

1 (2) Records or portions of records made confidential
2 and exempt by this section may be released, upon written
3 request, to another agency in the performance of that agency's
4 official duties and responsibilities. The receiving agency
5 shall maintain the confidential and exempt status of such
6 record or portion of record made confidential and exempt by
7 this section.

8 (3) That portion of a meeting of the association board
9 of directors or a subcommittee of the association board of
10 directors at which records made confidential and exempt by
11 this section are discussed are exempt from the provisions of
12 s. 286.011 and s. 24(b), Art. I of the State Constitution. All
13 portions of meetings which are closed to the public shall be
14 recorded and transcribed. The board shall record the times of
15 commencement and termination of the meeting, all discussion
16 and proceedings, the names of all persons present at any time,
17 and the names of all persons speaking. No portion of any
18 closed meeting shall be off the record. Subject to this
19 subsection and s. 119.07(2)(a), the court reporter's notes of
20 any closed meeting shall be retained by the corporation for a
21 minimum of 5 years. A copy of the transcript of any closed
22 meeting wherein claims are discussed shall become public as to
23 individual claims after settlement of the claim with any
24 exempt and confidential information redacted.

25 Section 2. Section 440.3851, Florida Statutes, is
26 subject to the Open Government Sunset Review Act of 1995 in
27 accordance with section 119.15, Florida Statutes, and shall
28 stand repealed on October 2, 2009, unless reviewed and saved
29 from repeal through reenactment by the Legislature.

30 Section 3. (1) The Legislature finds that it is a
31 public necessity that claims files of the Florida

1 Self-Insurers Guaranty Association, Incorporated, be held
2 confidential and exempt from public disclosure and that
3 portions of meetings of the board of directors of the
4 association, or meetings of any subcommittee of the board,
5 wherein these claims files are reviewed and evaluated be
6 closed. The Legislature finds that the association was created
7 to stand in the place of private businesses that are self
8 insured for workers' compensation claims if any of such
9 businesses becomes insolvent. The Legislature finds that the
10 exemption of the open compensation files of the association is
11 necessary for the effective and efficient administration of a
12 government program created to insure workers with claims
13 against insolvent businesses which can otherwise seek
14 compensation from the funds collected by the association from
15 its member businesses. Claims files are created by the
16 association after a claim against one of its insolvent members
17 is made, contain detailed information about the claim, medical
18 information, and other personal identifying information about
19 the claimant, and also contain information detailing the
20 evaluation of the legitimacy of the claim, the extent of
21 incapacity and a valuation of the award, if any, that should
22 be made. Information in a claim file held by the association
23 includes the medical records of a claimant. The Legislature
24 finds that the claimants' medical records are personal and
25 sensitive. Therefore, the Legislature finds that an exemption
26 for medical records and personal identifying information of a
27 claimant is a public necessity in order to protect a
28 claimant's health-related information. Matters of personal
29 health are traditionally a private and confidential concern.
30 The release of the medical records of a claimant or personal
31 identifying information of a claimant would be defamatory to

1 the individuals or could cause unwarranted damage to the name
2 or reputation of the individuals. When a claim is contested,
3 the work product of legal counsel may also be included in the
4 file in the form of direction to claims professionals or other
5 attorney-client privileged communications. Allowing the
6 claimant or their lawyer's access to the files, which could be
7 used for purposes of negotiation, claim evaluation, and
8 settlement considerations, would weaken the legal position of
9 the association and could result in higher awards and
10 settlements paid out by the guaranty fund and ultimately the
11 membership of the association. Additionally, information in
12 claims files that reasonably encompass privileged
13 attorney-client communications should be held confidential and
14 exempt because the release of such information could
15 jeopardize ongoing or pending litigation. The Legislature
16 further finds that the exempt records contain confidential
17 medical information of a personal, sensitive nature about the
18 claimant.

19 (2) The Legislature further finds that closing access
20 to meetings of the board of directors of the association or
21 meetings of a subcommittee of the board, wherein claims files
22 are reviewed and evaluated, is necessary for the effective and
23 efficient administration of the claims evaluation work of the
24 association. The directors of the fund act in a trustee
25 capacity and must take care that the assets of the fund are
26 managed wisely. Their efforts to meet as a collegial body to
27 closely review individual files in an open and frank setting
28 that includes staff are thwarted by the current requirement
29 that such meetings be noticed and open. Furthermore,
30 discussion of individual files in an open and public setting
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1 might reveal private, sensitive medical information that is
2 otherwise confidential.

3 Section 4. This act shall take effect upon becoming a
4 law.

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6 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
7 COMMITTEE SUBSTITUTE FOR
8 Senate Bill 2122

9 Provides that medical records and personal identifying
10 information regarding a claimant would continue to be
11 confidential and exempt from s. 119.07(1), F.S., and s. 24(a),
Art. I of the State Constitution after the litigation of a
claim is terminated.

12 Creates the public records exemption in ch. 440, F.S., rather
13 than ch. 624, F.S., since the Florida Self-Insurers Guaranty
Association is created under ch. 440, F.S.

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