

Tab 1	SB 322 by Simpson; Preexisting Conditions					
863736	D	S	RCS	BI, Simpson	Delete everything after	02/19 01:25 PM

Tab 2	SB 380 by Brandes; (Identical to H 00617) Homeowners' Insurance Policies					
690278	T	S	RCS	BI, Lee	In title, delete L.2:	02/19 01:25 PM

Tab 3	SPB 7050 by BI; OGSR/Investigations and Examinations by the Office of Financial Regulation					
--------------	---------------------------------------------------------------------------------------------------	--	--	--	--	--

Tab 4	SPB 7052 by BI; OGSR/Informal Enforcement Actions/Trade Secrets/Office of Financial Regulation					
--------------	-------------------------------------------------------------------------------------------------------	--	--	--	--	--

Tab 5	SPB 7054 by BI; OGSR/Hurricane or Flood Loss Models					
--------------	------------------------------------------------------------	--	--	--	--	--

Tab 6	SPB 7056 by BI; OGSR/Family Trust Companies/Office of Financial Regulation					
--------------	-----------------------------------------------------------------------------------	--	--	--	--	--

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

BANKING AND INSURANCE
Senator Broxson, Chair
Senator Rouson, Vice Chair

MEETING DATE: Tuesday, February 19, 2019
TIME: 12:30—2:00 p.m.
PLACE: Pat Thomas Committee Room, 412 Knott Building

MEMBERS: Senator Broxson, Chair; Senator Rouson, Vice Chair; Senators Brandes, Gruters, Lee, Perry, Taddeo, and Thurston

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 322 Simpson	Preexisting Conditions; Defining the terms “operative date” and “preexisting medical condition” with respect to health insurance policies and group, blanket, and franchise health insurance policies; requiring insurers and health maintenance organizations, contingent upon the occurrence of either of two specified events, to make at least one comprehensive major medical health insurance policy or health maintenance contract available to all residents of this state within a specified timeframe; prohibiting such insurers or health maintenance organizations from excluding or delaying coverage under such policies or contracts due to preexisting medical conditions, etc. BI 02/19/2019 Fav/CS HP RC	Fav/CS Yeas 6 Nays 1
2	SB 380 Brandes (Similar S 550, Identical H 617)	Homeowners’ Insurance Policies; Revising circumstances under which insurers issuing homeowners’ insurance policies must include a specified statement relating to flood insurance with the policy documents at initial issuance and renewals, etc. BI 02/19/2019 Fav/CS CA RC	Fav/CS Yeas 7 Nays 0
3	SPB 7050	OGSR/Investigations and Examinations by the Office of Financial Regulation; Amending provisions which provides an exemption from public records requirements for information collected in connection with investigations and examinations by the Office of Financial Regulation of the Financial Services Commission; removing the scheduled repeal of the exemption, etc.	Submitted and Reported Favorably as Committee Bill Yeas 7 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Banking and Insurance

Tuesday, February 19, 2019, 12:30—2:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SPB 7052	OGSR/Informal Enforcement Actions/Trade Secrets/Office of Financial Regulation; Amending provisions relating to exemptions from public records requirements for informal enforcement actions by the Office of Financial Regulation and certain trade secrets held by the office under the financial institutions codes; removing the scheduled repeal of the exemptions, etc.	Submitted and Reported Favorably as Committee Bill Yeas 7 Nays 0
5	SPB 7054	OGSR/Hurricane or Flood Loss Models; Amending provisions relating to exemptions from public records and public meetings requirements for certain trade secrets used in designing and constructing hurricane or flood loss models and provided to the Florida Commission on Hurricane Loss Projection Methodology, the Office of Insurance Regulation, or the Insurance Consumer Advocate, and for certain portions and recordings of meetings at which the trade secrets are discussed; removing the scheduled repeal of the exemptions, etc.	Submitted and Reported Favorably as Committee Bill Yeas 7 Nays 0
6	SPB 7056	OGSR/Family Trust Companies/Office of Financial Regulation; Amending provisions relating to an exemption from public records requirements for certain information held by the Office of Financial Regulation relating to family trust companies, licensed family trust companies, and foreign licensed family trust companies; removing the scheduled repeal of the exemption, etc.	Submitted and Reported Favorably as Committee Bill Yeas 7 Nays 0

Other Related Meeting Documents

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 Committee on Banking and Insurance

BILL: CS/SB 322

INTRODUCER: Banking and Insurance Committee and Senator Simpson

SUBJECT: Preexisting Conditions

DATE: February 21, 2019 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	Fav/CS
2.			HP	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 322 requires each insurer or health maintenance organization (HMO) issuing major medical policies or contracts in Florida to offer at least one comprehensive major medical policy or contract that does not exclude, limit, deny, or delay coverage due to one or more preexisting medical conditions. The operative date for such mandated offer is the enactment of a federal law that expressly repeals the Patient Protection and Affordable Care Act (PPACA) or the invalidation of the PPACA by the United States Supreme Court. Preexisting conditions affect an estimated 129 million Americans.¹

The PPACA prohibits group and individual health insurance plans from imposing preexisting condition exclusions. This requirement of the PPACA preempts state laws that allow such insurers to utilize preexisting condition exclusions. The currently preempted Florida law prohibits individual health policies from excluding preexisting conditions for more than 24 months and that may relate to conditions that manifested themselves during the 24-month period. Individual health policies may exclude coverage for named or specific conditions without any time limit. Florida law prohibits group policies from excluding preexisting conditions for more than 12 months, or 18 months in the case of a late enrollee and may only relate to conditions that manifested themselves during the 6-month period prior to coverage.

¹ 80 FR 72192.

II. Present Situation:

PPACA

On March 23, 2010, the PPACA was signed into law.² Among its sweeping changes to the U.S. health care system are requirements for health insurers to make coverage available to all individuals and employers, without exclusions, for preexisting medical conditions and without basing premiums on any health-related factors. The PPACA imposes many insurance requirements including an individual mandate of coverage, required benefits, rating and underwriting standards, mandatory review of rate increases, reporting of medical loss ratios and payment of rebates, internal and external appeals of adverse benefit determinations, and other requirements.³ The PPACA preempts any state law that prevents the application of a provision of PPACA.⁴

Preexisting Condition Exclusions

The PPACA prohibits health insurance policies from excluding coverage for any preexisting condition.⁵ A health insurer that offers individual or group health insurance coverage may not impose any preexisting condition exclusion.⁶ Rules define the term, “preexisting condition exclusion” to include a denial of coverage.⁷ Individual (but not group) grandfathered health plans are exempt from this requirement.⁸

Regulation of Insurance in Florida

The Office of Insurance Regulation (OIR) is responsible for the regulation of all activities of insurers and other risk-bearing entities.⁹

² P.L. 111-148, 124 Stat. 119-1945 (2010). PPACA was amended by P.L. 111-152, the Health Care and Education Reconciliation Act of 2010.

³ Most of the insurance regulatory provisions in PPACA amend Title XXVII of the Public Health Service Act (PHSA), (42 U.S.C. 300gg et seq.).

⁴ The PPACA preempts any state law that prevents the application of a provision of the PPACA. The PPACA effectively allows states to adopt and enforce laws that provide greater consumer protections than the PPACA, but any state law that does not meet the federal minimum standards will be preempted. PPACA s. 1321(d).

⁵ PPACA s. 1201; PHSA s. 2704 (42 U.S.C. 300gg-3).

⁶ 45 CFR 144.108.

⁷ *Preexisting condition exclusion* means a limitation or exclusion of benefits (including a denial of coverage) based on the fact that the condition was present before the effective date of coverage (or if coverage is denied, the date of the denial) under a group health plan or group or individual health insurance coverage...whether or not any medical advice, diagnosis, care, or treatment was recommended or received before that day. A preexisting condition exclusion includes any limitation or exclusion of benefits (including a denial of coverage) applicable to an individual as a result of information relating to an individual's health status before the individual's effective date of coverage (or if coverage is denied, the date of the denial) under a group health plan, or group or individual health insurance coverage...such as a condition identified as a result of a pre-enrollment questionnaire or physical examination given to the individual, or review of medical records relating to the pre-enrollment period. See 45 C.F.R. s. 144.013.

⁸ A grandfathered health plan can be an individual or group health insurance policy purchased on or before March 23, 2010. Such plans are not subject to the ACA prohibition on pre-existing conditions and other specified ACA requirements. A plan can lose its grandfathered status if it is significantly changed. See Healthcare.gov, Grandfathered Health Insurance Plans, available at <https://www.healthcare.gov/health-care-law-protections/grandfathered-plans> (last viewed February 18, 2019).

⁹ The OIR is under the Financial Services Commission, which is composed of the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture, which serves as the agency head of the commission. Section 20.121(3), F.S.

2019 Individual and Small Group Markets

Nine health insurance companies writing individual policies or contracts submitted rate filings to the OIR in June 2018. In August 2018, the OIR announced that premiums for the individual PPACA compliant plans would increase an average of 5.2 percent effective January 1, 2019.¹⁰ The average approved rate changes on the exchange plans ranged from -1.5 percent to a +9.8 percent. Only one insurer, Blue Cross Blue Shield offers individual coverage in all 67 counties.¹¹ During the 2019 open enrollment period, 1,786,679 individuals enrolled in Florida plans through the federally administered exchange.¹²

The OIR approved the 2019 rates for 14 small group insurers.¹³ The weighted average change in approved rates from 2018 was 6.0 percent. The percentage change in approved rates from 2018 ranged from -11.8 percent to +14.5 percent. Florida Blue and UnitedHealthCare (and affiliates) offer small group plans in every county.

Preexisting Condition Exclusions

The PPACA prohibits group and individual health insurance plans from imposing preexisting condition exclusions.¹⁴ This requirement of the PPACA preempts state laws that allow such insurers to utilize preexisting condition exclusions. The currently preempted Florida law prohibits individual health policies from excluding preexisting conditions for more than 24 months and that may relate to conditions that manifested themselves during the 24-month period.¹⁵ Individual health policies may exclude coverage for named or specific conditions without any time limit.¹⁶ Florida law prohibits group policies from excluding preexisting conditions for more than 12 months, or 18 months in the case of a late enrollee and may only relate to conditions that manifested themselves during the 6-month period prior to coverage.¹⁷

PPACA Legislation and Litigation

In recent years, major federal legislation has been filed to amend, repeal or replace the PPACA.¹⁸ In 2017, the federal Tax Cuts and Jobs Act¹⁹ reduced the tax penalty for individuals who fail to

¹⁰ Office of Insurance Regulation, Individual PPACA Market Monthly Premiums for Plan Year 2019, available at <https://floir.com/siteDocuments/IndividualMarketPremiumSummary.pdf> (last viewed February 11, 2019). See also OIR Press Release, OIR Announces 2019 PPACA Individual Market Health Insurance Plan Rates, available at <https://www.floir.com/PressReleases/viewmediarelease.aspx?id=2234> (last viewed February 11, 2019).

¹¹ OIR, Individual Market County Offerings, available at <https://www.floir.com/sitedocuments/IndividualMarketCountyOfferings.pdf>, (last viewed February 11, 2019).

¹² CMS.gov, *Final Weekly Enrollment Snapshot for the 2019 Enrollment Period*, January 3, 2019, at <https://edit.cms.gov/newsroom/fact-sheets/final-weekly-enrollment-snapshot-2019-enrollment-period> (last viewed February 14, 2019).

¹³ OIR, Small Group PPACA Market Monthly Premiums for Plan Year 2019, dated August 22, 2018, available at OIR <https://www.floir.com/siteDocuments/SGMarketPremiumSummary.pdf> (last viewed February 14, 2019).

¹⁴ 42 U.S.C. 300gg-3.

¹⁵ Section 627.6045, F.S.

¹⁶ Section 627.607(2), F.S.

¹⁷ Prior creditable coverage reduces the exclusion period.

¹⁸ Compare Proposals to Replace the Affordable Care Act, available at <https://www.kff.org/interactive/proposals-to-replace-the-affordable-care-act/> (last viewed February 13, 2019).

¹⁹ Public L. No. 115-97, Stat. 2054 (2017).

comply with PPACA's individual mandate to maintain minimum essential health coverage to zero beginning tax year 2019.²⁰ However, the act did not repeal the individual mandate.

On December 14, 2018, the U.S. District Court for the Northern District of Texas, declared the individual mandate of the PPACA unconstitutional and the remaining provisions of the PPACA inseverable from the mandate, and thus invalid.²¹ Subsequently, on December 31, 2018, the Court issued a stay that keeps the PPACA in force while the ruling is appealed.²² In response to the ruling, the federal U.S. Department of Health and Human Services²³ stated, "The recent U.S. District Court decision regarding the Affordable Care Act is not an injunction that halts the enforcement of the law and not a final judgment. Therefore, HHS will continue administering and enforcing..."

III. Effect of Proposed Changes:

Section 1 creates s. 627.6046, F.S., to require insurers issuing or delivering individual health insurance policies in Florida to offer at least one comprehensive major medical health insurance policy that does not exclude or delay coverage under the policy or contract due to one or more preexisting medical conditions. This mandated offer is triggered by an operative date. The term, "operative date," means the date that either of the following occurs with respect to PPACA:

- A federal law is enacted that expressly repeals PPACA; or
- PPACA is invalidated by the United States Supreme Court.

Notwithstanding s. 627.6045, F.S.,²⁴ the section requires every insurer to make such policy or contract available to all residents of the state within 30 days after the operative date. The comprehensive major medical health insurance policy that the insurer is required to offer under this section must be a policy that had been actively marketed in this state by the insurer as of the operative date and that was also actively marketed in this state during the year immediately preceding the operative date. An insurer may not limit or exclude benefits under such policy, including a denial of coverage applicable to an individual as a result of information relating to an individual's health status before the individual's effective date of coverage, or if coverage is denied, the date of the denial.

The term, "preexisting medical condition" is defined to mean:

²⁰ Prior to tax year 2019, PPACA required that, for each month during the year, an individual must have minimum essential coverage (MEC) or individual mandate; qualify for an exemption; or pay a penalty or shared responsibility payment when filing the federal income tax return. 26 U.S.C. s. 5000A. See <https://www.irs.gov/taxtopics/tc561> (last viewed February 14, 2019).

²¹ *Texas v. Azar*, available at https://benefitslink.com/src/ctop/Texas-v-US_NDTex_12142018.pdf (last viewed February 15, 2019). The Court noted that the 2010 Congress memorialized that the mandate was the keystone to PPACA, see 42 U.S.C. s. 18091.

²² *Texas v. Azar*, Order available at <https://static.politico.com/17/86/6721f2eb435fb2512430e54c2904/220.pdf> (last viewed February 15, 2019).

²³ See Statement from the Department of Health and Human Services on *Texas v. Azar*, dated December 17, 2018, available at: <https://www.hhs.gov/about/news/2018/12/17/statement-from-the-department-of-health-and-human-services-on-texas-v-azar.html> (last viewed February 11, 2019).

²⁴ Florida law on preexisting conditions in individual market policies that is currently preempted by the PPACA.

- A condition that was present before the effective date of coverage under a policy, whether or not any medical advice, diagnosis, care, or treatment was recommended or received before the effective date of coverage; and
- A condition identified as a result of a preenrollment questionnaire or physical examination given to the individual, or review of medical records relating to the preenrollment period.²⁵

This section does not apply to an insurer issuing only limited benefit, disability income, specified disease, Medicare supplement, or hospital indemnity policies in this state.

Section 2 creates s. 627.65612, F.S., to require insurers issuing or delivering group health insurance policies in Florida to offer at least one comprehensive major medical health insurance policy that does not exclude or delay coverage under the policy due to one or more preexisting medical conditions, as required for individual policies and contracts in Section 1 of the bill. The terms, “operative date” and “preexisting medical condition,” have the same meaning as provided in Section 1 of the bill.

Notwithstanding ss. 627.6561, F.S.,²⁶ an insurer is required to make such coverage available within 30 days after the operative date. An insurer may not limit or exclude benefits under such policy, including a denial of coverage applicable to an individual as a result of information relating to an individual’s health status before the individual’s effective date of coverage, or if coverage is denied, the date of the denial.

This section does not apply to an insurer issuing only limited benefit, disability income, specified disease, Medicare supplement, or hospital indemnity policies in this state.

Section 3 amends s. 641.31, F.S., to require HMOs issuing or delivering individual or group contracts in Florida to offer at least one comprehensive major medical health insurance policy or contract that does not exclude or delay coverage under the policy or contract due to one or more preexisting medical conditions, as required for individual policies and contracts in Section 1 of the bill. The terms, “operative date” and “preexisting medical condition,” have the same meaning as provided in Section 1 of the bill.

