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CHAMBER ACTION

1 The Governmental Operations Committee recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5
6 A bill to be entitled

7 An act relating to public records; amending s. 119.07,
8 F.S.; requiring an agency head who appoints a designee to
9 act as a custodian of public records to provide notice to
10 the public of such designation; providing notice
11 requirements; prohibiting a person who is not a custodian
12 of public records or a designee from denying the existence
13 of a record or misleading anyone as to the existence of a
14 record; requiring custodians of public records and their
15 designees to respond to requests to inspect and copy
16 public records promptly and in good faith; amending ss.
17 497.140, 627.311, and 627.351, F.S.; correcting cross-
18 references; providing an effective date.

19
20 Be It Enacted by the Legislature of the State of Florida:

21
22 Section 1. Subsection (1) of section 119.07, Florida
23 Statutes, is amended to read:

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24 119.07 Inspection and copying of records; photographing
25 public records; fees; exemptions.--

26 (1) (a) Every person who has custody of a public record
27 shall permit the record to be inspected and copied by any person
28 desiring to do so, at any reasonable time, under reasonable
29 conditions, and under supervision by the custodian of the public
30 records.

31 (b) Each agency head who appoints a designee to act as a
32 custodian of public records shall provide notice to the public
33 of such designation. Such notice shall contain the name and
34 title of the designee and the designee's e-mail address, office
35 telephone number, and office mailing address. At a minimum, the
36 notice shall be prominently posted in those portions of agency
37 offices that are accessible to the public and, if the agency
38 maintains an agency website, the notice shall be prominently
39 displayed on the home page of such website and shall be made
40 available by any employee who responds to telephone calls from
41 the public. A person who is not a custodian of public records or
42 appointed as a designee may not deny the existence of a public
43 record nor mislead anyone as to the existence of a public
44 record.

45 (c) A custodian of public records and his or her designee
46 must respond to requests to inspect or copy records promptly and
47 in good faith. A good faith response includes making reasonable
48 efforts to determine from other officers or employees whether
49 such a record exists and, if so, the location at which the
50 record can be accessed.

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51 (d) A custodian of public records or his or her designee
52 shall be available to respond to requests to inspect and copy
53 public records during the regular business hours of the office
54 at which public records are maintained.

55 (e)~~(b)~~ A person who has custody of a public record who
56 asserts that an exemption applies to a part of such record shall
57 redact that portion of the record to which an exemption has been
58 asserted and validly applies, and such person shall produce the
59 remainder of such record for inspection and copying.

60 (f)~~(e)~~ If the person who has custody of a public record
61 contends that all or part of the record is exempt from
62 inspection and copying, he or she shall state the basis of the
63 exemption that he or she contends is applicable to the record,
64 including the statutory citation to an exemption created or
65 afforded by statute.

66 (g)~~(d)~~ If requested by the person seeking to inspect or
67 copy the record, the custodian of public records shall state in
68 writing and with particularity the reasons for the conclusion
69 that the record is exempt or confidential.

70 (h)~~(e)~~ In any civil action in which an exemption to this
71 section is asserted, if the exemption is alleged to exist under
72 or by virtue of s. 119.071(1)(d) or (f), (2)(d), (e), or (f), or
73 (4)(c), the public record or part thereof in question shall be
74 submitted to the court for an inspection in camera. If an
75 exemption is alleged to exist under or by virtue of s.
76 119.071(2)(c), an inspection in camera is discretionary with the
77 court. If the court finds that the asserted exemption is not
78 applicable, it shall order the public record or part thereof in

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79 | question to be immediately produced for inspection or copying as
80 | requested by the person seeking such access.

81 | (i)~~(f)~~ Even if an assertion is made by the custodian of
82 | public records that a requested record is not a public record
83 | subject to public inspection or copying under this subsection,
84 | the requested record shall, nevertheless, not be disposed of for
85 | a period of 30 days after the date on which a written request to
86 | inspect or copy the record was served on or otherwise made to
87 | the custodian of public records by the person seeking access to
88 | the record. If a civil action is instituted within the 30-day
89 | period to enforce the provisions of this section with respect to
90 | the requested record, the custodian of public records may not
91 | dispose of the record except by order of a court of competent
92 | jurisdiction after notice to all affected parties.

93 | (j)~~(g)~~ The absence of a civil action instituted for the
94 | purpose stated in paragraph (h) ~~(e)~~ does not relieve the
95 | custodian of public records of the duty to maintain the record
96 | as a public record if the record is in fact a public record
97 | subject to public inspection and copying under this subsection
98 | and does not otherwise excuse or exonerate the custodian of
99 | public records from any unauthorized or unlawful disposition of
100 | such record.

101 | Section 2. Subsection (5) of section 497.140, Florida
102 | Statutes, is amended to read:

103 | 497.140 Fees.--

104 | (5) The department shall charge a fee not to exceed \$25
105 | for the certification of a public record. The fee shall be
106 | determined by rule of the department. The department shall

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107 assess a fee for duplication of a public record as provided in
108 s. 119.07(1)(a) and (e)~~(b)~~.

109 Section 3. Paragraph (b) of subsection (4) of section
110 627.311, Florida Statutes, is amended to read:

111 627.311 Joint underwriters and joint reinsurers; public
112 records and public meetings exemptions.--

113 (4) The Florida Automobile Joint Underwriting Association:

114 (b) Shall keep portions of association meetings during
115 which confidential and exempt underwriting files or confidential
116 and exempt claims files are discussed exempt from the provisions
117 of s. 286.011 and s. 24(b), Art. I of the State Constitution.

