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HB 7169, Engrossed 1

2007 Legislature

1 A bill to be entitled
2 An act relating to public records and public meetings
3 exemptions; creating s. 627.3121, F.S.; providing an
4 exemption from public records requirements for certain
5 records of the Florida Workers' Compensation Joint
6 Underwriting Association, Inc.; authorizing the release of
7 confidential and exempt records under certain
8 circumstances; providing an exemption from public meetings
9 requirements for portions of a meeting of the
10 association's board of governors or a subcommittee thereof
11 during which confidential and exempt records are
12 discussed; requiring that exempt portions of meetings be
13 recorded, transcribed, and maintained for a specified
14 period; providing an exemption from public records
15 requirements for minutes and transcripts of exempt
16 portions of meetings; providing for future legislative
17 review and repeal of the exemptions under the Open
18 Government Sunset Review Act; providing a statement of
19 public necessity; providing an effective date.

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

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23 Section 1. Section 627.3121, Florida Statutes, is created
24 to read:

25 627.3121 Public records and public meetings exemptions.--

26 (1) The following records held by the Florida Workers'
27 Compensation Joint Underwriting Association, Inc., are
28 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I

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29 of the State Constitution:

30 (a) Underwriting files, except that a policyholder or an
 31 applicant shall be provided access to his or her own
 32 underwriting files.

33 (b) Claims files until termination of all litigation and
 34 the settlement of all claims arising out of the same accident,
 35 except that portions of the claims files may remain confidential
 36 or exempt if otherwise provided by law.

37 (c) Records obtained or generated by an auditor pursuant
 38 to a routine audit until the audit is completed or, if the audit
 39 is conducted as part of an investigation, until the
 40 investigation is closed or ceases to be active. An investigation
 41 is considered "active" while the investigation is being
 42 conducted with a reasonable, good-faith belief that it could
 43 lead to the filing of administrative, civil, or criminal
 44 proceedings.

45 (d) Proprietary information licensed to the association
 46 under contract if the contract requires the association to
 47 maintain the confidentiality of such information.

48 (e) Medical records, which include information relating to
 49 the medical condition or medical status of an individual.

50 (f) All records relative to an employee's participation in
 51 an employee assistance program upon the entrance of the employee
 52 into the program, except as otherwise provided in s. 440.102(8).

53 (g) Information relating to negotiations for financing,
 54 reinsurance, reinsurance commutation agreements, depopulation,
 55 or contractual services until the conclusion of the
 56 negotiations.

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57 (h) Reports provided to or submitted by the association
 58 regarding suspected fraud or other criminal activity and
 59 producer appeals and related reporting regarding suspected
 60 misconduct until such investigation is closed or ceases to be
 61 active.

62 (i) Information received from the Department of Revenue
 63 regarding payroll information and client lists of employee
 64 leasing companies obtained pursuant to ss. 440.381 and 468.529.

65 (j) A public record prepared by an attorney retained by
 66 the association to protect or represent the interests of the
 67 association, or prepared at the attorney's express direction,
 68 that reflects a mental impression, conclusion, litigation
 69 strategy, or legal theory of the attorney or the association.
 70 This protection is not waived by the release of such public
 71 record to another employee or officer of the same association or
 72 any person consulted by the association attorney.

73 (2) (a) The association may release confidential and exempt
 74 underwriting files and claims files to:

75 1. A carrier that is considering underwriting a risk
 76 insured by the association;

77 2. A producer seeking to place such a risk with such a
 78 carrier; or

79 3. Another entity seeking to arrange voluntary market
 80 coverage for association risks.

81 (b) Prior to the release authorized in paragraph (a), the
 82 carrier, producer, or other entity must agree in writing,
 83 notarized and under oath, to maintain the confidential and
 84 exempt status of such file until that carrier, producer, or

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85 other entity agrees to underwrite the risk or provide voluntary
86 market coverage.

87 (3) Records made confidential and exempt by this section
88 may be released, upon written request, to another agency in the
89 performance of that agency's official duties and
90 responsibilities.

91 (4) (a) That portion of a meeting of the association's
92 board of governors, or any subcommittee of the association's
93 board, at which records made confidential and exempt by this
94 section are discussed is exempt from s. 286.011 and s. 24(b),
95 Art. I of the State Constitution.

96 (b) All exempt portions of meetings shall be recorded and
97 transcribed. The board shall record the times of commencement
98 and termination of the meeting, all discussion and proceedings,
99 the names of all persons present at any time, and the names of
100 all persons speaking. An exempt portion of any meeting may not
101 be off the record.

102 (c) Subject to this section and s. 119.021(2), the court
103 reporter's notes of any exempt portion of a meeting shall be
104 retained by the association for a minimum of 5 years.

105 (d)1. A transcript and minutes of exempt portions of
106 meetings are confidential and exempt from s. 119.07(1) and s.
107 24(a), Art. I of the State Constitution.

108 2. Those portions of the transcript or the minutes
109 pertaining to a confidential and exempt claims file are no
110 longer confidential and exempt upon termination of all
111 litigation with regard to that claim.

112 (5) This section is subject to the Open Government Sunset

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113 Review Act in accordance with s. 119.15 and shall stand repealed
 114 on October 2, 2012, unless reviewed and saved from repeal
 115 through reenactment by the Legislature.

116 Section 2. (1) The Legislature finds that it is a public
 117 necessity to make certain records of the Florida Workers'
 118 Compensation Joint Underwriting Association, Inc., confidential
 119 and exempt from public records requirements. The association was
 120 authorized by the Legislature to provide workers' compensation
 121 and employer's liability insurance to applicants who are
 122 required by law to maintain workers' compensation and employer's
 123 liability insurance, and who are entitled to but are unable to
 124 procure such insurance through the voluntary market. The
 125 Legislature finds that the exemption from public records
 126 requirements for open claims files of the association is
 127 necessary for the effective and efficient administration of an
 128 entity created to provide workers' compensation and employer's
 129 liability insurance as described in s. 627.311(5), Florida
 130 Statutes. Claims files contain detailed information concerning
 131 the claim, medical information, and other sensitive personal
 132 information concerning the claimant, and also contain
 133 information detailing the evaluation of the legitimacy of the
 134 claim, the extent of incapacity, and a valuation of the award.
 135 Information in a claims file that is held by the association
 136 includes the medical records and other information related to
 137 the medical condition or medical status of a claimant. The
 138 Legislature finds that the claimants' medical records and other
 139 medical-related information are personal and sensitive. Matters
 140 of personal health are traditionally a private and confidential

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141 concern. The release of the medical records would violate the
142 privacy of an individual or could cause unwarranted damage to
143 the name or reputation of that individual. The Legislature finds
144 that information relating to the medical, mental, or behavioral
145 condition of an employee of the association is private and that
146 matters of personal health are traditionally a private and
147 confidential concern. The Legislature finds that the association
148 must conduct ongoing negotiations for financing, reinsurance,
149 contractual services, or related matters to perform the duties
150 assigned to the association. If such information were made
151 public prior to the conclusion of the negotiations, the
152 association's bargaining position would be severely damaged,
153 resulting in additional cost to the association and the public.
154 The Legislature also finds that, because the association will
155 investigate insurance fraud, criminal investigations of
156 insurance fraud would be harmed if reports of suspected
157 fraudulent activity were made public. The Legislature has also
158 recognized a need for the Department of Revenue to provide
159 payroll information and client lists of employee leasing
160 companies to the association in the furtherance of its duties
161 and responsibilities. Such information is proprietary business
162 information and traditionally is private. The Legislature finds
163 that the internal audit process, and therefore accountability to
164 the public, will be damaged if records relating to an incomplete
165 internal audit or investigation are made public. The Legislature
166 finds that although the association is an agency within the
167 meaning of the public records and open meetings laws, the
168 association essentially operates as a private business. Its core

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169 function is to engage in the business of providing workers'
170 compensation insurance coverage, as distinguished from an agency
171 whose core functions are governmental in nature. The association
172 does not exercise the authority or perform the functions of a
173 department or political subdivision, and lacks the power to
174 enforce laws. The Legislature further finds that the general
175 exemptions in chapters 119 and 286 relating to records created
176 by attorneys and communications with attorneys are designed to
177 address the needs of agencies providing governmental functions
178 and are generally limited to matters relating to litigation and
179 adversarial administrative matters. As distinguished from
180 agencies providing governmental functions, the association
181 receives the advice of counsel on the entire range of matters on
182 which a similarly situated private business would receive advice
183 of counsel, including matters that do not involve litigation or
184 adversarial administrative matters. These include, but are not
185 limited to, legal advice relating to business negotiations with
186 private entities which provide the association with reinsurance,
187 policy issuance, policy administration, underwriting, and
188 payroll audit services, with insurance agents who may act as
189 producers of insurance business to the association, and with
190 other entities which provide services to private market
191 insurers. Accordingly, the Legislature finds that the
192 association would not be able to carry out its core business
193 functions effectively without the free and confidential exchange
194 of attorneys' mental impressions, conclusions, litigation
195 strategies, and legal theories, both as to business matters and
196 as to litigation and adversarial administrative matters.

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197 (2) The Legislature further finds that it is a public
198 necessity to exempt certain meetings of the Florida Workers'
199 Compensation Joint Underwriting Association, Inc., from public
200 meetings requirements. Closing access to meetings of the board
201 of directors of the association, or a subcommittee of the board,
202 wherein confidential and exempt records are discussed is
203 essential to preserving the confidentiality of those records.
204 Further, it enables the association to carry out its statutory
205 duty of providing workers' compensation coverage. Furthermore,
206 the Legislature finds that minutes and transcripts of exempt
207 portions of meetings should be made confidential and exempt from
208 public records requirements. Release of those records would
209 defeat the purpose of holding a closed meeting.

210 Section 3. This act shall take effect July 1, 2007.