Notwithstanding s. 641.31071, F.S.,²⁷ an HMO is required to make such coverage available within 30 days after the operative date. The comprehensive major medical HMO contract that the HMO is required to offer under this section must be a contract that had been actively marketed in this state by the HMO as of the operative date and that was also actively marketed in this state during the year immediately preceding the operative date. An HMO may not limit or exclude benefits under such contract, including a denial of coverage applicable to an individual as a result of information relating to an individual’s health status before the individual’s effective date of coverage, or if coverage is denied, the date of the denial.

Section 4 provides this act will take effect July 1, 2019.

²⁵ See 45 C.F.R. s. 144.013.

²⁶ Florida laws on preexisting conditions for group policies offered by insurers that are currently preempted by the PPACA.

²⁷ Florida laws on preexisting conditions for contracts offered by health maintenance organizations that are currently preempted by the PPACA.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

If the U.S. Supreme Court invalidates PPACA or a federal law expressly repeals PPACA, the bill would provide access for individuals and groups to at least one policy or contract for major medical coverage that did not exclude or delay coverage due to the applicant having one or more preexisting medical conditions. Currently, the Florida Insurance Code does not prohibit preexisting condition exclusions; however, it is preempted by PPACA.

The bill requires every insurer and HMO to offer at least one policy or contract without preexisting medical exclusions to all residents. Currently, only Florida Blue offers individual plans in every county. Florida Blue and UnitedHealthCare (and affiliates) offer small group plans in every county.

Such coverage may be expensive for some individuals with preexisting medical conditions due to adverse selection. Many individuals purchasing such coverage would be expected to have some type of preexisting medical condition. Under Florida law, insurers would be allowed to pool policies or contracts covering preexisting conditions separately from other policies that did not offer that benefit, as well as underwrite such policies that accounts for the losses experienced.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

Due to a scrivener's error, a provision in Section 2 of the bill, as filed, was not included in the CS. This was a provision regarding the type of group policy an insurer is required to offer.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 627.6046 and 627.65612

IX. Additional Information:

Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

The CS:

- Revises the definition of the term, “preexisting medical condition.”
- Revises requirements relating to the offer of coverage without preexisting condition exclusions.

A. Amendments:

None.



863736

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/19/2019	.	
	.	
	.	
	.	

The Committee on Banking and Insurance (Simpson) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 627.6046, Florida Statutes, is created
to read:

627.6046 Limit on preexisting conditions.-

(1) As used in this section, the term:

(a) "Operative date" means the date on which either of the
following occurs with respect to the Patient Protection and



863736

11 Affordable Care Act, Pub. L. No. 111-148, as amended by the
12 Health Care and Education Reconciliation Act of 2010, Pub. L.
13 No. 111-152 (PPACA):

14 1. A federal law is enacted which expressly repeals PPACA;
15 or

16 2. PPACA is invalidated by the United States Supreme Court.

17 (b) "Preexisting medical condition" means a condition that
18 was present before the effective date of coverage under a
19 policy, whether or not any medical advice, diagnosis, care, or
20 treatment was recommended or received before the effective date
21 of coverage. The term includes a condition identified as a
22 result of a preenrollment questionnaire or physical examination
23 given to the individual, or review of medical records relating
24 to the preenrollment period.

25 (2) (a) Not later than 30 days after the operative date, and
26 notwithstanding s. 627.6045 or any other law to the contrary,
27 every insurer issuing, delivering, or issuing for delivery
28 individual health insurance policies in this state shall make at
29 least one comprehensive major medical health insurance policy
30 available to all residents of this state, and such insurer may
31 not exclude, limit, deny, or delay coverage under such policy
32 due to one or more preexisting medical conditions.

33 (b) An insurer may not limit or exclude benefits under such
34 policy, including a denial of coverage applicable to an
35 individual as a result of information relating to an
36 individual's health status before the individual's effective
37 date of coverage, or if coverage is denied, the date of the
38 denial.

39 (3) The comprehensive major medical health insurance policy



863736

40 that the insurer is required to offer under this section must be
41 a policy that had been actively marketed in this state by the
42 insurer as of the operative date and that was also actively
43 marketed in this state during the year immediately preceding the
44 operative date.

45 (4) This section does not apply to an insurer that issues
46 only limited benefit, disability income, specified disease,
47 Medicare supplement, or hospital indemnity policies in this
48 state.

49 Section 2. Section 627.65612, Florida Statutes, is created
50 to read:

51 627.65612 Limit on preexisting conditions.-

52 (1) As used in this section, the terms "operative date" and
53 "preexisting medical condition" have the same meanings as
54 provided in s. 627.6046.

55 (2)(a) Not later than 30 days after the operative date, and
56 notwithstanding s. 627.6561 or any other law to the contrary,
57 every insurer issuing, delivering, or issuing for delivery group
58 health insurance policies in this state shall make at least one
59 comprehensive major medical health insurance policy available to
60 all residents of this state, and such insurer may not exclude,
61 limit, deny, or delay coverage under such policy due to one or
62 more preexisting medical conditions.

63 (b) An insurer may not limit or exclude benefits under such
64 policy, including a denial of coverage applicable to an
65 individual as a result of information relating to an
66 individual's health status before the individual's effective
67 date of coverage, or if coverage is denied, the date of the
68 denial.



863736

69 (4) This section does not apply to an insurer issuing only
70 limited benefit, disability income, specified disease, Medicare
71 supplement, or hospital indemnity policies in this state.

72 Section 3. Subsection (45) is added to section 641.31,
73 Florida Statutes, to read:

74 641.31 Health maintenance contracts.-

75 (45) (a) As used in this subsection, the terms "operative
76 date" and "preexisting medical condition" have the same meanings
77 as provided in s. 627.6046.

78 (b) Not later than 30 days after the operative date, and
79 notwithstanding s. 641.31071 or any other law to the contrary,
80 every health maintenance organization issuing, delivering, or
81 issuing for delivery individual or group contracts in this state
82 shall make at least one comprehensive major medical health
83 maintenance contract available to all residents of this state,
84 and such health maintenance organization may not exclude, limit,
85 deny, or delay coverage under such contract due to one or more
86 preexisting medical conditions. A health maintenance
87 organization may not limit or exclude benefits under such
88 contract, including a denial of coverage applicable to an
89 individual as a result of information relating to an
90 individual's health status before the individual's effective
91 date of coverage, or if coverage is denied, the date of the
92 denial.

93 (c) The comprehensive major medical health maintenance
94 contract the health maintenance organization is required to
95 offer under this section must be a contract that had been
96 actively marketed in this state by the health maintenance
97 organization as of the operative date and that was also actively



863736

98 marketed in this state during the year immediately preceding the
99 operative date.

100 Section 4. This act shall take effect July 1, 2019.

101
102 ===== T I T L E A M E N D M E N T =====

103 And the title is amended as follows:

104 Delete everything before the enacting clause
105 and insert:

106 A bill to be entitled
107 An act relating to preexisting conditions; creating
108 ss. 627.6046 and 627.65612, F.S.; defining the terms
109 "operative date" and "preexisting medical condition"
110 with respect to individual and group health insurance
111 policies, respectively; requiring insurers, contingent
112 upon the occurrence of either of two specified events,
113 to make at least one comprehensive major medical
114 health insurance policy available to all residents of
115 this state within a specified timeframe; prohibiting
116 such insurers from excluding, limiting, denying, or
117 delaying coverage under such policies due to
118 preexisting medical conditions; prohibiting certain
119 actions; requiring such policies to have been actively
120 marketed on a specified date and during a certain
121 timeframe before that date; providing applicability;
122 amending s. 641.31, F.S.; defining the terms
123 "operative date" and "preexisting medical condition"
124 with respect to health maintenance contracts;
125 requiring health maintenance organizations, contingent
126 upon the occurrence of either of two specified events,



863736

127 to make at least one comprehensive major medical
128 health maintenance contract available to all residents
129 of this state within a specified timeframe;
130 prohibiting such health maintenance organizations from
131 excluding, limiting, denying, or delaying coverage
132 under such contracts due to preexisting medical
133 conditions; prohibiting certain actions; requiring
134 such contracts to have been actively marketed on a
135 specified date and during a certain timeframe before
136 that date; providing an effective date.

By Senator Simpson

10-00487C-19

2019322__

1 A bill to be entitled
 2 An act relating to preexisting conditions; creating
 3 ss. 627.6046 and 627.65612, F.S.; defining the terms
 4 "operative date" and "preexisting medical condition"
 5 with respect to health insurance policies and group,
 6 blanket, and franchise health insurance policies;
 7 requiring insurers and health maintenance
 8 organizations, contingent upon the occurrence of
 9 either of two specified events, to make at least one
 10 comprehensive major medical health insurance policy or
 11 health maintenance contract available to all residents
 12 of this state within a specified timeframe;
 13 prohibiting such insurers or health maintenance
 14 organizations from excluding or delaying coverage
 15 under such policies or contracts due to preexisting
 16 medical conditions; requiring such policies or
 17 contracts to have been actively marketed on a
 18 specified date and during a certain timeframe before
 19 that date; providing applicability; providing an
 20 effective date.

21
 22 Be It Enacted by the Legislature of the State of Florida:

23
 24 Section 1. Section 627.6046, Florida Statutes, is created
 25 to read:

26 627.6046 Limit on preexisting conditions.-

27 (1) As used in this section, the term:

28 (a) "Operative date" means the date that either of the
 29 following occurs with respect to the Patient Protection and

Page 1 of 4

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

10-00487C-19

2019322__

30 Affordable Care Act, Pub. L. No. 111-148, as amended by the
 31 Health Care and Education Reconciliation Act of 2010, Pub. L.
 32 No. 111-152 (PPACA):
 33 1. A federal law is enacted which expressly repeals PPACA;
 34 or
 35 2. PPACA is invalidated by the United States Supreme Court.
 36 (b) "Preexisting medical condition" means:
 37 1. A condition that, during the 24-month period immediately
 38 preceding the effective date of coverage, manifested itself in
 39 such a manner as to cause an ordinarily prudent person to seek
 40 medical advice, diagnosis, care, or treatment or for which
 41 medical advice, diagnosis, care, or treatment was recommended or
 42 received; or
 43 2. A pregnancy existing on the effective date of coverage.
 44 (2) No later than 30 days after the operative date, and
 45 notwithstanding s. 627.6045 or any other law to the contrary,
 46 every insurer and health maintenance organization issuing,
 47 delivering, or issuing for delivery individual health insurance
 48 policies or health maintenance contracts in this state shall
 49 make at least one comprehensive major medical health insurance
 50 policy or health maintenance contract available to all residents
 51 of this state, and such insurer or health maintenance
 52 organization may not exclude or delay coverage under such policy
 53 or contract due to one or more preexisting medical conditions.
 54 (3) The comprehensive major medical health insurance policy
 55 or health maintenance contract that the insurer or health
 56 maintenance organization is required to offer under this section
 57 must be a policy or contract that had been actively marketed in
 58 this state by the insurer or health maintenance organization as

Page 2 of 4

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

10-00487C-19 2019322__

59 of the operative date and that was also actively marketed in
 60 this state during the year immediately preceding the operative
 61 date.

62 (4) This section does not apply to an insurer that issues
 63 only limited benefit, disability income, specified disease,
 64 Medicare supplement, or hospital indemnity policies in this
 65 state.

66 Section 2. Section 627.65612, Florida Statutes, is created
 67 to read:

68 627.65612 Limit on preexisting conditions.-

69 (1) As used in this section, the terms "operative date" and
 70 "preexisting medical condition" have the same meanings as
 71 provided in s. 627.6046.

72 (2) No later than 30 days after the operative date, and
 73 notwithstanding ss. 627.6561 and 641.31071 or any other law to
 74 the contrary, every insurer and health maintenance organization
 75 issuing, delivering, or issuing for delivery group health
 76 insurance policies or health maintenance contracts in this state
 77 shall make at least one comprehensive major medical health
 78 insurance policy or health maintenance contract available to all
 79 residents of this state, and such insurer or health maintenance
 80 organization may not exclude or delay coverage under such policy
 81 or contract due to one or more preexisting medical conditions.

82 (3) The comprehensive major medical health insurance policy
 83 or health maintenance contract the insurer or health maintenance
 84 organization is required to offer under this section must be a
 85 policy or contract that had been actively marketed in this state
 86 by the insurer or health maintenance organization as of the
 87 operative date and that was also actively marketed in this state

10-00487C-19 2019322__

88 during the year immediately preceding the operative date.

89 (4) This section does not apply to an insurer issuing only
 90 limited benefit, disability income, specified disease, Medicare
 91 supplement, or hospital indemnity policies in this state.

92 Section 3. This act shall take effect July 1, 2019.



The Florida Senate

Committee Agenda Request

To: Senator Doug Broxson, Chair
Committee on Banking and Insurance

Subject: Committee Agenda Request

Date: January 28, 2019

I respectfully request that **Senate Bill # 322**, relating to pre-existing conditions, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in black ink, appearing to read "W. Simpson", written over a horizontal line.

Senator Wilton Simpson
Florida Senate, District 10

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 Committee on Banking and Insurance

BILL: CS/SB 380

INTRODUCER: Banking and Insurance Committee and Senator Brandes

SUBJECT: Homeowners' Insurance Policies Disclosures

DATE: February 20, 2019 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Knudson	BI	Fav/CS
2.			CA	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 380 requires when an insurer issues homeowners policies that excludes coverage for the peril of flood they must provide to their policyholders a disclosure informing them of the benefits of flood insurance.

The new requirements will apply to policies issued or renewed on or after July 1, 2019.

II. Present Situation:

The National Flood Insurance Program (NFIP)

The NFIP was created by the passage of the National Flood Insurance Act of 1968.¹ The NFIP is administered by the Federal Emergency Management Agency (FEMA) and provides property owners located in flood-prone areas the ability to purchase flood insurance protection from the federal government.

¹ <http://www.fema.gov/media-library/assets/documents/7277?id=2216> (Last accessed January 29, 2019).

Private Market Flood Insurance in Florida

In 2014, the Legislature created s. 627.715, F.S., governing the sale of personal lines residential flood insurance.² “Flood” is defined as a general and temporary condition of partial or complete inundation of two or more acres of normally dry land area or of two or more properties from:

- Overflow of inland or tidal waters;
- Unusual and rapid accumulation or runoff of surface waters from any source;
- Mudflow; or
- Collapse or subsidence of land along the shore of a lake or similar body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels that result in a flood as defined above.³

The Legislature amended the law in 2015⁴ and 2017.⁵ Flood insurance is a separate line of insurance from homeowner’s property insurance and is not included in such a policy.⁶ In the case of flood damage occurring during the course of a hurricane, the windstorm portion of the homeowner’s property insurance policy does not cover the flood damage.⁷ If the homeowner does not separately purchase flood insurance through the National Flood Insurance Program or an admitted Florida flood insurer, such losses will be uninsured.

The Office of Insurance Regulation reports there are 29 admitted insurance companies currently writing private flood insurance in the state.⁸

Insurance Policy Notice Requirements

The Florida Insurance Code⁹ requires that various insurance policies include specific notices to provide consumers with important information or ensure consistency and readability of insurance contracts from different insurers. The content of the notice depends on the type of coverage provided. Statutory provisions requiring notices often establish requirements regarding their content, print type or size, and appearance (e.g., bold type or all capitalized text).

In 2018¹⁰, the legislature passed a requirement that all insurers issuing homeowners policies must provide to their policyholders a disclosure in bold, 18 point font that must read:

**“FLOOD INSURANCE: YOU MAY ALSO NEED TO CONSIDER THE PURCHASE
OF FLOOD INSURANCE. YOUR HOMEOWNER’S INSURANCE POLICY DOES**

² Ch. 2014-80, Laws of Fla.

³ s. 627.715(1)(b), F.S.

⁴ Ch. 2015-69, Laws of Fla.

⁵ Ch. 2017-142, Laws of Fla.

⁶ part X, ch. 627, F.S.

⁷ Flood insurance covers rising water that sits or flows on the ground and damages property by inundation and flow. Windstorm insurance covers water falling or driven by wind that damages property by infiltration of the structure from above or laterally while carried by the wind. In short, flood insurance covers damage related to rising water and windstorm insurance covers damage related to airborne water.

⁸ Presentation by OIR “Flood Facts & Florida’s Flood Insurance Market” January 2019. (On file with the Banking and Insurance Committee)

⁹ Chapters 624-632, 634, 635, 636, 641, 642, 648, and 651 constitute the “Florida Insurance Code.” s. 624.01, F.S.

