

By the Committee on Banking and Insurance; and Senator King

311-1759-00

1 A bill to be entitled
2 An act relating to the Florida Windstorm
3 Underwriting Association; amending s. 627.351,
4 F.S.; providing exemptions from the public
5 records law for specified records of the
6 association; providing an exemption for certain
7 meetings of the members of the board of
8 directors of the association; providing for
9 future review and repeal; providing a finding
10 of public necessity; providing an effective
11 date.

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

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15 Section 1. Paragraph (f) is added to subsection (2) of
16 section 627.351, Florida Statutes, to read:

17 627.351 Insurance risk apportionment plans.--

18 (2) WINDSTORM INSURANCE RISK APPORTIONMENT.--

19 (f)1. The following records of the Florida Windstorm
20 Underwriting Association are confidential and exempt from the
21 provisions of s. 119.07(1) and s. 24(a), Art. I of the State
22 Constitution:

23 a. Appraisals, surveys, applications, and other
24 information relating to a policyholder's property, including
25 its location, type of construction, and valuation, and related
26 information; the name and address of the policyholder and the
27 producer of record; all information relating to underlying
28 property coverages on the policyholder's property, including
29 the name and address of the underlying property insurer and
30 its agent of record and policy expirations; all information
31 generated in connection with applications for coverage; and

1 all information included in underwriting files. However, the
2 policyholder shall have access to all of this information.

3 b. Claims files, until termination of all litigation
4 and settlement of all claims arising out of the same incident,
5 although portions of the claims files may remain exempt, as
6 otherwise provided by law. Confidential and exempt claims file
7 records may be released to other governmental agencies upon
8 written request and demonstration of need; such records held
9 by the receiving agency remain confidential and exempt as
10 provided for in this paragraph.

11 c. Records obtained or generated by an internal
12 auditor pursuant to a routine audit, until the audit is
13 completed, or if the audit is conducted as part of an
14 investigation, until the investigation is closed or ceases to
15 be active. An investigation is considered active while the
16 investigation is being conducted with a reasonable, good-
17 faith belief that it could lead to the filing of
18 administrative, civil, or criminal proceedings.

19 d. Matters reasonably encompassed in privileged
20 attorney-client communications.

21 e. All proprietary information and data, including
22 computer models, and all data, programs, or supporting
23 documentation that is a trade secret, as defined in s.
24 812.081, licensed or furnished to or used by the association
25 as part of a response to a request for proposals under
26 sub-subparagraph h. or under separate contract between the
27 owner and the association if such response or contract
28 provides for confidentiality.

29 f. All information relating to the medical condition
30 or medical status of an association employee which is not
31 relevant to the employee's capacity to perform his or her

1 duties, except as otherwise provided in this paragraph.

2 Information that is exempt includes, but is not limited to,
3 information relating to workers' compensation, insurance
4 benefits, and retirement or disability benefits.

5 g. Upon an employee's entrance into the employee
6 assistance program or a program to assist any employee who has
7 a behavioral or medical disorder, substance-abuse problem, or
8 emotional difficulty that affects the employee's job
9 performance, all records relative to that participation,
10 except as otherwise provided in s. 112.0455(11).

11 h. When the association issues requests for proposals
12 from vendors to perform services as reinsurance
13 intermediaries, financial advisors, mapping experts, modelers,
14 financial managers, or other specialized professional
15 services, all responses to such requests, until the successful
16 vendor is selected or the request for proposal is withdrawn by
17 the association.

18 2. When an authorized insurer is considering assuming
19 or taking out a risk insured by the association, relevant
20 underwriting files and confidential claims files may be
21 released to the insurer if the insurer or licensed agent
22 agrees in writing, notarized and under oath, to maintain the
23 confidentiality of such files. When a file is transferred to
24 an insurer or authorized agent that file is no longer a public
25 record because it is not held by an agency subject to the
26 provisions of the public records law.

