

1 A bill to be entitled
 2 An act relating to public records; amending s. 119.07,
 3 F.S.; requiring each agency head to designate a
 4 custodian of public records and to display the contact
 5 information for the custodian under certain
 6 circumstances; requiring a public records request to
 7 be made to certain persons in order for the requestor
 8 to be eligible for reimbursement of attorney fees;
 9 correcting a cross-reference; amending s. 119.0701,
 10 F.S.; revising required provisions in a public agency
 11 contract for services regarding a contractor's
 12 compliance with public records laws for contracts
 13 signed or amended on or after a specified date;
 14 specifying penalties for a contractor who fails to
 15 comply with certain provisions; amending ss. 497.140,
 16 627.311, and 627.351, F.S.; conforming cross-
 17 references; providing an effective date.

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

20
 21 Section 1. Paragraphs (b) through (i) of subsection (1) of
 22 section 119.07, Florida Statutes, are redesignated as paragraphs
 23 (d) through (k), respectively, present paragraph (i) is amended,
 24 and new paragraphs (b) and (c) are added to that subsection, to
 25 read:

26 119.07 Inspection and copying of records; photographing

27 public records; fees; exemptions.—

28 (1)

29 (b) Each agency head shall designate a custodian of public
 30 records. If the agency has a website, it shall display the
 31 contact information for the custodian of public records on the
 32 home page of the agency's website.

33 (c) A request to inspect or copy public records must be
 34 made directly to the custodian of public records, a member of
 35 the agency's governing body, or the agency head in order for the
 36 requestor to be eligible for attorney fees under s. 119.12.

37 (k)-(i) The absence of a civil action instituted for the
 38 purpose stated in paragraph (i) ~~(g)~~ does not relieve the
 39 custodian of public records of the duty to maintain the record
 40 as a public record if the record is in fact a public record
 41 subject to public inspection and copying under this subsection
 42 and does not otherwise excuse or exonerate the custodian of
 43 public records from any unauthorized or unlawful disposition of
 44 such record.

45 Section 2. Section 119.0701, Florida Statutes, is amended
 46 to read:

47 119.0701 Contracts; public records.—

48 (1) For purposes of this section, the term:

49 (a) "Contractor" means an individual, partnership,
 50 corporation, or business entity that enters into a contract for
 51 services with a public agency and is acting on behalf of the
 52 public agency as provided under s. 119.011(2).

53 (b) "Public agency" means a state, county, district,
 54 authority, or municipal officer, or department, division, board,
 55 bureau, commission, or other separate unit of government created
 56 or established by law.

57 (2) In addition to other contract requirements provided by
 58 law, each public agency contract for services entered into or
 59 amended on or after July 1, 2016, must include:

60 (a) The following statement, in substantially the
 61 following form, identifying the contact information of the
 62 public agency's custodian of public records in at least 14-point
 63 boldfaced type:

64
 65 IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICABILITY
 66 OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY
 67 TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT,
 68 CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT ...(telephone
 69 number, e-mail address, and mailing address)....

70
 71 (b) A provision that requires the contractor to comply
 72 with public records laws, specifically to:

73 1.(a) Keep and maintain public records that ordinarily and
 74 necessarily would be required by the public agency in order to
 75 perform the service.

76 2.(b) Provide the public with access to public records on
 77 the same terms and conditions that the public agency would
 78 provide the records and at a cost that does not exceed the cost

79 provided in this chapter or as otherwise provided by law.

80 3.(e) Ensure that public records that are exempt or
 81 confidential and exempt from public records disclosure
 82 requirements are not disclosed except as authorized by law for
 83 the duration of the contract term and following completion of
 84 the contract if the contractor does not transfer the records to
 85 the public agency.

86 4.(d) Upon completion of the contract, ~~Meet all~~
 87 ~~requirements for retaining public records and transfer,~~ at no
 88 cost, to the public agency all public records in possession of
 89 the contractor or keep and maintain public records that
 90 ordinarily and necessarily would be required by the public
 91 agency in order to perform the service. If the contractor
 92 transfers all public records to the public agency upon
 93 completion of the contract, the contractor shall ~~upon~~
 94 ~~termination of the contract and~~ destroy any duplicate public
 95 records that are exempt or confidential and exempt from public
 96 records disclosure requirements. If the contractor keeps and
 97 maintains public records upon completion of the contract, the
 98 contractor shall meet all applicable requirements for retaining
 99 public records and provide requested records to a public agency
 100 pursuant to the requirements of this section. Upon request from
 101 the public agency's custodian of public records, all records
 102 stored electronically must be provided to the public agency in a
 103 format that is compatible with the information technology
 104 systems of the public agency.

