

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GAP 10-14

OGSR Florida Commission on Hurricane Loss Projection

Methodology

SPONSOR(S): Governmental Affairs Policy Committee

TIED BILLS:

IDEN./SIM. BILLS: SB 1664

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Governmental Affairs Policy Committee		Williamson	Williamson
1)				
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

In 1995, the Legislature created the Florida Commission on Hurricane Loss Projection Methodology (commission) to serve as an independent body within the State Board of Administration. The commission's role is to adopt findings relating to the accuracy or reliability of the methods, standards, principles, models, and other means used to project hurricane losses. The commission must consider any actuarial methods, principles, standards, models, or output ranges that have the potential for improving the accuracy of or reliability of the hurricane loss projections used in residential property insurance rate filings.

Current law provides a public record exemption for a trade secret used in designing and constructing a hurricane loss model that is provided by a private company to the commission, Office of Insurance Regulation, or an appointed consumer advocate. In addition, current law provides a public meeting exemption for that portion of a meeting of the commission or a rate proceeding on an insurer's rate filing at which confidential and exempt trade secrets are discussed.

The bill reenacts the public record and public meeting exemptions for the commission. It requires a recording to be made of any closed portion of a meeting. The bill expands the current exemptions to protect recordings of closed meetings. As such, the bill extends the repeal date from October 2, 2010, to October 2, 2015. It also provides a public necessity statement as required by the State Constitution.

The bill could create a minimal fiscal impact on the commission as it could incur costs associated with recording closed portions of meetings. It does not appear to have a fiscal impact on local governments.

**The bill requires a two-thirds vote of the members present and voting for passage.**

## 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 Act<sup>1</sup> 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.<sup>2</sup> 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 created<sup>3</sup> then a public necessity statement and a two-thirds vote for passage are not required.

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<sup>1</sup> Section 119.15, F.S.

<sup>2</sup> Section 24(c), Art. I of the State Constitution.

<sup>3</sup> An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

## Florida Commission on Hurricane Loss Projection Methodology

In 1995, the Legislature created the Florida Commission on Hurricane Loss Projection Methodology (commission) to serve as an independent body within the State Board of Administration.<sup>4</sup> The commission's role is to adopt findings relating to the accuracy or reliability of the methods, standards, principles, models, and other means used to project hurricane losses. The commission must consider any actuarial methods, principles, standards, models, or output ranges that have the potential for improving the accuracy of or reliability of the hurricane loss projections used in residential property insurance rate filings.<sup>5</sup>

A number of vendors produce highly complex computer models that purport to reflect an average annual expected loss from hurricanes and other perils. Models of this nature are driven by an array of internal assumptions, within a variety of scientific disciplines.<sup>6</sup> Although some basic assumptions may be common to more than one model, many of the detailed internal assumptions have been developed only after considerable research by each vendor. Such information is closely guarded and treated as a trade secret. If all internal information of a model were published, that model could be replicated, and the vendor producing the model would lose the entirety of its value.

### Exemptions under Review

Initially, s. 627.0628, F.S., did not contain an exemption from public records or public meetings requirements. Accordingly, the commission undertook a process to evaluate the participating computer models that contained proprietary information without the ability to exempt either records or meetings from full public disclosure. The commission first established detailed standards that a model was required to meet in order to obtain approval. For the portion of the model that was nonproprietary, the commission members questioned the vendor in open meetings; for the portion that was proprietary, the commission hired a "professional team" of experts who went on-site to determine whether the model met the applicable standards, and reported its findings to the commission in an open hearing.<sup>7</sup>

At the time, a number of officials voiced concern that a portion of the computer model's internal programming was not subject to the direct scrutiny of the members of the commission, and the process was criticized by some as being a "black box" that the public was unable to view.<sup>8</sup>

In 2005, the Legislature created a public record exemption for a trade secret used in designing and constructing a hurricane loss model that is provided by a private company to the commission, Office of Insurance Regulation, or appointed consumer advocate.<sup>9</sup> The exemption applied to a trade secret as defined in chapter 812, F.S., which relates to theft, robbery, and related crimes.<sup>10</sup> Typically public record exemptions reference the definition of trade secret provided in the Uniform Trade Secrets Act.<sup>11</sup>

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<sup>4</sup> Section 627.0628(2), F.S.

<sup>5</sup> Section 627.0628(3)(a), F.S.

<sup>6</sup> Examples of scientific disciplines used include meteorology, structural engineering, actuarial science, statistics, computer science.

<sup>7</sup> Senate Bill Analysis and Fiscal Impact Statement for SPB 7042 by the Committee on Banking and Insurance, January 26, 2010, at 4.

<sup>8</sup> *Id.*

<sup>9</sup> Section 3 of chapter 2005-264, L.O.F., codified at s. 627.0628(3)(f)1., F.S.

<sup>10</sup> Section 812.081(1)(c), F.S., defines "trade secret" to mean the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. "Trade secret" includes any scientific, technical, or commercial information, including any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:

1. Secret;
2. Of value;
3. For use or in use by the business; and
4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it

when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

<sup>11</sup> Section 688.002(4), F.S., defines "trade secret" to mean information, including a formula, pattern, compilation, program, device, method, technique, or process that:

In 2005, the Legislature also created a public meeting exemption for that portion of a meeting of the commission or of a rate proceeding on an insurer's rate filing, at which a confidential and exempt<sup>12</sup> trade secret is discussed.<sup>13</sup> Current law does not require a recording of the closed portions of meetings. As such, one could argue the public has no assurance that the commission actually discusses trade secrets during those closed sessions.

Pursuant to the Open Government Sunset Review Act, the exemptions will repeal on October 2, 2010, unless reenacted by the Legislature.<sup>14</sup>

### **Effect of Bill**

The bill reenacts the public record and public meeting exemptions for the Florida Commission on Hurricane Loss Projection Methodology.

The bill provides that the public record exemption applies to a "trade secret" as defined in the Uniform Trade Secrets Act. This makes the public record exemption for trade secrets consistent with other similar exemptions.

Further, the bill requires that any portion of a closed meeting be recorded. No portion of the closed meeting may be off the record. The bill also creates a public record exemption for those recordings of closed meetings. As such, the bill extends the repeal date from October 2, 2010, to October 2, 2015. In addition, it provides a public necessity statement as required by the State Constitution.

#### **B. SECTION DIRECTORY:**

Section 1 amends s. 627.0628, F.S., to reenact and expand the exemptions for the Florida Commission on Hurricane Loss Projection Methodology.

Section 2 provides a public necessity statement.

Section 3 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:**

The Florida Commission on Hurricane Loss Projection Methodology could incur costs associated with recording closed portions of meetings; however, those costs should be minimal.

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(a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

(b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

<sup>12</sup> 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).

<sup>13</sup> Section 3 of chapter 2005-264, L.O.F., codified at s. 627.0628(3)(f)2., F.S.

<sup>14</sup> Section 627.0628(3)(f)3., F.S.

**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:

Vote Requirement

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public record or public meeting exemption. The bill expands the current exemptions under review; thus, it requires a two-thirds vote for passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution, requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands the current exemptions under review; thus, it includes a public necessity statement.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

Not applicable.