

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.

Florida Self-Insurers Guaranty Association

The Florida Legislature created the Florida Self-Insurers Guaranty Association (association) as a nonprofit corporation.⁴ The purpose of the association is to provide a mechanism to fund covered

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.

⁴ Section 440.385(1)(a), F.S.

workers' compensation claims of individual insolvent self-insurers other than public utilities or governmental entities. The association is under the general oversight of the Department of Financial Services, which also regulates individual self-insurers for purposes of workers' compensation coverage.⁵

Exemptions under Review

Current law provides a public record exemption for the association. Claims files and medical records and information relating to the medical condition or medical status, of a claimant, are confidential and exempt⁶ from public records requirements.⁷ The public record exemption for claims files expires upon termination of all litigation and settlement of all claims arising out of the accident.⁸

Upon written request, confidential and exempt claims files and medical records and other medical information, of a claimant, may be released to another agency in the performance of that agency's official duties and responsibilities. The receiving agency must maintain the confidential and exempt status of such files, records, and information.⁹

Current law also provides a public meeting exemption for those portions of association meetings wherein confidential and exempt claims files or other medical information about a claimant is discussed. All closed portions of meetings must be recorded and transcribed, including:

- The times of commencement and termination of the meeting;
- All discussion and proceedings;
- The names of all persons present at any time; and
- The names of all persons speaking.¹⁰

Minutes of closed portions of association meetings are confidential and exempt from public records requirements; however, such exemption expires upon termination of all litigation and settlement of all claims.¹¹

The court reporter's notes of any exempt portion of a meeting must be retained by the association for a minimum of five years.¹²

Pursuant to the Open Government Sunset Review Act, the exemptions will repeal on October 2, 2010, unless reenacted by the Legislature.¹³

EFFECT OF BILL

The bill removes the repeal date, thereby reenacting the public record and public meeting exemptions. It also reorganizes the section for clarity.

⁵ *Id.*

⁶ 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).

⁷ Section 440.3851(1)(a) and (b), F.S.

⁸ Section 440.3851(1)(a), F.S.

⁹ Section 440.3851(2), F.S.

¹⁰ Section 440.3851(3), F.S.

¹¹ Section 440.3851(1)(c) and (3), F.S.

¹² Section 440.3851(3), F.S.

¹³ Section 440.3851(4), F.S.

B. SECTION DIRECTORY:

Section 1 amends s. 440.3851, F.S., to reenact the public record and public meeting exemptions for the Florida Association of Self-Insurers Guaranty Association.

Section 2 provides an effective date of October 1, 2010.

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.