HB 273

2016

105 (3) If a contractor does not comply with a public records
 106 request, the public agency shall enforce the contract provisions
 107 in accordance with the contract.

108 (4) A contractor is only liable for attorney fees pursuant
 109 to s. 119.12 if the public records request is made to:

110 (a) The contractor's registered agent; or

111 (b) An employee or agent of the contractor who acts, or
 112 purports to act, in a management or supervisory capacity.

113 Section 3. Subsection (5) of section 497.140, Florida
 114 Statutes, is amended to read:

115 497.140 Fees.—

116 (5) The department shall charge a fee not to exceed \$25
 117 for the certification of a public record. The fee shall be
 118 determined by rule of the department. The department shall
 119 assess a fee for duplication of a public record as provided in
 120 s. 119.07(1)(a) and (g) ~~(e)~~.

121 Section 4. Paragraph (b) of subsection (4) of section
 122 627.311, Florida Statutes, is amended to read:

123 627.311 Joint underwriters and joint reinsurers; public
 124 records and public meetings exemptions.—

125 (4) The Florida Automobile Joint Underwriting Association:

126 (b) Shall keep portions of association meetings during
 127 which confidential and exempt underwriting files or confidential
 128 and exempt claims files are discussed exempt from the provisions
 129 of s. 286.011 and s. 24(b), Art. I of the State Constitution.

130 All closed portions of association meetings shall be recorded by

131 a court reporter. The court reporter shall record the times of
 132 commencement and termination of the meeting, all discussion and
 133 proceedings, the names of all persons present at any time, and
 134 the names of all persons speaking. No portion of any closed
 135 meeting shall be off the record. Subject to the provisions of
 136 this paragraph and s. 119.07(1)(f)-(h) ~~119.07(1)(d)-(f)~~, the
 137 court reporter's notes of any closed meeting shall be retained
 138 by the association for a minimum of 5 years. A copy of the
 139 transcript, less any confidential and exempt information, of any
 140 closed meeting during which confidential and exempt claims files
 141 are discussed shall become public as to individual claims files
 142 after settlement of that claim.

143 Section 5. Paragraph (x) of subsection (6) of section
 144 627.351, Florida Statutes, is amended to read:

145 627.351 Insurance risk apportionment plans.—

146 (6) CITIZENS PROPERTY INSURANCE CORPORATION.—

147 (x)1. The following records of the corporation are
 148 confidential and exempt from the provisions of s. 119.07(1) and
 149 s. 24(a), Art. I of the State Constitution:

150 a. Underwriting files, except that a policyholder or an
 151 applicant shall have access to his or her own underwriting
 152 files. Confidential and exempt underwriting file records may
 153 also be released to other governmental agencies upon written
 154 request and demonstration of need; such records held by the
 155 receiving agency remain confidential and exempt as provided
 156 herein.

157 b. Claims files, until termination of all litigation and
 158 settlement of all claims arising out of the same incident,
 159 although portions of the claims files may remain exempt, as
 160 otherwise provided by law. Confidential and exempt claims file
 161 records may be released to other governmental agencies upon
 162 written request and demonstration of need; such records held by
 163 the receiving agency remain confidential and exempt as provided
 164 herein.

165 c. Records obtained or generated by an internal auditor
 166 pursuant to a routine audit, until the audit is completed, or if
 167 the audit is conducted as part of an investigation, until the
 168 investigation is closed or ceases to be active. An investigation
 169 is considered "active" while the investigation is being
 170 conducted with a reasonable, good faith belief that it could
 171 lead to the filing of administrative, civil, or criminal
 172 proceedings.

173 d. Matters reasonably encompassed in privileged attorney-
 174 client communications.

175 e. Proprietary information licensed to the corporation
 176 under contract and the contract provides for the confidentiality
 177 of such proprietary information.