¹⁰ Ch. 2018-63 L.O.F.

NOT INCLUDE COVERAGE FOR DAMAGE RESULTING FROM FLOOD EVEN IF HURRICANE WINDS AND RAIN CAUSED THE FLOOD TO OCCUR. WITHOUT SEPARATE FLOOD INSURANCE COVERAGE, YOU MAY HAVE UNCOVERED LOSSES CAUSED BY FLOOD. PLEASE DISCUSS THE NEED TO PURCHASE SEPARATE FLOOD INSURANCE COVERAGE WITH YOUR INSURANCE AGENT.”

III. Effect of Proposed Changes:

The bill would require when an insurer issues homeowners policies that excludes the coverage for the peril of flood they must provide to their policyholders a disclosure as to the benefit of flood insurance. When an insurer issues a homeowners policy that includes flood coverage they will no longer be required to provide such disclosure to their policyholders.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

When an insurer issues homeowners policies that include coverage for the peril of flood will no longer have to print and provide to their policyholders a disclosure as to the benefits of flood insurance.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 627.7011 of the Florida Statutes.

IX. Additional Information:

- A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance on February 19, 2019:
The CS adds “Disclosures” to the title of the bill.

- B. Amendments:

None.



690278

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/19/2019	.	
	.	
	.	
	.	

The Committee on Banking and Insurance (Lee) recommended the following:

Senate Amendment

In title, delete line 2
and insert:
An act relating to homeowners' insurance policy
disclosures;

By Senator Brandes

24-01047-19

2019380__

1 A bill to be entitled
2 An act relating to homeowners' insurance policies;
3 amending s. 627.7011, F.S.; revising circumstances
4 under which insurers issuing homeowners' insurance
5 policies must include a specified statement relating
6 to flood insurance with the policy documents at
7 initial issuance and renewals; providing an effective
8 date.

9
10 Be It Enacted by the Legislature of the State of Florida:

11 Section 1. Subsection (4) of section 627.7011, Florida
12 Statutes, is amended to read:

13 627.7011 Homeowners' policies; offer of replacement cost
14 coverage and law and ordinance coverage.—

15 (4) (a) An insurer that issues a homeowner's insurance
16 policy must include with the policy documents at initial
17 issuance and every renewal, in bold type no smaller than 18
18 points, the following statement:

19
20
21 "LAW AND ORDINANCE: LAW AND ORDINANCE COVERAGE IS AN
22 IMPORTANT COVERAGE THAT YOU MAY WISH TO PURCHASE.
23 PLEASE DISCUSS WITH YOUR INSURANCE AGENT."
24

25 (b) An insurer that issues a homeowner's insurance policy
26 that does not provide flood insurance coverage must include with
27 the policy documents at initial issuance and every renewal, in
28 bold type no smaller than 18 points, the following statement:
29

Page 1 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

24-01047-19

2019380__

30 "FLOOD INSURANCE: YOU MAY ALSO NEED TO CONSIDER THE
31 PURCHASE OF FLOOD INSURANCE. YOUR HOMEOWNER'S
32 INSURANCE POLICY DOES NOT INCLUDE COVERAGE FOR DAMAGE
33 RESULTING FROM FLOOD EVEN IF HURRICANE WINDS AND RAIN
34 CAUSED THE FLOOD TO OCCUR. WITHOUT SEPARATE FLOOD
35 INSURANCE COVERAGE, YOU MAY HAVE UNCOVERED LOSSES
36 CAUSED BY FLOOD. PLEASE DISCUSS THE NEED TO PURCHASE
37 SEPARATE FLOOD INSURANCE COVERAGE WITH YOUR INSURANCE
38 AGENT."
39

40 (c) The intent of this subsection is to encourage
41 policyholders to purchase sufficient coverage to protect them in
42 case events excluded from the standard homeowners policy, such
43 as law and ordinance enforcement and flood, combine with covered
44 events to produce damage or loss to the insured property. The
45 intent is also to encourage policyholders to discuss these
46 issues with their insurance agent.

47 Section 2. This act shall take effect July 1, 2019.

Page 2 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.



Flood Facts & Florida's Private Flood Insurance Market

Susanne Murphy
Deputy Commissioner - Property and Casualty

Florida's Private Flood Statewide Data as of September 1, 2018

- **Personal Residential Private Flood**
 - Policies in Force: 44,252
 - Number of Insurers Writing: 29
 - Number of Insurers that Received Certification: 15
- **Excess Personal Residential Private Flood**
 - Policies in Force: 6,186
 - Number of Insurers Writing: 6
- **Surplus Lines**
 - Personal Residential Policies in Force: 18,492
 - Personal Excess Policies in Force: 5,938
 - Commercial Policies in Force: 5,560
 - Commercial Excess Policies in Force: 1,356
 - Number of Insurers Writing: 47

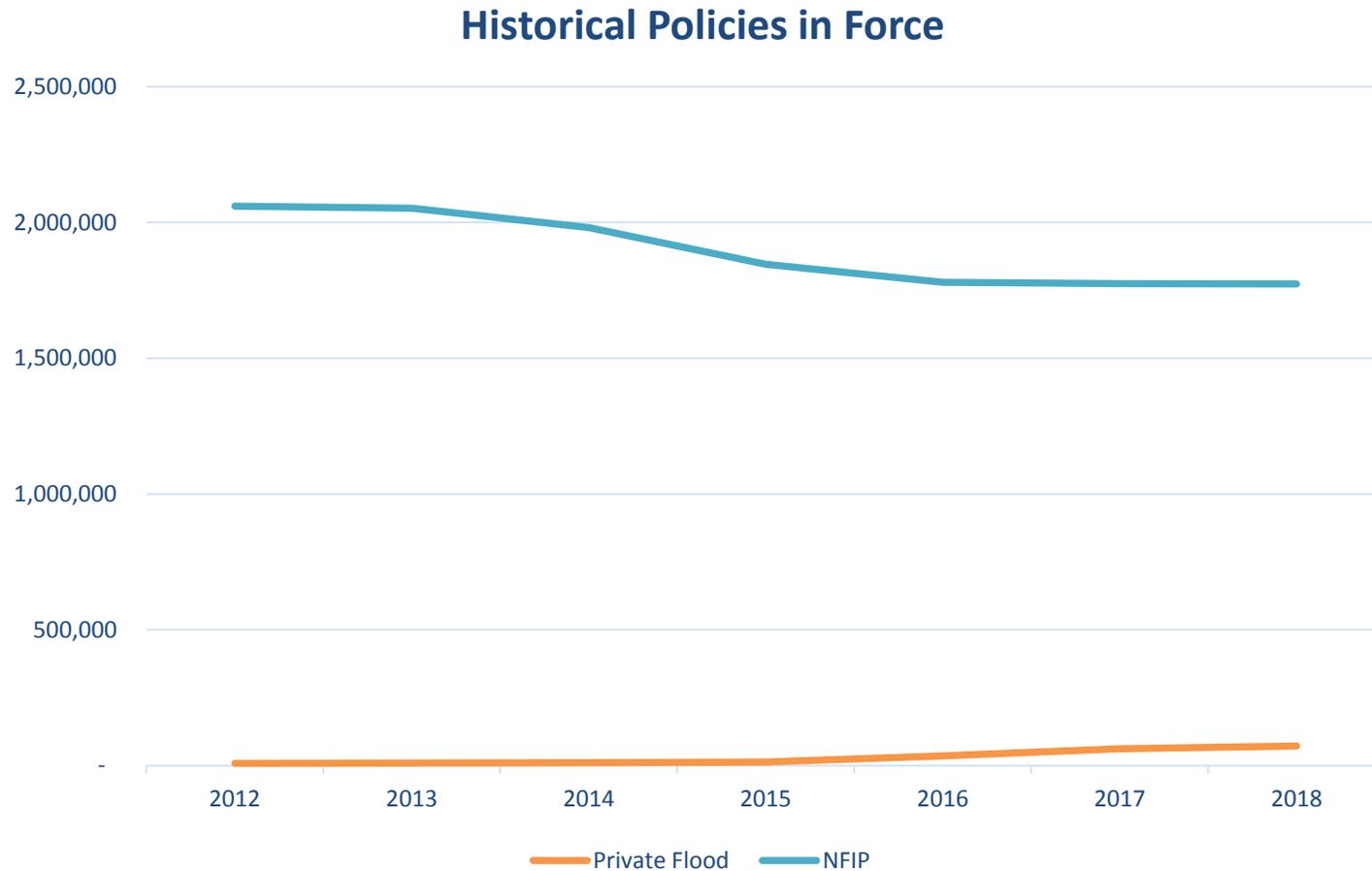


Urgent Need to Encourage the Purchase of Flood Coverage

- FL Population (2017 est.): 20,980,000
- Number of FL Residential Policies in Force (as of 6.30.2018): 6,295,351
- Number of NFIP Policies in Force: 1,770,452
- Total Number of Private Flood Policies in Force in FL: 81,784
- Potential Number of Residential Risks Uninsured for the Peril of Flood: **4,443,115**



Urgent Need to Encourage the Purchase of Flood Coverage



Urgent Need to Encourage the Purchase of Flood Coverage

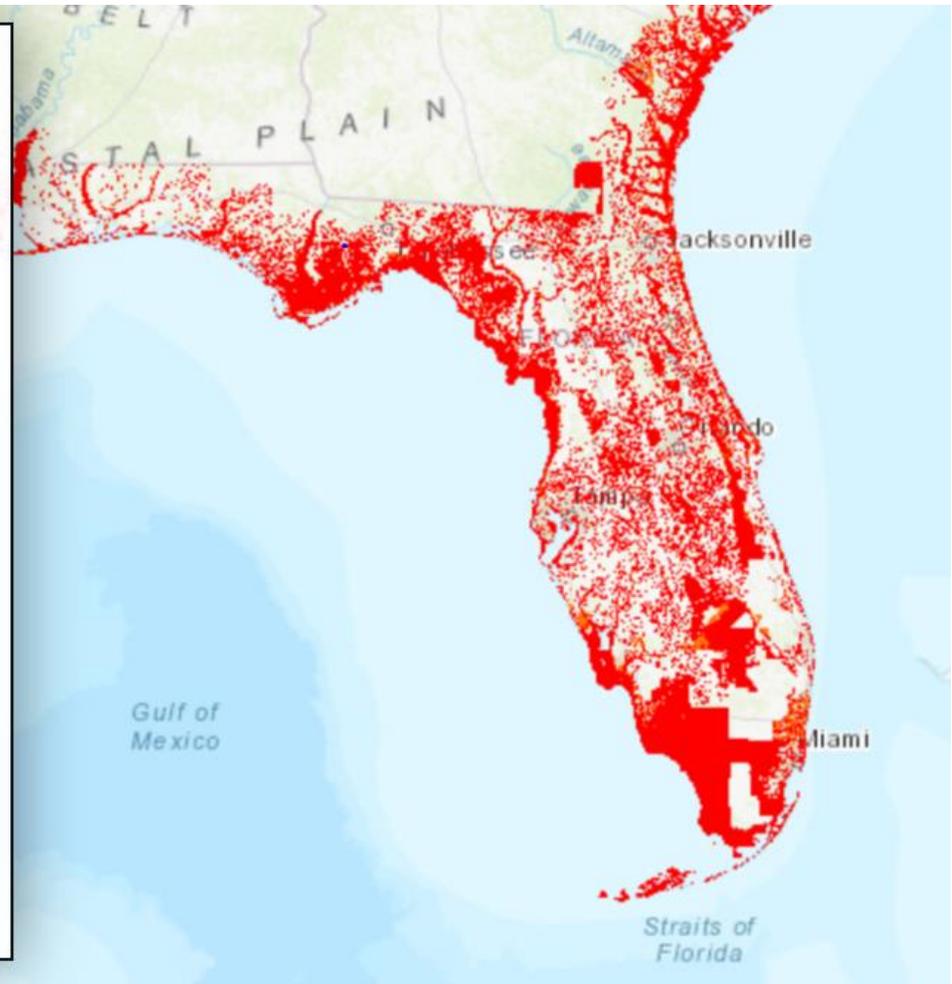
FEMA Flood Zones

This map shows high-risk (1% annual chance, or 100-year floodplain) and moderate-risk (0.2% annual chance, or 500-year floodplain) flood zones designated by the Federal Emergency Management Agency (FEMA).

Some parts of the flood zone may experience frequent flooding while other areas are only affected by severe storms. Areas outside of mapped zones may also be at risk since land use changes could have occurred after the maps were created, changing the flooding potential.

To designate the zones and determine insurance premiums, FEMA conducts flood insurance studies. Incorporated in the studies are statistical data for river flow and storm tides, hydrologic and hydraulic analyses, rainfall and topographic surveys, and storm frequency and intensity models.

Note: High-risk flood zones are also commonly referred



Florida's Roadmap for the Development of a Private Flood Insurance Market

- Identify the development of a private flood market as a priority
- Support legislation to encourage its development
- Streamline flow of rate and form filings
- Encourage company participation as new flood writers

Next Steps:

- Consumer outreach
- Agent education
- Lender and realtor education
- Statewide partnership



Florida's Private Flood Insurance Statute

- Section 627.715, F.S. ~ became effective June 13, 2014:
- Provides flexibility in the development of flood rates
- Allows insurers alternative ways to establish flood rates
 - Permits insurers to file rates for approval; or
 - Allows insurers to use rates, rating manuals or filed schedules which allow a reasonable rate of return
 - No rate approvals required until 2023



Florida's Private Flood Insurance Statute

- Requires policies to be at least as broad as the NFIP
- Provides flexibility in flood coverages provided
- Allows insurers to develop customized flood coverage
 - An insurer may issue flood insurance policies, contracts, endorsements, or excess coverage
 - On a standard, preferred, customized, flexible, or supplemental basis



Florida's Private Flood Insurance Statute

- Suspends diligent effort requirements allowing surplus lines agents to export flood coverage without demonstrating that coverage is available from licensed insurers
- Insurers may request the Office to certify that a policy, contract, or endorsement provides coverage for the peril of flood which equals or exceeds flood coverage offered by the NFIP
 - Policies, contracts, or endorsements must contain a provision stating it meets the requirements specified in 42 U.S.C. s. 4012a(b); and
 - May not contain any provision that is not in compliance with 42 U.S.C. s. 4012a(b)



Example of Certification Policy Language

B. NFIP Compliance Guarantee

This “flood coverage endorsement” is guaranteed to provide coverage for the peril of “flood” which equals or exceeds the “flood” coverage offered by the “National Flood Insurance Program (NFIP)”. To the extent any provision within this endorsement fails to provide such coverage, such provision is hereby amended to provide coverage for the peril of “flood” which equals the “flood” coverage offered by the “National Flood Insurance Program”.

This “flood coverage endorsement” meets the private “flood” insurance requirements specified in 42 U.S.C. s. 4012a(b) and does not contain any provision that is not in compliance with 42 U.S.C. s. 4012a(b).



Why Does a Private Flood Market Work?

- Florida's statute facilitates and simplifies insurer ability to develop private flood policies
- Consumers have access to more choices:
 - 4 coverage options
 - May purchase coverage from NFIP, private insurers, or surplus lines insurers
- Certification ensures policies meet or exceed NFIP coverage
- Insurers voluntarily participate in data and loss ratio collection efforts



FEMA's New Strategic Goals

- Nationwide commitment to close the flood insurance gap
- Unifies emergency management across the nation
- Goal to double the number of properties covered by flood insurance by 2022
- Create a culture of preparedness as insured survivors are able to more fully and more quickly recover



FLOIR.com

- Basic Flood Insurance Information
- Additional Flood Insurance Resources and Contacts
- Lists of Private Flood Insurance Writers in Florida
- Email questions or requests for information about writing private flood in Florida to: PrivateFlood@FLOIR.com.
- Tables are now manned with experience staff to discuss private flood.



Questions?



Thank You for Attending





The Florida Senate

Committee Agenda Request

To: Senator Doug Broxson
Committee on Banking and Insurance

Subject: Committee Agenda Request

Date: January 28, 2019

I respectfully request that **Senate Bill #380**, relating to **Homeowners' Insurance Policies**, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in black ink, appearing to read "Jeff Brandes", written over a horizontal line.

