

**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.)

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Prepared By: The Professional Staff of the Committee on Banking and Insurance

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BILL: SPB 7010

INTRODUCER: For consideration by the Banking and Insurance Committee

SUBJECT: OGSR/Department of Financial Services

DATE: February 28, 2025

REVISED: \_\_\_\_\_

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ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Thomas	Knudson		<b>Pre-meeting</b>

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**I. Summary:**

SPB 7010 reenacts and saves from repeal the current public records exemption for certain information held by the Department of Financial Services acting as receiver for an insolvent insurer. This information includes records relating to the personal financial and health information of insurance consumers; underwriting, personnel, payroll, and consumer claim information; Own-Risk and Solvency Assessment summary reports; corporate governance annual disclosures; and information received from the National Association of Insurance Commissioners and other governmental entities.

The Open Government Sunset Review Act requires the Legislature to review each public record and public meeting exemption 5 years after enactment. The affected exemptions are scheduled for repeal on October 2, 2025. The bill removes the scheduled repeal date to continue the exempt status.

The bill is not expected to impact state and local revenues and expenditures.

The bill takes effect October 1, 2025.

**II. Present Situation:**

**Public Records Law**

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.<sup>1</sup> This applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person who acts on behalf of the government.<sup>2</sup>

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<sup>1</sup> FLA. CONST., art. I, s. 24(a).

<sup>2</sup> *Id.*

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.<sup>3</sup> Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.<sup>4</sup> The Public Records Act states that:

It is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.<sup>5</sup>

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted. Section 119.011(12), F.S., defines “public records” to include:

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.<sup>6</sup>

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to “perpetuate, communicate, or formalize knowledge of some type.”<sup>7</sup>

The Florida Statutes specify conditions under which public access to governmental records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any government public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.<sup>8</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>9</sup>

The Public Records Act contains general exemptions that apply across agencies. Agency or program-specific exemptions often are placed in the substantive statutes relating to that particular agency or program. Only the Legislature may create an exemption to public records requirements.<sup>10</sup> An exemption must be created by general law and must specifically state the public necessity which justifies the exemption.<sup>11</sup> Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill that enacts an exemption may not

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<sup>3</sup> The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are primarily located in s. 11.0431(2)-(3), F.S.

<sup>4</sup> Public records laws are found throughout the Florida Statutes.

<sup>5</sup> Section 119.01(1), F.S.

<sup>6</sup> Section 119.011(2), F.S., defines “agency” 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.”

<sup>7</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

<sup>8</sup> Section 119.07(1)(a), F.S.

<sup>9</sup> Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

<sup>10</sup> FLA. CONST., art. I, s. 24(c).

<sup>11</sup> *Id.*

contain other substantive provisions<sup>12</sup> and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.<sup>13</sup>

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Public Records Act *and confidential*.<sup>14</sup> Records designated as “confidential and exempt” are not subject to inspection by the public and may only be released under the circumstances defined by statute.<sup>15</sup> Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.<sup>16</sup>

### **Open Government Sunset Review Act**

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act (the Act), prescribe a legislative review process for newly created or substantially amended public records or open meetings exemptions,<sup>17</sup> with specified exceptions.<sup>18</sup> The Act requires the repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption or repeal the sunset date.<sup>19</sup> In practice, many exemptions are continued by repealing the sunset date, rather than reenacting the exemption.

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.<sup>20</sup> An exemption serves an identifiable purpose if the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption, and it meets one of the following purposes:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;<sup>21</sup>
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;<sup>22</sup> or

<sup>12</sup> The bill may, however, contain multiple exemptions that relate to one subject.

<sup>13</sup> FLA. CONST., art. I, s. 24(c).

<sup>14</sup> *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5<sup>th</sup> DCA 2004).

<sup>15</sup> *Id.*

<sup>16</sup> *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5<sup>th</sup> DCA 1991).

<sup>17</sup> An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

<sup>18</sup> Section 119.15(2)(a) and (b), F.S., provides that exemptions required by federal law or applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

<sup>19</sup> Section 119.15(3), F.S.

