

STORAGE NAME: h3925.go

DATE: March 24, 1998

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
GOVERNMENTAL OPERATIONS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 3925

RELATING TO: Public Records Exemption

SPONSOR(S): Committee on Real Property & Probate, Crow and others

COMPANION BILL(S): SB 1180(i)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) REAL PROPERTY & PROBATE YEAS 4 NAYS 0
 - (2) ELDER AFFAIRS & LONG TERM CARE YEAS 6 NAYS 0
 - (3) GOVERNMENTAL OPERATIONS
 - (4)
 - (5)
-

I. SUMMARY:

HB 3925 provides for access by the Statewide Public Guardianship Office to any medical, financial, or mental health records necessary to evaluate the public guardianship system, to assess the need for additional public guardianship offices or services, or to develop the annual report of the Statewide Public Guardianship Office.

The bill also creates two public records exemptions. These exemptions appear to conflict with one another and one is internally inconsistent. The member has filed an amendment to clarify the language of the exemptions.

The bill provides a statement of public necessity.

The effective date of the bill is tied to the passage of HB 3923, or similar legislation, creating the Statewide Public Guardianship Office.

This bill will not have a fiscal impact.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Public Records Law

Article I, s. 24, Florida Constitution, expresses Florida's public policy regarding access to government records in providing that:

(a) Every person has the right to inspect or copy any public records made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

Article I, s. 24, Florida Constitution, does, however, permit the Legislature to provide by general law for the exemption of records from the requirements of s. 24. The general law exempting the records must state with specificity the public necessity justifying the exemption and can be no broader than necessary to accomplish the stated purpose of the law.

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07, Florida Statutes, provides:

Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at a reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee.

Section 119.15, Florida Statutes, provides that an exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of the following purposes and the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption:

1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
2. Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; or

3. Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

Public Guardianship

Chapter 744, F.S., provides for guardianship of incapacitated individuals. Sections 744.701-744.709, F.S., provide for public guardians as administered through "offices of public guardians." Currently each office of public guardian is administered by the chief judge of the circuit court.

HB 3925 (formerly PCB 98-01 by the Committee on Real Property & Probate) creates the Statewide Public Guardianship Office. HB 3925 requires the new statewide office to conduct research including but not limited to the need for public guardianship services, and to provide oversight of the state's public guardians. In order to meet the requirements specified for this new office, the Statewide Public Guardianship Office will need access to sensitive medical, financial, and mental health records of the states' vulnerable citizens who are elderly, disabled, who have a developmental disability or who have a mental illness.

B. EFFECT OF PROPOSED CHANGES:

Requirement of Access to Agency and Court records

This bill requires any agency or the court and its agencies to provide to the Statewide Public Guardianship Office any medical, financial, or mental health records that are needed for the following purposes:

- to evaluate the public guardianship system;
- to assess the need for additional public guardianship services; or
- to develop the required annual report of the Statewide Public Guardianship Office.

Provisions dealing with Confidentiality

This bill has two provisions dealing with confidentiality.

First, this bill provides that any confidential or exempt information provided by other agencies or the court and its agencies shall be "held confidential or exempt as otherwise provided by law." This means that any information which is confidential when in the custody of other agencies or the court retains that confidential status after its receipt by the Statewide Public Guardianship Office. This provision appears to be narrowly tailored to meet the requirements of the bill's public necessity statement in a manner "no broader than necessary," in accordance with Art. I, section 24 of the Florida Constitution.

Second, this bill provides that "**all records** obtained by the Statewide Public Guardianship Office relating to the medical, financial, or mental health of an individual may not be disclosed publicly in such a manner as to identify the individual and shall be confidential and exempt from [public disclosure]." This language is broader than that of the previous provision. This provision would include within it all the records obtained

from other agencies and the court, in addition to any information otherwise obtained by the Statewide Public Guardianship Office.

This second provision states that the information covered within it: (1) may not be disclosed in a manner which would allow the subject of the information to be identified (2) and, shall be "confidential and exempt" from public disclosure. The wording of this provision is unclear regarding the degree of confidentiality it imposes. The language includes the statement that the information is "confidential and exempt," which parallels the language of the first provision (and appears facially unequivocal), but links this assertion to other language which states that disclosure cannot occur if to do so would identify the individual (which can be interpreted to allow certain disclosures). As presently written, the language of this second provision appears internally inconsistent and in conflict with the first provision regarding information from agencies and the court.

Public Necessity Statement

This bill provides a public necessity statement indicating that allowing the Statewide Public Guardianship Office to obtain access to medical, financial, and mental health records is necessary to advance the health of elderly or disabled adults.

The public necessity statement further provides that the exemption is necessary in order to prevent the disclosure of sensitive information because to do so could lead to discrimination against those individuals who are the subject of the information, and make those citizens reluctant to seek assistance for themselves or their family members.

The effective date of HB 3925 is tied to passage of HB 3923, or similar legislation, which creates the Statewide Public Guardianship office.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No

(3) any entitlement to a government service or benefit?

No

- b. If an agency or program is eliminated or reduced:

No agency or program is eliminated or reduced.

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

- (2) what is the cost of such responsibility at the new level/agency?

N/A

- (3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No

- b. Does the bill require or authorize an increase in any fees?

No

- c. Does the bill reduce total taxes, both rates and revenues?

No

- d. Does the bill reduce total fees, both rates and revenues?

No

- e. Does the bill authorize any fee or tax increase by any local government?

No

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

This bill does not purport to provide services to families or children.

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

No

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- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

This bill does not create or change a program providing services to families or children.

- (1) parents and guardians?

N/A

- (2) service providers?

N/A

- (3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

The bill creates section 744.7081, Florida Statutes.

E. SECTION-BY-SECTION RESEARCH:

Section 1. Section 744.7081, Florida Statutes, is created to permit access to records by the Statewide Public Guardianship Office. The office will have access to any medical, financial, or mental health records necessary to evaluate the public guardianship system, to assess the need for additional public guardianship offices or services, or to develop the annual report of the Statewide Public Guardianship Office. An exemption from public disclosure is created to prevent the release of confidential information obtained from other agencies or the court. An exemption is created covering all records, preventing their disclosure in such a manner as to identify the individual which is the subject of the record, and making such records confidential and exempt from public disclosure.

Section 2. Provides a public necessity statement for the exemption described above, which provides in part that the Legislature finds that the health and safety of the public necessitates that the Statewide Public Guardianship Office have access to medical, financial, and mental health records of the states' vulnerable citizens as specified. The legislature further finds that an exemption from public disclosure of sensitive information is necessary to prevent the negative effects on effectiveness and efficiency which would result if such information is made public.

Section 3. Provides for an effective date which is tied to and contingent upon the passage of HB 3923, or similar legislation, creating the Statewide Public Guardianship Office.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None

2. Recurring Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

4. Total Revenues and Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None

2. Recurring Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None

2. Direct Private Sector Benefits:

None

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3. Effects on Competition, Private Enterprise and Employment Markets:

None

D. FISCAL COMMENTS:

None

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

None

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Elder Affairs and Long Term Care adopted one technical amendment. The amendment simply provided a bill number showing that this public records bill is tied to the passage of HB 3923.

VII. SIGNATURES:

COMMITTEE ON REAL PROPERTY & PROBATE:

Prepared by:

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AS REVISED BY THE COMMITTEE ON ELDER AFFAIRS & LONG TERM CARE:

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