Senator Jeff Brandes
Florida Senate, District 24

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 Committee on Banking and Insurance

BILL: SPB 7050

INTRODUCER: Banking and Insurance Committee

SUBJECT: OGSR/Investigations and Examinations by the Office of Financial Regulation

DATE: February 19, 2019

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Johnson	Knudson		BI Submitted as Comm. Bill/Fav

I. Summary:

SPB 7050 continues the public records exemption for information collected in connection with an investigation or examination conducted by the Office of Financial Regulation (OFR), pursuant to the Florida Consumer Collection Practices Act (act), by removing the October 2, 2019, repeal date.

Currently, s. 559.5558, F.S., provides that any information held by the OFR pursuant to an investigation or examination of a violation of the act is confidential and exempt from s. 119.07(1), F.S., and article I, section 24 of the Florida Constitution. Information made confidential and exempt may be disclosed by the OFR to a law enforcement agency or another administrative agency in the performance of its official duties and responsibilities. Once the investigation or examination is completed or ceases to be active, such information is no longer confidential and exempt unless certain circumstances exist.

Pursuant to the Open Government Sunset Review, the public records exemption is scheduled to repeal October 2, 2019, unless reenacted by the Legislature. Since the bill continues the exemption and does not expand the scope of the public records exemption, the bill requires a majority vote of each chamber for passage.

This bill takes effect October 1, 2019.

II. Present Situation:

Florida's Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ This applies to the official business of any public body, officer, or employee of the state, including state and local governmental

¹ FLA. CONST., art. I, s. 24(a).

entities, and any person acting on behalf of the government.² In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.³ Chapter 119, F.S., known as the Public Records Act, constitutes the main body of public records laws.⁴ The Public Records Act states that

it is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁵

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

The Legislature may create an exemption to public records requirements by passing a general law by a two-thirds vote of each of the House and the Senate.⁹ The exemption must explicitly explain the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the exemption.¹⁰ A statutory exemption that does not meet these two criteria may be unconstitutional and may not be judicially saved.¹¹

An exemption may provide that a record is “confidential and exempt” or “exempt.”¹² Records designated as “confidential and exempt” may be released by the records custodian only under the

² *Id.*

³ The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So.2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are primarily located in s. 11.0431(2)-(3), F.S.

⁴ Public records laws are found throughout the Florida Statutes.

⁵ Section 119.01(1), F.S.

⁶ Section 119.011(12), F.S., defines “public record” to mean “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.” Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So.2d 633, 640 (Fla. 1980).

⁸ Section 119.10, F.S. Public records laws and penalties for violation of these laws are found throughout the Florida Statutes.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ *Id.*

¹¹ *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So.2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a public records statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

¹² If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004).

circumstances defined by the Legislature. Records designated as “exempt” may be released at the discretion of the records custodian.¹³

Open Government Sunset Review Act

In addition to the constitutional requirements relating to the enactment of a public records or open meetings exemption, the Legislature may subject the new or broadened exemption to the Open Government Sunset Review Act (OGSR Act). The OGSR Act prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁴ The OGSR Act provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.¹⁵ In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

The OGSR Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.¹⁶ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹⁷
- Releasing sensitive personal information would be defamatory or would jeopardize an individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;¹⁸ or
- It protects trade or business secrets.¹⁹

Further, the OGSR Act requires specified questions to be considered during the review process.²⁰ In examining an exemption, the OGSR Act asks the Legislature to question carefully the purpose and necessity of reenacting the exemption.

¹³ *Williams v. City of Minneola*, 575 So.2d 683 (Fla. 5th DCA 1991).

¹⁴ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.

¹⁵ Section 119.15(3), F.S.

¹⁶ Section 119.15(6)(b), F.S.

¹⁷ Section 119.15(6)(b)1., F.S.

¹⁸ Section 119.15(6)(b)2., F.S.

¹⁹ Section 119.15(6)(b)3., F.S.

²⁰ Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

If in reenacting an exemption or repealing the sunset date, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²¹ If the exemption is reenacted or saved from repeal without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²²

Regulation of Consumer Collection Agencies and Debt Collectors

Consumer debt covers non-business debt such as mortgages, credit cards, medical debts, and other debts primarily for personal, family, or household purposes. If a borrower defaults on a consumer debt, the lender may initiate collection efforts, usually through the sale or assignment of the asset to a third-party debt collector.

The Florida Consumer Collection Practices Act²³ (act) regulates consumer collection agencies. The act gives primary oversight authority to the Office of Financial Regulation (OFR).²⁴ The act defines the term, “consumer collection agency,” to mean any debt collector or business entity engaged in the business of soliciting consumer debts for collection or of collecting consumer debts that is not exempted by the act.²⁵ The term, “debt collector,” is defined to mean any person who uses any instrumentality of interstate commerce in any business the principal purpose of which is the collection of debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due to asserted to be owed or due another.²⁶ The act contains registration²⁷ and recordkeeping²⁸ requirements and prohibits certain collection practices. According to the OFR, there are 1,283 licensed consumer collectors.²⁹

The OFR may conduct examinations and investigations to determine whether a person has violated the provisions of the act. Section 559.5558, F.S., provides that any information held by the OFR pursuant to an investigation or examination of a violation the act is confidential and exempt from s. 119.07(1), F.S., and article I, section 24 of the Florida Constitution. Information made confidential and exempt may be disclosed by the office to a law enforcement agency or another administrative agency in the performance of its official duties and responsibilities. Once the investigation or examination is completed or ceases to be active, such information is no longer confidential and exempt, unless disclosure of the information would:

- Jeopardize the integrity of another active investigation or examination.

²¹ FLA. CONST. art. I, s. 24(c).

²² Section 119.15(7), F.S.

²³ Part VI of Ch. 559, F.S., Section 559.551, F.S.

²⁴ The Office of Financial Regulation is established within the Financial Services Commission, which is composed of the Governor, the Attorney General, and Chief Financial Officer, and the Commissioner of Agriculture. Commission members serve as the agency head of the OFR. The Financial Services Commission is created within the Department of Financial Services and is not subject to control, supervision, or direction by the Department of Financial Services. Section 20.121(3), F.S.

²⁵ Section 559.55(3), F.S.

²⁶ Section 559.55(7), F.S.

²⁷ Sections 559.553 and 559.555, F.S.

²⁸ Section 559.5556, F.S.

²⁹ Correspondence from the Office of Financial Regulation, dated January 7, 2019. On file with Senate Banking and Insurance Committee.

- Reveal the personal identifying information of a consumer, unless the consumer is also the complainant. The complainant's personal identifying information is subject to disclosure after the investigation or examination is completed or ceases to be active. However, the complainant's personal financial and health information remains confidential and exempt.
- Reveal the identity of a confidential source.
- Reveal investigative or examination techniques or procedures.
- Reveal trade secrets, as defined in s. 688.002, F.S.

Further, s. 559.5588, F.S., is subject to the Open Government Sunset Review Act and shall stand repealed on October 2, 2019, if not reenacted.

OGSR Survey and Results

In 2018, Senate professional staff sent out a survey to the Office of Financial Regulation and other stakeholders to ascertain if s. 559.5558, F.S., remains necessary, pursuant to the OGSR Act.³⁰ Subsequent meetings were held with the OFR staff. The OFR provided the following information to professional staff concerning public record requests for information relating to s. 559.5558, F.S. The OFR stated that it had received 684 public records requests related to s. 559.5558, F.S., which may contain exempt information. According to the OFR, those requests were received from attorneys (201 or 29.4 percent), industry (196 or 28.7 percent), administrative agencies (167 or 24.4 percent), law enforcement (55 or 8 percent), consumers (48 or 7 percent), and media (17 or 2.5 percent). The OFR indicated that documents were provided in 679 (or 99.3 percent) of those requests, and in the remainder of the requests, six were withdrawn, four were closed when documents were not available and in two cases, the requests were closed due to documents being exempt or confidential. These two cases were exempt or confidential due to possible disclosure of personal health information or due to the entity being under investigation.

The OFR recommends reenacting the public records exemption without changes. Further, the OFR indicates that this exemption is vital to protecting the public from phishing and other types of identity theft. The release of financial or medical records collected during an examination or investigation could result in the release of personal financial and medical information.

III. Effect of Proposed Changes:

Section 1 amends s. 559.5558, F.S., to remove the scheduled repeal date of October 2, 2019, of the public records exemption law. Effectively, the bill permits the public records exemption relating to OFR investigations and examinations of consumer collection practices to continue, as they currently exist.

Section 2 provides an effective date of October 1, 2019.

³⁰ See OFR survey correspondence, dated July 13, 2018, on file with the Senate Committee on Banking and Insurance.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce the ability of counties and municipalities to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

The bill does not expand the current exemption, and therefore a public necessity statement is not required. Since there is no expansion of the exemption, a simple majority vote is required.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The continuation of the public records exemption would prevent the release of sensitive personal medical information and financial information of individuals.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends section 559.5558 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of 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.

FOR CONSIDERATION By the Committee on Banking and Insurance

597-00886-19

20197050pb

1 A bill to be entitled
 2 An act relating to a review under the Open Government
 3 Sunset Review Act; amending s. 559.5558, F.S., which
 4 provides an exemption from public records requirements
 5 for information collected in connection with
 6 investigations and examinations by the Office of
 7 Financial Regulation of the Financial Services
 8 Commission; removing the scheduled repeal of the
 9 exemption; providing an effective date.

10
 11 Be It Enacted by the Legislature of the State of Florida:

12
 13 Section 1. Section 559.5558, Florida Statutes, is amended
 14 to read:

15 559.5558 Public records exemption; investigations and
 16 examinations.—

17 (1) As used in this section, the term "personal financial
 18 and health information" means:

19 (a) Information relating to the existence, nature, source,
 20 or amount of a consumer's personal income, expenses, and debt;

21 (b) Information relating to a consumer's financial
 22 transactions of any kind;

23 (c) Information relating to the existence, identification,
 24 nature, or value of a consumer's assets, liabilities, or net
 25 worth;

26 (d) A consumer's personal health condition, disease, or
 27 injury; or

28 (e) A history of a consumer's personal medical diagnosis or
 29 treatment.

Page 1 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

597-00886-19

20197050pb

30 (2) (a) Except as otherwise provided by this section,
 31 information held by the office pursuant to an investigation or
 32 examination of a violation of this part is confidential and
 33 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 34 Constitution. However, information made confidential and exempt
 35 pursuant to this section may be disclosed by the office to a law
 36 enforcement agency or another administrative agency in the
 37 performance of its official duties and responsibilities.

38 (b) Information made confidential and exempt pursuant to
 39 this section is no longer confidential and exempt once the
 40 investigation or examination is completed or ceases to be active
 41 unless disclosure of the information would:

42 1. Jeopardize the integrity of another active investigation
 43 or examination.

44 2. Reveal the personal identifying information of a
 45 consumer, unless the consumer is also the complainant. A
 46 complainant's personal identifying information is subject to
 47 disclosure after the investigation or examination is completed
 48 or ceases to be active. However, a complainant's personal
 49 financial and health information remains confidential and
 50 exempt.

51 3. Reveal the identity of a confidential source.

52 4. Reveal investigative or examination techniques or
 53 procedures.

54 5. Reveal trade secrets, as defined in s. 688.002.

55 (c) For purposes of this subsection, an investigation or
 56 examination is considered active if the investigation or
 57 examination is proceeding with reasonable dispatch and the
 58 office has a reasonable good faith belief that the investigation

Page 2 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

597-00886-19

20197050pb

59 or examination may lead to the filing of an administrative,
60 civil, or criminal proceeding or to the denial or conditional
61 grant of an application for registration or other approval
62 required under this part.

63 ~~(3) This section is subject to the Open Government Sunset~~
64 ~~Review Act in accordance with s. 119.15 and shall stand repealed~~
65 ~~on October 2, 2019, unless reviewed and saved from repeal~~
66 ~~through reenactment by the Legislature.~~

67 Section 2. This act shall take effect October 1, 2019.

Johnson, Lisa

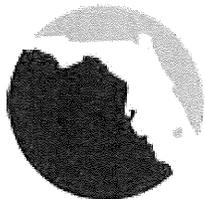
From: Anderson, Alex <Alex.Anderson@flofr.com>
Sent: Monday, January 7, 2019 1:29 PM
To: Harrington, Tiffany
Cc: Johnson, Lisa
Subject: RE: OGSR Follow-up

My apologies for not knowing about this request before today, in regard to collection agencies there are 1,283 consumer collectors and 185 commercial collectors. I am looking into the information about confidential sources and will get that to you as soon as I can.

Best,

Alexander J. Anderson

Director of Legislative Affairs
Florida Office of Financial Regulation
Office: (850) 410-9601
Direct: (850) 410-9789
Alex.Anderson@flofr.com



From: Harrington, Tiffany <Tiffany.Harrington@myfloridahouse.gov>
Sent: Monday, January 7, 2019 12:31 PM
To: Mongiovi, Jamie <Jamie.Mongiovi@flofr.com>
Cc: Johnson, Lisa <JOHNSON.LISA@flsenate.gov>
Subject: OGSR Follow-up

Hi Jamie,

I just wanted to touch base with you regarding the Open Government Sunset Review for s. 559.5558, F.S. I think the last time we spoke, you were planning to send us more information on who the confidential sources are that are referred to in the public record exemption. Also, I had in my notes that you were going to send us information on how many registered collection agencies there are. I'm not sure if there was anything else, but if you think there is anything that could be helpful to us, please feel free to forward it.

Thanks so much!

Tiffany A. Harrington

Deputy Staff Director, State Affairs Committee
Policy Chief, Oversight, Transparency & Public Management Subcommittee
Florida House of Representatives
218 House Office Building
Tallahassee, FL 32399
850.717.4890

Johnson, Lisa

From: Mongiovi, Jamie <Jamie.Mongiovi@flofr.com>
Sent: Friday, July 13, 2018 4:28 PM
To: Johnson, Lisa
Subject: OGSR Survey - 559.5558
Attachments: Attachment A - Admin. Agency or LE Requestors.xlsx; 2019 OGSR Open Government Sunset Review of Section 559.5558 Final.docx

Hi Lisa,

Happy Friday! Attached is the information you requested. Please let us know if you have any questions. Thanks!

Jamie C. Mongiovi, Director
Communications & Governmental Relations
Florida Office of Financial Regulation
Office: (850) 410-9601
Direct: (850) 410-9709
Jamie.Mongiovi@flofr.com
www.flofr.com
Follow us! [@FLFinancialReg](https://twitter.com/FLFinancialReg)



Senate Banking and Insurance staff are conducting an Open Government Sunset Review (OGSR) of section 559.5558, F.S., which provides a public record exemption for information collected in connection with examinations and investigations conducted by the Office of Financial Regulation (OFR) pursuant to the Florida Consumer Collection Practices Act. Please see attached copy of s. 559.5558, F.S. To assist us in conducting this review, please respond to the following questions by July 13, 2018.

1. Please describe the specific records that are affected by the public record exemption?

Those records obtained by the Office of Financial Regulation while conducting an investigation or examination of a consumer collection agency which includes:

- (a) Information relating to the existence, nature, source, or amount of a consumer's personal income, expenses, and debt;*
- (b) Information relating to a consumer's financial transactions of any kind;*
- (c) Information relating to the existence, identification, nature, or value of a consumer's assets, liabilities, or net worth;*
- (d) A consumer's personal health condition, disease, or injury; or*
- (e) A history of a consumer's personal medical diagnosis or treatment.*

The exemption also includes records that would:

- (a) Jeopardize the integrity of another active investigation or examination.*
- (b) Reveal the personal identifying information of a consumer, unless the consumer is also the complainant. A complainant's personal identifying information is subject to disclosure after the investigation or examination is completed or ceases to be active. However, a complainant's personal financial and health information remains confidential and exempt.*
- (c) Reveal the identity of a confidential source.*
- (d) Reveal investigative or examination techniques or procedures.*
- (e) Reveal trade secrets, as defined in s. 688.002.*

2. Has the OFR received a public record request for any such information? If "yes," please describe the types of entities requesting such information and how many requests were received since the enactment of the exemption. If "yes," did the OFR release the information? Please explain.

The OFR has received 684 public records requests related to section 559.5558, F.S. that may contain exempt information. Those requests have come from; attorney's (201, 29%), industry (196, 29%), administrative agencies (167, 24%), law enforcement (55, 8%), consumers (48, 7%), and media (17, 2%).

Documents were provided in 679 (98%) of those requests, 6 (1%) were withdrawn and 4 (1%) were closed when documents were not available and in 2 (<1%) cases the requests were closed due to documents being exempt or confidential. These 2 cases were exempt or confidential due to possible disclosure of HIPPA information or due to the entity being under investigation.

In instances where the request was for confidential and exempt information that was provided to the requestor (i.e. law enforcement) a cover letter was provided (see #4 below) that instructed the requestor to maintain the confidentiality of the information.

