

**BILL #:** HB 1939      PCB IN 05-04    Public Records and Meeting Exemptions  
**SPONSOR(S):** Insurance Committee  
**TIED BILLS:**                                 **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Insurance Committee	15 Y, 0 N	Callaway	Cooper
1)			
2)			
3)			
4)			
5)			

The bill creates two public records exemptions and one public meetings exemptions relating to hurricane loss data and hurricane modeling. One public records exemption in the bill is for reports of hurricane loss data and associated exposure data specific to a particular insurance company that is reported by the insurer or licensed rating organization to the Office of Insurance Regulation or a type I center at a state university. This exemption will cover an insurer's loss and exposure data required to be reported to create, maintain, and update the public hurricane loss model.

The other public records exemption in the bill is for trade secrets used by insurers in designing and constructing a hurricane loss model. The exemption only applies when the trade secret is disclosed to the Florida Commission on Hurricane Loss Projection Methodology, the Office of Insurance Regulation, or the Insurance Consumer Advocate. The bill makes such trade secrets confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.

The bill also creates a public meetings exemption for those portions of meetings of the Florida Commission on Hurricane Loss Projection Methodology or of a rate proceeding on an insurer's rate filing wherein confidential and exempt trade secrets used in designing and constructing a hurricane loss model are discussed.

The bill provides for future review and repeal of the exemptions and provides statements of public necessity.

The bill does not appear to have a fiscal impact on state or local governments.

**This bill requires a two-thirds vote of the members present and voting for passage.**

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Provide limited government** – The bill decreases public access to records of the Office of Insurance Regulation, of a type I center at a state university, of the Florida Commission on Hurricane Loss Projection Methodology, and of the Insurance Consumer Advocate. The bill decreases public access to meetings of the Florida Commission on Hurricane Loss Projection Methodology and insurance rate filing proceedings.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Background**

*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 mission of the Commission "is to assess the efficacy of various methodologies which have the potential for improving the accuracy of projecting insured Florida losses resulting from hurricanes and to adopt findings regarding the accuracy or reliability of these methodologies for use in residential rate filings."

The membership of the Commission is designed to equip it with a wide array of expertise in fulfilling its mission. The members include an actuary member from the Florida Hurricane Catastrophe Fund (FHCF) Advisory Council, an actuary employed with a property and casualty insurer, an actuary employed by the Office of Insurance Regulation (OIR) who is responsible for property insurance rate filings, the Executive Director of Citizens, the senior employee responsible for FHCF operations, the Insurance Consumer Advocate, the Director of Emergency Management of the Department of Community Affairs, and experts in insurance, finance, statistics, computer system design, and meteorology who are full-time faculty members in the state university system.

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. There are currently four private hurricane loss models that have been determined by the Commission to meet its standards and found acceptable.

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 because private modeling companies consider certain information a trade secret that could be subject to disclosure under Florida's Sunshine Laws. 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 for the Commission. Representatives from OIR have also been provided access to different proprietary models, but are not permitted to disclose the proprietary aspects of the models.

*Use of Hurricane Models in Rate Filings* --Under current law, an insurer's hurricane loss findings and factors are admissible and relevant in a rate filing, in any administrative or judicial review of a rate filing or in an arbitration held in lieu of an administrative review of a rate filing. Representatives from OIR stated before the Joint Select Committee on Hurricane Insurance (Joint Select Committee) that a lack

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<sup>1</sup> s. 627.0628, F.S. (2004).

of access and ability to challenge the assumptions and components of models approved by the Commission has created difficulty in determining whether the modeling data used by an insurer justifies the insurer's proposed rates pursuant to the standards of the rating laws.

PCB IN 05-02, the bill linked to passage of this bill, requires insurers to allow OIR and the Insurance Consumer Advocate to access all assumptions and components for the hurricane model the insurer uses in its residential insurance rate filing. It allows the findings of a hurricane model used by an insurer to support a rate filing to be admissible in the rate filing only if OIR and the Consumer Advocate have access to all of the assumptions and components of the model and are not precluded from disclosing the assumptions and components in a rate proceeding.

*Public Hurricane Model* --In order to improve the accuracy of hurricane risk assessments, the state has authorized the development and creation of a *public* hurricane loss projection model. The model has been developed to comply with the standards set by the Commission using expert personnel from the state university system, and is maintained at the International Hurricane Research Center at Florida International University (FIU). The model is currently being tested and externally reviewed, and is expected to be completed and released by May 2005.

