

STORAGE NAME: h2333z.in
DATE: May 8, 2000

****FAILED TO PASS THE LEGISLATURE****

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
INSURANCE
FINAL ANALYSIS**

BILL #: HB 2333
RELATING TO: Public Records / Windstorm Insurance
SPONSOR(S): Representative Melvin
TIED BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) INSURANCE YEAS 9 NAYS 0
 - (2) GOVERNMENTAL OPERATIONS (W/D)
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

Under Article I, Section 24, Florida Constitution, records and meetings of public bodies must be open to the public in the absence of an exemption. In 1994, the Attorney General issued an opinion, concluding that the Florida Windstorm Underwriting Association (FWUA) is subject to these laws.

Under the bill, certain records and meetings of the FWUA would be exempted from the public records and meeting laws. Records the FWUA would not be required to permit the public to copy or inspect would include appraisals, surveys, applications, and other information relating to a policyholder's property; underwriting files; claims files until the termination of litigation arising out of the same incident; internal audits; privileged attorney-client communications; proprietary information; employee records; and responses to requests for proposals until the successful vendor is selected. Additionally, the FWUA would not be required to notify the public of, or permit the public to attend, meetings, negotiating sessions, presentations, conferences, and promotional sessions by two or more board members incident to the promotion, marketing, negotiation, or consummation of a debt financing transaction.

These exemptions would be made subject to the Open Government Sunset Review Act of 1995 and be repealed on October 2, 2005, unless reviewed and saved from repeal through reenactment by the Legislature.

This bill would not have a fiscal impact on state or local governments.

Amendments

On April 24, 2000, the Committee on Insurance adopted four amendments that are traveling with HB 2333. See Amendments section.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- 1. Less Government Yes No N/A
- 2. Lower Taxes Yes No N/A
- 3. Individual Freedom Yes No N/A
- 4. Personal Responsibility Yes No N/A
- 5. Family Empowerment Yes No N/A

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

B. PRESENT SITUATION:

Public Records and Meetings

Constitutional provisions

Article I, s. 24, Florida Constitution, expresses Florida's public policy regarding access to government records:

Every person has the right to inspect or copy any public records 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. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

Article I, s. 24, Florida Constitution, expresses Florida's public policy regarding access to public meetings by providing that:

All meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, city, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public.

Statutory exemptions

The Legislature may by general law exempt certain records and meetings from the requirements of Article I, s. 24.¹ The general law must include a specific statement of the

¹The relevant general laws are the public records law in Chapter 119, F.S., and the public meetings law in Chapter 286.

public necessity justifying the exemption. The exemption must not be broader than necessary to accomplish the stated purpose of the law.

In the Open Government Sunset Review Act of 1995,² the Legislature included an express statement of intent that exemptions to the public records and public meetings laws be created or maintained only if: the exempted record or meeting is of a sensitive, personal nature concerning individuals; the exemption is necessary for the effective and efficient administration of a governmental program; or the exemption affects confidential information concerning an entity.

In 1995, the Legislature exempted the Residential Property and Casualty Joint Underwriting Association from the public records and meetings laws. In 1998, the Legislature granted a similar exemption to the Florida Automobile Joint Underwriting Association. Certain documents of both associations, such as underwriting files, open claims files, and certain employee files, are exempt from the public records law. Portions of meetings of both associations where confidential underwriting files or confidential open claims files are discussed also are exempt from the open meetings law.

Florida Windstorm Underwriting Association

The Legislature created the Florida Windstorm Underwriting Association (FWUA) in 1970 for the purpose of providing windstorm insurance when it is otherwise unavailable in certain areas of the state. The FWUA is a private, nonprofit unincorporated association made up of all licensed property insurers in the state and is governed under s. 627.351(2), F.S. The FWUA is subject to regulation by the Department of Insurance.

On April 12, 1994, in response to a request from the Insurance Commissioner, the Attorney General issued Attorney General's Opinion 94-32. The Attorney General concluded that the FWUA is subject to the public records law and the open meetings law. In determining whether or not the public records law applied, the Attorney General considered the creation, funding, regulation, decision-making process, and goals of the FWUA. Based on these same considerations, the Attorney General also ruled that the FWUA was subject to the open meetings law.

C. EFFECT OF PROPOSED CHANGES:

Certain records and meetings of the FWUA would be exempted from the public records and meeting laws.

