

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: **HB 1279**
SPONSOR(S): **Hasner**
TIED BILLS: **HB 1277**

Public Records and Public Meetings Exemptions

IDEN./SIM. BILLS: **SB 2306**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance Committee		Freire	Cooper
2) Governmental Operations Committee			
3) Commerce Council			
4) _____			
5) _____			

SUMMARY ANALYSIS

This bill is tied to HB 1277, relating to risk-based capital requirement for health maintenance organizations (HMOs). House Bill 1277 provides that HMOs must file risk-based capital reports with the Office of Insurance Regulation (OIR), and it authorizes the OIR, after a specific date, to take certain actions when an HMO has failed to meet the risk-based capital requirements.

This bill creates a public records and public meetings exemption for information relating to an HMO's risk-based capital. It also provides that hearings conducted pursuant to s. 641.224, F.S., unless otherwise provided, are exempt from the public records and public meetings exemption.

The bill provides for future review and repeal of the exemptions on October 2, 2012, provides a statement of public necessity, and provides penalty provisions for violating the exemption.

The bill could have a fiscal impact on state or local governments.

The 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- This bill decreases public access to records and meetings relating to risk-based capital reports, adjusted risk-based capital reports, risk-based capital plans, and working papers and reports of examination or analysis of an HMO's plan, corrective order, or regulatory action level event.

B. EFFECT OF PROPOSED CHANGES:

Background

House Bill 1277, relating to risk-based capital requirements for health maintenance organizations (HMOs), requires HMOs to file risk-based capital reports with the Office of Insurance Regulation (OIR). The bill provides that from January 1, 2007 to April 2, 2011, the risk-based capital reports will serve for informational purposes only. However, effective in 2011, the bill delineates what action the OIR can take when an HMO does not meet its risk-based capital requirements.

The Bill

This bill provides that certain HMO risk-based capital information is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Article I of the Florida Constitution. The bill specifies that the following information with respect to an HMO is confidential: all risk-based capital reports, adjusted risk-based capital reports, risk-based capital plans, revised risk-based capital plan, and the working papers and reports of examination or analysis of an HMO performed pursuant to a plan, corrective order, or a regulatory level event.

The bill also provides that hearings conducted pursuant to s. 641.224, F.S., are confidential and exempt from s. 119.07(1), F.S., and s. 24(b), Article I of the State Constitution. It also provides that a court reporter shall record such hearings, and that the OIR may open such hearings if the OIR determines the disclosure is necessary for the enforcement of laws.

Furthermore, the bill provides that the public records and meeting exemption is required as a public necessity. It states that unrestricted access to the risk-based capital information may damage HMO's solvency and have a substantially negative effect the public. The Legislature also finds that access to information would be misleading to the public because the data does not reflect all factors of an HMO's financial strength. The Legislature also states that the public has access to an HMO's financial strength through more adequate means.

The bill provides for future review and repeal of the exemptions on October 2, 2012, pursuant to the Open Government Sunset Review Act of 1995. It also provides a statement of public necessity.

C. SECTION DIRECTORY:

Section 1. Establishes s. 641.2241, F.S., relating to Confidentiality of risk-based capital information.

Section 2. Provides a statement of public necessity.

Section 3. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See "FISACAL COMMENTS" section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See "FISCAL COMMENTS" section.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill protects the private sector to the extent that a risk-based capital report may affect an HMO's solvency.

D. FISCAL COMMENTS:

This bill could create a fiscal impact on state and local governments because state and local government staff would have to be trained with regards to the categories of information that is confidential and exempt from public disclosure versus records available for public inspection and copying. The state and local entities could also incur costs associated with redacting confidential and exempt information prior to releasing a record.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This 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, the bill requires a two-thirds vote for passage.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

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 to 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 1995¹ 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

¹ Section 119. 15, F.S.