3. There is a distinction between records that are made “exempt” and records that are made “confidential and exempt.” A record deemed as exempt from public disclosure may be disclosed under certain circumstances. 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 by statute.

The exemption under review provides that such information is confidential and exempt from public record requirements. As such, the confidential and exempt information may only be released as provided in statute. Subsection 559.5558, F.S, authorizes the release of such information.

- a. How frequently has such information been requested under these conditions? How frequently is such information released?

The OFR receives approximately 40 requests from administrative or law enforcement agencies annually, information would be provided in each case, when requested.

- b. Are there other instances when such information must be released (e.g., with another governmental entity in the furtherance of its lawful duties and responsibilities)? If “yes,” please list those entities needing access to such information.

Yes, data can be released based on subpoena by law enforcement or the courts, this would include the Attorney General, States’ Attorney, and all Federal, State, and Local law enforcement.

We have attached a list of agencies requesting information pursuant to Part VI of Chapter 559, Florida Statutes, but they are also included with agencies that make general requests, such a licensure certifications. We are unable to distinguish which agencies requested information via subpoena without reviewing each individual request.

4. Please describe the process the OFR uses to ensure the confidentiality of the records or information if personal identifying information is made available to such persons.

If confidential information is made available to an entity under Subsection 559.5558, F.S. the OFR includes a cover letter/memo with the requested document(s) that reads as follows:

“Please note that these records may contain social security numbers, which are confidential and exempt from public records disclosure pursuant to Section 119.071(5)(a)5., Florida Statutes. Some of these records may contain bank account numbers, which are exempt per Section 119.071(5)(b)., Florida Statutes.

However, these records have not been redacted. Section 559.5558(2)(a), Florida Statutes, permits the Office to provide information to any law enforcement or administrative agency, so long as the recipient agency receiving confidential information in connection with its official duties shall maintain the confidentiality of the information so long as it would otherwise be confidential.

We are enclosing the documents with the understanding that the confidentiality of these documents will be preserved.”

The documents are then sent via encrypted email to the requestor. However, in the case of certifications under seal, the documents are printed, and physical copies are sent in a sealed envelope via USPS or FedEx.

5. Does the OFR recommend that the Legislature repeal the public record exemption, or reenact the public record exemption? Please provide justification for such recommendation. If the OFR recommends reenacting the exemption, does the OFR recommend reenacting the exemption with any changes?

The OFR recommends reenacting the public records exemption without changes. This exemption is vital to protecting the public from phishing and other types of identity theft. The records collected during an examination, investigation, or in the receipt of a complaint could contain a consumer's entire financial and medical record; information that, if in the wrong hands, could be devastating.

6. Is there any case law interpreting the exemption?

There is no current case law interpreting this exemption.

7. Please provide any additional comments or suggestions regarding the public record exemption under review.

The OFR has no additional comments or suggestions at this time.

Requestor	# of Requests
ATTORNEY GENERAL OF FLORIDA	32
CANADA CONSUMER INVESTIGATIONS UNIT	1
CITY OF MIAMI	1
COMMONWEALTH OF MASSACHUSETTS	1
COMMONWEALTH OF MASSACHUSETTS DIVISION OF BANKS	2
DEPARTMENT OF AGRICULTURE	1
DEPARTMENT OF FINANCIAL SERVICES	1
DEPARTMENT OF HOMELAND SECURITY	3
FBI	2
FEDERAL TRADE COMMISSION	1
FLORIDA BAR	1
FLORIDA SENATE COMMITTEE ON ETHICS AND	1
HAWAII - STATE OF	6
KENTUCKY DEPT OF FINANCIAL INSTITUTIONS	1
OFFICE OF FINANCIAL REGULATION	26
OFFICE OF MINNESOTA ATTORNEY GENERAL	4
OFFICE OF THE ATTORNEY GENERAL	2
PALM BEACH COUNTY SCHOOL DISTRICT POLICE DEPARTMENT	2
SOUTH CAROLINA-BOARD OF FINANCIAL INSTITUTIONS	1
STATE ATTORNEY'S OFFICE - 20TH JUDICIAL CIRCUIT	1
STATE ATTORNEY'S OFFICE, ELEVENTH JUDICIAL CIRCUIT OF FLORIDA	1
STATE ATTORNEY'S OFFICE-FOURTH JUDICIAL CIRCUIT	2
STATE OF COLORADO DIVISION OF SECURITIES	3
STATE OF COLORADO OFFICE OF THE ATTORNEY GENERAL	1
STATE OF COLORADO, UNIFORM CONSUMER CODE	71
STATE OF IDAHO, CONSUMER FINANCE BUREAU	1
STATE OF KANSAS	1
STATE OF MASSACHUSETTS	43
STATE OF MASSACHUSETTS - DIVISION OF BANKS	2
STATE OF MINNESOTA ATTORNEY GENERAL	4
STATE OF NEW YORK DEPT OF BANKING	1
STATE OF WYOMING	1
UNITED STATES SECRET SERVICE	1
Grand Total	222

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 Committee on Banking and Insurance

BILL: SPB 7052
INTRODUCER: Banking and Insurance Committee
SUBJECT: OGSR/Informal Enforcement Actions/Trade Secrets/Office of Financial Regulation
DATE: February 19, 2019 REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Knudson	Knudson		BI Submitted as Comm. Bill/Fav

I. Summary:

SPB 7052 reenacts and saves from repeal the exemptions to public record requirements in s. 655.037(3), F.S., for informal enforcement actions performed by the Office of Financial Regulation, and s. 655.037(4), F.S., for trade secrets held by the Office of Financial Regulation in accordance with its statutory duties under the financial institutions codes.

These exemptions are subject to the Open Government Sunset Review Act and will be repealed on October 2, 2019, unless re-enacted and saved from repeal by the Legislature.

The effective date of the bill is October 1, 2019.

II. Present Situation:

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ This applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

Chapter 119, F.S., known as the Public Records Act, constitutes the main body of public records laws.³ The Public Records Act states that

[i]t is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁴

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ Public records laws are found throughout the Florida Statutes.

⁴ Section 119.01(1), F.S.

The Public Records Act typically contains general exemptions that apply across agencies. Agency- or program-specific exemptions often are placed in the substantive statutes relating to that particular agency or program.

The Public Records Act does not apply to legislative or judicial records.⁵ Legislative records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are codified primarily in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the legislature.

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

The Florida Statutes specify conditions under which public access to governmental records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any state or local government public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

Only the Legislature may create an exemption to public records requirements.¹⁰ An exemption must be created by general law and must specifically state the public necessity justifying the exemption.¹¹ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions¹² and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹³

When creating or expanding a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’¹⁴ Records designated as ‘confidential and exempt’ may be released by the records custodian only under the circumstances defined by the

⁵ *Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So.2d 255 (Fla. 1995).

⁶ Section 119.011(12), F.S., defines “public record” to mean “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.” Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So.2d 633, 640 (Fla. 1980).

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ *Id.*

¹² The bill may, however, contain multiple exemptions that relate to one subject.

¹³ FLA. CONST., art. I, s. 24(c)

¹⁴ If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The Sch. Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004).

Legislature or pursuant to a court order. Records designated as ‘exempt’ may be released at the discretion of the records custodian under certain circumstances.¹⁵

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions,¹⁶ with specified exceptions.¹⁷ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁸ The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.¹⁹

Open Government Sunset Review Act

In addition to the constitutional requirements relating to the enactment of a public records or open meetings exemption, the Legislature may subject the new or broadened exemption to the Open Government Sunset Review Act (OGSR Act). The OGSR Act prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.²⁰ The OGSR Act provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.²¹ In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

The OGSR Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.²² An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;²³
- Releasing sensitive personal information would be defamatory or would jeopardize an individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²⁴ or

¹⁵ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁶ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

¹⁷ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁸ Section 119.15(3), F.S.

¹⁹ Section 119.15(6)(b), F.S.

²⁰ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.

²¹ Section 119.15(3), F.S.

²² Section 119.15(6)(b), F.S.

²³ Section 119.15(6)(b)1., F.S.

²⁴ Section 119.15(6)(b)2., F.S.

- It protects trade or business secrets.²⁵

Further, the OGSR Act requires specified questions to be considered during the review process.²⁶ In examining an exemption, the OGSR Act asks the Legislature to question carefully the purpose and necessity of reenacting the exemption.

If in reenacting an exemption or repealing the sunset date, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁷ If the exemption is reenacted or saved from repeal without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²⁸

Regulation of State-Chartered Financial Institutions

The Office of Financial Regulation (OFR) regulates and charters banks, trust companies, credit unions, and other financial institutions pursuant to the Financial Institutions Codes (Codes) in chapter 655 through chapter 667 of the Florida Statutes. Section 655.032 of the Codes authorizes the OFR to make investigations and examinations pursuant to its authority to ensure compliance with, and prevent violations of, the Codes and the administrative rules adopted pursuant to the Codes.²⁹ The Codes direct the OFR to take into account the appropriateness of an administrative remedy or penalty provided for the Codes with respect to the size of the financial resources and good faith of the person charged, the gravity of the violation, the history of previous violations, and other matters as justice may require.³⁰ Accordingly, the OFR will sometimes impose an “informal enforcement action” which the public records exemption in s. 655.057, F.S., defines to mean a board resolution, document of resolution, or an agreement in writing between the OFR and a financial institution which the OFR imposes when it determines that a formal enforcement action is not an appropriate administrative remedy.³¹ The informal enforcement action must set forth a program of corrective action to address safety and soundness deficiencies or violations of law or rule of the institution. Informal enforcement actions are not subject to enforcement by imposition of an administrative fine under s. 655.041, F.S.

²⁵ Section 119.15(6)(b)3., F.S.

²⁶ Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

²⁷ FLA. CONST. art. I, s. 24(c).

²⁸ Section 119.15(7), F.S.

²⁹ See s. 655.032, F.S., and s. 655.045, F.S.

³⁰ Section 655.031(1), F.S.

³¹ Section 655.057(12)(b), F.S.

Public Records Exemptions for Informal Enforcement Actions and Trade Secrets

Chapter 655.057, F.S., exempts from public records requirements various records held by the OFR related to its authority and duties to enforce the Codes, including records related to investigations and examinations. The Legislature in 2014 created a public records exemption for informal enforcement actions of the OFR and trade secrets as defined by s. 688.002, F.S., held by the OFR in accordance with its statutory duties with respect to the financial institutions codes.³² A trade secret is defined by s. 688.002(4), F.S., to mean information,³³ that 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. Such information must also be the subject of efforts that are reasonable under the circumstances to maintain its secrecy to be a trade secret.

The public records exemption for “informal enforcement actions” continues to hold informal enforcement actions confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution after the investigation relating to the informal enforcement action is completed or ceases to be active if the disclosure would:

- Jeopardize the integrity of another active investigation.
- Impair the safety and soundness of the financial institution.
- Reveal personal financial information.
- Reveal the identity of a confidential source.
- Defame or cause unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual.
- Reveal investigative techniques or procedures.

The Legislature stated that the exemption was necessary because disclosure of informal enforcement actions could erode public confidence in financial institutions in this state and would place Florida-chartered institutions at a competitive disadvantage because financial institutions chartered federally or in other states are generally protected by the laws of those jurisdictions from the disclosure of informal enforcement actions. The Legislature stated that the public records exemption for trade secrets was necessary to prevent disclosures that could result in a competitive disadvantage and economic loss to a financial institution.

Professional Staff of the Banking and Insurance Committee submitted a questionnaire to the OFR regarding the public records exemptions for informal enforcement actions and trade secrets held by the office.³⁴ The OFR reported that it uses informal enforcement actions to address weak operating practices, deteriorating financial conditions, violations of the Codes, or activity that impairs the safety and soundness of a financial institution. The OFR receives public records requests for information that would include informal enforcement actions and that the OFR responds to such requests by redacting all information deemed confidential and exempt under s. 655.057, F.S. The OFR indicated that the public records exemption for informal enforcement actions remains necessary and that its repeal is necessary to ensure that new financial

³² Chapter 2014-99, L.O.F.

³³ Including a formula, pattern, compilation, program, device, method, technique, or process

³⁴ *Open Government Sunset Review Questionnaire for Subsection (3) and (4) of Section 655.057, F.S.*, Senate Banking and Insurance Committee (November 16, 2018). On file with the Senate Banking and Insurance Committee.

institutions are willing to be chartered in Florida and to prevent existing Florida-chartered or licensed entities from converting to an entity regulated by a different state or the federal government. The OFR also indicated that the public records exemption for trade secrets is also necessary to allow the agency to perform its statutorily mandated regulatory oversight, some of which requires the OFR to collect trade secret information. Entities regulated by the office may claim a trade secret in order to keep proprietary information private.

III. Effect of Proposed Changes:

SPB 7052 reenacts and saves from repeal the public records exemptions in s. 655.037(3), F.S., for informal enforcement actions performed by the Office of Financial Regulation, and s. 655.037(4), F.S., for trade secrets held by the Office of Financial Regulation in accordance with its statutory duties under the financial institutions codes.

These exemptions are subject to the Open Government Sunset Review Act and will be repealed on October 2, 2019, unless re-enacted and saved from repeal by the Legislature.

The effective date of the bill is October 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill reenacts and does not create or expand an existing exemption, thus the bill only requires a majority of the members present to re-enact the public records exemption.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. This bill does not create or expand an exemption to public records requirements and thus does not require a public necessity statement.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

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. Statutes Affected:

This bill substantially amends section 655.057 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

FOR CONSIDERATION By the Committee on Banking and Insurance

597-00868-19

20197052pb

1 A bill to be entitled
 2 An act relating to a review under the Open Government
 3 Sunset Review Act; amending s. 655.057, F.S., relating
 4 to exemptions from public records requirements for
 5 informal enforcement actions by the Office of
 6 Financial Regulation and certain trade secrets held by
 7 the office under the financial institutions codes;
 8 removing the scheduled repeal of the exemptions;
 9 providing an effective date.

10 Be It Enacted by the Legislature of the State of Florida:

11 Section 1. Subsection (14) of section 655.057, Florida
 12 Statutes, is amended, and subsections (3) and (4) of that
 13 section are republished, to read:
 14 655.057 Records; limited restrictions upon public access.—
 15 (3) Except as otherwise provided in this section and except
 16 for those portions that are otherwise public record, after an
 17 investigation relating to an informal enforcement action is
 18 completed or ceases to be active, informal enforcement actions
 19 are confidential and exempt from s. 119.07(1) and s. 24(a), Art.
 20 I of the State Constitution to the extent that disclosure would:
 21 (a) Jeopardize the integrity of another active
 22 investigation.
 23 (b) Impair the safety and soundness of the financial
 24 institution.
 25 (c) Reveal personal financial information.
 26 (d) Reveal the identity of a confidential source.
 27 (e) Defame or cause unwarranted damage to the good name or
 28
 29

Page 1 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

597-00868-19

20197052pb

30 reputation of an individual or jeopardize the safety of an
 31 individual.
 32 (f) Reveal investigative techniques or procedures.
 33 (4) Except as otherwise provided in this section and except
 34 for those portions that are otherwise public record, trade
 35 secrets as defined in s. 688.002 which comply with s. 655.0591
 36 and which are held by the office in accordance with its
 37 statutory duties with respect to the financial institutions
 38 codes are confidential and exempt from s. 119.07(1) and s.
 39 24(a), Art. I of the State Constitution.
 40 ~~(14) Subsections (3) and (4) are subject to the Open~~
 41 ~~Government Sunset Review Act in accordance with s. 119.15 and~~
 42 ~~are repealed on October 2, 2019, unless reviewed and saved from~~
 43 ~~repeal through reenactment by the Legislature.~~
 44 Section 2. This act shall take effect October 1, 2019.

Page 2 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

The Senate Banking and Insurance Committee

Open Government Sunset Review Questionnaire

PLEASE RETURN THIS QUESTIONNAIRE BY DECEMBER 1, 2018, TO:

**James Knudson
Staff Director
Senate Banking and
Insurance Committee
Knudson.James@flsenate.gov
(850) 487-5361**

In 2014, the Legislature created a public record exemption in subsections (3) and (4), with corresponding definitions in subsection (12) of section 655.057, F.S., for informal enforcement actions and trade secrets. This public record exemption in subsections (3) and (4) will stand repealed on October 2, 2019, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act (section 119.15, Florida Statutes).

