

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: Banking and Insurance Committee

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BILL: SPB 7070

SPONSOR: Banking and Insurance Committee

SUBJECT: Open Government Sunset Review Act: Florida Surplus Lines Service Office

DATE: January 23, 2006

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Knudson</u>	<u>Deffenbaugh</u>	_____	<b>Pre-meeting</b>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

The PCB re-enacts the current public records exemption for certain information concerning surplus lines insurance, which is specific to a particular policy or policyholder and is submitted to the Florida Surplus Lines Service Office (FSLSO) or the Department of Financial Services (DFS) or which is available for inspection by the department. The public records exemption is scheduled for repeal on October 2, 2006.

Surplus lines insurance is insurance coverage provided by a company that is not licensed in Florida, but is allowed to transact insurance in the state as an “eligible” insurer. The purpose of the surplus lines law is to provide the insurance purchasing public with access to insurers that are not authorized to transact business in Florida when certain insurance coverages cannot be obtained from Florida-authorized insurers. Surplus lines agents are authorized to handle the placement of insurance coverages with surplus lines insurers, and are required to report and file with the FSLSO a copy of, or information on, each surplus lines insurance policy.

This bill re-enacts section 626.921(8) of the Florida Statutes.

## II. Present Situation:

### Public Records; Exemptions

Section 24(a), Art. I of the Florida Constitution states, “Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution.”

Section 24(c), Art. I of the Florida Constitution permits the Legislature to create exemptions from the public records law. However, the bill creating the exemption must contain a statement of public necessity that justifies the exemption, and the exemption must be no broader than necessary to accomplish its purpose. Additionally, a bill that contains an exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.

The Open Government Sunset Review Act of 1995, s. 119.15, F.S., establishes a review and repeal process for public records exemptions. In the fifth year after enactment of a new exemption or the substantial amendment of an existing exemption, the exemption is repealed on October 2, unless the Legislature reenacts the exemption. An “exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records. An exemption is not substantially amended if the amendment narrows the scope of the exemption.”<sup>1</sup>

Under s. 119.15(2), F.S., an exemption may be maintained only if: “(a) The exempted record or meeting is of a sensitive, personal nature concerning individuals; (b) The exemption is necessary for the effective and efficient administration of a governmental program; or (c) The exemption affects confidential information concerning an entity.”

Section 119.15(4)(a), F.S., requires, as part of the review process, the consideration of the following questions:

1. What specific records or meetings are affected by the exemption?
2. Whom does the exemption uniquely affect, as opposed to the general public?
3. What is the identifiable public purpose or goal of the exemption?
4. Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
5. Is the record or meeting protected by another exemption?
6. Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

An exemption may be maintained only if it serves an identifiable public purpose, and it may be no broader than necessary to meet that purpose. An identifiable public purpose is served if the exemption meets one of the following purposes and the Legislature finds that the purpose is sufficiently compelling to override the strong policy of open government and cannot be accomplished without the exemption:

- The exemption allows “the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.”
- The exemption protects “information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals.”

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<sup>1</sup> Section 119.15(3)(b), F.S.

- The exemption protects “information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.”<sup>2</sup>

### **Surplus Lines Insurance Coverage**

Insurance companies that transact insurance in Florida or that have offices located in the state are required to obtain a certificate of authority, (COA) issued by the Office of Insurance Regulation pursuant to s. 624.401, F.S. Generally, an insurer that does not have a certificate of authority to transact insurance business in Florida and does so, is considered an unauthorized insurer and has committed insurance fraud. However, exceptions exist to the COA requirement, the primary one being for surplus lines insurers.

Surplus lines insurance is insurance coverage provided by a company that is not licensed in Florida, but is allowed to transact insurance in the state as an “eligible” insurer. The purpose of the surplus lines law is to provide the insurance purchasing public with access to insurers that are not authorized to transact business in Florida when certain insurance coverages cannot be obtained from Florida-authorized insurers.<sup>3</sup> Insurance may only be purchased from a surplus lines carrier if the necessary amount of coverage cannot be procured after a diligent effort<sup>4</sup> to buy the coverage from authorized insurers. Rates charged by a surplus lines carrier may not be more favorable than in use and offered by the majority of authorized insurers writing similar coverages on similar risks in Florida.<sup>5</sup>

### **Florida Surplus Lines Service Office**

In 1997, the Legislature created the Florida Surplus Lines Service Office (Service Office or FLSO), a non-profit association designed to act as a, “self-regulating organization” to permit better access by consumers to approved surplus lines insurers.<sup>6</sup> The Surplus Lines Service Office is governed by a nine person board of governors consisting of eight members appointed by the Department of Financial Services<sup>7</sup> with the insurance consumer advocate being the ninth member.<sup>8</sup> The FLSO is required to perform its functions under a plan of operation that is subject to the approval of the Office of Insurance Regulation.