<sup>20</sup> Section 119.15(6)(b), F.S.

<sup>21</sup> Section 119.15(6)(b)1., F.S.

<sup>22</sup> Section 119.15(6)(b)2., F.S.

- It protects information of a confidential nature concerning entities, such as trade or business secrets.<sup>23</sup>

The Act requires specified questions to be considered during the review process.<sup>24</sup> In examining an exemption, the Act directs the Legislature to question the purpose and necessity of reenacting the exemption. If, in reenacting an exemption or repealing the sunset date, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.<sup>25</sup> If the exemption is reenacted or saved from repeal without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to expire, the previously exempt records will remain exempt unless otherwise provided by law.<sup>26</sup>

### **Public Record Exemption Related to Records of Insolvent Insurers**

Along with the Department of Financial Services (DFS), the Office of Insurance Regulation (OIR) is tasked with enforcing the provisions of the Florida Insurance Code, chs. 624-632, 634-636, 641-642, 648 and 651, F.S.<sup>27</sup> OIR is responsible for examining the affairs, transactions, accounts, records, and assets of each authorized insurer.<sup>28</sup> In the event that the OIR determines that one or more grounds<sup>29</sup> for the initiation of delinquency proceedings against an insurer exist, such as insolvency,<sup>30</sup> the Insurers Rehabilitation and Liquidation Act<sup>31</sup> requires the Director of the OIR to notify the DFS of that determination, and to provide the DFS with all necessary

<sup>23</sup> Section 119.15(6)(b)3., F.S.

<sup>24</sup> Section 119.15(6)(a), F.S. The specific questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

<sup>25</sup> FLA. CONST. art. I, s. 24(c).

<sup>26</sup> Section 119.15(7), F.S.

<sup>27</sup> See Sections 624.307(1) and 624.01, F.S.

<sup>28</sup> Section 624.316(1)(a), F.S.

<sup>29</sup> Grounds for rehabilitation generally include, but are not limited to, impairment, insolvency, failure to comply with OIR orders or to submit records for examination, and other violations of law. See Section 631.051, F.S. Grounds for liquidation include imminent or actual insolvency, an attempt or actual commencement of voluntary liquidation or dissolution, and a failure to timely complete organization and obtain a certificate of authority. Section 631.061, F.S. The DFS may also apply to the circuit court for an order appointing it as ancillary receiver of, and directing it to liquidate the business and assets of, a foreign insurer which has assets, business, or claims in this state upon the appointment in the domiciliary state of such insurer of a receiver, liquidator, conservator, rehabilitator, or other officer by whatever name called for the purpose of liquidating the business of such insurer. Section 631.091, F.S. Grounds for conservation of foreign insurers include the same as those for rehabilitation and liquidation, or when the insurer's property has been sequestered in its domiciliary sovereignty or in any other sovereignty. Section 631.071, F.S. Grounds for the conservation of alien insurers are the same but additionally include an insurer's failures to timely comply with an OIR order to make good an impairment of trusteed funds. Section 631.081, F.S.

<sup>30</sup> "Insolvency" means that all the assets of the insurer, if made immediately available, would not be sufficient to discharge all its liabilities or that the insurer is unable to pay its debts as they become due in the usual course of business. Section 631.011(14), F.S. Depending on the context, insolvency also includes and is defined as "impairment of surplus" and "impairment of capital" as defined in s. 631.011(13) and (12), F.S., respectively.

