

A bill to be entitled

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

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

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

440.3851 Public records and public meetings exemptions.--

(1) The following records of the Florida Self-Insurers Guaranty Association, Incorporated, are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

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

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

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

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

36 | (3) That portion of a meeting of the association's board  
37 | of directors or any subcommittee of the association's board at  
38 | which records made confidential and exempt by this section are  
39 | discussed is exempt from s. 286.011 and s. 24(b), Art. I of the  
40 | State Constitution. All exempt portions of meetings shall be  
41 | recorded and transcribed. The board shall record the times of  
42 | commencement and termination of the meeting, all discussion and  
43 | proceedings, the names of all persons present at any time, and  
44 | the names of all persons speaking. An exempt portion of any  
45 | meeting may not be off the record. Subject to this section and  
46 | s. 119.021(2), the court reporter's notes of any exempt portion  
47 | of a meeting shall be retained by the association for a minimum  
48 | of 5 years. A copy of the transcript of any exempt portion of a  
49 | meeting in which claims files are discussed shall become public  
50 | as to individual claims after settlement of the claim with any  
51 | confidential and exempt information redacted.

52 | (4) This section is subject to the Open Government Sunset  
53 | Review Act of 1995 in accordance with s. 119.15 and shall stand

54 repealed on October 2, 2010, unless reviewed and saved from  
55 repeal through reenactment by the Legislature.

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

82 records and other medical-related information are personal and  
83 sensitive. Therefore, the Legislature finds that an exemption  
84 for medical records and other information related to the medical  
85 condition or medical status of a claimant is a public necessity  
86 in order to protect a claimant's health-related information.  
87 Matters of personal health are traditionally a private and  
88 confidential concern. The release of the medical records of a  
89 claimant or personal identifying information concerning a  
90 claimant would violate the privacy of the individual or could  
91 cause unwarranted damage to the name or reputation of the  
92 individual. When a claim is contested, the work product of legal  
93 counsel may also be included in the file in the form of  
94 direction to claims professionals. Allowing the claimant or  
95 claimant's lawyers access to the files, which could be used for  
96 purposes of negotiation, claim evaluation, and settlement  
97 considerations, would weaken the legal position of the  
98 association and could result in higher awards and settlements  
99 paid out by the guaranty fund and ultimately the membership of  
100 the association.

101 (2) The Legislature further finds that closing access to  
102 meetings of the board of directors of the association or of a  
103 subcommittee of the board, wherein claims files are reviewed and  
104 evaluated, is necessary for the effective and efficient  
105 administration of the claims evaluation work of the association.  
106 The directors of the fund act in a trustee capacity and must  
107 take care that the assets of the fund are managed wisely. Their  
108 efforts to meet as a collegial body to closely review individual  
109 files in an open and frank setting that includes staff are

110 thwarted by the current requirement that such meetings be open.  
111 Furthermore, discussion of individual files in an open and  
112 public setting might reveal private, sensitive medical  
113 information that is otherwise confidential.

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