

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: Judiciary Committee

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BILL: SB 474

INTRODUCER: Senator Saunders

SUBJECT: Statewide Guardianship Office/Public Records

DATE: March 7, 2006

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cibula	Maclure	JU	<b>Favorable</b>
2.	_____	_____	CF	_____
3.	_____	_____	GO	_____
4.	_____	_____	RC	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

The bill creates a public records exemption to allow donors and prospective donors to the direct-support organization for the Statewide Public Guardianship Office to remain anonymous, if they wish. The bill provides that the public records exemption is necessary because the release of information identifying donors will adversely affect the direct-support organization.

This bill substantially amends section 744.7082, Florida Statutes.

## II. Present Situation:

### Public Records Law

Florida has a long history of providing public access to the records of governmental and other public entities. The Legislature enacted its first law affording access to public records in 1909. In 1992, Floridians adopted an amendment to the state constitution that raised the statutory right of access to public records to a constitutional level. Section (24)(a), Art. I of the State Constitution provides that:

Every person has 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 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.

The Public Records Law<sup>1</sup> also specifies conditions under which the public must have access to governmental records. Section 119.011(11), F.S., defines the term “public records” to include:

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.

The Florida Supreme Court has interpreted this definition of public records to include all materials made or received by an agency in connection with official business which are used “to perpetuate, communicate, or formalize knowledge.”<sup>2</sup> Unless the Legislature makes these materials exempt, they are open for public inspection, regardless of whether they are in final form.<sup>3</sup>

Under s. 24(c), Art. I of the State Constitution, the Legislature may provide for the exemption of records from the public records requirements provided: (1) the law creating the exemption states with specificity the public necessity justifying the exemption; and (2) the exemption is no broader than necessary to accomplish the stated purpose of the law.

The Open Government Sunset Review Act, s. 119.15, F.S., provides for the review, repeal, and reenactment of an exemption. A new exemption is repealed on the October 2nd in the fifth year after enactment, unless the exemption is reenacted by the Legislature. An exemption may be created or maintained only if it serves an identifiable public purpose, and it may be no broader than necessary to meet that purpose.

### **Statewide Public Guardianship Office**

The Statewide Public Guardianship Office (SPGO) is housed within the Department of Elderly Affairs.<sup>4</sup> The purpose of the SPGO is to provide public guardians to incapacitated persons for whom there is no family member or friend, other person, bank, or corporation willing and qualified to serve as guardian.<sup>5</sup> The Legislature also authorized the creation of a direct-support organization to support the SPGO.<sup>6</sup> The purpose of the direct-support organization is:

to conduct programs and activities; to raise funds; to request and receive grants, gifts, and bequests of moneys; to acquire, receive, hold, invest, and administer, in its own name, securities, funds, objects of value, or other property, real or

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<sup>1</sup> Chapter 119, F.S.

<sup>2</sup> *Shevin v. Byron, Harless, Schaffer, Reid, and Assocs., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

<sup>3</sup> *See Wait v. Florida Power & Light Co.*, 372 So. 2d 420 (Fla. 1979).

<sup>4</sup> Section 744.7021, F.S.

<sup>5</sup> Section 744.702, F.S.

<sup>6</sup> Section 744.7082, F.S.

personal; and to make expenditures to or for the direct or indirect benefit of the Statewide Public Guardianship Office . . . .<sup>7</sup>

### **III. Effect of Proposed Changes:**

The bill creates a public records exemption to allow donors and prospective donors to the direct-support organization for the Statewide Public Guardianship Office to remain anonymous, if they wish. The bill provides that the public records exemption is necessary because the release of information identifying donors will adversely affect the direct-support organization.

This bill takes effect July 1, 2006. The public records exemption will automatically repeal on October 2, 2010, unless reviewed and saved from repeal through reenactment by the Legislature.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

This bill creates a new public records exemption and, as a result, is subject to the requirement of s. 24(c), Art. I of the State Constitution that two-thirds of the members present and voting in each house of the Legislature pass the bill.

#### **C. Trust Funds Restrictions:**

None.

### **V. Economic Impact and Fiscal Note:**

#### **A. Tax/Fee Issues:**

None.

#### **B. Private Sector Impact:**

The public records exemption will allow anonymous donations to the direct-support organization for the Statewide Public Guardianship Office. As such, those donors and potential donors who wish to donate anonymously will no longer be discouraged from donating by public records laws.

#### **C. Government Sector Impact:**

The public records exemption will allow anonymous donations to the direct-support organization for the Statewide Public Guardianship Office. As such, those donors and

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<sup>7</sup> Section 744.7082(1)(b), F.S.

potential donors who wish to donate anonymously will no longer be discouraged from donating by public records laws.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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

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## **VIII. Summary of Amendments:**

None.

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