<sup>31</sup> Part I of Chapter 631, F.S.

documentation and evidence, thereby enabling the DFS to initiate the delinquency proceeding.<sup>32</sup> This documentation and evidence may include confidential and sensitive information. Upon such notice, the DFS is tasked with initiating delinquency proceedings pursuant to ch. 631, F.S., which constitute the sole and exclusive method of liquidating, rehabilitating, reorganizing, or conserving an insurer.<sup>33</sup>

The nature of the DFS's statutory duties regarding delinquency proceedings require the DFS to assume custodianship of insurer records. When the DFS is appointed as receiver of an insurer during the course of a delinquency proceeding, Florida Statutes expressly vest the DFS with the title to all of the property of the insurer, including all of the books and records, wherever located.<sup>34</sup> Similarly, orders to rehabilitate or liquidate a domestic insurer must direct the DFS to take possession of the property of the insurer.<sup>35</sup> Orders to liquidate the business of a United States branch of an alien insurer having trusteed assets in this state shall be on the same terms as those prescribed for domestic insurers, but the DFS only takes possession of the assets within that branch.<sup>36</sup> Orders to conserve the assets of a foreign or alien insurer likewise must require the DFS to take possession of the property of the insurer within this state.<sup>37</sup>

Section 631.195(2), F.S., provides that the following records of an insurer which are made or received by the DFS, acting as receiver for an insolvent insurer, are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

- All personal financial and health information of a consumer.
- Underwriting files of a type customarily maintained by an insurer transacting lines of insurance similar to those lines transacted by the insurer.
- Personnel and payroll records of the insurer.
- Consumer claim files.
- An own-risk and solvency assessment (ORSA) summary report, a substantially similar ORSA summary report, and supporting documents submitted to the OIR pursuant to s. 628.8015, F.S.
- A corporate governance annual disclosure and supporting documents submitted to the OIR pursuant to s. 628.8015, F.S.
- Information received from the National Association of Insurance Commissioners (NAIC), a governmental entity in this or another state, the Federal Government, or a government of another nation which is confidential or exempt if held by that entity and which is held by the DFS for use in the performance of its duties relating to insurer solvency.

There are limited circumstances under which the DFS may disclose this confidential and exempt information, including:

- To any state or federal agency, upon written request, if disclosure is necessary for the receiving entity to perform its duties and responsibilities.

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<sup>32</sup> Section 631.031(1), F.S.

<sup>33</sup> Section 631.021(3), F.S.

<sup>34</sup> See s. 631.141(1)-(2), F.S.

<sup>35</sup> See ss. 631.101 and 631.111, F.S., respectively.

<sup>36</sup> Section 631.121, F.S.

<sup>37</sup> Section 631.131(1), F.S.

- To comply with a properly authorized civil, criminal, or regulatory investigation or a subpoena or summons by a federal, state, or local authority.
- To the NAIC and its affiliates and subsidiaries, if the recipient agrees in writing to maintain the confidential and exempt status of the records.
- To the guaranty associations and funds of the various states which are receiving, adjudicating, and paying claims of the insolvent insurer subject to delinquency proceedings pursuant to this chapter.
- Upon written request, to persons identified as designated employees as described in s. 626.989(4)(d), whose responsibilities include the investigation and disposition of claims relating to suspected fraudulent insurance acts
- In the case of personal financial and health information of a consumer, upon written request of the consumer or the consumer's legally authorized representative.<sup>38</sup>

### **Consumer Personal Financial and Health Information**

Insurance companies routinely possess records of policyholders and claimants during the normal course of business which include personal, private financial and medical information. Such information held by solvent insurers is not freely available to any person or entity. If such records are made available, it is usually through confidentiality agreements or court orders, and with reference to certain state and federal privileges and confidentiality laws and regulations. The Legislature often enacts public records exemptions to restrict disclosure of private financial and medical information, an example of which is found in s. 624.23, F.S., which makes confidential and exempt the personal financial and health information held by the DFS or the OIR relating to a consumer's complaint or inquiry regarding a matter or activity regulated under the Florida Insurance Code or s. 440.191, F.S.