The public model will help project annual expected insured residential losses in Florida as well as provide calculations for hypothetical scenarios. This should yield multiple benefits by providing a check on the methods and results of proprietary models, making loss modeling available for smaller insurers, and by helping the state evaluate the insurance risk faced by the FHCF. According to a representative from FIU, the process of testing the public model has been slowed by the failure of some insurers to timely provide insurance policy and claims data.<sup>2</sup>

PCB IN 05-02, the bill linked to the passage of this bill, requires insurers to provide data in writing to the state university research center (currently FIU) for use in developing, maintaining, and updating the public hurricane model within 30 days of receipt of a written request for data. The bill also protects the trade secret nature of the loss data if trade secrets are disclosed to the state university research center (currently FIU).

### **Effect of Bill**

The bill creates two public records exemptions and one public meetings exemptions relating to hurricane loss data and hurricane modeling. One public records exemption in the bill is for reports of hurricane loss data and associated exposure data specific to a particular insurance company that is reported by the insurer or licensed rating organization to the Office of Insurance Regulation or a type I center at a state university. This exemption will cover an insurer's loss and exposure data required to be reported to create, maintain, and update the public hurricane loss model.

The other public records exemption in the bill is for trade secrets used by insurers in designing and constructing a hurricane loss model. The exemption only applies when the trade secret is disclosed to the Commission, Office of Insurance Regulation, or Insurance Consumer Advocate. The bill makes such trade secrets confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.

The bill also creates a public meetings exemption for those portions of meetings of the Commission or of a rate proceeding on an insurer's rate filing wherein confidential and exempt trade secrets used in designing and constructing a hurricane loss model are discussed.

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<sup>2</sup> Testimony at the Joint Select Committee on Hurricane Insurance meeting on February 4, 2005 from Shahid S. Hamid, Ph.D., C.F.A., Professor of Finance, and Director, Laboratory for Insurance, Economic and Financial Research, International Hurricane Research Center, Florida International University.

The bill provides for future review and repeal of the exemptions on October 2, 2010, pursuant to the Open Government Sunset Review Act of 1995. It also provides a statement of public necessity.

**C. SECTION DIRECTORY:**

Section 1 creates s. 627.06292, F.S.; to create a public records exemption for specified information of insurance companies.

Section 2 provides a statement of public necessity.

Section 3 creates s. 627.0628, F.S.; to create a public records and public meetings exemption under specified circumstances for trade secrets used in designing and constructing hurricane loss models.

Section 4 provides a statement of public necessity.

Section 5 makes the effective date of the bill the same date that HB 1937 or substantially similar legislation takes effect.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

**1. Revenues:**

None. The bill does not create, modify, amend, or eliminate a state revenue source.

**2. Expenditures:**

None. The bill does not create, modify, amend, or eliminate a state expenditure.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

**1. Revenues:**

None. The bill does not create, modify, amend, or eliminate a local revenue source.

**2. Expenditures:**

None. The bill does not create, modify, amend, or eliminate a local expenditure.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill may create a minimal fiscal impact on OIR, the commission, the office of the insurance consumer advocate, or the type I center (center) in the state university system, because their staff would have to be trained with regards to the categories of information that is confidential and exempt from public disclosure versus records that are available for public inspection and copying. The commission, insurance consumer advocate office, center, or OIR could also incur costs associated with redacting confidential and exempt information prior to releasing a record.

**D. FISCAL COMMENTS:**

None.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

The bill does not: require counties or municipalities to spend funds or to take an action requiring the expenditure of funds; reduce the percentage of a state tax shared with counties or municipalities; or reduce the authority that municipalities have to raise revenue.

##### 2. Other:

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. Thus, this bill requires a two-thirds vote for passage.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

##### **Public Records and Public Meetings Laws**

Article I, s. 24(a), Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. Article I, s. 24(b), Florida Constitution, sets forth the state's public policy regarding access to government meetings. The section requires all meetings of the executive branch and local government be open and noticed to the public.

The Legislature may, however, provide by general law for the exemption of records and meetings from the requirements of Article I, s. 24, Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.

Public policy regarding access to government records and meetings is also addressed in the Florida Statutes. Section 119.07(1), F.S., also guarantees every person a right to inspect, examine, and copy any state, county, or municipal record, and s. 286.011, F.S., requires that all state, county, or municipal meetings be open and noticed to the public. Furthermore, the Open Government Sunset Review Act of 1995<sup>3</sup> provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes: 1. Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; 2. Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or, 3. Protecting trade or business secrets.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

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<sup>3</sup> Section 119.15, F.S.