

The Florida Senate  
**COMMITTEE MEETING EXPANDED AGENDA**

**BANKING AND INSURANCE**

**Senator Richter, Chair**  
**Senator Smith, Vice Chair**

**MEETING DATE:** Wednesday, September 21, 2011

**TIME:** 8:30 —10:30 a.m.

**PLACE:** *Pat Thomas Committee Room, 412 Knott Building*

**MEMBERS:** Senator Richter, Chair; Senator Smith, Vice Chair; Senators Alexander, Bennett, Fasano, Gaetz, Hays, Margolis, Negron, Oelrich, and Sobel

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
Professional staff presentations of the following Open Government Sunset Reviews:			
1	2012-312: Section 324.242, F.S., Personal Identifying Information in Insurance Policy Personal Injury Protection (PIP) and Property Damage Liability Insurance Policies;		
2	2012-313: Section 624.23, F.S., Consumer Complaints and Inquiries Received by the Department of Financial Services; and		
3	2012-314: Section 717.117 (8), F.S., Unclaimed or Abandoned Property.		
4	Presentation by Commissioner Tom Grady, Office of Financial Regulation		
5	Presentation by Dr. Jack Nicholson, Chief Operating Officer, Florida Hurricane Catastrophe Fund		



# The Florida Senate

*Issue Brief 2012-312*

*September 2011*

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Committee on Banking and Insurance

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## **OPEN GOVERNMENT SUNSET REVIEW OF SECTION 324.242, F.S., PERSONAL IDENTIFYING INFORMATION IN INSURANCE POLICY PERSONAL INJURY PROTECTION (PIP) AND PROPERTY DAMAGE LIABILITY INSURANCE POLICIES**

### **Statement of the Issue**

Section 324.242, F.S., exempts from public records requirements personal identifying information and the insurance policy number contained in personal injury protection (PIP) and property damage liability motor vehicle insurance policies. The records held by the department include the insurance company, the policy number, driver's license number, personal identifying information (name and address), and information identifying the vehicle (vehicle identification number plus the make, model, and year of the vehicle). The public records exemption in s. 324.242, F.S., is similar to the public records exemption in s. 627.736(9), F.S., which was repealed on October 1, 2007, as part of the repeal of the Florida Motor Vehicle No-Fault Law. The public records exemption is subject to the Open Government Sunset Review Act and shall stand repealed October 2, 2012, unless reviewed and reenacted by the Legislature.

Section 324.0221, F.S., requires each insurer that issues a policy providing personal injury protection or property damage liability coverage to report to the Department of Highway Safety and Motor Vehicles (department or DHSMV) the renewal, cancellation, or nonrenewal of the policy within 45 days of the effective date. The insurer must report the issuance of a new policy to a named insured who was not previously insured by the insurer during the calendar year. Insurers are also required to notify the named insured in writing of the cancellation or nonrenewal of the policy and that failure to maintain PIP and property damage coverage when required by law can result in the loss of registration and driving privileges along with the imposition of reinstatement fees.

Upon written receipt by the department of a written request and copy of a crash report as specified, the department must release the policy number for a vehicle involved in a motor vehicle accident to any person involved in such accident, the attorney of any person involved in the accident, or a representative of the insurer of any person involved in the accident.

### **Motor Vehicle Financial Responsibility Requirements**

Florida places minimum financial responsibility requirements on every owner and registrant of a motor vehicle. Each registrant must obtain and provide proof of holding a motor vehicle insurance policy that includes \$10,000 in PIP benefits and \$10,000 in property damage liability coverage. Section 627.733, F.S., requires every owner or registrant of a motor vehicle to maintain security that remains in effect continuously throughout the registration or licensing period.<sup>1</sup> This requirement may be met by:

- An insurance policy issued pursuant to the Florida Motor Vehicle No-Fault law that provides at least \$10,000 in PIP benefits.
- Pursuant to s. 324.031(2), F.S., posting with the Department of Highway Safety and Motor Vehicles (DHSMV) a satisfactory bond of a surety company authorized to do business in Florida that will provide payment of \$10,000 because of bodily injury to, or death of one person in a crash and \$20,000 because of bodily injury or death of two or more persons in any one crash. The bond must also provide \$10,000 to respond to liability for property damage.

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<sup>1</sup> This requirement does not apply to a limousine or a vehicle used as a school bus pursuant to s. 1006.25, F.S.

- Pursuant to s. 324.031 (3), F.S., furnishing a certificate of the DHSMV showing a deposit of cash or securities in accordance with s. 324.161, F.S.<sup>2</sup>
- Furnishing a certificate of self insurance issued by the department in accordance with s. 324.171.
- The state and its agencies and subdivisions may self-insure as authorized by s. 768.28(16), F.S.

Section 324.022, F.S., requires each owner or operator of each Florida-registered motor vehicle to maintain the ability to pay for at least \$10,000 in property damage arising out of the use of the motor vehicle. The financial responsibility requirement may be met through various methods including maintaining an insurance policy that provides at least \$10,000 in property damage liability coverage or a policy that provides at least \$30,000 for combined property damage and bodily injury liability coverage.

The state has higher financial responsibility requirements for various other actors. Commercial motor vehicles must maintain a minimum level of bodily injury (BI) coverage, with the minimum limit based on the weight of the vehicle.<sup>3</sup> Owners and operators of taxicabs<sup>4</sup> and for-hire passenger transportation vehicles<sup>5</sup> also have additional financial responsibility requirements. The owner or operator of a vehicle that must be registered who has been found guilty or plead nolo contendere to driving under the influence must carry \$100,000 in bodily injury coverage for injuries to one person, \$300,000 in BI coverage for injuries to multiple persons, and \$50,000 in property damage coverage for at least three years.<sup>6</sup>

## **Discussion**

### **Public Records**

The State of Florida has a long history of providing public access to governmental records. The Florida Legislature enacted the first public records law in 1892.<sup>7</sup> One hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.<sup>8</sup> Article I, s. 24 of the State Constitution, provides that:

- (a) Every person has 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 persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

In addition to the State Constitution, the Public Records Act,<sup>9</sup> which predates public records provision of the State Constitution, specifies conditions under which public access must be provided to records of an agency.<sup>10</sup> Section 119.07(1) (a), F.S., states:

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<sup>2</sup> For all entities other than natural persons that use surety bond or a deposit of cash or securities to meet the financial responsibility requirements, the bond or deposit must equal the number of vehicles owned times \$30,000 to a maximum of \$120,000, and must maintain insurance providing excess coverage with minimum limits of \$125,000 in bodily injury benefits to any one person, \$250,000 in bodily injury benefits to multiple persons, and \$50,000 in property damage coverage (or \$300,000 in combined single limits).