TO ASSIST PROFESSIONAL COMMITTEE STAFF AS PART OF THEIR REVIEW OF THIS PUBLIC RECORD EXEMPTION, PLEASE ANSWER THE FOLLOWING QUESTIONS. A COPY OF SECTION 655.057(3), (4), AND (12), FLORIDA STATUTES, IS ATTACHED FOR YOUR CONVENIENCE.

Agency or Organization Completing this Questionnaire: Office of Financial Regulation (“Office”)

Name of Person Completing the Questionnaire: Jodi-Ann Livingstone

Title: Chief Counsel, Division of Financial Institutions

Telephone Number: 850-410-9652

E-mail Address: jodi.livingstone@flofr.com

Date that this Questionnaire was Completed: 11-16-2018

Part I. Informal Enforcement Actions

655.057 Records; limited restrictions upon public access.—

(3) Except as otherwise provided in this section and except for those portions that are otherwise public record, after an investigation relating to an informal enforcement action is completed or ceases to be active, informal enforcement actions are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution to the extent that disclosure would:

- (a) Jeopardize the integrity of another active investigation.
- (b) Impair the safety and soundness of the financial institution.
- (c) Reveal personal financial information.
- (d) Reveal the identity of a confidential source.
- (e) Defame or cause unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual.
- (f) Reveal investigative techniques or procedures.

(12) For purposes of this section, the term:

(a) “Examination report” means records submitted to or prepared by the office as part of the office’s duties performed pursuant to s. 655.012 or s. 655.045(1).

(b) “Informal enforcement action” means a board resolution, a document of resolution, or an agreement in writing between the office and a financial institution which:

1. The office imposes on an institution when the office considers the administrative enforcement guidelines in s. 655.031 and determines that a formal enforcement action is not an appropriate administrative remedy;

2. Sets forth a program of corrective action to address one or more safety and soundness deficiencies and violations of law or rule at the institution; and

3. Is not subject to enforcement by imposition of an administrative fine pursuant to s. 655.041.

(c) “Personal financial information” means:

1. Information relating to the existence, nature, source, or amount of a person’s personal income, expenses, or debt.

2. Information relating to a person’s financial transactions of any kind.

3. Information relating to the existence, identification, nature, or value of a person’s assets, liabilities, or net worth.

(d) “Working papers” means the records of the procedures followed, the tests performed, the information obtained, and the conclusions reached in an examination or

investigation performed under s. 655.032 or s. 655.045. Working papers include planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of the books and records of a financial institution as defined in s. 655.005(1), and schedules or commentaries prepared or obtained in the course of such examination or investigation.

A. In conducting an open government sunset review, the Legislature must consider the following:

1. What specific records or meetings are affected by the exemption?

The exemption in section 655.057(3), Florida Statutes, specifically refers to all documents related to informal enforcement actions conducted by the Office. Informal agency actions include board resolutions, documents of resolution, and agreements in writing between the Office and a financial institution that the Office regulates.

- a. Has your agency received a public record request for any such information?**
- i. If “yes,” please describe the types of entities requesting such information and how many requests were received each year during that period.**

Yes; the agency has received public records requests for information that would include informal enforcement actions. Such requests come from several different sources to include law firms, the media, and members of the public. The Office keeps records of its public record requests; however, the information does not specifically delineate or identify requests for informal enforcement actions. As such, the Office is unable to provide an accurate number.

- ii. If “yes,” was the information released? Please explain.**

The Office responds to each public records request, redacting all information deemed confidential and exempt by section 655.057, F.S.

b. Please provide examples of:

- i. Circumstances that could lead to an informal enforcement action?**

The Office may use informal enforcement actions to address weak operating practices, deteriorating financial conditions, violations of the Financial Institutions Codes¹, or any activity that impairs the safety and soundness of the financial institution. The informal enforcement action is put in place to set forth corrective action deemed necessary to address safety and soundness concerns.

¹ Chapters 655-667, Florida Statutes

ii. How many informal enforcement actions has the Office taken in the last three calendar years?

In the stated calendar years, institutions have been under the following numbers of ongoing informal enforcement actions: Calendar year 2018- 14; Calendar year 2017- 15; Calendar year 2016- 30; Calendar year 2015- 42.

iii. Please explain the types of actions the Office takes when imposing an informal enforcement action.

Informal enforcement actions that the Office uses include board resolutions, memorandums of understanding, and other written agreements. A financial institution that fails to comply with the terms of an informal enforcement action may be subject to a formal enforcement action.

2. Whom does the exemption uniquely affect, as opposed to the general public?

The exemption affects the financial institution under the informal enforcement action. The release of information that an institution is under an informal enforcement action could cause severe reputational risks and hinder the safety and soundness of the financial institution.

a. Please describe the various persons or entities that are subject to an informal enforcement action.

The Office may enter into an informal enforcement action with any financial institution under our regulatory purview. These entities include, but are not limited to, Florida state-chartered savings associations, banks, savings banks, trust companies, credit unions, and licensed offices of international banking corporations and international trust entities.

b. Are there other persons or entities that are not subject to an informal enforcement action that may be affected by the public records exemption, other than the general public?

The public records exemption specifically makes confidential and exempt information that would reveal personal financial information, reveal the identity of a confidential source, or defame or cause unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual. These individuals may include employees, customers/members, and third-party vendors of the financial institution.

3. What is the identifiable public purpose or goal of the exemption?

- a. The Legislative findings for this exemption are that it is a public necessity to keep informal enforcement actions confidential and exempt because public disclosure could further impair the safety and soundness of a financial institution subject to the action. Also, public disclosure could erode public confidence in financial institutions in the state. It was also noted that financial institutions chartered under federal law and by other states generally enjoy similar protection from public disclosure of such actions. Does the Office affirm the Legislative findings? Are there any additional public purposes or goals the Office has identified in administering the exemption?**

Yes; the purposes of the exemption, as set forth above, are still current and relevant. The reasons for the exemption are as applicable now as they were when the exemption was enacted. Without these exemptions, the State of Florida would likely lose potential future de novo financial institution activity. Further, this exemption may cause currently chartered/licensed entities to convert to an entity regulated by the Office of the Comptroller of the Currency or another state regulator. Protection of this confidential information is necessary to ensure that Florida remains competitive.

- 4. Can the information contained in the records or discussed in the meeting be readily obtained by alternate means? If so, how?**

No.

- a. The public records exemption for informal enforcement actions only applies to portions of the action that are not otherwise public record. Please explain which specific records or meetings, if any, are public record and thus must be disclosed by the office?**

Information related to an informal enforcement action may include information that is otherwise public record. For example, the informal enforcement action may include information from Consolidated Reports of Condition and Income ("Call Report") and Uniform Bank Performance Reports ("UBPR")².

- b. The public records exemption for informal enforcement actions only applies of the disclosure would jeopardize the integrity of another active**

² As set forth in Rule 69U-120.0451, Florida Administrative Code, a Call Report means, in the case of a state bank or state association, the quarterly bank Consolidated Reports of Condition and Income filed with the Federal Financial Institutions Examination Council (FFIEC) as required by 12 U.S.C. §§324 and 1817. Call Reports and UBPRs may be accessed through the FDIC's website.

investigation; impair the safety and soundness of the financial institution; reveal personal financial information, reveal the identity of a confidential source; defame or cause unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual; or reveal investigative techniques or procedures.

5. Is the record or meeting protected by another exemption?

No.

6. Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

No.

B. Recommendations and Additional Comments

1. Does your agency recommend that the Legislature repeal the public record exemption, or reenact the public record exemption?

reenact the exemption 'as is'

2. Is there any case law interpreting the exemption?

No.

3. Please provide any additional comments regarding the public record exemption under review.

As set forth above, it is imperative that the exemptions be reenacted by the Legislature so that Florida remains competitive as a state in which to operate a financial institution. The need to protect the confidentiality of informal enforcement actions is sufficiently compelling to override this state's public policy of open government and the protection of such information cannot be accomplished without this exemption.

Part II. Trade Secrets

655.057 Records; limited restrictions upon public access.—

(4) Except as otherwise provided in this section and except for those portions that are otherwise public record, trade secrets as defined in s. 688.002 which comply with s. 655.0591 and which are held by the office in accordance with its statutory duties with respect to the financial institutions codes are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

A. In conducting an open government sunset review, the Legislature must consider the following:

1. What specific records or meetings are affected by the exemption?

Section 655.057, Florida Statutes, specifically makes trade secrets that comply with the requirements of section 655.0591, Florida Statutes, that the Office receives in its regulatory capacity, confidential and exempt. These trade secrets are defined in section 688.002, Florida Statutes, to include a formula, pattern, compilation, program, device, method, technique, or process that 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 is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. In the case where documents or information do not qualify as confidential supervisory information or books and records of the financial institution, such documents and information may nonetheless be accorded confidential treatment if they qualify for the trade secret exemption.

Whom does the exemption uniquely affect, as opposed to the general public?

a. Please describe the types of entities regulated by the Office that claim trade secret protection.

Any entity regulated by the Office that submits records to the Office in accordance with the Office's statutory regulatory duties, may claim a trade secret exemption for the submitted records. These entities include, but are not limited to, Florida state-chartered savings associations, banks, savings banks, trust companies, credit unions, and licensed offices of international banking corporations and international trust entities. It also includes entities that have applied to be licensed or chartered by the Office.

2. What is the identifiable public purpose or goal of the exemption?

To conduct its statutorily mandated regulatory oversight, the Office often collects trade secret information from the institutions it regulates and institutions applying to be regulated. The goal of the exemption is to allow businesses to keep proprietary information private. The disclosure of trade secret information to the competitors of these institutions would be detrimental; without these exemptions, these institutions would be resistant to providing such information to the Office and may forego a regulatory relationship with the Office entirely.

3. Can the information contained in the records or discussed in the meeting be readily obtained by alternate means? If so, how?

No.

4. Is the record or meeting protected by another exemption?

No.

5. Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

No.

B. Recommendations and Additional Comments

1. Does your agency recommend that the Legislature repeal the public record exemption, or reenact the public record exemption?

reenact the exemption 'as is'

2. Is there any case law interpreting the exemption?

No.

3. Please provide any additional comments regarding the public record exemption under review.

As set forth above, it is imperative that the exemptions be reenacted by the Legislature so that Florida remains competitive as a state in which to operate a financial institution. The need to protect trade secrets is sufficiently compelling to override this state's public policy of open government and the protection of such information cannot be accomplished without this exemption.

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 Committee on Banking and Insurance

BILL: SPB 7054

INTRODUCER: Banking and Insurance Committee

SUBJECT: OGSR/Hurricane or Flood Loss Models

DATE: February 19, 2019

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Matiyow</u>	<u>Knudson</u>	_____	BI Submitted as Comm. Bill/Fav

I. Summary:

SPB 7054 reenacts and removes the scheduled repeal on October 2, 2019, of s. 627.0628(3)(g), F.S., which makes confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution:

- Trade secrets used in designing and constructing hurricane and flood loss models that are provided to the Florida Commission on Hurricane Loss Projection Methodology (methodology commission), the Office of Insurance Regulation (OIR), or the consumer advocate under s. 627.0628, F.S.
- The portion of a meeting by the methodology commission or a rate filing by an insurer in which trade secrets pertaining to hurricane or flood models are discussed.

Pursuant to the Open Government Sunset Review, the public records exemption is scheduled to repeal October 2, 2019, unless reenacted by the Legislature. Since the bill continues the exemption and does not expand the scope of the public records exemption, the bill requires a majority vote of each chamber for passage.

This bill takes effect October 1, 2019.

II. Present Situation:

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ This applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

Chapter 119, F.S., known as the Public Records Act, constitutes the main body of public records laws.³ The Public Records Act states that

[i]t is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁴

The Public Records Act typically contains general exemptions that apply across agencies. Agency- or program-specific exemptions often are placed in the substantive statutes relating to that particular agency or program.

The Public Records Act does not apply to legislative or judicial records.⁵ Legislative records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are codified primarily in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the legislature.

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

The Florida Statutes specify conditions under which public access to governmental records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any state or local government public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

Only the Legislature may create an exemption to public records requirements.¹⁰ An exemption must be created by general law and must specifically state the public necessity justifying the exemption.¹¹ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions¹²

³ Public records laws are found throughout the Florida Statutes.

⁴ Section 119.01(1), F.S.

⁵ *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995).

⁶ Section 119.011(12), F.S., defines “public record” to mean “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.” Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ *Id.*

¹² The bill may, however, contain multiple exemptions that relate to one subject.

and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹³

When creating or expanding a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’¹⁴ Records designated as ‘confidential and exempt’ may be released by the records custodian only under the circumstances defined by the Legislature or pursuant to a court order. Records designated as ‘exempt’ may be released at the discretion of the records custodian under certain circumstances.¹⁵

Open Meetings Laws

The Florida Constitution provides that the public has a right to access governmental meetings.¹⁶ Each collegial body must provide notice of its meetings to the public and permit the public to attend any meeting at which official acts are taken or at which public business is transacted or discussed.¹⁷ This applies to the meetings of any collegial body of the executive branch of state government, counties, municipalities, school districts or special districts.¹⁸

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., which is also known as the “Government in the Sunshine Law,”¹⁹ or the “Sunshine Law,”²⁰ requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken be open to the public.²¹ The board or commission must provide the public reasonable notice of such meetings.²² Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin or economic status or which operates in a manner that unreasonably restricts the public’s access to the facility.²³ Minutes of a public meeting must be promptly recorded and open to public inspection.²⁴ Failure to abide by open meetings requirements will invalidate any resolution, rule or formal action adopted at a meeting.²⁵ A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.²⁶

¹³ FLA. CONST., art. I, s. 24(c)

¹⁴ If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The Sch. Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004).

¹⁵ *Williams v. City of Minneola*, 575 So.2d 683 (Fla. 5th DCA 1991).

¹⁶ FLA. CONST., art. I, s. 24(b).

¹⁷ *Id.*

¹⁸ FLA. CONST., art. I, s. 24(b). Meetings of the Legislature are governed by Article III, section 4(e) of the Florida Constitution, which states: “The rules of procedure of each house shall further provide that all prearranged gatherings, between more than two members of the legislature, or between the governor, the president of the senate, or the speaker of the house of representatives, the purpose of which is to agree upon formal legislative action that will be taken at a subsequent time, or at which formal legislative action is taken, regarding pending legislation or amendments, shall be reasonably open to the public.”

¹⁹ *Times Pub. Co. v. Williams*, 222 So.2d 470, 472 (Fla. 2d DCA 1969).

²⁰ *Board of Public Instruction of Broward County v. Doran*, 224 So.2d 693, 695 (Fla. 1969).

²¹ Section 286.011(1)-(2), F.S.

²² *Id.*

²³ Section 286.011(6), F.S.

²⁴ Section 286.011(2), F.S.

²⁵ Section 286.011(1), F.S.

²⁶ Section 286.011(3), F.S.

The Legislature may create an exemption to open meetings requirements by passing a general law by at least a two-thirds vote of both the Senate and the House of Representatives.²⁷ The exemption must explicitly lay out the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the exemption.²⁸ A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.²⁹

Open Government Sunset Review Act

The Open Government Sunset Review Act ("OGSR" Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions,³⁰ with specified exceptions.³¹ The OGSR Act provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption or repeal the sunset date.³² In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

The OGSR Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.³³ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;³⁴
- Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;³⁵ or
- It protects trade or business secrets.³⁶

²⁷ FLA. CONST., art. I, s. 24(c).

²⁸ *Id.*

²⁹ *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So.2d 189 (Fla. 1st DCA 2004), the court found that the intent of a public records statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

³⁰ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

³¹ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

³² Section 119.15(3), F.S.

³³ Section 119.15(6)(b), F.S.

³⁴ Section 119.15(6)(b)1., F.S.

³⁵ Section 119.15(6)(b)2., F.S.

³⁶ Section 119.15(6)(b)3., F.S.

The OGSR Act also requires specified questions to be considered during the review process.³⁷ In examining an exemption, the OGSR Act asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption or repealing the sunset date, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.³⁸ If the exemption is reenacted or saved from repeal without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.³⁹

Florida Commission on Hurricane Loss Projection Methodology

In 1995, the Florida Legislature created the Florida Commission on Hurricane Loss Projection Methodology (methodology commission), under s. 627.0628, F.S., which declares the legislative intent is “to encourage the use of the most sophisticated actuarial methods to assure that consumers are charged lawful rates for residential property insurance coverage.”⁴⁰ The methodology commission is administratively housed within the State Board of Administration, but independently exercises its powers and duties as specified in the statute.