Records the FWUA would not be required to permit the public to copy or inspect would include the following:

- ◆ Appraisals, surveys, applications and other information relating to a policyholder's property, information relating to property coverages and the property insurer, applications for coverage, and all information included in underwriting files. A policyholder would have access to this information [*stated justification for exemption: disclosure could harm insureds; also these files contain proprietary confidential business information*].

²Section 119.15, F.S.

- ◆ Claims files, until termination of all litigation and settlement of all claims arising out of the same incident. Confidential and exempt claims files may be released to governmental agencies upon written request and demonstration of need. These records held by the receiving agency would remain confidential and exempt *[stated justification for exemption: the release of information could result in higher awards and settlements to be paid by the FWUA and ultimately the consumer]*.
- ◆ Records obtained or generated by an internal auditor. If the report is pursuant to a routine audit, the report would be confidential until the audit is completed. If the report is part of an investigation, it would be confidential until the investigation is closed or ceases to be active *[stated justification for exemption: the release of the information could jeopardize investigations and may result in the release of inaccurate information]*.
- ◆ Matters reasonably encompassed in privileged attorney-client communications *[stated justification for exemption: the release of this information could jeopardize litigation or other business matters]*.
- ◆ All proprietary information and data, including computer models, and all data that is a trade secret as defined under s. 812.081, F.S., licensed to the FWUA as part of a response to a request for proposals from vendors to perform certain financial services, or under contract, if the response or contract provides for the confidentiality of such information.
- ◆ Information relating to the medical condition or medical status of an FWUA employee which is not relevant to the employee's capacity to perform his or her duties, and information relating to workers' compensation, insurance benefits, and retirement or disability benefits *[stated justification for exemption: they contain personal, sensitive information that could harm an employee if disclosed]*.
- ◆ Records relating to an FWUA employee's participation in an employee assistance program designed to assist an employee who has a behavioral or medical disorder, substance abuse problem, or emotional difficulty that affects the employee's job performance *[stated justification for exemption: they contain personal, sensitive information that could harm an employee if disclosed]*.
- ◆ Information relating to responses to requests for proposals from vendors to perform financial or other specialized services, until the vendor is selected.

When an authorized insurer is considering assuming or taking out a risk insured by the FWUA, relevant underwriting and claims files could be released to the insurer if the insurer or licensed agent agrees in writing under oath to keep such information confidential. Once files are transferred to an insurer or authorized agent, they no longer would be considered a public record, as they would not be held by an agency that is subject to the public records law.

Additionally, the FWUA would not be required to notify the public of, or permit the public to attend, meetings, negotiating sessions, presentations, conferences, and promotional sessions by two or more board members incident to the promotion, marketing, negotiation, or consummation of a debt financing transaction.

These exemptions would be made subject to the Open Government Sunset Review Act of 1995 and be repealed on October 2, 2005, unless reviewed and saved from repeal through reenactment by the Legislature.

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As required by Article I, s. 24, Florida Constitution, the bill would include a public necessity statement to justify each exemption.

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

None

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require a city or county to spend funds or to take any action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the revenue raising authority of any city or county.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the amount of state tax shared with counties and municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 24, 2000, the Committee on Insurance adopted four amendments that are traveling with HB 2333.

Amendment 1 by Rep. Melvin (page 3, line 26): would remove the exemption from the open meetings law for meetings, negotiating sessions, presentations, conferences, or promotional sessions with lenders, rating agencies, investors, underwriters, or government officials where two or more of the board FWUA members are in attendance. As a result of this amendment, all FWUA meetings would remain subject to the open meetings law.

Amendment 2 by Rep. Melvin (page 4, line 27): would remove references to the exemption from the open meetings law from the statement of public necessity to conform to the change made by Amendment 1.

Amendment 3 by Rep. Melvin (page 4, line 9): would provide that nothing in the records exemptions would preclude the Department of Insurance from obtaining access to records from the FWUA. Additionally, FWUA records that are exempt from the public records law and are in the possession of a state agency would remain exempt from the public records law.

Amendment 4 by Rep. Melvin (page 4, line 12): specifies in the statement of public necessity that certain records of the FWUA should be exempt from s. 119.07(1), F.S., and s. 24, Art. I of the State Constitution.

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VII. SIGNATURES:

COMMITTEE ON INSURANCE:

Prepared by:

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FINAL ANALYSIS PREPARED BY THE COMMITTEE ON INSURANCE:

Prepared by:

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