

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 Committee on Children, Families, and Elder Affairs

BILL: SB 610

INTRODUCER: Senator Joyner

SUBJECT: Public Records/Claim Settlement on Behalf of a Minor or Ward

DATE: April 11, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Hendon	CF	Pre-meeting
2.	_____	_____	JU	_____
3.	_____	_____	GO	_____
4.	_____	_____	RC	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

SB 610 amends the law relating to guardianship to provide that the petition requesting permission for settlement of a ward's or minor's claim, the order on the petition, and any document associated with the settlement, are confidential and exempt from public records requirements. The court may order partial or full disclosure of the confidential and exempt record to specified individuals upon a showing of good cause.

The bill provides for a repeal date for the exemption unless it is reviewed and saved from repeal by the legislature. The bill provides a statement of public necessity as required by the State Constitution.

The bill is anticipated to have an insignificant fiscal impact on government and provides for an effective of upon becoming law.

This bill substantially amends section 744.3701 of the Florida Statutes.

II. Present Situation:

Settlements in Guardianship Cases

Litigation settlement agreements routinely include a provision that the terms will be held in confidence by all parties. Because an adult may settle a lawsuit without court approval, those confidentiality clauses are effective and enforceable.

However, a minor cannot settle a case valued in excess of \$15,000 without court approval.¹ The court approval process requires a petition setting forth the terms of the settlement.² An order is eventually entered that also may contain the terms of settlement, or may refer to the petition.³ The petition and the order are part of a court file, and therefore, are a matter of public record and open for inspection under current law.

Public Records Requirements

The Florida Constitution specifies requirements for public access to government records. It provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.⁴ The records of the legislative, executive, and judicial branches are specifically included.⁵

In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records. The Public Records Act⁶ guarantees every person's right to inspect and copy any state or local government public record⁷ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁸

Only the Legislature may create an exemption to public records requirements.⁹ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.¹⁰ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other

¹ Section 744.301(2), F.S.

² Section 744.387, F.S.

³ *Id.*

⁴ FLA. CONST. art. I, s. 24(a)

⁵ *Id.*

⁶ Chapter 119, F.S.

⁷ Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records see *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992).

⁸ Section 119.07(1)(a), F.S.

⁹ FLA. CONST. art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates 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 (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 2004); and *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).

¹⁰ FLA. CONST. art. I, s. 24(c)

substantive provisions¹¹ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹²

Open Government Sunset Review Act

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹³ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁴

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.¹⁵ An exemption serves an identifiable purpose if it meets one of the following purposes and the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- It 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; or
- It protects trade or business secrets.¹⁶

The Act also requires specified questions to be considered during the review process.¹⁷ When reenacting an exemption that will repeal, a public necessity statement and a two-thirds vote for passage are required if the exemption is expanded.¹⁸ A public necessity statement and a two-thirds vote for passage are not required if the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception¹⁹ to the exemption is created.²⁰

¹¹The bill, however, may contain multiple exemptions that relate to one subject.

¹² FLA. CONST., art. I, s. 24(c)

¹³ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Courts System (s. 119.15(2), F.S.)

¹⁴ Section 119.15(3), F.S.

¹⁵ Section 119.15(6)(b), F.S.

¹⁶ *Id.*

¹⁷ Section 119.15(6)(a), F.S. The specified questions are: What specific records or meetings are affected by the exemption? Whom does the exemption uniquely affect, as opposed to the general public? 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? If so, how? 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?

¹⁸ An exemption is expanded when it is amended to include more records, information, or meetings or to include meetings as well as records, or records as well as meetings.

¹⁹ An example of an exception to a public records exemption would be allowing an additional agency access to confidential and exempt records.

Court Records

Florida courts have consistently held that the judiciary is not an “agency” for purposes of ch. 119, F.S.²¹ However, the Florida Supreme Court found that “both civil and criminal proceedings in Florida are public events” and that the court will “adhere to the well-established common law right of access to court proceedings and records.”²² There is a Florida constitutional guarantee of access to judicial records.²³ The constitutional provision provides for public access to judicial records, except for those records expressly exempted by the State Constitution, Florida law in effect on July 1, 1993, court rules in effect on November 3, 1992, or by future acts of the legislature in accordance with the Constitution.²⁴

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 744.3701, F.S., to provide that any court record relating to the settlement of a ward's or minor's claim, including a petition for approval of a settlement on behalf of a ward or minor, a report of a guardian ad litem relating to a pending settlement, or an order approving a settlement on behalf of a ward or minor, is confidential and exempt from the provisions of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution and may not be disclosed except as specifically authorized.

Because the record is made confidential and exempt, it may not be disclosed except as provided in law. Current law allows the court, the clerk of court, the guardian and the guardian's attorney to review the guardianship court file. The bill amends s. 744.3701, F.S., to provide that record of a settlement may also be disclosed to the guardian ad litem (if any) related to the settlement, to the ward (the minor) if he or she is 14 years of age or older and has not been declared incompetent, and to the attorney for the ward. The record may also be disclosed as ordered by the court.

The bill provides for a repeal date of October 2, 2018, for the exemption unless it is reviewed and saved from repeal by the Legislature.

Section 2 of the bill provides a statement of public necessity as required by the State Constitution. The bill states that it is a public necessity to keep confidential and exempt from public disclosure information contained in a settlement record which could be used to identify a minor or ward. The information contained in these records is of a sensitive, personal nature and its disclosure could jeopardize the physical safety and financial security of the minor or ward. In order to protect minors, wards, and others who could be at risk upon disclosure of a settlement, it is necessary to ensure that only those interested persons who are involved in settlement proceedings or the administration of the guardianship have access to reports and records.

Section 3 of the bill provides for an effective date of upon becoming law.

²⁰ See *State of Florida v. Ronald Knight*, 661 So. 2d 344 (Fla. 4th DCA 1995) (holding that nothing in s. 24, Art. I of the Florida Constitution require exceptions to a public records exemption to contain a public necessity statement.)

²¹ See e.g., *Times Publishing Company v. Ake*, 660 So. 2d 255 (Fla. 1995).

²² See *Barron v. Florida Freedom Newspapers*, 531 so. 2d 113, 116 (Fla. 1988).

²³ FLA. CONST. art. I, s. 24(a)

²⁴ FLA. CONST. art. I, ss. 24(c) and (d)

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

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

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 expands a public record exemption related to guardianships; thus, it includes a public necessity statement.

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption related to guardianships. The exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

An increase in judicial workload potentially may occur due to the new obligation on the court to determine whether good cause is shown to permit disclosure of court records relating to settlement of a claim on behalf of a minor or ward, and to determine whether disclosure and recording of such records is warranted in relation to a real property transaction, or for such other purposes as the court allows. The potential increase cannot be quantified at this time.²⁵

²⁵ Office of the State Courts Administrator *2013 Judicial Impact Statement*, SB 610 (Mar. 4, 2013) (on file with the Senate Committee on Children, Families and Elder Affairs).

The fiscal impact of this legislation cannot be accurately determined due to the unavailability of data needed to establish the increase in judicial workload resulting from the new obligation on the court to determine whether good cause is shown to permit disclosure of court records relating to settlement of a claim on behalf of a minor or ward, and to determine whether disclosure and recording of such records is warranted in relation to a real property transactions, or for such other purposes as the court allows.²⁶

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

²⁶ *Id.*