

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 Judiciary Committee

BILL: SB 888

INTRODUCER: Children, Families, and Elder Affairs Committee

SUBJECT: OGSR/Information Held by Guardians Ad Litem

DATE: February 17, 2010

REVISED: 02/19/10

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Walsh	Walsh	CF	Favorable
2.	Anderson/Maclure	Maclure	JU	Favorable
3.			GO	
4.			RC	
5.				
6.				

I. Summary:

Currently, the Florida Statutes provide that any information related to the best interest of a child and held by a guardian ad litem is confidential and exempt from the requirements of public records law. This information includes medical, mental health, substance abuse, child care, education, law enforcement, court, social services, and financial records, and any other information that is otherwise confidential under the statutes governing proceedings relating to children. The public records exemption will expire on October 2, 2010, unless saved from repeal through reenactment by the Legislature. This bill retains the public records exemption to keep the prescribed information held by a guardian ad litem confidential and exempt from public disclosure.

This bill substantially amends section 39.0132, Florida Statutes.

II. Present Situation:

Florida Public Records Law

Florida has a long history of providing public access to government records. The Legislature enacted the first public records law in 1892.¹ In 1992, Floridians adopted an amendment, article I, section 24, to the State Constitution that raised the statutory right of access to public records to a constitutional level.

¹ Sections 1390, 1391, F.S. (Rev. 1892).

The Public Records Act² specifies conditions under which public access must be provided to records of the executive branch and other agencies. Unless specifically exempted, all agency³ records are available for public inspection. Section 119.011(12), F.S., defines *public records* very broadly to include “all documents, . . . tapes, photographs, films, sound recordings, . . . made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Unless made exempt, all such materials are open for public inspection.⁴

Only the Legislature is authorized to create exemptions to open government requirements. Exemptions must be created by general law, and such law must specifically state the public necessity justifying the exemption.⁵ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.⁶ A bill enacting an exemption or substantially amending an existing exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.⁷

Open Government Sunset Review Act

The Open Government Sunset Review Act⁸ provides for the systematic review of an exemption from the Public Records Act in the fifth year after its enactment. The act states that an exemption may be created, revised, or maintained only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves.⁹ An identifiable public purpose is served if the exemption meets one of three specified criteria and if 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.¹⁰ An exemption meets the statutory criteria if it:

- 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 information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals; or
- 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 would injure the affected entity in the marketplace.¹¹

² Chapter 119, F.S.

³ Section 119.011(2), F.S., defines *agency* as “any state, county, . . . or municipal officer, department, . . . or other separate unit of government created or established by law . . . and any other public or private agency, person, . . . acting on behalf of any public agency.”

⁴ *Tribune Co. v. Cannella*, 458 So. 2d 1075, 1077 (Fla. 1984).

⁵ Art. 1, s. 24(c), Fla. Const.

⁶ *Id.*

⁷ *Id.*

⁸ Section 119.15, F.S.

⁹ Section 119.15(6)(b), F.S.

¹⁰ *Id.*

¹¹ *Id.*

Guardian Ad Litem Program/Public Records Exemption

The Florida Guardian ad Litem Program is a partnership of community advocates and professional staff acting on behalf of Florida's abused and neglected children.¹² A guardian ad litem (GAL) is "a volunteer appointed by the court to protect the rights and advocate the best interests of a child involved in a court proceeding."¹³ As of July 8, 2009, there were approximately 27,000 children represented by close to 7,000 volunteers in the Guardian ad Litem Program.¹⁴

According to the Statewide Guardian ad Litem Program, a GAL's responsibilities include but are not limited to the following:¹⁵

- 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 has been created for the child in accordance with federal and state law 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, which 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.

The Guardian ad Litem 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 sensitive information that could harm the child should they be released.

This information may include but is not limited to the following:

- Medical records,
- Mental health records,

¹² Florida Guardian ad Litem Program, website homepage, <http://www.guardianadlitem.org/> (last visited December 4, 2009).