<sup>3</sup> Section 627.7415, F.S.

<sup>4</sup> Section 324.031, F.S.

<sup>5</sup> Section 324.032, F.S.

<sup>6</sup> Section 324.023, F.S.

<sup>7</sup> Sections 1390, 1391 F.S. (Rev. 1892).

<sup>8</sup> Article I, s. 24 of the State Constitution.

<sup>9</sup> Chapter 119, F.S.

<sup>10</sup> The word “agency” is defined in s. 119.011(2), F.S., to mean “. . . 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 Florida Constitution also establishes a right of access to any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf,

Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.

Unless specifically exempted, all agency records are available for public inspection. The term “public record” is broadly defined 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.<sup>11</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.<sup>12</sup> All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.<sup>13</sup>

Only the Legislature is authorized to create exemptions to open government requirements.<sup>14</sup> Exemptions must be created by general law and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.<sup>15</sup> A bill enacting an exemption<sup>16</sup> may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.<sup>17</sup>

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.<sup>18</sup> If a record is simply made exempt from disclosure requirements an agency is not prohibited from disclosing the record in all circumstances.<sup>19</sup>

The Open Government Sunset Review Act<sup>20</sup> provides for the systematic review, through a 5-year cycle ending October 2nd of the 5th year following enactment, of an exemption from the Public Records Act or the Public Meetings Law. Each year, by June 1, the Division of Statutory Revision of the Office of Legislative Services is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.

The act states that an exemption may be created or expanded only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. An exemption meets the three statutory criteria if it:

- (1) allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;

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except those records exempted by law or the state constitution.

<sup>11</sup> Section 119.011(11), F.S.

<sup>12</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).

<sup>13</sup> *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).

<sup>14</sup> Article I, s. 24(c) of the State Constitution.

<sup>15</sup> *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So. 2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).

<sup>16</sup> Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

<sup>17</sup> Art. I, s. 24(c) of the State Constitution.

<sup>18</sup> Attorney General Opinion 85-62.

<sup>19</sup> *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5<sup>th</sup> DCA), review denied, 589 So.2d 289 (Fla. 1991).

<sup>20</sup> Section 119.15, F.S.

- (2) protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or
- (3) protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.<sup>21</sup>

The act also requires consideration of the following:

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

While the standards in the Open Government Sunset Review Act may appear to limit the Legislature in the exemption review process, those aspects of the act that are only statutory, as opposed to constitutional, do not limit the Legislature because one session of the Legislature cannot bind another.<sup>22</sup> The Legislature is only limited in its review process by constitutional requirements.

Further, s. 119.15(4) (e), F.S., makes explicit that:

... notwithstanding s. 768.28 or any other law, neither the state or its political subdivisions nor any other public body shall be made party to any suit in any court or incur any liability for the repeal or revival and reenactment of any exemption under this section. The failure of the Legislature to comply strictly with this section does not invalidate an otherwise valid reenactment.

### **Analysis of Section 324.242, F.S. Pursuant to the Open Government Sunset Review Act**

Section 324.242, F.S., specifically protects all personal identifying information of insureds and former insureds and the policy number of each insurance policy. Representatives from the Department of Highway Safety and Motor Vehicles indicate that detailed information identifying the policyholder, the insured vehicle, and contents of the insurance policy are held by the department. This information includes the insurance company code; the insurance policy number; transaction type; vehicle identification number (VIN); the model, make, and year of the vehicle; the full name and address of the insured; the insured's driver's license number or federal tax ID; and the effective date of the policy.

The exemption uniquely affects motor vehicle insurance policyholders and the insurance companies that write such policies. The public records exemption serves two of the three statutory criteria requiring that the exemption serve an identifiable public purpose. First, the exemption protects information of a sensitive personal nature concerning individuals that would jeopardize their safety or reputation if released. The personal identifying information held by the DHSMV includes the personal particulars (name, address; etc.) of individual insureds, driver's license numbers, and vehicle identification numbers, which could be used for purposes of identity theft. Second, the exemption protects confidential information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace. The DHSMV essentially holds personal identifying information for each insurer's motor vehicle insurance book of business that includes the contact information of all the insurer's customers paired with insurance policy numbers, vehicle identification numbers, and policy details. Insurers would face irreparable harm should

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<sup>21</sup> Section 119.15(4)(b), F.S.

<sup>22</sup> *Straughn v. Camp*, 293 So.2d 689, 694 (Fla. 1974).

competitors obtain this data, which could be used to solicit the policyholders of particular insurance companies, policyholders that meet certain criteria, or for other uses.

The information held by the department cannot be readily obtained by alternate means. The identifying information of each insurer's policyholders paired with insurance policy information is unavailable to the general public. Only individual insurance companies would have this information in the aggregate and consider it a trade secret. Committee staff and representatives of the DHSMV are unable to identify another public records exemption that protects such information when held by the Department and did not identify additional exemptions for these types of records that it would be appropriate to merge. Committee staff also contacted representatives from the First Amendment Foundation, which does not oppose reenactment of s. 324.242, F.S., in its current form.

Banking and Insurance professional staff recommends that the current exemption should be reenacted and saved from repeal. This public records exemption benefits policyholders by preventing the disclosure personal identifying information paired with driver's license numbers, which could potentially be used for identity theft. The public records exemption also benefits the insurers by preventing disclosure of information that would essentially allow competitors access to trade secret information that details each individual insurer's book of business.



# The Florida Senate

*Interim Report 2012-313*

*August 2011*

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Committee on Banking and Insurance

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## **OPEN GOVERNMENT SUNSET REVIEW OF SECTION 624.23, F.S., CONSUMER COMPLAINTS AND INQUIRIES RECEIVED BY THE DEPARTMENT OF FINANCIAL SERVICES**

### **Issue Description**

Consumers may file complaints or make inquiries to the Department of Financial Services (DFS) regarding an insurance company or other person or entity regulated by the DFS or the Office of Insurance Regulation (OIR). In 2002, legislation was enacted to provide that specified personal and financial information of a consumer held by the DFS or the OIR relating to a consumer's complaint or inquiry regarding a matter regulated under the Florida Insurance Code is confidential and exempt from the public records law. Subsequently, in 2007, legislation was enacted that expanded the current exemption to include the same personal financial and medical information provided by consumers to the Division of Workers' Compensation of the DFS for the purpose of resolving disputes and complaints of employees.