The Florida Surplus Lines Service Office is required to conduct the following activities:<sup>9</sup>

- Receive, record and review all surplus lines insurance policies;

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<sup>2</sup> Section 119.15(4)(b), F.S.

<sup>3</sup> Section 626.913(2), F.S.

<sup>4</sup> See s. 626.914(4), F.S. A “diligent effort” is defined as seeking coverage from and being rejected by at least three authorized insurers that write the type of coverage being sought. The rejections must be documented.

<sup>5</sup> Section 626.916(1)(b), F.S.

<sup>6</sup> Ch. 97-196, L.O.F.

<sup>7</sup> Five members of the board are from the regular membership of the Florida Surplus Lines Association, one from each of the two largest domestic agents associations who are also licensed surplus lines agents, and a risk manager from a large domestic commercial enterprise.

<sup>8</sup> Section 626.921(4), F.S.

<sup>9</sup> See generally subsections (3) and (6) of s. 626.921, F.S.

- Maintain records of the policies reported to the service office and perform reports as required by the Financial Services Commission;<sup>10</sup>
- Prepare and deliver to each surplus lines agent quarterly reports of each agent's business;
- Collect and remit to the DFS the surplus lines tax as provided for in s. 626.932, F.S.;
- Reconcile the policies provided by non-admitted insurers with the policies reported to the service office by agents;
- Collect monthly from each surplus lines agent a service fee of .25 percent;<sup>11</sup>
- Other activities as specified by statute.

### **Florida Surplus Lines Agents**

Surplus lines agents are authorized to handle the placement of insurance coverages with surplus lines insurers, and to place coverages with authorized insurers with whom the agent is not licensed.<sup>12</sup> Licensed resident general lines agents who meet the statutory criteria for licensure are eligible for licensure as a surplus lines agent.<sup>13</sup> In order to place a business with a surplus lines carrier, the agent must make a “diligent effort” to place the policy with a Florida-authorized insurer, which is shown by having three written rejections of coverage from insurers currently writing the type of insurance being sought.<sup>14</sup> Representatives from the FLSO state that approximately 800 agents are currently licensed to transact surplus lines coverage, with about 440 agents actively reporting to the surplus lines office.

Surplus lines agents are required to report and file with the FLSO a copy of, or information on, each surplus lines insurance policy as required in the FLSO board of governors plan of operation.<sup>15</sup> Agents must comply with the Agents Procedure Manual adopted by the DFS, which requires agents to submit specific information on each policy including the name of the insured and insurer, the policy number and its effective date, the policy’s expiration date, the zip code and county where the covered risk is located, the type of coverage, the premium, effective date, service fees and other information. Surplus lines agents are also required by statute to submit a quarterly report to the service office that includes an affidavit stating all surplus lines insurance transacted by the agent during the calendar quarter that has been submitted to the service office as required.<sup>16</sup> The affidavit must also include efforts made to place coverages with authorized insurers and the results of those efforts.

When requested by the DFS or the FLSO, surplus lines agents are also required to submit to the service office an exact copy of any and all requested policies and other forms of confirming insurance policies<sup>17</sup> along with any substitutions or endorsements.<sup>18</sup> Upon request, the agent

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<sup>10</sup> Currently, the Surplus Lines Office is required to prepare a “Quasar” report that includes new business reported by agents, policy cancellations, and policy renewals.

<sup>11</sup> See Section 626.921(3)(f), F.S. The Service Office is authorized to collect up to .3 percent of total gross premium. The fee is used to pay for the cost of operating the Service Office and is to be paid by the insurer.

<sup>12</sup> Section 626.914(1), F.S.

<sup>13</sup> Section 626.927, F.S. Generally, to be licensed as a surplus lines agent, an individual must be: (1) deemed by the DFS to have sufficient experience in the insurance business (2) have 1 year’s experience working for a licensed surplus lines agent or have completed 60 class hours in an approved surplus lines course, and (3) pass a written examination.

<sup>14</sup> Section 626.914(4), F.S.

<sup>15</sup> Section 626.921(2), F.S.

<sup>16</sup> Section 626.931, F.S.

<sup>17</sup> Such as applications, certificates, and cover notes.

may also be required to submit the agent's memorandum as to the substance of any change represented by a substitute certificate, cover note, other form of confirmation of insurance coverage, or endorsement as compared with the coverage as originally placed or issued.<sup>19</sup> A request is typically only made by the department or surplus lines office for purposes of investigating an agent for a suspected violation such as non-payment of the surplus lines tax, misappropriation of funds, or improper placement of business in the surplus lines market.

Surplus lines agents are required to maintain in their agency office for a period of 5 years each surplus lines contract, including applications and all certificates, and any substitutions or endorsements.<sup>20</sup> The information must include the amount of the insurance and perils insured against; the location of the insured property and a brief description; gross premium charged; return premium paid; rate of premium charged upon the several items of property; effective date of the contract and its terms; the name and post office address of the insured; the name and home-office address of the insurer; the amount collected from the insured; and other information that is required by the department. As noted, the department typically examines this information when an agent is being investigated for a suspected violation.

