

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: SB 1848

INTRODUCER: Banking and Insurance Committee

SUBJECT: Public Records/Inspector General/Citizens Property Insurance Corporation

DATE: April 9, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Burgess		bi SPB 7136 as Introduced
2.	Naf	McVaney	GO	Favorable
3.			RC	
4.				
5.				
6.				

I. Summary:

SB 1848 is linked to SB 1770, which, in pertinent part, creates an Office of the Inspector General of Citizens Property Insurance Corporation (Citizens). SB 1848 expands an existing public records exemption for Citizens records to also include:

- The identity of an individual who makes an allegation to the inspector general that an employee or agent of Citizens has committed a specified act or violation; and
- Information relating to an investigation of such an alleged act or violation.

The bill specifies circumstances under which such an identity or investigative information may be released.

The bill provides that the expanded exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2018, unless reviewed and reenacted by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.

Because this bill expands a public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

This bill substantially amends the section 627.351 of the Florida Statutes.

II. Present Situation:

Public Records Laws

The Florida Constitution provides every person 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 of persons acting on their behalf.¹ The records of the legislative, executive, and judicial branches are specifically included.²

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act³ guarantees every person's right to inspect and copy any state or local government public record⁴ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁵

Only the Legislature may create an exemption to public records requirements.⁶ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.⁷ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions⁸ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.⁹

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁰ It

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ Chapter 119, F.S.

⁴ Section 119.011(12), F.S., defines "public records" 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." Section 119.011(2), F.S., defines "agency" to mean as "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 Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).

⁵ Section 119.07(1)(a), F.S.

⁶ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and* exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances (*see WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991)). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see Attorney General Opinion 85-62*, August 1, 1985).

⁷ FLA. CONST., art. I, s. 24(c).

⁸ The bill may, however, contain multiple exemptions that relate to one subject.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹¹ The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.¹²

Citizens Property Insurance Corporation (Citizens)

Citizens is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market.¹³ Citizens is not a private insurance company.¹⁴ Citizens was statutorily created in 2002 when the Florida Legislature combined the state's two insurers of last resort, the Florida Residential Property and Casualty Joint Underwriting Association and the Florida Windstorm Underwriting Association. Citizens operates in accordance with the provisions in s. 627.351(6), F.S., and is governed by an eight-member Board of Governors that administers its Plan of Operations, which is reviewed and approved by the Financial Services Commission. The Governor, President of the Senate, Speaker of the House of Representatives, and Chief Financial Officer each appoints two members to the board.

Citizens Inspector General

Citizens currently does not have an inspector general and is not required by law to have one. The Chief of Internal Audit has job duties and responsibilities similar to an inspector general. The Chief of Internal Audit position was created in Citizens in 2006 and Citizens' first Chief of Internal Audit started in January 2007. The position has been filled almost continuously since that time, with Citizens employing four Chiefs of Internal Audit since 2007.

Generally, the duties of the Chief of Internal Audit include: fostering and promoting accountability and integrity in Citizens; holding the Citizen's leadership, management and staff accountable for efficient, cost-effective operation; and preventing, identifying, and eliminating fraud, waste, corruption, illegal acts, and abuse. Specific duties and responsibilities for the position are contained in s. 627.351(6)(i), F.S. The Chief of Internal Audit carries out his duties primarily through audits, management reviews and investigations.

From December 2010 until October 2012, Citizens also had an Office of Corporate Integrity. The office handled employee complaints, particularly those that could indicate ethics violations and internal fraud. From December 2010 until July 2012, the employees in this office reported to Citizens' General Counsel and Chief Legal Officer. Thereafter, they reported to the Citizens' Chief of Internal Audit. The Office was disbanded by Citizens' Board in October 2012, but its functions were absorbed by other Citizens' staff, including the Office of Internal Audit, the Ethics Officer, and the Employee Relations Office.

¹¹ Section 119.15(3), F.S.

¹² Section 119.15(6)(b), F.S.

¹³ "Admitted market" means insurance companies licensed to transact insurance in Florida.

¹⁴ Section 627.351(6)(a)1., F.S. Citizens is also subject to regulation by the Office of Insurance Regulation.

SB 1770 (linked to this bill)

SB 1770, in pertinent part, establishes the Office of the Inspector General within Citizens to ensure accountability, integrity, and efficiency. The inspector general is appointed by the Financial Services Commission and may be removed from office only by the commission. The inspector general is under the supervision of the commission until June 30, 2014, after which he or she reports to the chair of the board of governors.

The inspector general's specified duties are to initiate, direct, coordinate, participate in, and perform studies, reviews, evaluations, and investigations designed to assess management practices; compliance with laws, rules, and policies; and program effectiveness and efficiency. In addition, the inspector general must complete special projects and perform other duties as requested by the Financial Services Commission.

At least annually, the inspector general must report to the President of the Senate and the Speaker of the House of Representatives the extent to which policies are returned to the voluntary market from the corporation's clearinghouse. Such a report must include an analysis regarding the effectiveness of the clearinghouse for depopulation of Citizens.

III. Effect of Proposed Changes:

This bill expands an existing public records exemption that makes specified Citizens records confidential and exempt. Specifically, the bill adds to the exemption the name or identity of an individual who, in good faith, alleges, or provides information relating to an allegation, to the Office of the Inspector General that an employee or agent of Citizens:

- Violated a federal, state, or local law, ordinance, or rule;
- Committed an act of fraud, waste, abuse, malfeasance, or mismanagement;
- Committed employee misconduct; or
- Violated a policy of the corporation.

The bill authorizes disclosure of such person's name or identity:

- With the written consent of the individual; or
- Pursuant to a court order.

The bill also adds to the existing Citizens public records exemption all information relating to an investigation of such a possible violation or act. The bill provides that such information is confidential or exempt until the inspector general completes the investigation and determines such violation or act occurred. If the inspector general determines that the alleged violation or act did not occur, the information remains confidential and exempt. Such information may be disclosed at any time to:

- A current member of the Financial Services Commission;
- The current President of the Senate; or
- The current Speaker of the House of Representatives.

The bill provides that the expanded exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2018, unless reviewed and reenacted by the Legislature. The bill also provides a statement of public necessity as required by the Florida Constitution.

This bill will take effect on the same date that SB 1770 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. This bill does not appear to affect county or municipal governments.

B. Public Records/Open Meetings Issues:

Vote Requirement

Section 24(c), Art. I of the Florida Constitution requires a newly created or expanded public records exemption to pass by a two-thirds vote of the members present and voting in each house of the Legislature. This bill expands a public records exemption; therefore, it requires a two-thirds vote for final passage.

Public Necessity Statement

Section 24(c), Art. I of the Florida Constitution requires a newly created or expanded public records exemption to contain a public necessity statement justifying the exemption. This bill expands a public records exemption; therefore, it contains a public necessity statement.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill could create a minimal fiscal impact on Citizens, because staff responsible for complying with public records requests could require training related to the expansion of the public records exemption. In addition, Citizens could incur costs associated with redaction of the confidential and exempt information prior to releasing the record. The costs would be absorbed, however, as they are part of the day-to-day responsibilities of Citizens.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
