

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/HB 7	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Government Operations Subcommittee; Passidomo; Rodríguez, J.	113 Y's	0 N's
COMPANION BILLS:	CS/CS/CS/HB 5; CS/CS/SB 360	GOVERNOR'S ACTION:	Pending

SUMMARY ANALYSIS

CS/HB 7 passed the House on April 16, 2015, and subsequently passed the Senate on April 28, 2015. The bill creates a public records exemption.

Court approval is required to settle any claim of a ward arising before or after the appointment of a guardian or any claim of a minor valued in excess of \$15,000. The court approval process requires a petition setting forth the terms of the settlement, which may also be reflected in a subsequent order approving the settlement. 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 even if the settlement agreement contains a confidentiality provision.

The bill makes 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, confidential and exempt from the provisions of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. The bill authorizes inspection of such records by certain persons upon a showing of good cause. The records may also be disclosed and recorded as ordered by the court.

The bill contains a public necessity statement as required by the State Constitution.

Subject to the Governor's veto powers, the effective date of this bill is on the same date that HB 5 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Public Records Law - In General

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. This 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

Court Records

Florida courts have consistently held that the judiciary is not an "agency" for purposes of Ch. 119, F.S.² 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."³ There is a Florida constitutional guarantee of access to judicial records.⁴ 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 State Constitution.⁵

Exempt versus Confidential and Exempt

There is a difference between records the Legislature has determined to be exempt and those which have been determined to be confidential and exempt.⁶ If the Legislature has determined the information to be confidential then the information is not subject to inspection by the public.⁷ Also, if the information is deemed to be confidential it may only be released to those person and entities designated in statute.⁸ However, the agency is not prohibited from disclosing the records in all circumstances where the records are deemed only exempt.⁹

Settlements in Guardianship Cases

Litigation settlement agreements routinely include a provision that the terms will be held in confidence by all parties. Because a competent adult may settle a lawsuit without court approval, such confidentiality clauses are effective and enforceable. However, court approval is required to settle any claim of a ward arising before or after the appointment of a guardian¹⁰ or any claim of a minor valued in excess of \$15,000.¹¹ The court approval process requires a petition setting forth the terms of the settlement.¹² An order is eventually entered that may also contain the terms of settlement, or may refer to the petition.¹³ The petition and the order are part of a court file, and therefore, are a matter of public

¹ Art I., s. 24(c), FLA. CONST.

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

³ *Barron v. Florida Freedom Newspapers*, 531 So. 2d 113, 116 (Fla. 1988).

⁴ Art I., s. 24(a), FLA. CONST.

⁵ Art I., s. 24(c) and (d), FLA. CONST.

⁶ *WFTV, Inc. v. School Board of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So. 2d 1015 (Fla. 2004).

⁷ *Id.*

⁸ *Id.*

⁹ See *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA), *review denied*, 589 So. 2d 289 (Fla. 1991).

¹⁰ S. 744.387, F.S.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

record and open for inspection under current law even if the settlement agreement contains a confidentiality provision.

Effect of the Bill

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. The bill authorizes inspection of such records by the following persons upon a showing of good cause:

- The court;
- The clerk or the clerk's representative;
- The guardian;
- The guardian's attorney;
- The guardian ad litem related to the settlement (if any);
- The ward if he or she is at least 14 years of age and has not been declared totally incapacitated;
- The attorney for the ward;
- The minor if he or she is at least 14 years of age; and
- The attorney representing the minor with regard to the minor's claim.

The records may also be disclosed and recorded as ordered by the court.

The bill includes a public necessity statement.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

Similar to other public records exemptions, the bill may lead to a minimal fiscal impact on the affected portions of the government, in this case, the court system and clerks of court. Staff responsible for complying with public record requests could require training related to expansion of the public record exemption, and court and clerk offices could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the court system and clerks.