

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 565 Public Records and Meeting Exemptions
SPONSOR(S): Clarke
TIED BILLS: None **IDEN./SIM. BILLS:** SB 2122

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance		Callaway	Cooper
2) State Administration			
3)			
4)			
5)			

SUMMARY ANALYSIS

Beginning January 1, 1994, the Legislature created the Florida Self-Insurers Guaranty Association, Incorporated (the Association). Most self-insured employers must join the Association. In the event a self-insured employer becomes insolvent, the Association assumes handling and paying the employer's workers' compensation claims. Thus, injured workers are protected and assured they will continue to receive workers' compensation benefits.

This bill creates a public records exemption for claims files and minutes of closed meetings of the Association wherein the exempt claims files are discussed. Unless otherwise provided by law, the public records exemption for the claims files and minutes of closed meetings ends when litigation involving the claim terminates or when all claims involving the workers' compensation accident are settled.

The bill also creates a public meetings exemption for portions of board of directors meetings of the Association. The public meetings exemption applies to discussions in meetings of the board of directors about the confidential and exempt claims files.

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

The bill requires a two-thirds vote of the members present and voting for passage.

The bill appears to have a minimal fiscal impact on state government. See "FISCAL COMMENTS" section.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

Not applicable.

B. EFFECT OF PROPOSED CHANGES:

Background

A workers' compensation self-insurance fund is created by two or more employers or local governmental entities pooling their workers' compensation liabilities.¹ The purpose of the self-insurance fund is to manage and pay workers' compensation claims for the fund members. It is not-for-profit. An administrator, reporting to a board of trustees, manages the self-insurance fund. Some funds employ staff to carry out the self-insured's administration and claims management; others contract with independent service companies to carry out the work. Although there are differences between a self-insurance fund and a conventional insurer, self-insurance funds in Florida look and function like conventional insurers. Workers' compensation self-insurance funds are regulated by the Department of Financial Services.

Beginning January 1, 1994, the legislature created the Florida Self-Insurers Guaranty Association, Incorporated (the Association).² All self-insured employers, except for public utilities and governmental entities, must join the Association.³ The Association exercises its powers and duties through a board of directors.⁴ The meetings of the board of directors are established in the Association's plan of operation.⁵

In the event a self-insured employer becomes insolvent, the Association assumes handling and paying the employer's workers' compensation claims. Thus, injured workers are protected and assured they will continue to receive workers' compensation benefits.⁶

Effect of Bill

This bill creates a public records exemption for the Association. It makes confidential and 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.

¹ An individual employer can also qualify as a self-insurer, if the employer can meet the self-insurer requirements set forth in s. 440.38, F.S. (2003) and Chapters 4-190 and 69L-5, F.A.C.

² s. 440.385, F.S. (2003)

³ s. 440.385(1)(a), F.S. (2003)

⁴ s. 440.385(1)(a), F.S. (2003)

⁵ s. 440.385(5)(c), F.S. (2003)

⁶ s. 440.385, F.S. (2003)

- Minutes of closed meetings of the Association regarding a confidential and exempt claim file until termination of all litigation and settlement of all claims arising out of the same workers' compensation accident.

Even after termination of litigation and settlement of all claims, some claim files and minutes of closed meetings may remain exempt if another law requires exemption.

The bill provides an exception to the public records exemption. Other governmental agencies may be given workers' compensation claims files of the Association upon written request and demonstration of need. The governmental agency receiving the claim file(s) must maintain the confidentiality and exempt status of the claim file(s) it receives.⁷

A public meetings exemption for the Association is created by the bill. Meetings or portions of meetings of the board of directors of the Association wherein confidential and exempt information is discussed are closed to public access. Additionally, the bill requires all portions of the meeting to be recorded and transcribed and precludes any portion of a closed meeting to be "off the record." The court reporter's notes of any closed meeting must be retained by the Association for a minimum of 5 years. After settlement of a claim, a copy of the transcript of any closed meeting wherein the claim was discussed must be made public, except for any part of the transcript discussing the claim required to stay exempt by another law.

This bill provides for future review and repeal of the exemptions, and provides a statement of public necessity.

C. SECTION DIRECTORY:

Section 1 creates s. 624.465, F.S., creating a public records exemption for claims files and minutes of closed meetings of the Florida Self-Insurers Guaranty Association; provides for an exception to the exemption; creates a public meetings exemption for the Association.

Section 2 provides for future review and repeal.

Section 3 provides a statement of public necessity.

Section 4 provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. This bill does not create, modify, or eliminate a revenue source.

2. Expenditures:

Unknown and likely minimal. See Fiscal Comments.

⁷ There is a difference between information and records that the Legislature has made *exempt* from public disclosure versus those that have been made *confidential and exempt*. Information and records that are simply made exempt from public disclosure are still permitted to be disclosed under certain circumstances. See *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991), and *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994). If the Legislature makes certain information and records confidential and exempt from public disclosure, such information and records may not be released by the records custodian to anyone other than to the persons or entities specifically designated in the statutory exemption. See *Attorney General Opinion 85-62*, August 1, 1985.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None. This bill does not affect local governments.

2. Expenditures:

None. This bill does not affect local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None. This bill does not regulate the conduct of persons in the private sector.

D. FISCAL COMMENTS:

The public records law in general creates a significant, although unquantifiable, increase in government spending. Government employees must locate requested records, and must examine every requested record to determine if a public records exemption prohibits release of the record. There is likely no marginal fiscal impact to a single public records exemption; the location and examination process remains whether or not a particular public records exemption exists.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not affect municipal or county government.

2. Other:

Article I, s. 24(c), Florida Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. Thus, this bill requires a two-thirds vote for passage.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Public Records and Public Meetings Laws

Article I, s. 24(a), Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. Article I, s. 24(b), Florida Constitution, sets forth the state's public policy regarding access to government meetings. The section requires all meetings of the executive branch and local government be open and noticed to the public.

The Legislature may, however, provide by general law for the exemption of records and meetings from the requirements of Article I, s. 24, Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.

Public policy regarding access to government records and meetings is also addressed in the Florida Statutes. Section 119.07(1), F.S. guarantees every person a right to inspect, examine, and copy any state, county, or municipal record, and s. 286.011, F.S., requires that all state, county, or municipal

meetings be open and noticed to the public. Furthermore, the Open Government Sunset Review Act of 1995⁸ provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety (however, only the identity of an individual may be exempted under this provision); or
- Protecting trade or business secrets.

Drafting Issues

Throughout the bill, the term "the association" is used to refer to the Florida Self-Insurers Guaranty Association, Incorporated. In line 44, however, it appears that the word "corporation" (instead of "association") is used to refer to the association in regards to the retention of the notes of the closed board of director meetings. If the intent of the legislation is to require the association to retain a copy of the notes of the closed meetings, the reference to "the corporation" in line 44 should be amended to refer to "the association." If the intent of the legislation is to require the court reporter to retain a copy of his/her notes of the closed meetings, the bill should be amended to clarify that the court reporter is responsible for maintaining his/her notes. It is anticipated an amendment will be proposed amending the bill to require the association to maintain a copy of the notes of the closed meetings.

All the statutory provisions relating to the Association are found in chapter 440, F.S.; however, the bill puts the public records and meeting exemptions in chapter 624, F.S. If the bill was amended to place the public records and meeting exemption in chapter 440, F.S., it may be easier to locate.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.

⁸ Section 119.15, F.S.