

# 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.)

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Prepared By: Banking and Insurance Committee

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BILL: CS/SB 1478

SPONSOR: Banking and Insurance Committee and Senator Garcia

SUBJECT: Public Records and Meetings (Hurricane Loss and Exposure Data)

DATE: April 5, 2007

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Deffenbaugh</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Fav/CS</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	<u>GO</u>	_____
4.	_____	_____	<u>RC</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

The Committee Substitute provides a public records exemption for reports of hurricane loss and exposure data which are specific to a particular insurance company, as reported by an insurer or licensed rating organization to the Office of Insurance Regulation (OIR) or to state university (Florida International University), for the development of a public hurricane loss model. A separate bill, CS/SB 1488, would require insurers to report such data in a time and manner as specified by OIR.

The bill would also provide a public records exemption for any information used in designing and constructing a hurricane loss model that is a trade secret, as defined, which is provided by a private company to the Florida Commission on Hurricane Loss Projection Methodology (Commission), OIR, or the consumer advocate. A public meetings exemption is also provided for that portion of a meeting of the commission or of a rate proceeding on an insurer's rate filing at which confidential information is discussed. This provision is also related to CS/SB 1488, that provides that the findings of the Commission are admissible and relevant in a rate proceeding only if OIR and the consumer advocate have access to all of the assumptions and factors that were used in developing the model and are not precluded from disclosing such information in a rate proceeding.

The exemptions are subject to repeal on October 1, 2009, unless reviewed and reenacted pursuant to the Open Government Sunset Review Act of 1995.

The bill provides statements of public necessity for each exemption, related primarily to the economic harm to a private company developing a hurricane loss model if a trade secret used in designing the model was disclosed to competitors, and the economic harm to insurers if

proprietary business information regarding its marketing strategies were disclosed to other competitor insurers.

This bill substantially amends the following sections of the Florida Statutes: 627.0628.

This bill creates the following sections of the Florida Statutes: 627.06292.

## **II. Present Situation:**

### **Public Records and Public Meetings; Exemptions**

Section 24(a), Art. I of the Florida Constitution, states, *“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.”*

Section 24(c), Art. I of the 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. Additionally, a bill that contains an exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.

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.

Section 119.15(3), F.S., provides that in the 5th year after enactment of a new exemption or substantial amendment of an existing exemption that exemption shall repeal on October 2nd of the 5th year, unless the Legislature acts to reenact the exemption.

### **Florida Commission on Hurricane Loss Projection Methodology**

In 1995 the Legislature established the Florida Commission on Hurricane Loss Projection Methodology (Commission) to serve as an independent body within the State Board of

Administration.<sup>1</sup> The Commission's role is to adopt findings relating to the accuracy or reliability of the methods, standards, principles, models and other means used to project hurricane losses. The membership of the Commission is designed to equip it with expertise in fulfilling its mission. The members include experts in insurance finance, statistics, computer system design, and meteorology appointed by the CFO who are full-time faculty members in the State University System, an actuary member from the FHCF Advisory Council, an actuary employed with a property and casualty insurer appointed by the CFO, an actuary employed by the Office of Insurance Regulation (OIR), the Executive Director of Citizens, the senior employee responsible for FHCF operations, the Insurance Consumer Advocate, and the Director of Emergency Management of DCA. The Commission sets standards for loss projection methodology and examines the methods employed in proprietary hurricane loss models used by private insurers in setting rates to determine whether they meet the Commission standards.

Since the law does not provide any exemption from the Public Records Law or Public Meetings Law, the entire Commission is not able to examine, have possession of, or specifically discuss all of the various assumptions and components used in developing the various private industry models. Private modeling companies consider certain information a trade secret that could be subject to disclosure to competitors if provided to the Commission. Instead, the Commission uses a staff of five experts made up of a meteorologist, an engineer, an actuary, a statistician, and a computer scientist known as the "Professional Team" to conduct on-site reviews of proprietary models and to report back to the Commission as to their conclusions. Representatives from OIR have also been provided access to different proprietary models, but are not permitted to disclose the proprietary aspects of the models. There are currently four private hurricane loss models that have been determined by the Commission to meet its standards and found acceptable.

