

CHAMBER ACTION

1 The Insurance Committee recommends the following:

2  
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to public records and meetings exemptions;  
7 creating s. 440.3851, F.S.; exempting from public records  
8 and public meetings requirements certain records of the  
9 Florida Self-Insurers Guaranty Association, Incorporated,  
10 and certain meetings of the board of directors of the  
11 association or any subcommittee of the board; providing  
12 for release of such records under certain circumstances;  
13 providing requirements; providing for future legislative  
14 review and repeal; providing findings of public necessity;  
15 providing an effective date.

16  
17 Be It Enacted by the Legislature of the State of Florida:

18  
19 Section 1. Section 440.3851, Florida Statutes, is created  
20 to read:

21 440.3851 Public records and public meetings exemptions.--

22 (1) The following records of the Florida Self-Insurers

23 Guaranty Association, Incorporated, are confidential and exempt

24 | from s. 119.07(1) and s. 24(a), Art. I of the State  
 25 | Constitution:

26 | (a) Claims files, until termination of all litigation and  
 27 | settlement of all claims arising out of the same accident.

28 | (b) Medical records that are part of a claims file and  
 29 | other information relating to the medical condition or medical  
 30 | status of a claimant.

31 | (c) Minutes of exempt portions of meetings, as provided in  
 32 | subsection (3), until termination of all litigation and  
 33 | settlement of all claims with regard to that claim.

34 | (2) Records or portions of records made confidential and  
 35 | exempt by this section may be released, upon written request, to  
 36 | another agency in the performance of that agency's official  
 37 | duties and responsibilities. The receiving agency shall maintain  
 38 | the confidential and exempt status of such record or portion of  
 39 | a record.

40 | (3) That portion of a meeting of the association's board  
 41 | of directors or any subcommittee of the association's board at  
 42 | which records made confidential and exempt by this section are  
 43 | discussed is exempt from s. 286.011 and s. 24(b), Art. I of the  
 44 | State Constitution. All exempt portions of meetings shall be  
 45 | recorded and transcribed. The board shall record the times of  
 46 | commencement and termination of the meeting, all discussion and  
 47 | proceedings, the names of all persons present at any time, and  
 48 | the names of all persons speaking. An exempt portion of any  
 49 | meeting may not be off the record. Subject to this section and  
 50 | s. 119.021(2), the court reporter's notes of any exempt portion  
 51 | of a meeting shall be retained by the association for a minimum

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52 of 5 years. A copy of the transcript of any exempt portion of a  
53 meeting in which claims files are discussed shall become public  
54 as to individual claims after settlement of the claim with any  
55 confidential and exempt information redacted.

56 (4) This section is subject to the Open Government Sunset  
57 Review Act of 1995 in accordance with s. 119.15 and shall stand  
58 repealed on October 2, 2010, unless reviewed and saved from  
59 repeal through reenactment by the Legislature.

60 Section 2. (1) The Legislature finds that it is a public  
61 necessity that claims files of the Florida Self-Insurers  
62 Guaranty Association, Incorporated, be held confidential and  
63 exempt from public records requirements and that portions of  
64 meetings of the board of directors of the association or of any  
65 subcommittee of the board, wherein these claims files are  
66 reviewed and evaluated be made exempt from public meetings  
67 requirements. The Legislature finds that the association was  
68 created to stand in the place of private businesses that are  
69 self-insured for workers' compensation claims if any of such  
70 businesses becomes insolvent. The Legislature finds that the  
71 exemption of the open claims files of the association is  
72 necessary for the effective and efficient administration of a  
73 government program created to insure workers with claims against  
74 insolvent businesses which can otherwise seek compensation from  
75 the funds collected by the association from its member  
76 businesses. Claims files are created by the association after a  
77 claim against one of its insolvent members is made; contain  
78 detailed information about the claim, medical information, and  
79 other personal information about the claimant; and also contain

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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80 information detailing the evaluation of the legitimacy of the  
81 claim, the extent of incapacity, and a valuation of the award,  
82 if any, that should be made. Information in a claims file held  
83 by the association includes the medical records and other  
84 information related to the medical condition or medical status  
85 of a claimant. The Legislature finds that the claimants' medical  
86 records and other medical-related information are personal and  
87 sensitive. Therefore, the Legislature finds that an exemption  
88 for medical records and other information related to the medical  
89 condition or medical status of a claimant is a public necessity  
90 in order to protect a claimant's health-related information.  
91 Matters of personal health are traditionally a private and  
92 confidential concern. The release of the medical records of a  
93 claimant or personal identifying information concerning a  
94 claimant would violate the privacy of the individual or could  
95 cause unwarranted damage to the name or reputation of the  
96 individual. When a claim is contested, the work product of legal  
97 counsel may also be included in the file in the form of  
98 direction to claims professionals or other attorney-client  
99 privileged communications. Allowing the claimant or claimant's  
100 lawyers access to the files, which could be used for purposes of  
101 negotiation, claim evaluation, and settlement considerations,  
102 would weaken the legal position of the association and could  
103 result in higher awards and settlements paid out by the guaranty  
104 fund and ultimately the membership of the association.  
105 Additionally, information in claims files that reasonably  
106 encompass privileged attorney-client communications should be

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107 held confidential and exempt because the release of such  
108 information could jeopardize ongoing or pending litigation.

109 (2) The Legislature further finds that closing access to  
110 meetings of the board of directors of the association or of a  
111 subcommittee of the board, wherein claims files are reviewed and  
112 evaluated, is necessary for the effective and efficient  
113 administration of the claims evaluation work of the association.  
114 The directors of the fund act in a trustee capacity and must  
115 take care that the assets of the fund are managed wisely. Their  
116 efforts to meet as a collegial body to closely review individual  
117 files in an open and frank setting that includes staff are  
118 thwarted by the current requirement that such meetings be open.  
119 Furthermore, discussion of individual files in an open and  
120 public setting might reveal private, sensitive medical  
121 information that is otherwise confidential.

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