178 f. All information relating to the medical condition or
 179 medical status of a corporation employee which is not relevant
 180 to the employee's capacity to perform his or her duties, except
 181 as otherwise provided in this paragraph. Information that is
 182 exempt shall include, but is not limited to, information

HB 273

2016

183 relating to workers' compensation, insurance benefits, and
184 retirement or disability benefits.

185 g. Upon an employee's entrance into the employee
186 assistance program, a program to assist any employee who has a
187 behavioral or medical disorder, substance abuse problem, or
188 emotional difficulty which affects the employee's job
189 performance, all records relative to that participation shall be
190 confidential and exempt from the provisions of s. 119.07(1) and
191 s. 24(a), Art. I of the State Constitution, except as otherwise
192 provided in s. 112.0455(11).

193 h. Information relating to negotiations for financing,
194 reinsurance, depopulation, or contractual services, until the
195 conclusion of the negotiations.

196 i. Minutes of closed meetings regarding underwriting
197 files, and minutes of closed meetings regarding an open claims
198 file until termination of all litigation and settlement of all
199 claims with regard to that claim, except that information
200 otherwise confidential or exempt by law shall be redacted.

201 2. If an authorized insurer is considering underwriting a
202 risk insured by the corporation, relevant underwriting files and
203 confidential claims files may be released to the insurer
204 provided the insurer agrees in writing, notarized and under
205 oath, to maintain the confidentiality of such files. If a file
206 is transferred to an insurer, that file is no longer a public
207 record because it is not held by an agency subject to the
208 provisions of the public records law. Underwriting files and

HB 273

2016

209 confidential claims files may also be released to staff and the
210 board of governors of the market assistance plan established
211 pursuant to s. 627.3515, who must retain the confidentiality of
212 such files, except such files may be released to authorized
213 insurers that are considering assuming the risks to which the
214 files apply, provided the insurer agrees in writing, notarized
215 and under oath, to maintain the confidentiality of such files.
216 Finally, the corporation or the board or staff of the market
217 assistance plan may make the following information obtained from
218 underwriting files and confidential claims files available to
219 licensed general lines insurance agents: name, address, and
220 telephone number of the residential property owner or insured;
221 location of the risk; rating information; loss history; and
222 policy type. The receiving licensed general lines insurance
223 agent must retain the confidentiality of the information
224 received.

225 3. A policyholder who has filed suit against the
226 corporation has the right to discover the contents of his or her
227 own claims file to the same extent that discovery of such
228 contents would be available from a private insurer in litigation
229 as provided by the Florida Rules of Civil Procedure, the Florida
230 Evidence Code, and other applicable law. Pursuant to subpoena, a
231 third party has the right to discover the contents of an
232 insured's or applicant's underwriting or claims file to the same
233 extent that discovery of such contents would be available from a
234 private insurer by subpoena as provided by the Florida Rules of

235 Civil Procedure, the Florida Evidence Code, and other applicable
 236 law, and subject to any confidentiality protections requested by
 237 the corporation and agreed to by the seeking party or ordered by
 238 the court. The corporation may release confidential underwriting
 239 and claims file contents and information as it deems necessary
 240 and appropriate to underwrite or service insurance policies and
 241 claims, subject to any confidentiality protections deemed
 242 necessary and appropriate by the corporation.

243 4. Portions of meetings of the corporation are exempt from
 244 the provisions of s. 286.011 and s. 24(b), Art. I of the State
 245 Constitution wherein confidential underwriting files or
 246 confidential open claims files are discussed. All portions of
 247 corporation meetings which are closed to the public shall be
 248 recorded by a court reporter. The court reporter shall record
 249 the times of commencement and termination of the meeting, all
 250 discussion and proceedings, the names of all persons present at
 251 any time, and the names of all persons speaking. No portion of
 252 any closed meeting shall be off the record. Subject to the
 253 provisions hereof and s. 119.07(1)(f)-(h) ~~119.07(1)(d)-(f)~~, the
 254 court reporter's notes of any closed meeting shall be retained
 255 by the corporation for a minimum of 5 years. A copy of the
 256 transcript, less any exempt matters, of any closed meeting
 257 wherein claims are discussed shall become public as to
 258 individual claims after settlement of the claim.

259 Section 6. This act shall take effect July 1, 2016.
 260