

By Senator Fasano

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1                   A bill to be entitled  
2           An act relating to public records and public meetings;  
3           creating s. 215.5571, F.S.; providing an exemption  
4           from public-records requirements for certain records  
5           of the Florida Hurricane Protection Program of the  
6           Florida Catastrophe Fund; providing an exemption from  
7           public-meetings requirements for portions of certain  
8           meetings of the State Board of Administration;  
9           requiring that exempt portions of meetings be  
10          recorded, transcribed, and maintained for a specified  
11          period; providing an exemption from public-records  
12          requirements for minutes and transcripts of exempt  
13          portions of meetings; providing for future legislative  
14          review and repeal of the exemptions under the Open  
15          Government Sunset Review Act; providing legislative  
16          findings; providing a statement of public necessity;  
17          providing a contingent effective date.

18  
19 Be It Enacted by the Legislature of the State of Florida:

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21           Section 1. Section 215.5571, Florida Statutes, is created  
22 to read:

23           215.5571 Public-records and public-meetings exemptions.-

24           (1) The following records held by the Florida Hurricane  
25 Protection Program of the Florida Hurricane Catastrophe Fund are  
26 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
27 of the State Constitution:

28           (a) Underwriting files, except that a policyholder or an  
29 applicant shall be provided access to his or her own

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30 underwriting files.

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

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

43 (d) Proprietary information licensed to the Florida  
44 Hurricane Protection Program under contract, if the contract  
45 requires the program to maintain the confidentiality of such  
46 information. This exemption also applies if the proprietary  
47 information is licensed to the Florida Hurricane Catastrophe  
48 Fund or the State Board of Administration for use by the  
49 program.

50 (e) Information relating to negotiations for financing,  
51 reinsurance, or contractual services until the conclusion of the  
52 negotiations.

53 (f) Reports provided to or submitted by the program  
54 regarding suspected fraud or other criminal activity and related  
55 reporting regarding suspected misconduct until the investigation  
56 of such suspected fraud, criminal activity, or misconduct is  
57 closed or ceases to be active.

58 (g) A public record prepared by an attorney employed or

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59 retained by the program, the Florida Hurricane Catastrophe Fund,  
60 or the State Board of Administration to protect or represent the  
61 interests of the program, or prepared at the attorney's express  
62 direction, which reflects a mental impression, conclusion,  
63 litigation strategy, or legal theory of the attorney or the  
64 program, the Florida Hurricane Catastrophe Fund, or the State  
65 Board of Administration. This protection is not waived by the  
66 release of such public record to another employee or officer of  
67 the program, fund, or board or to any person consulted by the  
68 attorney.

69 (2) A policyholder who has filed suit against the Florida  
70 Hurricane Protection Program has the right to discover the  
71 contents of his or her own claims file to the same extent that  
72 discovery of such contents would be available from a private  
73 insurer in litigation as provided by the Florida Rules of Civil  
74 Procedure, the Florida Evidence Code, and other applicable law.  
75 Pursuant to subpoena, a third party has the right to discover  
76 the contents of an insured's or applicant's underwriting or  
77 claims file to the same extent that discovery of such contents  
78 would be available from a private insurer by subpoena as  
79 provided by the Florida Rules of Civil Procedure, the Florida  
80 Evidence Code, and other applicable law, and subject to any  
81 confidentiality protections requested by the program and agreed  
82 to by the seeking party or ordered by the court. The program may  
83 release confidential underwriting and claims file contents and  
84 information as it deems necessary and appropriate to underwrite  
85 or service insurance policies and claims, subject to any  
86 confidentiality protections deemed necessary and appropriate by  
87 the program.

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

92       (4) (a) That portion of a meeting of the State Board of  
93 Administration at which records made confidential and exempt by  
94 this section are discussed is exempt from s. 286.011 and s.  
95 24(b), 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 board 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 minutes pertaining  
109 to a confidential and exempt claims file are no longer  
110 confidential and exempt upon termination of all litigation with  
111 regard to that claim.