### **ORSA Summary Reports and Corporate Governance Annual Disclosures**

Section 624.4212(3)(a)-(b), F.S., provides that, except for information obtained by the OIR that would otherwise be available for public inspection, the following information held by the OIR is confidential and exempt from the disclosure requirements of s. 119.07(1), F.S. and s. 24(a), Art. I of the State Constitution:

- *ORSA Reports.* Own-Risk and Solvency Assessments (ORSA) are internal assessments conducted by insurers and insurance groups of the material and relevant risks associated with their business plan and the sufficiency of their capital resources to support those risks.<sup>39</sup> An ORSA Summary Report is a high-level ORSA summary of an insurer or insurance group, consisting of a single report or combination of reports.<sup>40</sup> Insurers are required to conduct an ORSA at least annually.<sup>41</sup> Unless an insurer or insurance group is exempted from this requirement or compliance is otherwise waived, insurers must submit an ORSA summary report to the OIR once every calendar year.<sup>42</sup>

<sup>38</sup> Section 631.195(4)(a)-(f), F.S.

<sup>39</sup> Section 628.8015(1)(d), F.S.

<sup>40</sup> Section 628.8015(1)(f), F.S.

<sup>41</sup> Section 628.8015(2)(b), F.S.

<sup>42</sup> Section 628.8015(2)(c)1.a.(I), F.S. See Section 628.8015(2)(d), F.S., for exemptions, and s. 628.8015(2)(e), F.S., for waiver requirements.

- *Corporate Governance Annual Disclosures.* Corporate governance annual disclosures are reports filed with the OIR by insurers and insurance groups which describe the corporate governance framework and structure of the insurer or insurance group, the policies and practices for directing senior management and of the most senior governing entity and its significant committees, and the processes by which the board, its committees, and senior management ensure the appropriate amount of oversight to critical risk areas that impact the insurer's business activities.<sup>43</sup> Insurers, or insurer members of an insurance group of which the OIR is the lead state regulator, must submit corporate governance annual disclosure to the OIR annually.<sup>44</sup>

### III. Effect of Proposed Changes:

The Open Government Sunset Review Act requires the Legislature to review each public record and public meeting exemption 5 years after enactment. The affected exemptions are scheduled for repeal on October 2, 2025. The bill removes the scheduled repeal to continue the exempt status.

**Section 1** amends s. 631.195(5), F.S., to save from repeal the current public records exemption for certain information held by the Department of Financial Services acting as receiver for an insolvent insurer. This information includes records relating to the personal financial and health information of insurance consumers; underwriting, personnel, payroll, and consumer claim information; Own-Risk and Solvency Assessment summary reports; corporate governance annual disclosures; and information received from the National Association of Insurance Commissioners and other governmental entities, which, if not exempted from the public records disclosure requirements of s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution, may result in public disclosure of traditionally private financial and health information and thereby create the opportunity for theft and fraud, jeopardizing the financial security of the subject person(s), as well as, information of a confidential nature concerning entities, such as trade or business secrets.

**Section 2** provides that the bill is effective October 1, 2025.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

#### B. Public Records/Open Meetings Issues:

##### **Vote Requirement**

<sup>43</sup> Section 628.8015(1)(a) and (3)(c)4.a.-d., F.S.

<sup>44</sup> Section 628.8015(3)(b)1.a.-c., F.S.

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill continues a current public records and public meetings exemption beyond its current date of repeal. The bill does not create or expand an exemption. Thus, the bill does not require an extraordinary vote for enactment.

### **Public Necessity Statement**

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. This bill continues a current public records and public meetings exemption without expansion. Thus, a statement of public necessity is not required.

### **Breadth of Exemption**

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The exemption in the bill does not appear to be broader than necessary to accomplish the purpose of the law. The bill provides the specific information that would be made exempt to prevent the unintentional release of information that may subject persons to identity theft, financial harm, or other adverse impacts, as well as, information of a confidential nature concerning entities, such as trade or business secrets.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The private sector will continue to be subject to the cost associated with an agency's review and redactions of exempt records in response to a public records request.



C. **Government Sector Impact:**

The government sector will continue to incur costs related to the review and redaction of exempt records associated with responding to public records requests.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following section of the Florida Statutes: 631.195.

**IX. Additional Information:**

A. **Committee Substitute – Statement of Changes:**

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

None.

B. **Amendments:**

None.