

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 1958

SPONSOR: Senator Latvala

SUBJECT: Public Records Exemption/Judges of Compensation Claims

DATE: April 18, 2001 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Deffenbaugh	BI	Favorable
2.	Rhea	Wilson	GO	Favorable
3.	_____	_____	RC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill provides that all investigatory records of the Division of Administrative Hearings of the Department of Management Services made or received pursuant to an investigation relating to a judge of compensation claims are confidential and exempt from the provisions of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution until such investigation is completed or ceases to be active.

The bill also provides that it is a public necessity for these records to be held confidential and exempt from public records in order not to compromise the investigation and disseminate potentially inaccurate information. In addition, if this information were made public, it would potentially defeat the purpose of the investigation. The Legislature also finds that it is a public necessity that business and financial records remain confidential and exempt after an investigation is completed or ceases to be active because the disclosure of such information may injure the affected party in the marketplace or defame or cause unwarranted damage to the name or reputation of an individual.

This bill substantially amends section 440.45, Florida Statutes and creates an undesignated section of the Florida Statutes.

II. Present Situation:

The Office of the Judges of Compensation Claims is responsible for hearing and resolving disputed workers' compensation issues under the authority of ch. 440, F.S. Senate Bill 1188, which incorporated legislative recommendations included in the Senate Banking and Insurance Committee staff interim report 2000-03, *"Evaluation of the Transfer of Workers' Compensation Hearings from the Department of Labor and Employment Security to the Division of*

Administrative Hearings,” transfers the workers’ compensation hearings function from the Department of Labor and Employment Security to the Division of Administrative Hearings Services. The current number and location of the judges, the mediators, and the district offices of the judges would be maintained. The judges of compensation claims and the Deputy Chief Judge would continue to be appointed by the Governor.

The judges of compensation claims would be required to abide by all of the provisions of the Code of Judicial Conduct, as adopted by the Supreme Court. The bill authorizes the Director of the Division of Administrative Hearings to initiate complaints, investigate complaints, and dismiss complaints against the Deputy Chief Judge and the judges of compensation claims and recommend to the Governor whether a judge should be disciplined or removed. A judge of compensation claims that was the subject of an investigation would have an opportunity to respond to the tentative findings. The response of the judge of compensation claims and the director’s rebuttal to the response would be included in the final report submitted to the Governor. Presently, there is no statutory mechanism, such as the Judicial Qualifications Commission, to receive and independently investigate complaints and recommend the removal or the discipline of any judge that violates the provisions of s. 440.442, F.S.

Public Records Exemptions

Section 119.15, F.S., the Open Government Sunset Review Act of 1995, provides for the repeal and prior legislative review of any public records or public meetings exemptions that are created or substantially amended in 1996 and subsequently. The law states that an exemption may be created or expanded only if the exemption:

- allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or
- protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.¹

Article I, s. 24(a), Florida Constitution, provides, “Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution.”@

Article I, s. 24(c), Florida Constitution, permits the Legislature to create exemptions from a public records law. However, the bill must contain a statement of public necessity that justifies the exemption and the exemption must be no broader than necessary to accomplish its purpose.

¹ Section 119.15(4)(b), F.S.

Additionally, a bill that contains an exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.

III. Effect of Proposed Changes:

Section 1. Provides that all investigatory records of the Division of Administrative Hearings made or received pursuant to an investigation of a judge of compensation claims and any records necessary to complete an investigation are confidential and exempt from the provisions of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution until the investigation is completed or ceases to be active. This exemption would be subject to the Open Government Sunset Review Act of 1995 and would stand repealed on October 2, 2006, unless reviewed and saved by repeal by the Legislature.

Section 2. Provides that it is a public necessity for these records to be held confidential and exempt from public records in order not to compromise the investigation and disseminate potentially inaccurate information. In addition, if this information were made public, it would potentially defeat the purpose of the investigation. The Legislature also finds that it is a public necessity that business and financial records remain confidential and exempt after an investigation is completed or ceases to be active because the disclosure of such information may injure the affected party in the marketplace or defame or cause unwarranted damage to the name or reputation of an individual.

Section 3. Provides that this act would take effect on the effective date of Senate Bill 1188 or similar legislation relating to the judges of compensation claims of the Division of Administrative Hearings.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill would prevent the disclosure of personal or financial information related to a judge of compensation claims that is the subject of an investigation that might defame or cause unwarranted damage to the reputation of that individual.

C. Government Sector Impact:

The integrity of the investigation could be retained by requiring that the investigatory records be held confidential and exempt until the investigation is completed or ceases to be active.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
