

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill decreases public access to records and meetings of the Florida Self-Insurers Guaranty Association, Inc.

B. EFFECT OF PROPOSED CHANGES:

Background

The Florida Self-Insurers Guaranty Association, Inc., (association) is a non-profit corporation. All individual self-insurers are required to be members of the association as a condition of their authority to individually self-insure in Florida for purposes of providing workers' compensation coverage.¹ The association has a board of directors that is made up of nine members who are appointed by the Department of Financial Services to serve four-year terms.² The association manages the Insolvency Fund, which was created for purposes of meeting the obligations of insolvent members and funds the association.³

Effect of Bill

The bill creates public records and public meetings exemptions for the association. It makes claims files confidential and exempt from public records requirements, until termination of all litigation and settlement of all claims arising out of the same accident. The bill also makes medical records and information related to the medical condition or medical status of a claimant confidential and exempt from public disclosure. The bill authorizes release of such files or medical records to another governmental agency pursuant to a written request. The receiving agency must maintain the confidential and exempt status of the claims files and medical records.

The bill also creates a public meetings exemption for those portions of meetings of the association's board of directors or of an association subcommittee wherein confidential and exempt claims files or medical records are discussed. All portions of exempt meetings must be recorded and transcribed. During the exempt portion of the meeting, the board and subcommittee must record:

- The times of commencement and termination;
- All discussion and proceedings;
- The names of all persons present at any time; and
- The names of all persons speaking.

Minutes of those exempt portions of meetings are confidential and exempt from public disclosure until termination of all litigation and settlement of all claims arising out of the same incident. The court reporter's notes of such meetings must be retained by the association for a minimum of five years. The bill also provides that the transcript of any portion of an exempt meeting becomes public upon termination of all litigation and settlement of all claims arising out of the same incident.

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.

¹ Section 440.385(1)(a), F.S.

² Section 440.385(2), F.S.

³ Section 440.385(4), F.S.

C. SECTION DIRECTORY:

Section 1 creates s. 440.3851, F.S., to create public records and public meetings exemptions for the Florida Self-Insurers Guaranty Association, Inc.

Section 2 provides a statement of public necessity.

Section 3 provides an effective date of "upon becoming a law."

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 could likely create a fiscal impact on the association's Insolvency Fund, because association staff would have to be trained with regards to the categories of information made confidential and exempt from public disclosure versus records that are available for public inspection and copying. The association 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 that 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 1995⁴ 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

Governmental Operations Committee

On March 16, 2005, the Governmental Operations Committee adopted a strike-all amendment and reported the bill favorably with committee substitute (CS). The bill as filed made claims files and minutes of exempt meetings confidential and exempt from public disclosure. The CS includes medical records in the list of confidential and exempt information. The CS moves the creation of the exemptions from s. 624.465, F.S., to s. 440.3851, F.S., which is the chapter of law that creates the Florida Self-Insurers Guaranty Association, Inc. Finally, language inconsistencies are addressed, and the exemption language is conformed to the public necessity statement.

Insurance Committee

On March 24, 2005, the Insurance Committee adopted two technical amendments and reported the bill favorably with committee substitute (CS). One amendment corrected a cross-reference; the other amendment corrected a scrivener's error. The staff analysis was updated to reflect the two amendments adopted in the Insurance Committee.

⁴ Section 119.15, F.S.