This public records exemption is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15, F.S., and shall stand repealed on October 2, 2012, unless reviewed and saved from repeal through reenactment by the Legislature. Under this act, exemptions from s. 24, Art. I of the State Constitution are subject to repeal 5 years after their enactment unless reviewed and saved from repeal by the Legislature pursuant to the standards established under the act.

### **Background**

#### **Public Records**

The State of Florida has a long history of providing public access to governmental records. The Florida Legislature enacted the first public records law in 1892.<sup>1</sup> One hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.<sup>2</sup> Article I, s. 24 of the State Constitution, provides that:

- (a) Every person has 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 persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

In addition to the State Constitution, the Public Records Act,<sup>3</sup> which pre-dates public records provision of the State Constitution, specifies conditions under which public access must be provided to records of an agency.<sup>4</sup> Section 119.07(1) (a), F.S., states:

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<sup>1</sup> Section 1390, 1391 F.S. (Rev. 1892)

<sup>2</sup> Article I, s. 24 of the State Constitution

<sup>3</sup> Chapter 119, F.S.

Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.

Unless specifically exempted, all agency records are available for public inspection. The term “public record” is broadly defined 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.<sup>5</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.<sup>6</sup> All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.<sup>7</sup>

Only the Legislature is authorized to create exemptions to open government requirements.<sup>8</sup> Exemptions must be created by general law and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.<sup>9</sup> A bill enacting an exemption<sup>10</sup> may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.<sup>11</sup>

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.<sup>12</sup> If a record is simply made exempt from disclosure requirements an agency is not prohibited from disclosing the record in all circumstances.<sup>13</sup>

The Open Government Sunset Review Act<sup>14</sup> provides for the systematic review, through a 5-year cycle ending October 2<sup>nd</sup> of the 5<sup>th</sup> year following enactment, of an exemption from the Public Records Act or the Public Meetings Law. Each year, by June 1, the Division of Statutory Revision of the Office of Legislative Services is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.

The act states that an exemption may be created or expanded only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves. An identifiable public purpose is

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<sup>4</sup> The word “agency” is defined in s. 119.011(2), F.S., to mean”. . . 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 Florida Constitution also establishes a right of access to any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except those records exempted by law or the state constitution.

<sup>5</sup> Section 119.011(11), F.S.

<sup>6</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).

<sup>7</sup> *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla.1979).

<sup>8</sup> Article I, s. 24(c) of the State Constitution.

<sup>9</sup> *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So.2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).

<sup>10</sup> Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

<sup>11</sup> Art. I, s. 24 (c) of the State Constitution.

<sup>12</sup> Attorney General Opinion 85-62.

<sup>13</sup> *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5<sup>th</sup> DCA), review denied, 589 So.2d 289 (Fla. 1991).

<sup>14</sup> Section 119.15, F.S.



served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. An exemption meets the three statutory criteria if it:

- (1) Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- (2) Protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or
- (3) Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.<sup>15</sup>

The act also requires consideration of the following:

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

While the standards in the Open Government Sunset Review Act may appear to limit the Legislature in the exemption review process, those aspects of the act that are only statutory, as opposed to constitutional, do not limit the Legislature because one session of the Legislature cannot bind another.<sup>16</sup> The Legislature is only limited in its review process by constitutional requirements.

Further, s. 119.15(4) (e), F.S., makes explicit that:

... notwithstanding s. 768.28 or any other law, neither the state or its political subdivisions nor any other public body shall be made party to any suit in any court or incur any liability for the repeal or revival and reenactment of any exemption under this section. The failure of the Legislature to comply strictly with this section does not invalidate an otherwise valid reenactment.

### **Section 624.23, F.S. Exemption**

In 2002, legislation was enacted to provide that specified personal and financial information of a consumer held by the DFS or the OIR relating to a consumer's complaint or inquiry regarding a matter regulated under the Florida Insurance Code is confidential and exempt from the public records law. Disclosure of the exempted information is allowed to the National Association of Insurance Commissioners (NAIC) and other governmental entities if necessary to perform their duties and responsibilities. However the NAIC and other governmental entities must maintain the confidentiality and exempt status of the information.

Initially, s. 624.23, F.S., did not contain an exemption for the same personal financial and medical information provided by consumers to the Division of Workers' Compensation of the DFS for the purpose of resolving disputes and complaints of employees. Subsequently, in 2007 legislation was enacted that expanded the exemption to include the specified personal financial and health information provided to DFS and regulated under s. 440.191, F.S. (Workers' Compensation Employee Assistance and Ombudsman Office). Additionally, the 2007 legislation limited the scope of records applicable to the exemption by specifying the personal financial and health information considered confidential and exempt, based on the rules adopted by DFS and OIR. The exempt information includes consumers' personal health condition, disease, or injury and certain records relating to a

<sup>15</sup> Section 119.15(4)(b), F.S.

<sup>16</sup> *Straughn v. Camp*, 293 So.2d 689, 694 (Fla. 1974).

consumer's personal finances and insurance coverage. Furthermore, the 2007 legislation deleted bank account numbers, debit, and charge card numbers from the exemption since they were already exempt under the general exemption of s.119.071(5)(b), F.S.

These public records exemptions will repeal on October 2, 2012, unless reviewed and saved from repeal by reenactment by the Legislature.

## Findings and/or Conclusions

Section 624.23, F.S., creates a public records exemption for consumers' health and financial records collected by the DFS divisions of Agent and Agency Services, Consumer Services, and Workers' Compensation and by the OIR. The parties affected by this exemption include insurers, attorneys, researchers, prospective employers, consumers' who request assistance from the agencies, witnesses to the agencies' investigations, and beneficiaries of or applicants for any product or service regulated under the Florida Insurance Code or s. 440.191, F.S. (Workers' Compensation Employee Assistance and Ombudsman Office).