The law provides that an insurer may use in its rate filing hurricane loss models found by the Commission to be accurate or reliable and that such findings are admissible and relevant in consideration of the rate filing by OIR or on any arbitration or administrative or judicial review. A separate bill, CS/SB 1488, amends s. 627.0628, F.S., to provide that the findings would be admissible and relevant only if OIR and the consumer advocate appointed by the Department of Financial Services (DFS) have access to all of the assumptions and factors that were used in developing the model and are not precluded from disclosing such information in a rate proceeding.

The consumer advocate is appointed by the CFO pursuant to s. 627.0613, F.S. The powers of the consumer advocate include examination of rate and form filings submitted to OIR and appearing in any proceeding or action before the DFS or OIR, or before the Division of Administrative Hearings relating to subject matter under the jurisdiction of the department or office.

### **Public Hurricane Model**

The state authorized and initially funded the development of a public hurricane loss projection model, pursuant to the 2000 General Appropriations Act.<sup>2</sup> The model is required to be designed in accordance with the standards set by the Florida Commission on Hurricane Loss Projection

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<sup>1</sup> Section 627.0628, F.S.

<sup>2</sup> Section 2226 of ch. 2000-166, L.O.F.

Methodology. The Department of Insurance was appropriated \$2.5 million to contract with the State University System, which contract was entered with the International Hurricane Research Center at Florida International University. Subsequent annual appropriations of about \$300,000 per year have been made to further the development of the public model. The process of developing and testing the public model has reportedly been slowed by the failure of some insurance companies to timely provide insurance policy and claims data. There is no specific requirement for insurers to report such data and no specific public records exemption for such reports. But, the Office of Insurance Regulation considers the reporting to be part of an ongoing examination and investigation that is exempt from public disclosure pursuant to s. 624.319, F.S.

The public model has been developed, is currently being tested and externally reviewed, and is expected to be completed and released by May 2005. However, the model will continue to require updating and maintenance as required for private models, particularly if it must continue to meet the standards of the Commission, which are also subject to revision, and to gather data from the 2004 storms.

A separate bill, CS/SB 1488, creates s. 627.06291, F.S., to require residential property insurers and licensed rating and advisory organizations that compile loss data to report residential hurricane loss and exposure data to the Office of Insurance Regulation or to Type I Center at a state university under contract with OIR (the Hurricane Research Center at Florida International University) for the purpose of developing, maintaining, and updating a public hurricane model for hurricane loss projections.

### **Trade Secrets**

Section 812.081(1)(c), F.S., states in part:

*“Trade secret” means the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. . .*

There are multiple exemptions for trade secrets for specific agencies, but there is no exemption, *per se*, that applies to all agencies. However, a recent case, *SEPRO Corporation v. Department of Environmental Protection* that is currently on appeal to the Florida Supreme Court, found such an exemption to be inherent in s. 815.04, F.S. That section provides a statement of public necessity for an exemption for “. . . data, programs or supporting documentation which is a trade secret as defined in s. 812.081, F.S., which resides or exists internal or external to a computer, computer system, or computer network . . .”

### **III. Effect of Proposed Changes:**

**Section 1** creates s. 627.06292, F.S., to provide a public records exemption for reports of hurricane loss and exposure data which are specific to a particular insurance company, as reported by an insurer or licensed rating organization to the Office of Insurance Regulation (OIR) to a type I center at a state university (the International Hurricane Research Center at Florida International University), pursuant to s. 627.06291, F.S. The cited section does not exist

in current law, but would be created by a separate bill, CS/SB 1488, to require insurers and rating organizations to report such data in a time and manner as specified by OIR.