A number of vendors produce highly complex computer models that purport to reflect an average annual expected loss from hurricanes, floods and other perils. Models of this nature are driven by an array of internal assumptions, within a variety of scientific disciplines (e.g., meteorology, structural engineering, actuarial science, statistics, computer science). 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, which closely guards that information as a trade secret. If all internal information of a model were published, that model could be replicated, and the vendor that produced the model would lose the entirety of its value.

Initially, s. 627.0628, F.S., did not contain an exemption from public records or public meetings. Accordingly, the methodology commission undertook a process to evaluate the participating computer models, which contained proprietary information, without the ability to exempt either records or meetings from full public disclosure. The methodology 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 methodology commission members questioned the vendor in open meetings; for the portion that was proprietary, the methodology commission hired a “professional team” of experts which went on-site to determine whether the model met

³⁷ Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means?
If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

³⁸ FLA. CONST. art. I, s. 24(c).

³⁹ Section 119.15(7), F.S.

⁴⁰ s. 6, ch. 95-276, L.O.F.

the applicable standards, and reported its findings to the methodology commission in an open hearing.

In 2005, the Legislature enacted s. 627.0628(3)(f), which pertains to public records exemptions for the methodology commission.⁴¹ The public records exemptions are:

- Section 627.0628(3)(f)1., F.S., which provides that trade secrets used in designing and constructing a hurricane loss model and submitted by a private company to the methodology commission, the OIR, or the consumer advocate are confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.
- Section 627.0628(3)(f)2., F.S., which provides that a portion of a meeting of the methodology commission or of a rate proceeding at which trade secrets used in designing and constructing a hurricane loss model are discussed is exempt from s. 286.011, F.S., and s. 24(b), Art. I of the State Constitution.

In 2014⁴², the Legislature expanded the methodology commission's oversight to include flood models submitted by insurers wanting to offer private flood insurance in competition with the National Flood Insurance Program. The Legislature that year also expanded the current public records exemptions for hurricane models to include flood models submitted to the methodology commission, the OIR and the office of the consumer advocate.⁴³ As a result of amending the current exemptions to include flood models, all exempt materials will sunset of October 2, 2019, unless saved from repeal by the Legislature.

Staff reviewed the methodology commission responses⁴⁴ to the questions to be considered in accordance with s. 119.15(6)(a), F.S. The commission stated that the exemption prevents the disclosure of trade secrets that would negatively impact the business interests of companies that develop hurricane and flood models. The commission stated that such trade secrets are not readily obtainable through alternative means and are not protected by another exemption.

III. Effect of Proposed Changes:

The bill reenacts and removes the scheduled repeal on October 2, 2019, of s. 627.0628(3)(g), F.S., which makes confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution:

- Trade secrets used in designing and constructing hurricane and flood loss models that are provided to the methodology commission, the OIR, or the consumer advocate under s. 627.0628, F.S.
- The portion of a meeting by the methodology commission or a rate filing by an insurer in which trade secrets pertaining to hurricane and flood loss models are discussed.

⁴¹ s. 3, ch. 2005-264, L.O.F.

⁴² Ch. 2014-80, L.O.F.

⁴³ Ch. 2014-98, L.O.F.

⁴⁴ Email from Leonard Schulte, Commission Representative, to Scott Matiyow, Senior Legislative Analyst for the Senate Committee on Banking and Insurance (September 25, 2018) (on file with the Senate Committee on Banking and Insurance).

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

The bill does not expand the current exemption, and therefore a public necessity statement is not required. Since there is no expansion of the exemption, a simple majority vote is required.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Private vendors that produce hurricane and flood loss models to the methodology commission would continue to have their sensitive development data and information protected.

C. Government Sector Impact:

The exemptions will continue to allow members of the methodology commission, the OIR, and the consumer advocate's office to have access to all information pertaining to the development of models that project hurricane and flood losses.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 627.0628 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of 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.

FOR CONSIDERATION By the Committee on Banking and Insurance

597-00803-19

20197054pb

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 627.0628, F.S., relating to exemptions from public records and public meetings requirements for certain trade secrets used in designing and constructing hurricane or flood loss models and provided to the Florida Commission on Hurricane Loss Projection Methodology, the Office of Insurance Regulation, or the Insurance Consumer Advocate, and for certain portions and recordings of meetings at which the trade secrets are discussed; removing the scheduled repeal of the exemptions; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (g) of subsection (3) of section 627.0628, Florida Statutes, is amended to read:

627.0628 Florida Commission on Hurricane Loss Projection Methodology; public records exemption; public meetings exemption.—

(3) ADOPTION AND EFFECT OF STANDARDS AND GUIDELINES.—

(g)1. A trade secret, as defined in s. 688.002, which is used in designing and constructing a hurricane or flood loss model and which is provided pursuant to this section, by a private company, to the commission, office, or consumer advocate appointed pursuant to s. 627.0613 is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

Page 1 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

597-00803-19

20197054pb

2.a. That portion of a meeting of the commission or of a rate proceeding on an insurer's rate filing at which a trade secret made confidential and exempt by this paragraph is discussed is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution. The closed meeting must be recorded, and no portion of the closed meeting may be off the record.

b. The recording of a closed portion of a meeting is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

~~e. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2019.

Page 2 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

Matiyow, Scott

From: Leonard Schulte <Leonard.Schulte@sbafla.com>
Sent: Thursday, August 30, 2018 10:06 AM
To: Matiyow, Scott
Cc: Anne Bert; Gina Wilson; Donna Sirmons
Subject: OGSR review, Florida Commission on Hurricane Loss Projection Methodology

Scott,

Please see below for the Florida Commission on Hurricane Loss Projection Methodology reponse to your OGSR questions. If you need anything else from the commission, Donna Sirmons (donna.sirmons@sbafla.com, 850-413-1349) and I are here to help.

Thanks,
Leonard

Next Session we have an Open Government Sunset Review to complete on s. 627.0628(3)(g), F.S., related to the public records exemptions for wind and flood models submitted to the Hurricane Loss Methodology Commission. As required by s. 119.15(6)(a), F.S., can you please provide answers on behalf of the Commission to the following questions. Please respond by September 1, 2018.

1. What specific records or meetings are affected by the exemption?

The exemption covers any "trade secret, as defined in s. 688.002, which is used in designing and constructing a hurricane or flood loss model and which is provided pursuant to this section, by a private company, to" the Florida Commission on Hurricane Loss Projection Methodology, the Office of Insurance Regulation, or the Insurance Consumer Advocate.

Meetings affected by the exemption are the "trade secret" sessions during Commission meetings to review models for acceptability, and specific records are audio recordings of the "trade secret" sessions.

2. Whom does the exemption uniquely affect, as opposed to the general public?

Private sector modeling organizations submitting hurricane or flood loss models for review. Commission members who attend on-site reviews and the "trade secret" sessions during Commission meetings.

3. What is the identifiable public purpose or goal of the exemption?

Disclosing trade secrets would negatively impact the business interests of a private company that has invested substantial economic resources in developing the model, and competitor companies would gain an unfair competitive advantage if provided access to such information. Reliable projections of hurricane or flood losses are necessary in order to ensure that rates for residential property insurance meet the statutory requirement that rates be neither excessive nor inadequate. This goal is served by enabling the Florida Commission on Hurricane Loss Projection Methodology, the Office of Insurance Regulation, and the Insurance Consumer Advocate to have access to all aspects of hurricane loss models and flood loss models, and encouraging private companies to submit such models to the commission, office, and consumer advocate for review without concern that trade secrets will be disclosed. As to trade secrets discussed during meetings or rate proceedings, because release of such information via a public meeting or proceeding would defeat

the purpose of the public records exemption and would allow competitors and other persons to attend those meetings and discover the protected trade secrets.

4. Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?

No. In order to qualify for exemption, the material must meet the definition of "trade secret" in s. 688.002, which includes the requirements that it:

“(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.”

5. Is the record or meeting protected by another exemption?

No.

6. Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge exemptions?

No.



Leonard Schulte

Florida Hurricane Catastrophe Fund

1801 Hermitage Blvd., Suite 100

Tallahassee, FL 32308

leonard.schulte@sbafla.com

www.sbafla.com/fhcf

850-413-1335 Direct Line

850-322-8465 Mobile

Disclaimer: This communication may contain confidential, proprietary, and/or privileged information. It is intended solely for the use of the addressee. If you are not the intended recipient, you are strictly prohibited from disclosing, copying, distributing or using any of this information. If you received this communication in error, please contact the sender immediately and destroy the material in its entirety, whether electronic or hard copy.

Additionally, please note that Florida has a very broad public records law. This communication (including your email address, any attachments and other email contents) may be subject to disclosure to the public and media.

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 Committee on Banking and Insurance

BILL: SPB 7056

INTRODUCER: Banking and Insurance Committee

SUBJECT: OGSR/Family Trust Companies/Office of Financial Regulation

DATE: February 19, 2019

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Billmeier	Knudson		BI Submitted as Comm. Bill/Fav

I. Summary:

SPB 7056 is based on an Open Government Sunset Review of a public records exemption for certain information relating to family trust companies held by the Office of Financial Regulation. Family trust companies provide trust company services to high net worth families. They are not allowed to provide services to the general public. The Office of Financial Regulation's regulatory role is limited to ensuring that fiduciary services are not provided to the general public unless the family trust company desires more regulation.

Section 662.148, F.S., provides that personal identifying information contained in family trust company applications, registrations, certifications, and examinations is confidential and exempt from public disclosure. It also provides that family trust company shareholder or member names are confidential and exempt.

The Legislature made such personal identifying information confidential and exempt because disclosure of financial information and names of family members, qualified participants, and shareholders of family trust companies could jeopardize the financial safety of the family members. Families with a high net worth are frequently the targets of criminals and placing family personal identifying information into the public domain would increase the risk that a family could become the target of criminal activity.

The exemption is scheduled for repeal on October 2, 2019. This bill makes the exemption permanent.

II. Present Situation:

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ This applies to the official business

¹ FLA. CONST., art. I, s. 24(a).

of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.² In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.³ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.⁴ The Public Records Act states that

[i]t is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁵

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

The Legislature may create an exemption to public records requirements by passing a general law by a two-thirds vote of each of the House and the Senate.⁹ The exemption must explicitly lay out the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the exemption.¹⁰ A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.¹¹

² *Id.*

³ The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So.2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are primarily located in s. 11.0431(2)-(3), F.S.

⁴ Public records laws are found throughout the Florida Statutes.

⁵ Section 119.01(1), F.S.

⁶ Section 119.011(12), F.S., defines “public record” to mean “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.” Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ *Id.*

¹¹ *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So.2d 189 (Fla. 1st DCA 2004), the court found that the intent of a public records statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

When creating a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’¹² Records designated as ‘confidential and exempt’ may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as ‘exempt’ may be released at the discretion of the records custodian under certain circumstances.¹³

Open Government Sunset Review Act

The Open Government Sunset Review Act (OGSR) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁴ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption or repeal the sunset date.¹⁵ In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.¹⁶ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹⁷
- Releasing sensitive personal information would be defamatory or would jeopardize an individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;¹⁸ or
- It protects trade or business secrets.¹⁹

The OGSR also requires specified questions to be considered during the review process.²⁰ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

¹² If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004).

¹³ *Williams v. City of Minneola*, 575 So.2d 683 (Fla. 5th DCA 1991).

¹⁴ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.

¹⁵ Section 119.15(3), F.S.

¹⁶ Section 119.15(6)(b), F.S.

¹⁷ Section 119.15(6)(b)1., F.S.

¹⁸ Section 119.15(6)(b)2., F.S.

¹⁹ Section 119.15(6)(b)3., F.S.

²⁰ Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?

If, in reenacting an exemption or repealing the sunset date, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²¹ If the exemption is reenacted or saved from repeal without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²²

The Family Trust Company

A family trust company provides trust services to wealthy families and cannot provide services to the general public. These services include serving as a trustee of trusts held for the benefit of the family members, as well as providing other fiduciary, investment advisory, wealth management, and administrative services to the family. A family might wish to form a family trust company in order to keep family matters more private than they would be if turned over to an independent trustee, to gain liability protection, to establish its own trust fee structure, and to obtain tax advantages. Traditional trust companies require regulatory oversight, licensing of investment personnel, public disclosure and capitalization requirements considered by practitioners to be overbroad and intrusive for the family trust.

In 2014, the Legislature authorized the creation of family trust companies in Florida.²³ The Florida Family Trust Company Act is codified in chapter 662, F.S. The Act allows for the creation of family trust companies in Florida and provides differing degrees of regulatory oversight by the Office of Financial Regulation (OFR).

Chapter 662, F.S., creates three types of family trust companies: family trust companies, licensed family trust companies, and foreign licensed family trust companies. A “family trust company” is a corporation or limited liability company that is exclusively owned by one or more family member and acts or proposes to act as a fiduciary to serve one or more family members.²⁴ A “licensed family trust company” means a family trust company that has been issued a license that has not been revoked or suspended by the OFR.²⁵ A “foreign licensed family trust company” means a family trust company that is licensed by a state other than Florida.²⁶ Family trust companies that are not licensed and foreign family trust companies must register annually with the OFR.²⁷

A licensed family trust company is subject to regulation by the OFR, including examinations and investigations.²⁸ If a family trust company is not licensed or is a foreign family trust company,

-
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

²¹ FLA. CONST. art. I, s. 24(c).

²² Section 119.15(7), F.S.

²³ Ch. 2014-97, Laws of Fla.

²⁴ See s. 662.111(12), F.S. and does not serve as a fiduciary for a person, entity, trust, or estate that is not a family member, except that it may serve as a fiduciary for up to 35 individuals who are not family members if the individuals are current or former employees of the family trust company or one or more trusts, companies, or other entities that are family members

²⁵ See s. 662.111(16), F.S.

²⁶ See s. 662.111(15), F.S.

²⁷ See ss. 662.122, 662.128, F.S.

²⁸ See s. 662.141, F.S.

the OFR role is limited to ensuring fiduciary services are not provided to the general public and are restricted to family members.²⁹

There are no licensed family trust companies in Florida. There are ten registered family trust companies in Florida. The OFR has identified one public records request relating to family trust companies in 2018, two requests in 2017, two requests in 2016, and one request in 2014. The OFR responded to each request by redacting confidential and exempt information.³⁰

Public Records Exemption

Section 662.148, F.S., provides that the following information in records relating to family trust companies held by the OFR are confidential and exempt from public disclosure:

- Personal identifying information appearing in records relating to a registration, an application, or an annual certification.
- Personal identifying information appearing in records relating to an examination.
- Personal identifying information appearing in reports of examinations, operations, or conditions of trust companies.
- Personal identifying information appearing in working papers held by the OFR.
- Any portion of a list of names of the shareholders or members.
- Information received from a person from another state or nation or the federal government which is otherwise confidential or exempt pursuant to the laws of that state or nation or pursuant to federal law.
- Emergency cease and desist orders. However, an emergency cease and desist order may be made public if it is made permanent or if continued confidentially will place the public at substantial risk of financial loss.

Subsection 662.148(3), F.S., provides that the OFR may disclose confidential and exempt information relating to family trust companies to the following:

- An authorized representative of a trust company during an examination.
- A fidelity insurance company, upon written consent of a trust company.
- An independent auditor, upon written consent of a trust company.
- A liquidator, receiver, or conservator for a trust company. However, any information which discloses the identity of a bondholder, customer, family member, member, or stockholder must be redacted by the OFR before being released.
- Any other state, federal, or foreign agency responsible for the regulation or supervision of a trust company.
- A law enforcement agency in the furtherance of the agency's official duties or for the purpose of reporting suspected criminal activity.
- A prosecutorial agency for the purpose of reporting suspected criminal activity.
- A legislative body or committee pursuant to a legislative subpoena. The legislative body or committee must maintain the confidentiality of the records it receives, except in cases involving a public official who is subject to impeachment or removal.

²⁹ See s. 662.102(3)(b), F.S.

³⁰ Letter from the Office of Financial Regulation to Senate Committee on Banking and Insurance Staff dated August 23, 2018 (on file with the Senate Committee on Banking and Insurance).