Other exemptions utilized by DFS and OIR, such as s. 626.601(6), F.S., and s. 440.125, F.S., cover similar information as s. 624.23, F.S.; however, the purposes of each exemption are unique. Under the exemption established in s. 626.601(6), F.S., any information obtained pursuant to an investigation by the DFS or OIR of any alleged improper conduct of an agent or other specified regulated entity is confidential and exempt until a formal administrative complaint, emergency order, or consent order against the licensee is filed by DFS or OIR. Section 624.23, F.S., continues the confidentiality of the personal financial and health information collected by the DFS or the OIR after it ceases under s. 626.601(6), F.S. In the context of workers' compensation, patient medical records made by health care providers may not be furnished to any person other than the patient or other specified persons, without written authorization except as provided in s. 440.13(4) (c), F.S. Medical records and medical reports of injured employees and any information contained in a medical report that identifies an injured employee provided to DFS are confidential and exempt under s. 440.125, F.S. Additionally, the federal Health Insurance Portability and Accountability Act<sup>17</sup> (HIPAA) provides privacy protection for health information but specifically applies to health plans, health providers and health care clearinghouses. Section 624.23, F.S., complements these exemptions and specifically applies to the personal and financial information collected by DFS and OIR.

The protection of personal financial and health information against identity theft and other misuse is the main purpose of s. 624.23, F.S. The exemption protects the information of consumers and injured employees who file complaints, witnesses, victims, and subjects of investigations, while encouraging the filing of consumer complaints without fear of retaliation. The agencies' role in maintaining the confidentiality of consumers' information is especially important in the context of an investigation due to the unintended harm that the release of information would cause complainants, witnesses, victims, or the subject of the investigation.

Under s. 624.23, F.S., the name and address of a complainant or the name of the insurer or other regulated entity that is the subject of the investigation or complaint are not exempt. Some concern has been expressed whether to expand the exemption to cover all of an injured worker's information provided to the Department of Financial Services Workers' Compensation division should be confidential and exempt. The concern arises from the Division providing certain information concerning injured workers, such as names and addresses, through monthly public records requests to approximately ninety law firms, who then send the workers mail solicitations. However, since the names and addresses of the workers are readily available through other means, expanding the exemption would be conflicting.

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<sup>17</sup> Public Law 104-191.

## Options and/or Recommendations

Based on the Open Government Sunset Review Act's criteria, the Banking and Insurance Committee professional staff recommends that the specified exemption be reenacted. The exemption is necessary for the effective and efficient protection of personal financial and health information against identity theft and other misuse.



# The Florida Senate

*Interim Report 2012-314*

*August 2011*

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Committee on Banking and Insurance

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## OPEN GOVERNMENT SUNSET REVIEW OF SECTION 717.117(8), F.S., UNCLAIMED OR ABANDONED PROPERTY

### Issue Description

The Open Government Sunset Review Act provides for the review of exemptions to open records and meetings requirements 5 years after enactment. Section 717.117(8), F.S., is an exemption for social security numbers and property identifiers, other descriptors used to identify the property holder of any unclaimed or abandoned property, held by the Department of Financial Services (DFS). This public records exemption will repeal on October 2, 2012, unless reviewed and saved from repeal.

### Background

#### Public Records

The State of Florida has a long history of providing public access to governmental records. The Florida Legislature enacted the first public records law in 1892.<sup>1</sup> One hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.<sup>2</sup> Article I, s. 24 of the State Constitution, provides that:

- (a) Every person has 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 persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

In addition to the State Constitution, the Public Records Act,<sup>3</sup> which pre-dates public records provision of the State Constitution, specifies conditions under which public access must be provided to records of an agency.<sup>4</sup> Section 119.07(1) (a), F.S., states:

Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.

Unless specifically exempted, all agency records are available for public inspection. The term “public record” is broadly defined 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

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<sup>1</sup> Section 1390, 1391 F.S. (Rev. 1892)

<sup>2</sup> Article I, s. 24 of the State Constitution

<sup>3</sup> Chapter 119, F.S.

<sup>4</sup> The word “agency” is defined in s. 119.011(2), F.S., to mean” . . . 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 Florida Constitution also establishes a right of access to any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except those records exempted by law or the state constitution.

received pursuant to law or ordinance or in connection with the transaction of official business by any agency.<sup>5</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.<sup>6</sup> All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.<sup>7</sup>

Only the Legislature is authorized to create exemptions to open government requirements.<sup>8</sup> Exemptions must be created by general law and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.<sup>9</sup> A bill enacting an exemption<sup>10</sup> may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.<sup>11</sup>

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.<sup>12</sup> If a record is simply made exempt from disclosure requirements an agency is not prohibited from disclosing the record in all circumstances.<sup>13</sup>

The Open Government Sunset Review Act<sup>14</sup> provides for the systematic review, through a 5-year cycle ending October 2<sup>nd</sup> of the 5<sup>th</sup> year following enactment, of an exemption from the Public Records Act or the Public Meetings Law. Each year, by June 1, the Division of Statutory Revision of the Office of Legislative Services is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.

The act states that an exemption may be created or expanded only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. An exemption meets the three statutory criteria if it:

- (1) Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- (2) Protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or
- (3) Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.<sup>15</sup>

The act also requires consideration of the following:

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<sup>5</sup> Section 119.011(11), F.S.

<sup>6</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).

<sup>7</sup> *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla.1979).

<sup>8</sup> Article I, s. 24(c) of the State Constitution.

<sup>9</sup> *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So.2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).

<sup>10</sup> Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

<sup>11</sup> Art. I, s. 24 (c) of the State Constitution.

<sup>12</sup> Attorney General Opinion 85-62.

<sup>13</sup> *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5<sup>th</sup> DCA), review denied, 589 So.2d 289 (Fla. 1991).

<sup>14</sup> Section 119.15, F.S.

<sup>15</sup> Section 119.15(4)(b), F.S.

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

While the standards in the Open Government Sunset Review Act may appear to limit the Legislature in the exemption review process, those aspects of the act that are only statutory, as opposed to constitutional, do not limit the Legislature because one session of the Legislature cannot bind another.<sup>16</sup> The Legislature is only limited in its review process by constitutional requirements.

Further, s. 119.15(4) (e), F.S., makes explicit that:

... notwithstanding s. 768.28 or any other law, neither the state or its political subdivisions nor any other public body shall be made party to any suit in any court or incur any liability for the repeal or revival and reenactment of any exemption under this section. The failure of the Legislature to comply strictly with this section does not invalidate an otherwise valid reenactment.

