

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

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

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

24 215.5571 Public records and public meetings exemptions.--

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

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

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

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

44 (d)1. Proprietary information licensed to the Florida
 45 Hurricane Protection Program under contract if the contract
 46 requires the program to maintain the confidentiality of such
 47 information; and

48 2. Proprietary information licensed to the Florida
 49 Hurricane Catastrophe Fund or the State Board of Administration
 50 for use by the Florida Hurricane Protection Program.

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

54 (f) Reports provided to or submitted by the program
 55 regarding suspected fraud or other criminal activity and related
 56 reporting regarding suspected misconduct until the investigation

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57 of such suspected fraud, criminal activity, or misconduct is
58 closed or ceases to be active.

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

70 (2) Records made confidential and exempt by this section
71 may be released, upon written request, to another agency in the
72 performance of that agency's official duties and
73 responsibilities.

74 (3) (a) That portion of a meeting of the State Board of
75 Administration at which records made confidential and exempt by
76 this section are discussed is exempt from s. 286.011 and s.
77 24(b), Art. I of the State Constitution.

78 (b) All exempt portions of meetings shall be recorded and
79 transcribed. The board shall record the times of commencement
80 and termination of the meeting, all discussion and proceedings,
81 the names of all persons present at any time, and the names of
82 all persons speaking. An exempt portion of any meeting may not
83 be off the record.

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

87 (d)1. A transcript and minutes of exempt portions of
88 meetings are confidential and exempt from s. 119.07(1) and s.
89 24(a), Art. I of the State Constitution.

90 2. Those portions of the transcript or the minutes
91 pertaining to a confidential and exempt claims file are no
92 longer confidential and exempt upon termination of all
93 litigation with regard to that claim.

94 (4) This section is subject to the Open Government Sunset
95 Review Act in accordance with s. 119.15 and shall stand repealed
96 on October 2, 2014, unless reviewed and saved from repeal
97 through reenactment by the Legislature.

98 Section 2. (1) The Legislature finds that it is a public
99 necessity to make certain records of the Florida Hurricane
100 Protection Program of the Florida Hurricane Catastrophe Fund
101 confidential and exempt from public records requirements. The
102 program was created by the Legislature to provide hurricane
103 insurance coverage for residential properties in the state. The
104 Legislature finds that the exemption from public records
105 requirements for open claims files of the program is necessary
106 for the effective and efficient administration of an entity
107 created to provide residential hurricane insurance coverage as
108 provided in s. 215.555(18), Florida Statutes. Claims files
109 contain detailed information concerning the claim and may
110 contain sensitive personal information concerning the claimant,
111 and also contain information detailing the evaluation of the

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112 legitimacy of the claim and the amounts of money involved, which
113 matters may become the subject of negotiation or litigation. The
114 Legislature finds that the program must conduct ongoing
115 negotiations for financing, reinsurance, and contractual
116 services to perform the duties assigned to the program. If such
117 information were made public prior to the conclusion of the
118 negotiations, the program's bargaining position would be
119 severely damaged, resulting in additional cost to the program
120 and the public. The Legislature also finds that, because the
121 program will investigate insurance fraud, criminal
122 investigations of insurance fraud would be harmed if reports of
123 suspected fraudulent activity were made public. The Legislature
124 finds that the internal audit process, and therefore
125 accountability to the public, will be damaged if records
126 relating to an incomplete internal audit or investigation are
127 made public. The Legislature finds that proprietary information
128 licensed to the Florida Hurricane Protection Program under
129 contract when confidentiality of such information is required
130 under the contract and proprietary information licensed to the
131 Florida Hurricane Catastrophe Fund or the State Board of
132 Administration for use by the program should be made
133 confidential and exempt because such proprietary information is
134 traditionally considered private. The Legislature finds that
135 although the program is a part of a state agency, it performs
136 functions that more closely resemble the functions of a private
137 enterprise, as distinguished from an agency whose core functions
138 are governmental in nature. The Legislature further finds that
139 the general exemptions in chapters 119 and 286 relating to

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140 records created by attorneys and communications with attorneys
141 are designed to address the needs of agencies providing
142 governmental functions and are generally limited to matters
143 relating to litigation and adversarial administrative matters.
144 As distinguished from agencies providing governmental functions,
145 the program receives the advice of counsel on the entire range
146 of matters on which a similarly situated private business would
147 receive advice of counsel, including matters that do not involve
148 litigation or adversarial administrative matters. These include,
149 but are not limited to, legal advice relating to business
150 negotiations with private entities which provide the program
151 with reinsurance and with other entities which provide services
152 to private market insurers. Accordingly, the Legislature finds
153 that the program would not be able to carry out its core
154 business functions effectively without the free and confidential
155 exchange of attorneys' mental impressions, conclusions,
156 litigation strategies, and legal theories, both as to business
157 matters and as to litigation and adversarial administrative
158 matters.

159 (2) The Legislature further finds that it is a public
160 necessity to exempt certain meetings of the State Board of
161 Administration relating to the operations of the Florida
162 Hurricane Protection Program from public meetings requirements.
163 Closing access to meetings of the board wherein confidential and
164 exempt records are discussed is essential to preserving the
165 confidentiality of those records and enabling the program to
166 carry out its statutory duty of providing residential hurricane
167 insurance coverage. Furthermore, the Legislature finds that

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168 | minutes and transcripts of exempt portions of meetings should be
169 | made confidential and exempt from public records requirements.
170 | Release of those records would defeat the purpose of holding a
171 | closed meeting.

172 | Section 3. This act shall take effect on the same date
173 | that HB 1157 or similar legislation creating the Florida
174 | Hurricane Protection Program within the Florida Hurricane
175 | Catastrophe Fund takes effect, if such legislation is adopted in
176 | the same legislative session or an extension thereof and becomes
177 | law.