

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1041 (PCB SA 03-14) Public Records/Meetings Exemptions/FL JUA
SPONSOR(S): State Administration and Mack
TIED BILLS: None **IDEN./SIM. BILLS:** SB 280

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>State Administration</u>	<u>5 Y, 0 N</u>	<u>Williamson</u>	<u>Everhart</u>
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The Open Government Sunset Review Act of 1995 in essence requires the Legislature to review each public records and each public meetings exemption five years after enactment. If the Legislature does not reenact the exemption, it is automatically repealed on October 2nd of the fifth year after enactment.

This bill reenacts with certain changes the public records and public meetings exemptions for the Florida Automobile Joint Underwriting Association (FAJUA), which will repeal on October 2, 2003, if this bill does not become law. This bill removes the public records exemption for "matters reasonably encompassed in privileged attorney client communications" because current law already provides a public records exemption for such information.

This bill does not appear to have a fiscal impact on state or local governments.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: pcb14a.sa.doc
DATE: February 18, 2003

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:

B. EFFECT OF PROPOSED CHANGES:

Background

The FAJUA was initially created pursuant to an Order with the announced purpose to be an “insurer of last resort” to provide motor vehicle insurance to applicants who were unable to procure such coverage through the voluntary or competitive market due to a variety of factors, including driving history or status as first-time drivers. Every insurer authorized to write automobile liability insurance or automobile physical damage insurance in Florida is required to be a member of the FAJUA. Expenses, losses, or profits of the FAJUA are apportioned among the insurer members in the ratio to their representation in the voluntary Florida market.

Florida law provides a public records exemption, which is under review, for the following information held by the FAJUA:

- Underwriting files;
- Claims files;
- Records obtained or generated by an internal auditor pursuant to a routine audit;
- Proprietary information licensed to the FAJUA under contract, but only when the contract provides for the confidentiality of such information;
- Information relating to the medical condition or medical status of an FAJUA employee which is not relevant to that employee’s capacity to perform his or her duties;
- Records relating to an FAJUA employee’s participation in an employee assistance program;
- Information relating to negotiations for financing, reinsurance, depopulation, or contractual services; and
- Minutes of closed meetings regarding confidential and exempt¹ underwriting files or confidential and exempt claims files.

The FAJUA exemption also provides a public records exemption for “[m]atters reasonably encompassed in privileged attorney-client communications.” The FAJUA exemption is unlike the exemption already provided in current law, which applies to all agencies, in that the latter exemption

¹ 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. 5thDCA 1991), and *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4thDCA 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.

provides for the eventual release of such matters.² It is unclear as to why the FAJUA needs its current exemption regarding such matters when it is already protected by the current exemption provided in chapter 119, F.S. Furthermore, when asked by staff, the FAJUA was unable to provide a need or justification for a more stringent exemption than the exemption found in chapter 119, F.S.

Additionally, the law provides that an insurer considering underwriting a risk insured by the FAJUA may have access to relevant confidential and exempt underwriting files and confidential and exempt claims files provided the insurer agrees in writing, notarized and under oath, to maintain the confidential and exempt status of such files. The FAJUA may also provide the following information to licensed general lines insurance agents so long as the confidential and exempt status of such information is maintained: name, address, and telephone number of the automobile owner or insured; location of the risk; rating information; loss history; and policy type.

Florida law also provides a public meetings exemption for portions of FAJUA meetings during which confidential and exempt underwriting files or confidential and exempt claims files are discussed. The closed meetings must be recorded by a court reporter. The court reporter must record the times of commencement and termination of the meeting, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking.

Current law provides for future review and repeal of the public records and public meetings exemptions for the FAJUA. Pursuant to the Open Government Sunset Review Act of 1995 (Act), s. 627.311(3)(I), F.S., will repeal on October 2, 2003, unless otherwise reenacted by the Legislature. Pursuant to the Act, the Florida House of Representatives Committee on State Administration sent an Open Government Sunset Review Questionnaire to the FAJUA and held meetings with association staff, regarding the public records and public meetings exemptions.

Effect of Bill

As a result of those questionnaire responses and meetings, this bill reenacts with certain changes the public records and public meetings exemptions for the FAJUA. This bill also:

1. Removes the exemption for "matters reasonably encompassed in privileged attorney-client communications."
2. Makes editorial changes, adds conforming language, and amends the catch line.
3. Removes the sentence that requires the repeal of the public records and public meetings exemptions.

C. SECTION DIRECTORY:

Section 1. Amends s. 627.311(3), F.S., by reenacting with certain changes the FAJUA public records and public meetings exemptions.

Section 2. Amends s. 440.51(13)(a), F.S., by correcting a cross-reference to conform with changes to section one of the bill.

Section 3. Amends s. 631.912(3), F.S., by correcting a cross-reference to conform with changes to section one of the bill.

Section 4. Provides that the act shall take effect October 1, 2003.

² Section 119.07(3)(I), F.S.

II. 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.

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: None.

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Open Government Sunset Review Act of 1995

The Open Government Sunset Review Act of 1995³ 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: 1. Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; 2. 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, 3. Protecting trade or business secrets.

Section 119.15, F.S., also sets forth a Legislative review process that requires newly created or expanded exemptions to include an automatic repeal of the exemption on October 2nd of the fifth year after enactment or substantial amendment, unless the Legislature reenacts the exemption.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement is required, as a result of the

³ Section 119.15, F.S.

requirements of Art. 1, s. 24, Florida Constitution. If the exemption is reenacted with grammatical or stylistic changes (that do not expand the exemption), if the exemption is narrowed, or if an exception to the exemption is created (e.g., allowing another agency access to the confidential or exempt records), then a public necessity statement is not required.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.