

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: SB 1850

INTRODUCER: Banking and Insurance Committee

SUBJECT: Public Records/Citizens Property Insurance Corporation Clearinghouse

DATE: April 8, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Burgess</u>		bi SPB 7140 as Introduced
2.	<u>Naf</u>	<u>McVaney</u>	GO	Pre-meeting
3.	_____	_____	RC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

SB 1850 is linked to SB 1770, which, in pertinent part, creates a Citizens Property Insurance Corporation clearinghouse. SB 1850 provides that underwriting guidelines, manuals, rating information, and other underwriting criteria or instructions submitted by an insurer to the clearinghouse which are used to identify and select risks from the clearinghouse are confidential and exempt from public records requirements.

The bill provides that the public records exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2018, unless reviewed and reenacted by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.

Because this bill creates a public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

This bill substantially amends a currently nonexistent section of the Florida Statutes that is created by the linked bill, SB 1770.

II. Present Situation:

Public Records Laws

The Florida Constitution provides every person 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 of persons acting on their behalf.¹ The records of the legislative, executive, and judicial branches are specifically included.²

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act³ guarantees every person's right to inspect and copy any state or local government public record⁴ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁵

Only the Legislature may create an exemption to public records requirements.⁶ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.⁷ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions⁸ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.⁹

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁰ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹¹ The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.¹²

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ Chapter 119, F.S.

⁴ Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).

⁵ Section 119.07(1)(a), F.S.

⁶ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and exempt*. A record classified as exempt from public disclosure may be disclosed under certain circumstances (*see WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991)). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see Attorney General Opinion 85-62*, August 1, 1985).

⁷ FLA. CONST., art. I, s. 24(c).

⁸ The bill may, however, contain multiple exemptions that relate to one subject.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ Section 119.15, F.S. 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 (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

¹¹ Section 119.15(3), F.S.

¹² Section 119.15(6)(b), F.S.

Citizens Property Insurance Corporation (Citizens)

Citizens is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market.¹³ Citizens is not a private insurance company.¹⁴ Citizens was statutorily created in 2002 when the Florida Legislature combined the state's two insurers of last resort, the Florida Residential Property and Casualty Joint Underwriting Association and the Florida Windstorm Underwriting Association. Citizens operates in accordance with the provisions in s. 627.351(6), F.S., and is governed by an eight-member Board of Governors that administers its Plan of Operations, which is reviewed and approved by the Financial Services Commission. The Governor, President of the Senate, Speaker of the House of Representatives, and Chief Financial Officer each appoints two members to the board.

SB 1770 (linked to this bill)

This bill is linked to SB 1770, which, in pertinent part, requires Citizens to implement a clearinghouse by July 1, 2013. All new and renewal applications, excluding commercial residential, must be submitted to the clearinghouse before Citizens can bind or renew coverage.

The clearinghouse:

- Must develop an application process to facilitate private insurers in determining whether or not to make an offer of coverage through the clearinghouse.
- Must enter into contracts with Florida property insurance companies to participate in the clearinghouse and must accept appointments from voluntary market insurers.
- Must require all new and renewal applicants to be submitted to the clearinghouse to see if there are any offers of coverage from an authorized insurer.
- Must require all new applications for coverage to be subject to a 48-hour period that allows a private insurer participating in the clearinghouse to select applicants for coverage.
- Allows an applicant to accept an offer from a surplus lines insurer if the applicant does not receive an offer of coverage from admitted insurers.
- May charge a reasonable fee as a percentage of an agent's commission to offset the costs of the clearinghouse. Insurers participating in the clearinghouse are not required to pay a fee or use the clearinghouse.

All licensed insurers are authorized to participate in the clearinghouse, but participation is not mandatory.

III. Effect of Proposed Changes:

The bill provides that underwriting guidelines, manuals, rating information, and other underwriting criteria or instructions submitted by an insurer to the Citizens clearinghouse which are used to identify and select risks from the clearinghouse are confidential and exempt from public records disclosure requirements.

¹³ "Admitted market" means insurance companies licensed to transact insurance in Florida.

¹⁴ Section 627.351(6)(a)1., F.S. Citizens is also subject to regulation by the Office of Insurance Regulation.

The bill provides that the public records exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2018, unless reviewed and reenacted by the Legislature. It also provides a public necessity statement as required by the Florida Constitution.

This act shall take effect on the same date that SB 1770 or similar legislation creating s. 627.3518, Florida Statutes, the Citizen's Property Insurance Corporation clearinghouse, takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. This bill does not appear to affect county or municipal governments.

B. Public Records/Open Meetings Issues:

Vote Requirement

Section 24(c), Art. I of the Florida Constitution requires a newly created or expanded public records exemption to pass by a two-thirds vote of the members present and voting in each house of the Legislature. This bill creates a public records exemption; therefore, it requires a two-thirds vote for final passage.

Public Necessity Statement

Section 24(c), Art. I of the Florida Constitution requires a newly created or expanded public records exemption to contain a public necessity statement justifying the exemption. This bill creates a public records exemption; therefore, it contains a public necessity statement.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Underwriting guidelines, manuals, rating information and other underwriting criteria belonging to insurers participating in the Citizens clearinghouse program will be protected, thereby preventing release of information that could put such insurers at a competitive disadvantage.

C. Government Sector Impact:

This bill could create a minimal fiscal impact on Citizens, because staff responsible for complying with public records requests could require training related to the expansion of the public records exemption. In addition, Citizens could incur costs associated with redaction of the confidential and exempt information prior to releasing the record. The costs would be absorbed, however, as they are part of the day-to-day responsibilities of Citizens.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.