118 All closed portions of association meetings shall be recorded by
119 a court reporter. The court reporter shall record the times of
120 commencement and termination of the meeting, all discussion and
121 proceedings, the names of all persons present at any time, and
122 the names of all persons speaking. No portion of any closed
123 meeting shall be off the record. Subject to the provisions of
124 this paragraph and s. 119.07(1) (e) - (g)~~(b)~~ - ~~(d)~~, the court
125 reporter's notes of any closed meeting shall be retained by the
126 association for a minimum of 5 years. A copy of the transcript,
127 less any confidential and exempt information, of any closed
128 meeting during which confidential and exempt claims files are
129 discussed shall become public as to individual claims files
130 after settlement of that claim.

131 Section 4. Paragraph (n) of subsection (6) of section
132 627.351, Florida Statutes, is amended to read:

133 627.351 Insurance risk apportionment plans.--

134 (6) CITIZENS PROPERTY INSURANCE CORPORATION.--

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135 (n)1. The following records of the corporation are
136 confidential and exempt from the provisions of s. 119.07(1) and
137 s. 24(a), Art. I of the State Constitution:

138 a. Underwriting files, except that a policyholder or an
139 applicant shall have access to his or her own underwriting
140 files.

141 b. Claims files, until termination of all litigation and
142 settlement of all claims arising out of the same incident,
143 although portions of the claims files may remain exempt, as
144 otherwise provided by law. Confidential and exempt claims file
145 records may be released to other governmental agencies upon
146 written request and demonstration of need; such records held by
147 the receiving agency remain confidential and exempt as provided
148 for herein.

149 c. Records obtained or generated by an internal auditor
150 pursuant to a routine audit, until the audit is completed, or if
151 the audit is conducted as part of an investigation, until the
152 investigation is closed or ceases to be active. An investigation
153 is considered "active" while the investigation is being
154 conducted with a reasonable, good faith belief that it could
155 lead to the filing of administrative, civil, or criminal
156 proceedings.

157 d. Matters reasonably encompassed in privileged attorney-
158 client communications.

159 e. Proprietary information licensed to the corporation
160 under contract and the contract provides for the confidentiality
161 of such proprietary information.

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162 f. All information relating to the medical condition or
163 medical status of a corporation employee which is not relevant
164 to the employee's capacity to perform his or her duties, except
165 as otherwise provided in this paragraph. Information which is
166 exempt shall include, but is not limited to, information
167 relating to workers' compensation, insurance benefits, and
168 retirement or disability benefits.

169 g. Upon an employee's entrance into the employee
170 assistance program, a program to assist any employee who has a
171 behavioral or medical disorder, substance abuse problem, or
172 emotional difficulty which affects the employee's job
173 performance, all records relative to that participation shall be
174 confidential and exempt from the provisions of s. 119.07(1) and
175 s. 24(a), Art. I of the State Constitution, except as otherwise
176 provided in s. 112.0455(11).

177 h. Information relating to negotiations for financing,
178 reinsurance, depopulation, or contractual services, until the
179 conclusion of the negotiations.

180 i. Minutes of closed meetings regarding underwriting
181 files, and minutes of closed meetings regarding an open claims
182 file until termination of all litigation and settlement of all
183 claims with regard to that claim, except that information
184 otherwise confidential or exempt by law will be redacted.

185
186 When an authorized insurer is considering underwriting a risk
187 insured by the corporation, relevant underwriting files and
188 confidential claims files may be released to the insurer
189 provided the insurer agrees in writing, notarized and under

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190 oath, to maintain the confidentiality of such files. When a file
191 is transferred to an insurer that file is no longer a public
192 record because it is not held by an agency subject to the
193 provisions of the public records law. Underwriting files and
194 confidential claims files may also be released to staff of and
195 the board of governors of the market assistance plan established
196 pursuant to s. 627.3515, who must retain the confidentiality of
197 such files, except such files may be released to authorized
198 insurers that are considering assuming the risks to which the
199 files apply, provided the insurer agrees in writing, notarized
200 and under oath, to maintain the confidentiality of such files.
201 Finally, the corporation or the board or staff of the market
202 assistance plan may make the following information obtained from
203 underwriting files and confidential claims files available to
204 licensed general lines insurance agents: name, address, and
205 telephone number of the residential property owner or insured;
206 location of the risk; rating information; loss history; and
207 policy type. The receiving licensed general lines insurance
208 agent must retain the confidentiality of the information
209 received.

210 2. Portions of meetings of the corporation are exempt from
211 the provisions of s. 286.011 and s. 24(b), Art. I of the State
212 Constitution wherein confidential underwriting files or
213 confidential open claims files are discussed. All portions of
214 corporation meetings which are closed to the public shall be
215 recorded by a court reporter. The court reporter shall record
216 the times of commencement and termination of the meeting, all
217 discussion and proceedings, the names of all persons present at

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

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218 | any time, and the names of all persons speaking. No portion of
219 | any closed meeting shall be off the record. Subject to the
220 | provisions hereof and s. 119.07(1) (e) - (g) ~~(b) - (d)~~, the court
221 | reporter's notes of any closed meeting shall be retained by the
222 | corporation for a minimum of 5 years. A copy of the transcript,
223 | less any exempt matters, of any closed meeting wherein claims
224 | are discussed shall become public as to individual claims after
225 | settlement of the claim.

226 | Section 5. This act shall take effect July 1, 2006.