

By Senator Atwater

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1 A bill to be entitled
2 An act relating to public records and meetings
3 exemptions; creating s. 440.3851 F.S.;
4 exempting from public records and public
5 meetings requirements certain records of the
6 Florida Self-Insurers Guaranty Association,
7 Incorporated, and meetings of the board of
8 directors of the association; providing for
9 future legislative review and repeal; providing
10 findings of public necessity; providing an
11 effective date.

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13 Be It Enacted by the Legislature of the State of Florida:

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15 Section 1. Section 440.3851, Florida Statutes, is
16 created to read:

17 440.3851 Public records and meeting exceptions.--

18 (1) The following records held by the Florida
19 Self-Insurers Guaranty Association authorized and created in
20 s. 440.385, are confidential and exempt from the provisions of
21 s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

22 (a) Claims files, until termination of all litigation
23 and settlement of all claims arising out of the same incident.

24 (b) Medical records that are part of a claims file and
25 other information related to the medical condition or medical
26 status of a claimant.

27 (c) Minutes of those portions of meetings at which a
28 record that is made confidential and exempt by this section is
29 discussed as provided in subsection (3), until termination of
30 all litigation and settlement of all claims with regard to
31 that claim.

1 (2) Records or portions of records made confidential
2 and exempt by this section may be released, upon written
3 request, to another agency in the performance of that agency's
4 official duties and responsibilities. The receiving agency
5 shall maintain the confidential and exempt status of such
6 record or portion of a record made confidential and exempt by
7 this section.

8 (3) That portion of a meeting of the association board
9 of directors or a subcommittee of the association board of
10 directors at which records made confidential and exempt by
11 this section are discussed are exempt from the provisions of
12 s. 286.011 and s. 24(b), Art. I of the State Constitution. All
13 portions of meetings which are closed to the public shall be
14 recorded and transcribed. The board shall record the times of
15 commencement and termination of the meeting, all discussion
16 and proceedings, the names of all persons present at any time,
17 and the names of all persons speaking. No portion of any
18 closed meeting shall be off the record. Subject to this
19 subsection and s. 119.07(2)(a), the court reporter's notes of
20 any closed meeting shall be retained by the corporation for a
21 minimum of 5 years. A copy of the transcript of any closed
22 meeting wherein claims are discussed shall become public as to
23 individual claims after settlement of the claim with any
24 exempt and confidential information redacted.

25 Section 2. Section 440.3851, Florida Statutes, is
26 subject to the Open Government Sunset Review Act of 1995 in
27 accordance with section 119.15, Florida Statutes, and shall
28 stand repealed on October 2, 2010, unless reviewed and saved
29 from repeal through reenactment by the Legislature.

30 Section 3. (1) The Legislature finds that it is a
31 public necessity that claims files of the Florida

1 Self-Insurers Guaranty Association, Incorporated, be held
2 confidential and exempt from public disclosure and that
3 portions of meetings of the board of directors of the
4 association, or meetings of any subcommittee of the board,
5 wherein these claims files are reviewed and evaluated be
6 closed. The Legislature finds that the association was created
7 to stand in the place of private businesses that are
8 self-insured for workers' compensation claims if any of such
9 businesses becomes insolvent. The Legislature finds that the
10 exemption of the open compensation files of the association is
11 necessary for the effective and efficient administration of a
12 government program created to insure workers with claims
13 against insolvent businesses which can otherwise seek
14 compensation from the funds collected by the association from
15 its member businesses. Claims files are created by the
16 association after a claim against one of its insolvent members
17 is made; contain detailed information about the claim, medical
18 information, and other personal identifying information about
19 the claimant; and also contain information detailing the
20 evaluation of the legitimacy of the claim, the extent of
21 incapacity, and a valuation of the award, if any, which should
22 be made. Information in a claim file held by the association
23 includes the medical records and other information related to
24 the medical condition or medical status of a claimant. The
25 Legislature finds that the claimants' medical records and
26 other medical related information are personal and sensitive.
27 Therefore, the Legislature finds that an exemption for medical
28 records and other information related to the medical condition
29 or medical status of a claimant is a public necessity in order
30 to protect a claimant's health-related information. Matters of
31 personal health are traditionally a private and confidential

1 concern. The release of the medical records of a claimant or
2 personal identifying information concerning a claimant would
3 violate the privacy of the individual or could cause
4 unwarranted damage to the name or reputation of the
5 individual. When a claim is contested, the work product of
6 legal counsel may also be included in the file in the form of
7 directions to claims professionals or other privileged
8 communications, including attorney-client communications.
9 Allowing the claimant or his or her lawyer access to the
10 files, which could be used for purposes of negotiation, claim
11 evaluation, and settlement considerations, would weaken the
12 legal position of the association and could result in higher
13 awards and settlements paid out by the guaranty fund and
14 ultimately the membership of the association. Additionally,
15 information in claims files which reasonably encompasses
16 privileged attorney-client communications should be held
17 confidential and exempt because the release of such
18 information could jeopardize ongoing or pending litigation.
19 The Legislature further finds that the exempt records contain
20 confidential medical information of a personal, sensitive
21 nature concerning the claimant.

22 (2) The Legislature further finds that closing access
23 to meetings of the board of directors of the association or
24 meetings of a subcommittee of the board, wherein claims files
25 are reviewed and evaluated, is necessary for the effective and
26 efficient administration of the claims evaluation work of the
27 association. The directors of the fund act in a trustee
28 capacity and must take care that the assets of the fund are
29 managed wisely. Their efforts to meet as a collegial body to
30 closely review individual files in an open and frank setting
31 that includes staff are thwarted by the current requirement