112       (5) This section is subject to the Open Government Sunset  
113 Review Act in accordance with s. 119.15 and shall stand repealed  
114 on October 2, 2014, unless reviewed and saved from repeal  
115 through reenactment by the Legislature.

116       Section 2. (1) The Legislature finds that it is a public

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117 necessity to make certain records of the Florida Hurricane  
118 Protection Program of the Florida Hurricane Catastrophe Fund  
119 confidential and exempt from public-records requirements. The  
120 program was created by the Legislature to provide hurricane  
121 insurance coverage for residential properties in this state. The  
122 Legislature finds that the exemption from public-records  
123 requirements for open claims files of the program is necessary  
124 for the effective and efficient administration of an entity  
125 created to provide residential hurricane insurance coverage as  
126 provided in s. 215.555(18), Florida Statutes. Claims files  
127 contain detailed information concerning the claim and may  
128 contain sensitive personal information concerning the claimant,  
129 and also contain information detailing the evaluation of the  
130 legitimacy of the claim and the amounts of money involved, which  
131 matters may become the subject of negotiation or litigation. The  
132 Legislature finds that the program must conduct ongoing  
133 negotiations for financing, reinsurance, contractual services,  
134 or related matters to perform the duties assigned to the  
135 program. If such information were made public before the  
136 conclusion of the negotiations, the program's bargaining  
137 position would be severely damaged, resulting in additional cost  
138 to the program and the public. The Legislature also finds that,  
139 because the program will investigate insurance fraud, criminal  
140 investigations of insurance fraud would be harmed if reports of  
141 suspected fraudulent activity were made public. The internal  
142 audit process, and therefore accountability the public, will be  
143 damaged if records relating to an incomplete internal audit or  
144 investigation are made public. Although the program is a part of  
145 a state agency, it performs functions that more closely resemble

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146 the functions of a private enterprise, as distinguished from an  
147 agency whose core functions are governmental in nature. The  
148 Legislature further finds that the general exemptions in  
149 chapters 119 and 286, Florida Statutes, relating to records  
150 created by attorneys and communications with attorneys are  
151 designed to address the needs of agencies providing governmental  
152 functions and are generally limited to matters relating to  
153 litigation and adversarial administrative matters. As  
154 distinguished from agencies providing governmental functions,  
155 the program receives the advice of counsel on the entire range  
156 of matters on which a similarly situated private business would  
157 receive advice of counsel, including matters not involving  
158 litigation or adversarial administrative matters. These include,  
159 but are not limited to, legal advice relating to business  
160 negotiations with private entities providing the program with  
161 reinsurance and with other entities providing services to  
162 private market insurers. Accordingly, the Legislature finds that  
163 the program would not be able to carry out its core business  
164 functions effectively without the free and confidential exchange  
165 of attorneys' mental impressions, conclusions, litigation  
166 strategies, and legal theories as to business matters,  
167 litigation, and adversarial administrative matters.

168 (2) The Legislature further finds that it is a public  
169 necessity to exempt certain meetings of the State Board of  
170 Administration relating to the operations of the Florida  
171 Hurricane Protection Program from public-meetings requirements.  
172 Closing access to meetings of the board during which  
173 confidential and exempt records are discussed is essential to  
174 the preservation of the confidentiality of those records and the

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175 ability of the program to carry out its statutory duty of  
176 providing residential hurricane insurance coverage. Furthermore,  
177 the Legislature finds that minutes and transcripts of exempt  
178 portions of meetings should be made confidential and exempt from  
179 public-records requirements. Release of such records would  
180 defeat the purpose of holding a closed meeting.

181 Section 3. This act shall take effect on the same date as  
182 SB \_\_\_\_, or similar legislation takes effect, if such legislation  
183 is enacted in the same legislative session or an extension  
184 thereof and becomes law.