

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill decreases access to public records.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Public Records Law

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. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a), 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 is further addressed in the Florida Statutes. Section 119.07(1), F.S., also guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act¹ 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.

HB 13C – Motor Vehicle Insurance

HB 13C revives and reenacts the Florida Motor Vehicle No-Fault Law. That bill requires every owner or registrant of a motor vehicle, which is required to be registered and licensed in Florida, to maintain personal injury protection coverage insurance and property damage liability insurance coverage in effect continuously throughout the registration or licensing period. It also requires every insurer issuing a policy providing personal injury protection benefits or property damage liability coverage to report information regarding renewal, cancellation, or nonrenewal to the Department of Highway Safety and Motor Vehicles. The intent is to use the information for enforcement and regulatory purposes only, including the generation by the department of data regarding compliance by owners of motor vehicles with coverage requirements.

Current Public Records Exemptions

On October 1, 2007, the Florida Motor Vehicle No-Fault Law and accompanying public records exemption sunsetted. The law required every insurer issuing a policy providing personal injury protection benefits to report information regarding renewal, cancellation, or nonrenewal to the

¹ Section 119.15, F.S.

Department of Highway Safety and Motor Vehicles. The reports were confidential and exempt from public records requirements.²

EFFECT OF BILL

The bill creates a public records exemption for certain information held by the Department of Highway Safety and Motor Vehicles regarding personal injury protection and property damage liability insurance policies. The following information is confidential and exempt³ from public records requirements:

- Personal identifying information of an insured or former insured;
- An insurance policy number; and
- Information that identifies the insurer.

The bill provides for limited release of the name of the insurer and the policy number. Upon receipt of a written request and a copy of a crash report,⁴ the department may release such information regarding a policy covering a vehicle involved in a motor vehicle accident to: any person involved in the accident; the attorney of any person involved in the accident; or a representative of the insurer of any person involved in the accident.

The bill provides for retroactive application of the public records exemption. It also provides for future review and repeal of the exemption on October 2, 2012. As required by the State Constitution, the bill provides a public necessity statement.

The bill provides an effective date that is contingent upon the passage of HB 13C or similar legislation adopted in the same legislative session or an extension thereof.

C. SECTION DIRECTORY:

Section 1 creates s. 324.242, F.S., to create a public records exemption for certain information regarding personal injury protection and property damage liability insurance policies.

Section 2 provides a public necessity statement.

Section 3 provides a contingent effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

² Section 627.736(9), F.S.

³ There is a difference between information and records that the Legislature has designated exempt from public disclosure and those the Legislature has deemed confidential and exempt. Information and records classified exempt from public disclosure are permitted to be disclosed under certain circumstances. See *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991). If the Legislature designates 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 the persons or entities specifically designated in the statutory exemption. See Attorney General Opinion 85-62, Aug. 1, 1985.

⁴ Sections 316.065, 316.066, and 316.068, F.S., provide crash report requirements.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

Vote Requirement

Article I, s. 24(c) of the 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. The bill creates a public records exemption; thus, it requires a two-thirds vote for enactment into law.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution, requires a statement of public necessity (public necessity statement) for a newly created public records or public meetings exemption. The bill creates a public records exemption; thus, it includes a public necessity statement.

Subject Limitation

Article I, s. 24(c) of the Florida Constitution requires a bill making exemptions to public access to records and meetings to contain only exemptions from s. 24(a) and (b) and provisions governing enforcement of those exemptions.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES