of the alleged incapacitated person.⁶ Each member must file a report with the clerk of the court, which must include at a minimum⁷:

- To the extent possible, a diagnosis, prognosis, and recommended course of treatment.
- An evaluation of the alleged incapacitated person's ability to retain her or his rights, including, without limitation, the rights to marry, vote, contract, manage or dispose of property, have a driver's license, determine her or his residence, consent to medical treatment, and make decisions affecting her or his social environment.
- The results of the comprehensive examination and the committee member's assessment of information provided by the attending or family physician, if any.
- A description of any matters with respect to which the person lacks the capacity to exercise rights, the extent of that incapacity, and the factual basis for the determination that the person lacks that capacity.
- The names of all persons present during the time the committee member conducted his or her examination. If a person other than the person who is the subject of the examination supplies answers posed to the alleged incapacitated person, the report must include the response and the name of the person supplying the answer.
- The signature of the committee member and the date and time the member conducted his or her examination.

The trial court judge reviews the reports of the examining committee members when determining whether or not the alleged incapacitated person should be placed in guardianship.

Effect of Bill

The bill creates a public record exemption for reports of an examining committee filed with the clerk of a court under the guardianship law. Such information is made confidential and exempt from public records requirements.⁸ A clerk of the court, upon request, must release the confidential and exempt report to:

- A judge of the circuit;
- The alleged incapacitated person;
- An attorney of record for the alleged incapacitated person;
- The public guardian if there is one for the judicial circuit;
- The guardian and the attorney for the guardian if a guardian is appointed;
- An appellate court as part of a record on appeal; and
- To any other person as directed by order of the court.

³ Section 744.3201, F.S.

⁴ Section 744.331(3), F.S.

⁵ Section 744.331(3)(e), F.S.

⁶ Section 744.331(3)(f), F.S.

⁷ Section 744.331(3)(g), F.S.

⁸ 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).

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.⁹

B. SECTION DIRECTORY:

Section 1 amends s. 744.331, F.S., to create a public record exemption for reports of an examining committee related to a petition 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.

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.

⁹ Section 24(c), Art. I of the State Constitution.

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 reports of the examining committee in a guardianship case 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 reports may be disclosed. In practice, the reports need to be disclosed to the presiding judge, the individual that the petition is filed against, and any attorney for the individual alleged to be incapacitated. 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 reports may be disclosed.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 25, 2010, the Governmental Affairs Policy Committee adopted an amendment to HB 1435 and reported the bill favorably with committee substitute. The amendment specifies to whom a clerk of the court must disclose a confidential and exempt report.