¹³ Florida Guardian ad Litem Program, *Volunteer: Frequently Asked Questions*, http://www.guardianadlitem.org/vol_faq.asp (last visited December 4, 2009).

¹⁴ Press Release, Florida Statewide Guardian ad Litem Office, Statewide Guardian ad Litem Program Executive Director Marks First Six Months (July 8, 2009), available at <http://www.guardianadlitem.org/documents/PressRelease07.08.09.pdf> (last visited December 4, 2009).

¹⁵ Florida Guardian ad Litem Program, *supra* note 13.

- Substance abuse records,
- Child care records,
- Education records,
- Law enforcement records,
- Court records,
- Social services records,
- Financial records, and
- Any other information maintained by a GAL which is identified as confidential information under chapter 39, F.S., governing proceedings relating to children.¹⁶

In 2005, the Legislature provided that this information is confidential and exempt from the constitutional and statutory public records requirements.¹⁷ In creating the public records exemption, which is codified at s. 39.0132(4)(a)2., F.S., the Legislature found that:

the information obtained by a guardian ad litem in ensuring the care, safety, and protection of children is sensitive and personal to the child and his or her family and that release of this information could expose the child to harm or injure the reputation of the child or the child's family.¹⁸

The public records exemption is scheduled to expire on October 2, 2010.¹⁹

Open Government Sunset Review by Committee on Children, Families, and Elder Affairs

Based upon the Open Government Sunset Review of the exemption, professional staff of the Senate Committee on Children, Families, and Elder Affairs recommended in September 2009 that the Legislature retain the public records exemption established in s. 39.0132(4)(a)2., F.S.²⁰ This recommendation was made in light of the information gathered for the Open Government Sunset Review which indicated that there is a public necessity to continue to protect information of a sensitive personal nature concerning children served by the Guardian ad Litem Program. This review also concluded that, if released, this information could cause unwarranted damage to the good name or reputation of the children or their families.

III. Effect of Proposed Changes:

The bill saves from repeal s. 39.0132(4)(a)2., F.S., allowing any information related to the best interest of a child, as determined by a guardian ad litem, which is held by a guardian ad litem to remain confidential and exempt from public disclosure. By deleting the scheduled October 2, 2010, repeal of the public records exemption, the bill allows for the continuation of the exemption from public records requirements for information including but not limited to medical, mental health, substance abuse, child care, education, law enforcement, court, social

¹⁶ Section 39.0132(4)(a)2., F.S.

¹⁷ Laws of Fla., 2005-213, s. 2.

¹⁸ *Id.* at s. 3.

¹⁹ Section 39.0132(4)(a)2., F.S.

²⁰ Committee on Children, Families, and Elder Affairs, Fla. Senate, *Open Government Sunset Review of Section 39.0132(4)(a)2., F.S., Guardians ad Litem* (Interim Report 2010-207) (Sept. 2009), available at http://www.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-207cf.pdf (last visited Feb. 9, 2010).

services, and financial records, as well as other information that is otherwise confidential under the statutes governing proceedings relating to children.

The effective date of the bill is October 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The bill would retain the public records exemption specified in s. 39.0132(4)(a)2., F.S., protecting from disclosure any information related to the best interest of a child and held by a guardian ad litem.

Section 24(c) of Article I of the State Constitution authorizes the Legislature to create public records exemptions and specifies that an exemption “shall be no broader than necessary to accomplish the stated purpose of the law.” The exemption retained by this bill applies to “any information” related to the best interests of a child and held by a guardian ad litem. Although the exemption prescribes particular kinds of records that are protected from disclosure (e.g., mental health records), it also specifies that the protected information is “not limited to” those particular records. In addition, the statute retained by the bill authorizes the guardian ad litem to determine what constitutes the best interests of a child. To the extent the public records exemption creates questions about the breadth of information protected from disclosure, it may raise constitutional concerns.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

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.