### **Section 717.117(8), F.S., Exemption**

The Department of Financial Services (DFS) Bureau of Unclaimed Property (Bureau) administers the Florida Disposition of Unclaimed Property Act (Chapter 717, F.S.), which establishes the statutory procedure for the reversion and disposition of presumed abandoned, real or personal, property to the state. Under s. 717.119, F.S. the holders, including banks and insurance companies, of property that has not been claimed for a certain period of time are required to submit the unclaimed property to DFS. The proceeds from property that remains unclaimed is then deposited into the Department of Education School Trust Fund, except for \$15 million that is retained in a separate account for the prompt payment of verified claims.<sup>17</sup>

The Bureau utilizes multiple means to fulfill the state's obligation under s. 717.118, F.S., to notify owners of unclaimed property accounts valued over \$250 in a cost-effective manner. The means utilized include attempts to directly contact the owner and a state website, [www.fltreasurehunt.org](http://www.fltreasurehunt.org), where unclaimed property is listed. Section 717.1400, F.S., mandates attorneys, public accountants, private investigators, or private investigative agencies to be certified or licensed within Florida in order to act as a claimant's representative, acquire ownership or entitlement to unclaimed property, and receive a distribution of fees and costs from DFS. A claimant's representative will attempt to locate the owner of unclaimed property and through a power-of-attorney agreement offer assistance in recovering the property in exchange for a fee.

In order to identify the owner of unclaimed property, claimants' representatives will utilize the information contained in the unclaimed property reports filed with the Bureau. Under the exemption in s. 717.117(8)(b), F.S., social security numbers contained in unclaimed property reports are confidential and exempt from public disclosure. In 2007, legislation was enacted that deleted the phrase "financial account numbers" within the exemption and replaced it with "property identifiers," defined as a "descriptor used by the holder to identify the unclaimed property."<sup>18</sup> Property identifiers contained within property reports are confidential and exempt and could include bank account numbers, credit card numbers, or insurance policy numbers. However, s. 717.117(8)(c), F.S., allows the disclosure of property reports, containing social security numbers of unclaimed property owners along with descriptions of the property, for the limited purpose of locating the owners. The property reports can be obtained by registered claimants' representatives from the Bureau's website or compact discs produced by the Bureau.

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<sup>16</sup> *Straughn v. Camp*, 293 So.2d 689, 694 (Fla. 1974).

<sup>17</sup> Section 717.123, F.S.

<sup>18</sup> Section 717.117(8)(a), F.S.

## Findings and/or Conclusions

Under s. 717.117(8), F.S., social security numbers and property identifiers are confidential and exempt. The parties affected by this exemption include owners of unclaimed property, registered claimants' representatives, and other non-registered third parties. Claimants' representatives who meet the statutory criteria and are registered with DFS have access to the exempt information through the Bureau's website or compact discs. The purpose of the exemption is to protect owners of unclaimed property from identity theft and related crimes. Representatives of the Bureau indicate that social security numbers and property identifiers utilized within the unclaimed property reports are not readily available through other means. However, access to an individual's social security number can result in exploitation of their financial, educational, medical, or familial records or forgery of documents.

The general exemption in s. 119.071, F.S., applies to each state agency and exempts from public records social security numbers, bank account numbers, debit or charge card numbers, and credit card numbers. The exemption in s. 717.117(8), F.S., for social security numbers contained in unclaimed property reports is meant to be stronger than the general exemption, since the reports are only released to registered claimants' representatives. Additionally, s. 717.117(8) limits the disclosure of social security numbers for the sole purpose of locating the owners of the unclaimed property, while the general exemption allows disclosure for numerous additional business purposes. However, there have been reports that unregistered persons have received the Bureau's compact discs containing the social security numbers of unclaimed property owners; which are often listed as a Federal Employee Identification Number. This poses a significant threat to the personal and financial information of unclaimed property owners.

## Options and/or Recommendations

Based on the Committee staff's review of the exemption under the Open Government Sunset Review Act's criteria, it is recommended that the public records exemption in s. 717.117(8), F.S., for social security and property identifiers contained in unclaimed property reports be reenacted. However, it is recommended to amend the disclosure of unclaimed property reports to registered claimants' representatives to not include social security numbers or Federal Employee Identification Numbers.



# **State Board of Administration**

## **Florida Hurricane Catastrophe Fund**

### **Senate Banking & Insurance Committee**

**September 21, 2011**



# Background

- **Purpose & Role of the FHCF**
- **Structure**
- **Recent Legislation:**
  - HB 1A (2007), expanded FHCF Coverage
  - HB 1495 (2009), began to phase-out optional coverage
- **Major Issues:**
  - Claims Paying Capacity
  - Volatility of Financial Markets
  - Adverse Loss Development and “Claims Inflation” (2004 & 2005 Losses)

# Florida Property Insurance Marketplace

**Private  
Reinsurers  
(approximately 100)**

**FHCF**

**\$1.378 billion** (\$1.181 billion mandatory coverage & \$196.7 million optional coverage) FHCF Premium  
-- about **14.0%** of the residential premium

