

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 2122

SPONSOR: Banking and Insurance Committee and Senator Atwater

SUBJECT: Public Records Exemption/Self-Insurers

DATE: April 20, 2004

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Deffenbaugh	BI	Fav/CS
2.	_____	_____	GO	_____
3.	_____	_____	RC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

In January 1, 1994, the Legislature created the Florida Self-Insurers Guaranty Association, Incorporated (association); a nonprofit entity. Generally, most self-insured employers are required to join the association and meet certain financial requirements. In the event a self-insured employer becomes insolvent, the association assumes responsibility for the administration and payment of the employer's workers' compensation claims.

The Committee Substitute creates a public records exemption for certain claims files and minutes of portions of meetings of the Florida Self-Insurers Guaranty Association until termination of all litigation and settlement of all claims arising out of the same accident. Once the litigation is resolved regarding a claim, the medical records and personal-identifying information contained in the claims files would continue to be exempt from the provisions of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution once the litigation was resolved.

The bill provides statements of public necessity and provides for future review and repeal of the exemptions.

This bill creates section 440.3851 of the Florida Statutes.

II. Present Situation:

Public Records; Exemptions

Section 24(a), Art. I of the State Constitution provides, "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."

Section 24(c), Art. I of the State Constitution permits the Legislature to create exemptions from a public records law. However, the bill must contain a statement of public necessity that justifies the exemption and the exemption must be no broader than necessary to accomplish its purpose. Additionally, a bill that contains an exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.

Section 119.15, F.S., the Open Government Sunset Review Act of 1995, provides for the repeal and prior legislative review of any public records or public meetings exemptions that are created or substantially amended in 1996 and subsequently. The law states that an exemption may be created or expanded only if the exemption:

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

Section 119.05(3), F.S., provides that in the 5th year after enactment of a new exemption or substantial amendment of an existing exemption, that exemption shall repeal on October 2 of the 5th year, unless the Legislature acts to reenact the exemption.

Florida Self-Insurers Guaranty Association

The Legislature created the Florida Self-Insurers Guaranty Association, Incorporated (association) effective January 1, 1994.¹ All self-insured employers, except for public utilities and governmental entities, are required to join the association and meet certain financial requirements as a condition of their authority to individually self-insure.² The association exercises its powers and duties through a board of directors.³ The board consists of nine members that are appointed by the Department of Financial Services based upon recommendations of the members of the association. In the event a self-insured employer becomes insolvent, the association assumes responsibility for administering workers' compensation claims of the self-insured employer and paying an employer's claims.

¹ Section 440.385, F.S. (2003)

² Section 440.385(1)(a), F.S. (2003)

³ Section 440.385(1)(a), F.S. (2003)

III. Effect of Proposed Changes:

Section 1 provides that the following records held by the Florida Self-Insurers Guaranty Association (association) are confidential and exempt from the provisions of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution exempt:

- Workers' compensation claims files of the association until the termination of all litigation and settlement of all claims arising out of the same workers' compensation accident.
- Medical Records that are part of a claims file.
- Personal identifying information in records that are part of a claims file.
- Minutes of those portions of meetings of the association at which a record that is confidential and exempt claim file by this section is discussed as provided in this section until termination of all litigation and settlement of all claims with regard to that claim.

The bill allows the association to be released to another agency in the performance of that agency's official duties and responsibilities. The governmental agency receiving such record must maintain the confidentiality and exempt status of the claim file it receives.

Section 2 provides for future review and repeal of the exemptions on October 2, 2009, and provides a statement of public necessity.

Section 3 provides that it is necessary to make such records and meetings confidential and exempt to prevent the disclosure of detailed information concerning a claim, including medical records and other personal information of a claimant. The bill also provides that the disclosure of information contained in a claim file prior to the termination of all litigation and settlement of all claims arising out of the same accident is necessary to avoid compromising the association's litigation of the claim.

Section 4 provides that the bill becomes effective upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The bill creates a public records exemption for association claim files and minutes of closed minutes until the termination of litigation and settlement of all claims relating to the same accident. The public records exemption for the claims files and minutes of closed meetings (except for medical records and personal identifying information contained in claims files) would end upon termination or settlement of litigation.

Article I, s. 24(c), State Constitution, requires a two-thirds vote of the members for passage of a newly created public records or public meetings exemption.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This public records exemption would protect sensitive health-related information and personal identifying information of a claimant from being disclosed.

C. Government Sector Impact:

This public records exemption would assist the association during the litigation of a claim since the release of such information could jeopardize or compromised ongoing or pending litigation.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.