27 3. The attendance at and participation in meetings,
28 negotiating sessions, presentations, conferences, and
29 promotional sessions by two or more members of the board of
30 directors of the association with lenders, rating agencies,
31 investors, underwriters, and government officials incident to

1 promoting, negotiating, or consummating a debt financing by
2 the association are exempt from the provisions of s. 286.011
3 and s. 24(b), Art. I of the State Constitution when the debt
4 financing has been approved by the board of directors at a
5 public meeting complying with the Sunshine Law.

6 4. Portions of meetings of the Florida Windstorm
7 Underwriting Association are exempt from the provisions of s.
8 286.011 and s. 24(b), Art. I of the State Constitution wherein
9 confidential underwriting files or confidential open claims
10 files are discussed. All portions of association meetings
11 which are closed to the public shall be recorded by a court
12 reporter. The court reporter shall record the times of
13 commencement and termination of the meeting, all discussion
14 and proceedings, the names of all persons present at any time,
15 and the names of all persons speaking. No portion of any
16 closed meeting shall be off the record. Subject to the
17 provisions hereof and s. 119.07(2)(a), the court reporter's
18 notes of any closed meeting shall be retained by the
19 association for a minimum of 5 years. A copy of the
20 transcript, less any exempt matters, of any closed meeting
21 wherein claims are discussed shall become public as to
22 individual claims after settlement of the claim.

23 5. The provisions of this paragraph do not preclude
24 the Department of Insurance from obtaining information from
25 the Florida Windstorm Underwriting Association.

26 6. The exemptions provided in this paragraph are
27 subject to the Open Government Sunset Review Act in accordance
28 with s. 119.15, and shall stand repealed on October 2, 2005,
29 unless reviewed and saved from repeal through reenactment by
30 the Legislature.

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1 Section 2. The Legislature finds that it is a public
2 necessity that certain association records be held
3 confidential and exempt from the provisions of section
4 119.07(1), Florida Statutes, and Section 24(a) of Article I of
5 the State Constitution. Certain medical records of association
6 employees should be held confidential and exempt because they
7 contain personal, sensitive information regarding an
8 employee's medical condition the disclosure of which would be
9 harmful to the employee. Likewise appraisals, applications,
10 and other information relating to a propertyholder's property
11 and underwriting files contain information the disclosure of
12 which could be harmful to the policyholder. Additionally such
13 files contain proprietary confidential business information.
14 Accordingly, it is a public necessity that those files be
15 closed. Additionally, matters reasonably encompassed in
16 privileged attorney-client communications should be held
17 confidential and exempt because the release of such
18 information could jeopardize ongoing or pending litigation or
19 other business matters. Also, open claims files records should
20 be closed. If such records and meetings were not exempt,
21 claimants would have unfettered access to information held by
22 the association which could be used as evidence and for
23 purposes of negotiation, claim evaluation, and settlement
24 considerations, which would result in higher awards and
25 settlements paid out by the association and ultimately the
26 consumer. Records held by an internal auditor while an audit
27 is incomplete or while an investigation is pending should be
28 held confidential and exempt because otherwise inaccurate
29 information would possibly be released or investigations
30 jeopardized. Finally, it is in the public interest and a
31 public necessity that attendance by the association's

1 directors at meetings and negotiations between members of the
2 association's board of directors and lenders, rating agencies,
3 underwriters, and government officials incidental to debt
4 financing by the association should be exempt from the public
5 meetings law under the provisions of section 286.011, Florida
6 Statutes, and Section 24(b) of Article I of the State
7 Constitution when the debt financing has been approved at a
8 public meeting.

9 Section 3. This act shall take effect July 1, 2000.

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11 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
12 COMMITTEE SUBSTITUTE FOR
13 Senate Bill 1278

- 14 1. Narrows the public records exemption relating to
15 requests for proposals for financial services to provide
16 that they shall be confidential and exempt until the
request for proposal is withdrawn by the Florida
Windstorm Underwriting Association (FWUA).
- 17 2. Provides that portions of meetings for the FWUA are
18 confidential and exempt from the public meetings law
19 wherein confidential underwriting and claims files are
20 discussed. States that a court reporter will record all
meetings and the FWUA will retain such records for 5
years. A copy of the transcript as to individual claims
will become public after settlement of such claim.
- 21 3. Allows the Department of Insurance access to information
22 of the FWUA.
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