**Insurers - 171  
(includes Citizens)**

**\$9.825 billion** residential premium (estimated\*)

**FIGA  
Florida  
Insurance  
Guarantee  
Association**

**Residential  
Policyholders  
(6.4 million risks insured\*\*)**

**\$2.16 trillion** of insured residential exposure values

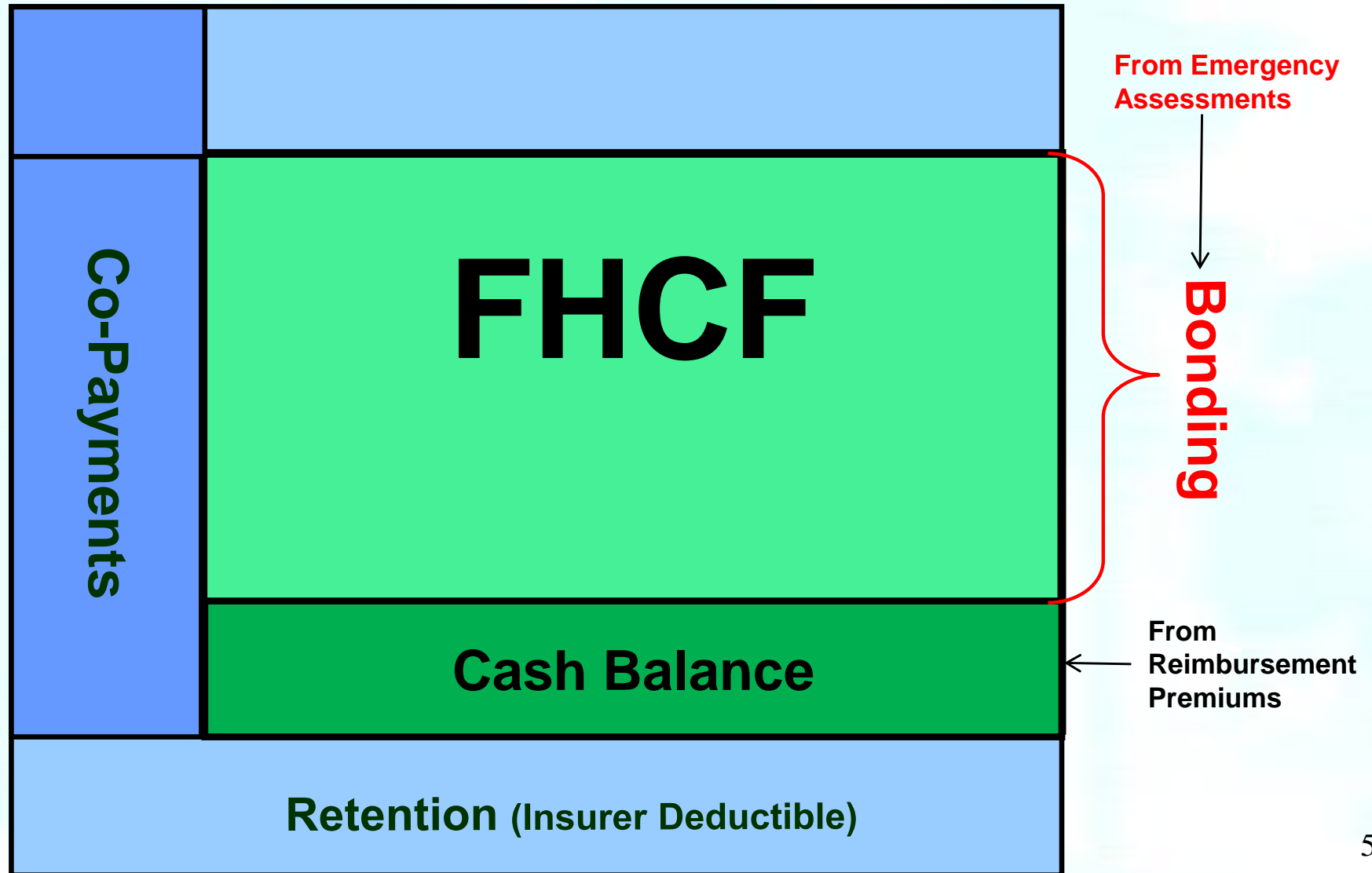
\*Based on Florida Office of Insurance Regulation's QUASR Reporting Summary 12/31/2010.

\*\*SOURCE: FHCF 2011 Ratemaking Formula Report

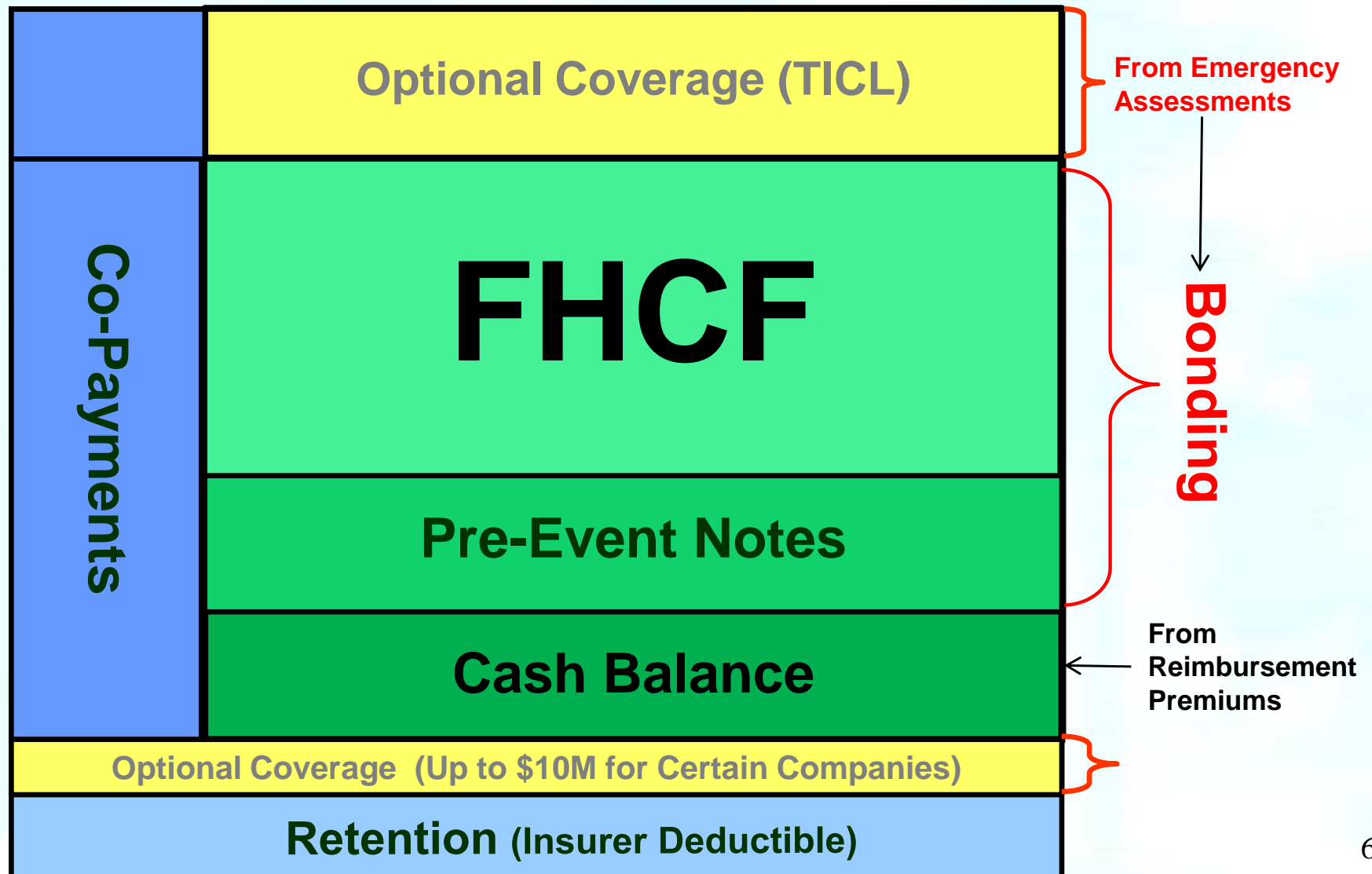
# Difference in the FHCF & Private Reinsurance

