

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GAP 10-05 OGSR Information Held by Guardians Ad Litem
SPONSOR(S): Governmental Affairs Policy Committee
TIED BILLS: IDEN./SIM. BILLS: SB 888

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Orig. Comm.: Governmental Affairs Policy Committee, Williamson, Williamson. Rows 2-5 are empty.

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The Florida Guardian ad Litem (GAL) Program is a partnership of community advocates and professional staff acting on behalf of Florida's abused and neglected children. As of December 14, 2009, approximately 23,000 children were represented by close to 7,000 volunteers in the GAL program.

Current law provides a public record exemption for any information related to the best interests of a child as determined by a GAL. Such information includes medical, mental health, substance abuse, child care, education, law enforcement, court, social services, and financial records; and any other information maintained by a GAL that is confidential information under chapter 39, F.S.

The bill reenacts the public record exemption, which will repeal on October 2, 2010, if this bill does not become law. The bill amends the exemption to specify the specific information made confidential and exempt from public records requirements. It removes the ability of the GAL to protect any other information if the GAL determines that such protection is in the best interest of the child. The State Constitution provides that only the Legislature can create an exemption from public records or public meetings requirements. Thus, authorizing the GAL to determine whether additional information should be made confidential and exempt violates this directive and appears to be an unlawful delegation of legislative authority.

The bill does not appear to have a fiscal impact on state or local governments.

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

Open Government Sunset Review Act

The Open Government Sunset Review Act¹ sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act 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.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.² If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created³ then a public necessity statement and a two-thirds vote for passage are not required.

Guardians ad Litem

The Florida Guardian ad Litem (GAL) Program is a partnership of community advocates and professional staff acting on behalf of Florida's abused and neglected children. As of December 14,

¹ Section 119.15, F.S.

² Section 24(c), Art. I of the State Constitution.

³ An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

2009, approximately 23,000 children were represented by close to 7,000 volunteers in the GAL program.⁴

Guardians ad Litem⁵ 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 GAL 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 interest;
- Reviewing records;
- 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 interest of the child;
- Attending and participating in court hearings and other related meetings to advocate for a permanent plan that serves the child's best interest; and
- Maintaining complete records about the case, including appointments scheduled, interviews held, and information gathered about the child and the child's life circumstances.⁶

The GAL Program receives information of a sensitive nature from third-party sources, such as medical providers, mental health providers, schools, and law enforcement. These records are maintained by a GAL and relate exclusively to children who allegedly have been abused, neglected, or abandoned and are in the dependency court system through no fault of their own. These records contain information that could harm the child should they be released.⁷

Public Record Exemption under Review

In 2005, the Legislature created a public record exemption for any information related to the best interests of a child as determined by a GAL.⁸ Such confidential and exempt⁹ information includes but is not limited to medical, mental health, substance abuse, child care, education, law enforcement, court, social services, and financial records; and any other information maintained by a GAL that is confidential information under chapter 39, F.S.

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2010, unless reenacted by the Legislature.¹⁰

⁴ Bill analysis by the Statewide Guardian ad Litem Office, December 15, 2009, at 1. (on file with the Governmental Affairs Policy Committee).

⁵ Section 39.820(1), F.S., defines "guardian ad litem" to mean: as referred to in any civil or criminal proceeding includes the following: 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.

⁶ Bill analysis by the Statewide Guardian ad Litem Office, December 15, 2009, at 1. (on file with the Governmental Affairs Policy Committee).

⁷ *Id.* at 2.

⁸ Section 2 of chapter 2005-213, L.O.F., codified at s. 39.0132(4)(a)2., F.S.

⁹ 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).

¹⁰ Section 39.0132(4)(a)2., F.S.

EFFECT OF BILL

The bill removes the repeal date, thereby reenacting the public record exemption. It amends the exemption to specify the specific information made confidential and exempt from public records requirements. The bill makes it explicit that medical, mental health, substance abuse, child care, education, law enforcement, court, social services, and financial records, in addition to any other information that is confidential under chapter 39, F.S., is confidential and exempt when held by a GAL.

The bill removes the ability of the GAL to protect any other information if the GAL determines that such protection is in the best interest of the child. Article I, s. 24(c) of the State Constitution provides that *only* the Legislature can create an exemption from public records or public meetings requirements. Thus, authorizing the GAL to determine whether additional information should be made confidential and exempt violates this directive and appears to be an unlawful delegation of legislative authority.

Finally, the bill reorganizes the exemption.

B. SECTION DIRECTORY:

Section 1 amends s. 39.0132, F.S., to reenact the public record exemption for certain information regarding a child held by a GAL.

Section 2 provides an effective date of October 1, 2009.

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 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 municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

Not applicable.