The exemption does not prevent or restrict the publication of a report required by federal law, nor does this bill prevent or restrict the publication of a trust company's name, or the name and address of its registered agent.³¹

Public Necessity Statement

The Legislature found that the exemption is necessary because:

- Financial information and lists of names of family members, qualified participants, and shareholders, if available for public access could jeopardize the financial safety of the family members who are the subject of the information. Families with a high net worth are frequently the targets of criminal predators seeking access to their assets. It is important that the exposure of such families and family members to threats of extortion, kidnapping, and other crimes not be increased. Placing family names, private family business records and methodologies into the public domain would increase the security risk that a family could become the target of criminal activity.
- Public disclosure of an examination, report of examination, or emergency cease and desist order could expose families to security risks, and could defame or cause unwarranted damage to the good name or reputation of the family that is the subject of the information.
- Family trust companies often provide a consolidated structure for the ownership of an operating business owned by multiple family members. Placing those private business operations and methods in the public domain could jeopardize their business assets, methodologies, and practices.³²

III. Effect of Proposed Changes:

This bill is based on an Open Government Sunset Review of section 662.148, F.S. Section 662.148, F.S., provides that certain personal identifying information relating to family trust companies held by the OFR is confidential and exempt from disclosure. The Legislature found that the exemption is necessary to protect families from criminal activity, to avoid unnecessary embarrassment to families, and to avoid exposing family business practices to the public. The public records exemption is scheduled to repeal on October 2, 2019. This bill deletes the scheduled repeal of the exemption. If the bill passes, the exemption would be permanent. The bill takes effect October 1, 2018

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

³¹ See s. 662.148(4), F.S.

³² See ch. 2014-102, L.O.F.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

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. Statutes Affected:

This bill substantially amends section 662.148 of the Florida Statutes:

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

FOR CONSIDERATION By the Committee on Banking and Insurance

597-00804-19

20197056pb

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 662.148, F.S., relating to an exemption from public records requirements for certain information held by the Office of Financial Regulation relating to family trust companies, licensed family trust companies, and foreign licensed family trust companies; removing the scheduled repeal of the exemption; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 662.148, Florida Statutes, is amended to read:

662.148 Public records exemption.—

(1) DEFINITIONS.—As used in this section, the term:

(a) "Reports of examinations, operations, or conditions" means records submitted to or prepared by the office as part of the office's duties performed pursuant to s. 655.012 or s. 655.045(1).

(b) "Working papers" means the records of the procedure followed, the tests performed, the information obtained, and the conclusions reached in an examination under s. 655.032 or s. 655.045. The term also includes books and records.

(2) PUBLIC RECORDS EXEMPTION.—The following information held by the office is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(a) Any personal identifying information appearing in records relating to a registration, an application, or an annual

Page 1 of 4

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

597-00804-19

20197056pb

certification of a family trust company, licensed family trust company, or foreign licensed family trust company.

(b) Any personal identifying information appearing in records relating to an examination of a family trust company, licensed family trust company, or foreign licensed family trust company.

(c) Any personal identifying information appearing in reports of examinations, operations, or conditions of a family trust company, licensed family trust company, or foreign licensed family trust company, including working papers.

(d) Any portion of a list of names of the shareholders or members of a family trust company, licensed family trust company, or foreign licensed family trust company.

(e) Information received by the office from a person from another state or nation or the Federal Government which is otherwise confidential or exempt pursuant to the laws of that state or nation or pursuant to federal law.

(f) An emergency cease and desist order issued under s. 662.143 until the emergency order is made permanent unless the office finds that such confidentiality will result in substantial risk of financial loss to the public.

(3) AUTHORIZED RELEASE OF CONFIDENTIAL AND EXEMPT INFORMATION.—Information made confidential and exempt under subsection (2) may be disclosed by the office:

(a) To the authorized representative or representatives of the family trust company, licensed family trust company, or foreign licensed family trust company under examination. The authorized representative or representatives shall be identified in a resolution or by written consent of the board of directors

Page 2 of 4

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

597-00804-19

20197056pb

59 if the trust company is a corporation, or of the managers if the
60 trust company is a limited liability company.

61 (b) To a fidelity insurance company, upon written consent
62 of the trust company's board of directors if a corporation, or
63 its managers if a limited liability company.

64 (c) To an independent auditor, upon written consent of the
65 trust company's board of directors if a corporation, or its
66 managers if a limited liability company.

67 (d) To a liquidator, receiver, or conservator for a family
68 trust company, licensed family trust company, or foreign
69 licensed family trust company if a liquidator, receiver, or
70 conservator is appointed. However, any portion of the
71 information which discloses the identity of a bondholder,
72 customer, family member, member, or stockholder must be redacted
73 by the office before releasing such portion to the liquidator,
74 receiver, or conservator.

75 (e) To any other state, federal, or foreign agency
76 responsible for the regulation or supervision of family trust
77 companies, licensed family trust companies, or foreign licensed
78 family trust companies.

79 (f) To a law enforcement agency in the furtherance of the
80 agency's official duties and responsibilities.

81 (g) To the appropriate law enforcement or prosecutorial
82 agency for the purpose of reporting any suspected criminal
83 activity.

84 (h) Pursuant to a legislative subpoena. A legislative body
85 or committee that receives records or information pursuant to
86 such a subpoena must maintain the confidential status of such
87 records or information, except in a case involving the

Page 3 of 4

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

597-00804-19

20197056pb

88 investigation of charges against a public official subject to
89 impeachment or removal, in which case records or information
90 shall only be disclosed to the extent necessary as determined by
91 such legislative body or committee.

92 (4) PUBLICATION OF INFORMATION.—This section does not
93 prevent or restrict the publication of:

94 (a) A report required by federal law.

95 (b) The name of the family trust company, licensed family
96 trust company, or foreign licensed family trust company and the
97 name and address of the registered agent of that company.

98 (5) PENALTY.—A person who willfully discloses information
99 made confidential and exempt by this section commits a felony of
100 the third degree, punishable as provided in s. 775.082, s.
101 775.083, or s. 775.084.

102 ~~(6) OPEN GOVERNMENT SUNSET REVIEW.—This section is subject~~
103 ~~to the Open Government Sunset Review Act in accordance with s.~~
104 ~~119.15 and is repealed on October 2, 2019, unless reviewed and~~
105 ~~saved from repeal through reenactment by the Legislature.~~

106 Section 2. This act shall take effect October 1, 2019.

Page 4 of 4

CODING: Words ~~stricken~~ are deletions; words underlined are additions.



FLORIDA OFFICE OF FINANCIAL REGULATION

www.FLOFR.com

PAMELA P. EPTING
INTERIM COMMISSIONER

August 23, 2018

Michael Billmeier, Chief Attorney
Florida Senate
Committee on Banking and Insurance
850-487-5370

Re: Public records exemption of information collected from family trust companies contained in s. 662.148, F.S.

Dear Mr. Billmeier:

The Office of Financial Regulation is writing to respond to your e-mail dated August 13, 2018. For ease of reference, your questions and comments have been reproduced below, with the Office of Financial Regulation's responses following immediately thereafter in bold type.

Section 662.121, F.S., provides for licensure of family trust companies.

(1) How many family trust companies are licensed by the Office of Financial Regulation (OFR)?

None.

(2) Have any licensed family trust companies discontinued business pursuant to section 662.129, F.S.? If so, how many?

No.

Section 662.122, F.S., provides for registration of family trust companies.

(3) How many family trust companies are registered with the OFR?

The OFR has 10 registered family trust companies. The OFR has 1 pending application for an additional registered family trust company.

Section 662.151, F.S. provides for registration of foreign licensed family trust companies.

(4) How many foreign licensed family trust companies are registered with the OFR?

There are no foreign licensed family trust companies currently registered with the OFR. The OFR has 1 pending application for a registered foreign licensed family trust company.

Section 662.128, F.S., requires family trust companies to file annual renewals with the OFR.
(5) How many annual renewals does the OFR process each year?

The OFR anticipates processing 11 annual renewals at the end of this year. The OFR processed:

- **8 annual renewals for registered family trust companies for the year 2018, as there were 8 approved registered family trust companies at year end 2017.**
- **2 annual renewals for registered family trust companies for the year 2017, as there were 2 approved registered family trust companies by year end 2016.**
- **0 registered family trust company renewals for year 2016, as there were no registered family trust companies before 2016.**

Section 662.141, F.S., provides for examinations and investigations of family trust companies.
(6) How many examinations or investigations has the OFR conducted?

The OFR does not have any licensed family trust companies or registered foreign licensed family trust companies at this time, and, as such, no examinations or investigations have been conducted.

The OFR has not conducted an examination or investigation of its registered family trust companies. The OFR notes that, unlike examinations for licensed family trust companies, which the OFR must conduct on a regular basis (at least once every 36 months), section 662.141, F.S., does not provide for regular examinations of registered family trust companies. The OFR may, however, conduct an examination or investigation of a registered family trust company under certain circumstances (e.g., “at any time [the OFR] deems it necessary to determine whether the family trust company . . . has engaged in any act prohibited under s. 662.131 or s. 662.134. . .”). To date, the OFR has not conducted an examination or investigation of its registered family trust companies pursuant to this provision.

(7) Did any of those examinations or investigations result in administrative discipline or other administrative actions?

Not applicable at this time.

Section 662.142, F.S., provides for revocation of licenses under certain circumstances.
(8) Has the OFR taken action to revoke the licenses of any family trust companies?

No. This provision applies only to licensed family trust companies, which the OFR does not have at this time.

(9) Has the OFR taken action pursuant to its cease and desist authority under section 662.143, F.S.?

No.

(10) How many cases has the OFR opened pursuant to section 662.145, F.S.?

None.

(11) Subsection 662.148(2), F.S., provides a public records exemption for specified information. Has your agency received a public records request for any such information?

Yes. The OFR has received requests for copies of application files, parts of which contain information deemed exempt and confidential by s. 662.148(2)(a) through (d), F.S.

If "yes," please describe the types of entities requesting such information, the information requested, and how many requests were received each year.

These requests typically come from law firms. The information requested varies; however, the majority of requests are for the applications received for registered family trust companies. The OFR was able to identify approximately 1 request in 2018, 2 requests in 2017, 2 requests in 2016, and 1 request in 2014.

If "yes," was the information released?

The OFR responded to each public records request, redacting all information deemed confidential and exempt by section 662.148(2), F.S.

(12) Is the exemption still necessary?

Yes. The public necessity for the exemption remains. The reasons for the exemption are as applicable now as they were when the exemption was enacted.¹ This is similar to the

¹ The public necessity statement in the Act, Chapter 2014-102, section 2, Laws of Florida, provides that:

(1) Financial information and lists of names of family members, qualified participants, and shareholders, if available for public access could jeopardize the financial safety of the family members who are the subject of the information. Families with a high net worth are frequently the targets of criminal predators seeking access to their assets. It is important that the exposure of such families and family members to threats of extortion, kidnapping, and other crimes not be increased. Placing family names, private family business records and methodologies into the public domain would increase the security risk that a family could become the target of criminal activity.

(2) Public disclosure of an examination, report of examination, or emergency cease and desist order could expose families to security risks, and could defame or cause unwarranted damage to the good name or reputation of the family that is the subject of the information.

exemption for banks and other financial institutions where the identities and personal financial information of minority shareholders, depositors, and borrowers are maintained as confidential and exempt. Without these exemptions, the State of Florida would likely lose any families wishing to establish family offices in Florida to manage their considerable wealth. Protection of the confidential information is necessary to ensure that Florida remains competitive.

(13) Subsection 662.148(3), F.S., provides that the OFR may disclose confidential and exempt information to specified entities. Has the OFR disclosed any information pursuant to this subsection?

No.

If “yes,” please describe the types of entities to which the information was disclosed and the type of information disclosed.

Not applicable.

(14) Subsection 662.148(5), F.S., provides for criminal penalties for willfully disclosing confidential and exempt information. Has anyone been prosecuted for wrongful disclosure of information made confidential and exempt under s. 662.148, F.S.

The OFR is not aware of any criminal prosecutions brought for a violation of s. 662.148, F.S.

(15) Does the OFR recommend that the Legislature repeal the public records exemption, reenact the public records exemption, or reenact the exemption with changes? If the OFR recommends changes, please describe the suggested changes.

The OFR recommends the Legislature reenact the public records exemption.

(16) Is there any case law interpreting the exemption?

No.

(17) Does the OFR have any additional comments?

As set forth above, it is imperative that the exemptions be reenacted by the Legislature so that Florida remains competitive as a state in which to operate a family trust company.

(3) Family trust companies often provide a consolidated structure for the ownership of an operating business owned by multiple family members. Placing those private business operations and methods in the public domain could jeopardize their business assets, methodologies, and practices.

Thank you for the opportunity to address your questions. If you have any further questions, please contact the OFR at (850) 410-9513.

Sincerely,

Florida Office of Financial Regulation
Division of Financial Institutions



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Commerce and Tourism, *Chair*
Finance and Tax, *Vice Chair*
Appropriations Subcommittee on Criminal
and Civil Justice
Banking and Insurance

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR JOE GRUTERS

23rd District

February 19th, 2019

The Honorable Doug Broxson, Chair
Banking and Insurance Committee
320 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Broxson:

I am writing to inform you that Senator Gruters will not be at the Banking and Insurance Committee meeting, on 2/19/19 at 12:30 pm.

Warm regards,

A handwritten signature in black ink that reads "Joe Gruters".

Joe Gruters

cc: James Knudson, Staff Director
Sheri Green, Committee Administrative Assistant

REPLY TO:

- 381 Interstate Boulevard, Sarasota, Florida 34240 (941) 378-6309
- 324 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

CourtSmart Tag Report

Room: KN 412
Caption: Banking and Insurance

Case No.:
Judge:

Type:

Started: 2/19/2019 12:34:00 PM
Ends: 2/19/2019 12:55:01 PM

Length: 00:21:02

12:33:59 PM Call to Order
12:34:08 PM Roll call
12:34:21 PM Quroum present
12:34:29 PM Chair remarks
12:34:46 PM Take up Tab 1: SB 322 by Senator Simpson
12:34:59 PM Senator Simpson for an explanation
12:35:51 PM Take up barcode: 836736 by Senator Simpson
12:36:05 PM Senator Simpson for an explanation
12:36:15 PM Questions?
12:36:18 PM Senator Lee
12:36:56 PM Senator Simpson for a response
12:37:33 PM Senator Lee for follow-up
12:38:24 PM Senator Thurston
12:38:59 PM Senator Simpson for a response
12:39:07 PM Senator Taddeo
12:39:38 PM Senator Simpson for a response
12:40:18 PM No Appearance forms
12:40:24 PM Debate?
12:40:28 PM Chair Broxson
12:40:50 PM Amendment adopted
12:41:01 PM Questions?
12:41:03 PM Debate?
12:41:10 PM Senator Brandes
12:41:35 PM Waive close
12:41:37 PM Roll call on CS/SB 322
12:41:47 PM Bill reported favorably
12:42:08 PM Take up Tab 2: SB 380 by Senator Brandes
12:42:18 PM Senator Brandes for an explanation
12:43:01 PM Questions?
12:43:04 PM Senator Lee has an amendment
12:43:26 PM Barcode 690278
12:43:52 PM Senator Lee for explanation
12:43:53 PM Debate?
12:44:04 PM Senator Brandes for comment
12:44:19 PM Chair Broxson for comments
12:44:48 PM Amendment adopted
12:44:53 PM Back on the bill as amended
12:44:57 PM Senator Taddeo in debate
12:45:18 PM Senator Brandes for response
12:45:46 PM Chair Broxson for comments
12:46:52 PM Roll call on CS/SB 380
12:47:07 PM Bill is reported favorably
12:47:25 PM Vice Chair Rouson for a series of bills
12:47:39 PM Senator Rouson votes in the affirmative for SB 322
12:47:57 PM Take up Tab 3: SPB 7050
12:48:18 PM Senator Rouson for an explanation
12:48:44 PM Senator Taddeo moves that SPB 7050 be submitted as a committee bill
12:49:03 PM Roll call
12:49:06 PM SPB 7050 is reported favorably as a committee bill
12:49:28 PM Take up Tab 4: SPB 7052
12:49:41 PM Senator Rouson for an explanation
12:50:28 PM Senator Lee moves that SPB 7052 be submitted as a committee bill

12:50:40 PM Roll call
12:50:43 PM SPB 7052 is favorably reported as a committee bill
12:50:58 PM Take up Tab 5: SPB 7054
12:51:03 PM Senator Rouson for an explanation
12:51:54 PM Senator Thurston moves that SPB 7054 be submitted as a committee bill
12:52:14 PM Roll call
12:52:15 PM SPB 7054 is favorably reported as a committee bill
12:52:31 PM Take up Tab 6: SPB 7056
12:52:34 PM Senator Rouson for an explanation
12:53:58 PM Senator Perry moves that SPB 7056 be submitted as a committee bill
12:54:09 PM Roll call
12:54:12 PM SPB 7056 is favorably reported as a committee bill
12:54:28 PM Chair Broxson for closing comments
12:54:48 PM Senator Taddeo moves we adjourn