- Different products for different purposes
- FHCF is intended to provided a stable layer of coverage
  - Consistent prices
  - Consistent & reliable capacity (however capacity is limited) 
  - Stabilize the residential property insurance market (and thus assists in stabilizing Florida's economy)
  - A risk management tool for the state of Florida that benefits all citizens of the state by reducing the risk of catastrophic hurricanes and their impact on the state's economy
- Private Reinsurance
  - Can provide significant capacity in Florida but its use is limited due to the “peak risk” nature of the hurricane exposure and lack of adequate “diversification”
  - Price can be highly volatile depending on the cost of risk capital which may be significantly impacted by worldwide catastrophic events from year to year
  - Designed to benefit the capital requirements of individual insurance companies

# Basic Structure of the FHCF



# Basic Structure of the FHCF with Optional Coverages and Pre-Event Notes

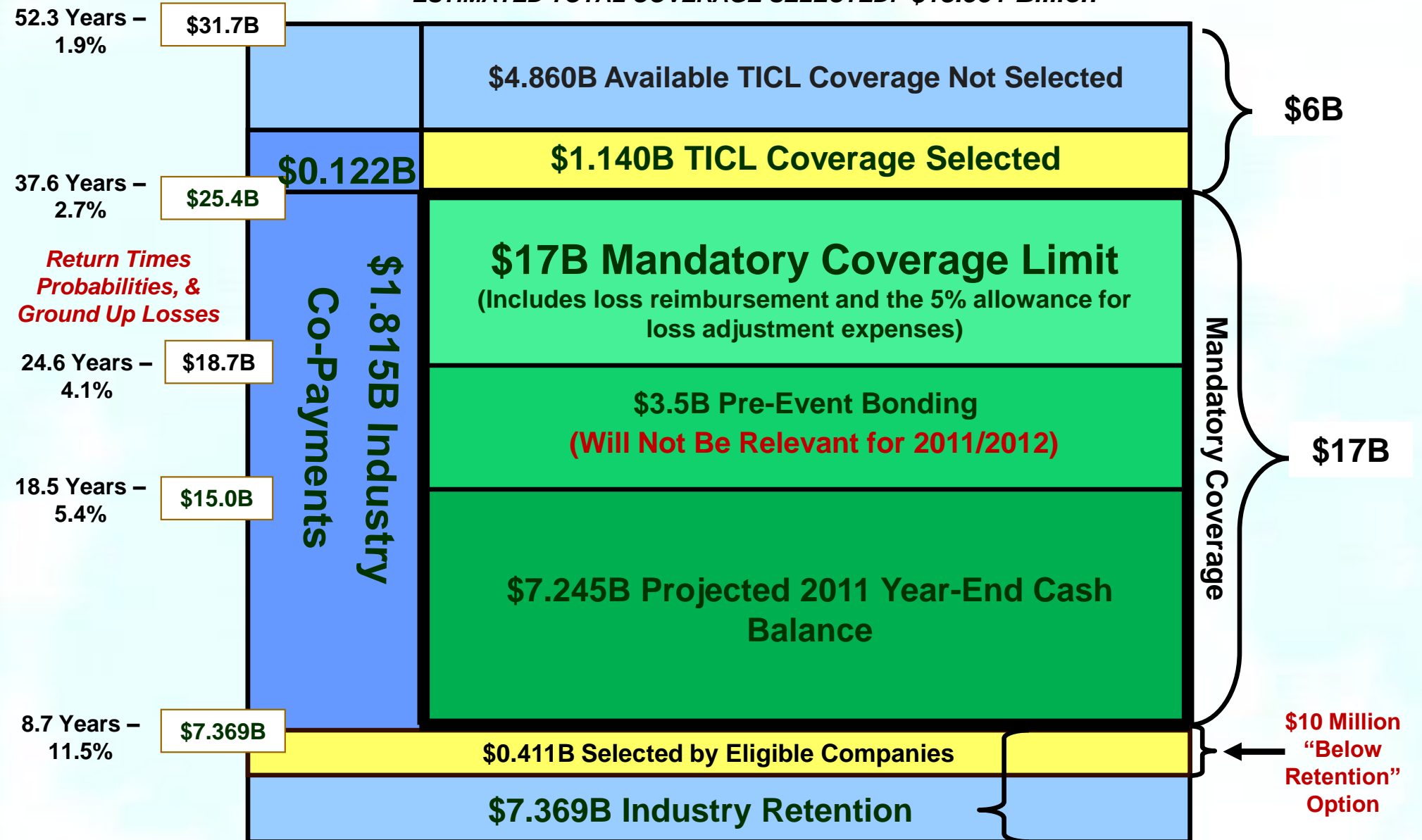


# 2011/2012 Initial Season

Projection Based on Data Available as of 5/9/11

Not Drawn to Scale  
Not Official  
For Illustrative Purposes  
Only

ESTIMATED TOTAL COVERAGE SELECTED: \$18.551 Billion



# **Problems with Reliance on Excessive Amounts of Debt**

- **Financed with Emergency Assessments which are a broad based assessment on most property & casualty lines of business (excludes Workers' Compensation and Medical Malpractice).**
- **Emergency Assessment can be up to 6% per year or 10% a year for all storms occurring in multiple years.**
- **Current Emergency Assessment is 1.3% to finance \$2.65 billion of bonds that were issued as a result of losses from the 2005 contract year. This assessment is expected to last until 2016 when the remaining debt will be retired.**
- **Biggest Problem is not the size of the Emergency Assessment (which is limited by law), but the ability to “sell” debt in a tight financial market. Regardless of the assessment or the cost of issuing debt, the FHCF may not have access to funds thus resulting in a shortfall from estimated capacity.**