The bill specifies that the exemption does not apply to reports of loss or exposure data that are aggregated for all insurers, or to loss reports for the 2004 hurricanes required to be filed with OIR pursuant to order of OIR, or to such similar reports as may be required for future hurricanes.

The section is subject to repeal on October 1, 2009, unless reviewed and reenacted pursuant to the Open Government Sunset Review Act of 1995.

**Section 2** provides a statement of public necessity for the public records exemption provided in Section 1. In summary, the Legislature finds that reports of hurricane loss and exposure data specific to particular company are proprietary business information, and that revealing such information reveals marketing strategies of an insurer and could harm insurers by giving competitor insurers an unfair economic advantage.

**Section 3** amends s. 627.0628, F.S., relating to the Florida Commission on Hurricane Loss Projection Methodology (Commission). The bill provides a public records exemption for any trade secret, as defined in s. 812.081, F.S., used in designing and constructing a hurricane loss model that is provided by a private company to the Commission, Office of Insurance Regulation, or the consumer advocate appointed pursuant to s. 627.0613, F.S. The bill also provides a public meetings exemption for 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 is discussed.

This provision is also related to a separate bill, CS/SB 1488, that amends s. 627.0628, F.S., to provide that the findings of the Commission are admissible and relevant in a rate proceeding only if OIR and the consumer advocate have access to all of the assumptions and factors that were used in developing the model and are not precluded from disclosing such information in a rate proceeding.

The exemption is subject to repeal on October 1, 2009, unless reviewed and reenacted pursuant to the Open Government Sunset Review Act of 1995.

**Section 4** provides a statement of public necessity for the public records exemption provided in Section 3. The Legislature finds that disclosing a trade secret used in the design and construction of a hurricane loss model would negatively impact the business interests of a private company that has invested substantial economic resources in developing a hurricane loss projection model and that competitor companies would gain an unfair competitive advantage if provided access to such information. Also, reliable projections of hurricane losses are necessary in order to ensure that rates are neither excessive or inadequate and that this goal is served by enabling the Commission, OIR, and the consumer advocate to have access to all aspects of such models and encouraging private companies to submit such models for review without concern that trade secrets will be disclosed.

**Section 5** provides a contingent effective date, that Sections 1 and 2 take effect on the same date that CS/SB 1488 or similar legislation takes effect requiring insurers to report hurricane loss and exposure data to OIR or a public university for developing a hurricane loss model. Sections 3

and 4 take effect on the same date that CS/SB 1488 or similar legislation takes effect, providing for OIR and the consumer advocate to have access to assumptions used in privately owned hurricane loss models.

#### **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:

Private companies that have developed hurricane loss models would have trade secrets protected from public disclosure and may be willing to submit such information to the Florida Commission on Hurricane Loss Projection Methodology, the Office of Insurance Regulation, and the consumer advocate. However, requiring that access to all aspects of the model be provided to OIR and the consumer advocate, in order for the model to be afforded the statutory status of admissibility in a rate proceeding, could also discourage private companies from submitting their models to the Commission for review. If access to all aspects of a model are provided to such parties, there may be greater assurance that such models are reasonably accurate, as reflected in rate filings. Insurers' economic interests would be protected for reporting loss and exposure data for development of the public hurricane model. The related requirement to report such data will serve to improve the accuracy and reliability of the public model, also serving to help assure that rates are neither excessive or inadequate.

C. Government Sector Impact:

The Commission on Hurricane Loss Projection Methodology may be provided direct access to all aspects of a proprietary models, but may still require the additional expertise of its current Professional Team that it uses to more closely investigate and study such models.

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In order for OIR and the consumer advocate to fully understand and utilize information that may be made available from companies that have developed loss models, they are likely to need to engage outside experts in various fields, as used by the Commission.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

This bill is related to substantive requirements of CS/SB 1488, as noted above.

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

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## **VIII. Summary of Amendments:**

None.

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