### **Public Records Exemptions for Information Reported by Surplus Lines Agents**

The public records exemptions in s. 626.921(8), F.S., protect from disclosure information reported by surplus lines agents that would reveal information specific to a particular policy or policyholder. The exemption in paragraph (a) of s. 626.921(8), F.S., applies to information submitted to the Department of Financial Services. The information that surplus lines agents submit to the Department of Financial Services under s. 626.923, F.S., and information contained in records subject to examination by the DFS under s. 626.930, F.S., is confidential and exempt from the Public Records Law.

A second exemption for information furnished to the FLSO under the Surplus Lines Law is contained in paragraph (b) of s. 626.921(8), F.S. This exemption does not prevent the disclosure of information by the FLSO to the DFS, but the public records exemption does apply to records obtained by the DFS from the Surplus Lines Office. This second public records exemption for information furnished to the FLSO shall stand repealed on October 2, 2006, unless reviewed in accordance with the Open Government Sunset Review Act<sup>21</sup> and reenacted by the Legislature.

### **Open Government Sunset Review of s. 626.921(8), F.S.**

Senate Interim Project Report 2006-203 conducted an Open Government Sunset Review of the public records exemption contained in s. 626.921(8), F.S. The Open Government Sunset Review Act prescribes certain questions that must be considered by the Legislature in determining whether to reenact a public records exemption. Section 119.15(6)(a), F.S., requires as part of the review process the consideration of the following specific questions that were addressed in the interim project report:

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<sup>18</sup> Section 626.923, F.S.

<sup>19</sup> See *id.*

<sup>20</sup> Section 626.930, F.S.

<sup>21</sup> Section 119.15, F.S.

***What specific records or meetings are affected by the exemption?***

- The statute specifies that “identifying information” contained in the information furnished to the Florida Surplus Lines Service Office under the Surplus Lines Law is confidential and exempt from public disclosure. Identifying information is defined in statute as information specific to a particular policy or policyholder. This is interpreted by the Florida Surplus Lines Service Office to include:
  - the name and address of the insured and the insurer,
  - the type of coverage in each policy,
  - the amount of coverage in each policy,
  - the premium charged,
  - the effective date of the policy,
  - fees charged,
  - deductibles.

***Whom does the exemption uniquely affect?***

- Insurance companies and insurance agencies are likely to be uniquely affected by this public records exemption, as it is these two groups that would most likely seek this information in order to learn the business practices of competitors and the location, financial practices and financial condition of potential customers. The exemption also affects surplus lines policyholders, since the information describes specific economic information about each surplus lines policy.

***What is the exemption’s public purpose or goal?***

- The Legislature declared that the public purpose of the exemption for information specific to a particular policy or policyholder is that disclosure of such information “would be harmful to insurers or agents due to the economic value of such information if revealed to competitors. Such information may also reveal economic information about the policyholder that would be harmful as an invasion of privacy to the policyholder.”<sup>22</sup>

***Is the information otherwise readily obtainable?***

- Representatives from the Florida Surplus Lines Service Office indicate to staff that the information held confidential under the public records exemption is not otherwise available. Information on each policy is generally only obtainable by the parties to the insurance contract (insurer and insured) and the surplus lines agent who facilitated the policy.

***Is the record or meeting protected by another exemption?***

- No. The public records exemption contained in s. 626.921(8)(b), F.S., is the only exemption in the Florida Statutes regarding information furnished to the Florida Surplus Lines Service Office under the Surplus Lines Law.

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<sup>22</sup> Chapter 2001-181, L.O.F.

*Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?*

- No. There are no other public records exemptions for information furnished to the Florida Surplus Lines Service Office under the Surplus Lines Law that could be combined with the exemption contained in s. 626.921(8)(b), F.S.

Pursuant to the analysis contained in Senate Interim Project Report 2006-203, staff of the Banking and Insurance Committee recommended that the public records exemption in s. 626.921(8)(b), F.S., be maintained and re-enacted.

**III. Effect of Proposed Changes:**

**Section 1.** Saves the public records exemption contained in s. 626.921(8)(b), F.S, from repeal under the Open Government Sunset Review Act via re-enactment. The section deletes the provision that provides for the repeal of the public records exemption.

**Section 2.** Provides that the act shall take effect October 1, 2006.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Yes. Reviewed in section II—Present Situation.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Failure to save the public records exemption contained in s. 626.921(8)(b), F.S., from repeal could result in harm to Florida citizens whose privacy would be invaded via the disclosure of their economic information that would be readily available to various parties. It would also harm insurance companies and insurance agencies, as their competitors would likely seek this information to learn their business practices and gain an economic advantage.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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## **VIII. Summary of Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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