# The Importance of Claims Paying Capacity Estimates

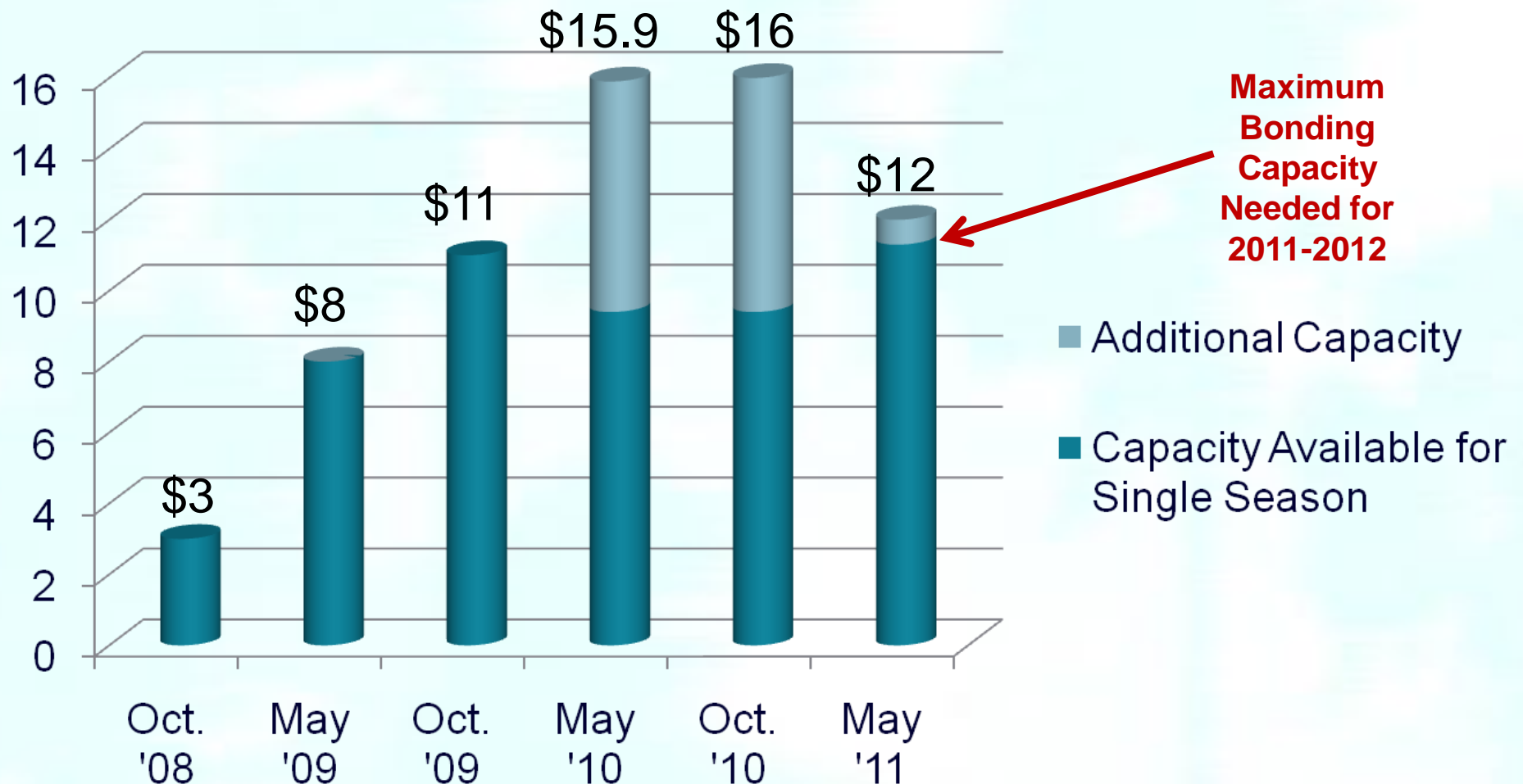
- **S. 215.555(2)(m), F.S.**
  - “**Actual claims-paying capacity**” means the sum of the balance of the fund as of December 31 of a contract year, plus any reinsurance purchased by the fund, plus the amount the board is able to raise through the issuance of revenue bonds under subsection (6).
- **S. 215.555(4)(c)1., F.S.**
  - The contract shall also provide that the obligation of the board with respect to all contracts covering a particular contract year shall not exceed the actual claims-paying capacity of the fund up to a limit of \$17 billion for that contract year, unless the board determines that there is sufficient estimated claims-paying capacity to provide \$17 billion of capacity for the current contract year and an additional \$17 billion of capacity for subsequent contract years. If the board makes such a determination, the estimated claims-paying capacity for the particular contract year shall be determined by adding to the \$17 billion limit one-half of the fund’s estimated claims-paying capacity in excess of \$34 billion. However, the dollar growth in the limit may not increase in any year by an amount greater than the dollar growth of the balance of the fund as of December 31, less any premiums or interest attributable to optional coverage, as defined by rule which occurred over the prior calendar year.



- **S. 215.555(4)(c)2., F.S.**

- **In May and October of the contract year, the board shall publish in the Florida Administrative Weekly a statement of the fund's estimated borrowing capacity, the fund's estimated claims-paying capacity, and the projected balance of the fund as of December 31.** After the end of each calendar year, the board shall notify insurers of the estimated borrowing capacity, estimated claims-paying capacity, and the balance of the fund as of December 31 to provide insurers with data necessary to assist them in determining their retention and projected payout from the fund for loss reimbursement purposes. In conjunction with the development of the premium formula, as provided for in subsection (5), the board shall publish factors or multiples that assist insurers in determining their retention and projected payout for the next contract year. **For all regulatory and reinsurance purposes, an insurer may calculate its projected payout from the fund as its share of the total fund premium for the current contract year multiplied by the sum of the projected balance of the fund as of December 31 and the estimated borrowing capacity for that contract year as reported under this subparagraph.**

# Changes in Bonding Capacity from October 2008 through May 2011 (\$ Billions)



# Changing Financial Markets

- **U.S. and world financial markets are in turmoil.**
- **Changes have occurred to the municipal market since 2007.**

# Contact Information

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