

**FOR CONSIDERATION By** the Committee on Governmental Oversight and Accountability

585-01616-12

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1                   A bill to be entitled  
2           An act relating to a review under the Open Government  
3           Sunset Review Act; amending s. 627.3121, F.S., which  
4           provides an exemption from public records requirements  
5           for records held by the Florida Workers' Compensation  
6           Joint Underwriting Association, Inc., and an exemption  
7           from public meetings requirements for meetings of the  
8           association's board of governors, or a subcommittee of  
9           the association's board, at which confidential and  
10          exempt records are discussed; saving the exemptions  
11          from repeal under the Open Government Sunset Review  
12          Act; removing the scheduled repeal of the exemptions;  
13          providing an effective date.

14  
15 Be It Enacted by the Legislature of the State of Florida:

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17           Section 1. Section 627.3121, Florida Statutes, is amended  
18           to read:

19           627.3121 Public records and public meetings exemptions.—

20           (1) The following records held by the Florida Workers'  
21           Compensation Joint Underwriting Association, Inc., are  
22           confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
23           of the State Constitution:

24           (a) Underwriting files, except that a policyholder or an  
25           applicant shall be provided access to his or her own  
26           underwriting files.

27           (b) Claims files until termination of all litigation and  
28           the settlement of all claims arising out of the same accident,  
29           except that portions of the claims files may remain confidential

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30 or exempt if otherwise provided by law.

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

38 (d) Proprietary information licensed to the association  
39 under contract if the contract requires the association to  
40 maintain the confidentiality of such information.

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

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

46 (g) Information relating to negotiations for financing,  
47 reinsurance, reinsurance commutation agreements, depopulation,  
48 or contractual services until the conclusion of the  
49 negotiations.

50 (h) Reports provided to or submitted by the association  
51 regarding suspected fraud or other criminal activity and  
52 producer appeals and related reporting regarding suspected  
53 misconduct until such investigation is closed or ceases to be  
54 active.

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

58 (j) A public record prepared by an attorney retained by the

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59 association to protect or represent the interests of the  
60 association, or prepared at the attorney's express direction,  
61 that reflects a mental impression, conclusion, litigation  
62 strategy, or legal theory of the attorney or the association.  
63 This protection is not waived by the release of such public  
64 record to another employee or officer of the same association or  
65 any person consulted by the association attorney.

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

68 1. A carrier that is considering underwriting a risk  
69 insured by the association;

70 2. A producer seeking to place such a risk with such a  
71 carrier; or

72 3. Another entity seeking to arrange voluntary market  
73 coverage for association risks.

74 (b) Prior to the release authorized in paragraph (a), the  
75 carrier, producer, or other entity must agree in writing,  
76 notarized and under oath, to maintain the confidential and  
77 exempt status of such file until that carrier, producer, or  
78 other entity agrees to underwrite the risk or provide voluntary  
79 market coverage.

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

84 (4) (a) That portion of a meeting of the association's board  
85 of governors, or any subcommittee of the association's board, at  
86 which records made confidential and exempt by this section are  
87 discussed is exempt from s. 286.011 and s. 24(b), Art. I of the

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88 State Constitution.

89 (b) All exempt portions of meetings shall be recorded and  
90 transcribed. The board shall record the times of commencement  
91 and termination of the meeting, all discussion and proceedings,  
92 the names of all persons present at any time, and the names of  
93 all persons speaking. An exempt portion of any meeting may not  
94 be off the record.

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

98 (d)1. A transcript and minutes of exempt portions of  
99 meetings are confidential and exempt from s. 119.07(1) and s.  
100 24(a), Art. I of the State Constitution.

101 2. Those portions of the transcript or the minutes  
102 pertaining to a confidential and exempt claims file are no  
103 longer confidential and exempt upon termination of all  
104 litigation with regard to that claim.

105 ~~(5) This section is subject to the Open Government Sunset~~  
106 ~~Review Act in accordance with s. 119.15 and shall stand repealed~~  
107 ~~on October 2, 2012, unless reviewed and saved from repeal~~  
108 ~~through reenactment by the Legislature.~~

109 Section 2. This act shall take effect October 1, 2012.