

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 Banking and Insurance Committee

BILL: SPB 7052

INTRODUCER: For consideration by the Banking and Insurance Committee

SUBJECT: Open Government Sunset Review/Reports of Hurricane Loss and Exposure Data Utilized for the Public Hurricane Loss Projection Model

DATE: January 27, 2010 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Emrich	Burgess		Pre-meeting
2.				
3.				
4.				
5.				
6.				

I. Summary:

This proposed committee bill is the result of the Banking and Insurance Committee’s Open Government Sunset Review (Interim Report 2010-204) of the public records exemption for reports by insurers of their hurricane loss and associated exposure data. These reports are provided on an annual basis to Florida International University (FIU) for the development and maintenance of the public hurricane loss projection model (public model). This public records exemption stands repealed on October 2, 2010, unless reenacted by the Legislature.

The bill reenacts the exemption and narrows the exemption by requiring FIU to annually publish a report summarizing by county the loss and exposure data collected from residential property insurers. The report must be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

This bill substantially amends s. 627.06292, Florida Statutes.

II. Present Situation:

Florida Public-Records Law

The State of Florida has a long history of providing public access to governmental records. The Florida Legislature enacted the first public-records law in 1892.¹ One hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level:

¹ Sections 1390, 1391 F.S. (Rev. 1892).

Every person has 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 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.²

Consistent with this constitutional provision, Florida's Public-Records Act provides that, unless specifically exempted, all public records must be made available for public inspection and copying.³

The term "public records" is broadly defined 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."⁴

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency⁵ in connection with official business which are used to "perpetuate, communicate, or formalize knowledge of some type."⁶ Unless made exempt, all such materials are open for public inspection as soon as they become records.⁷

Only the Legislature is authorized to create exemptions to open-government requirements.⁸ Exemptions must be created by general law, which must specifically state the public necessity justifying the exemption.⁹ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.¹⁰ A bill enacting an exemption or substantially amending an existing exemption¹¹ may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.¹²

² FLA. CONST. art. I, s. 24(a).

³ Section 119.07, F.S.

⁴ Section 119.011(12), F.S.

⁵ The word "agency" is defined in s. 119.011(2), F.S., to mean "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."

⁶ *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁷ *Tribune Co. v. Cannella*, 458 So. 2d 1075, 1077 (Fla. 1984).

⁸ FLA. CONST. art. I, s. 24(c).

⁹ *Id.*

¹⁰ *Id.*

¹¹ Pursuant to s. 119.15(4)(b), F.S., an existing exemption is substantially amended if the exemption is expanded to cover additional records or information.

¹² FLA. CONST. art. I, s. 24(c).

There is a difference between records that the Legislature makes exempt from public inspection and those that it makes exempt and confidential.¹³ If the Legislature makes a record exempt and confidential, the information may not be released by an agency to anyone other than to the persons or entities designated in the statute.¹⁴ If a record is simply made exempt from disclosure requirements, the exemption does not prohibit the showing of such information at the discretion of the agency holding it.¹⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act provides for the systematic review of exemptions from the Public Records Act on a 5 year cycle ending October 2 of the fifth year following the enactment or substantial amendment of an exemption.¹⁶ Each year, by June 1, the Division of Statutory Revision of the Office of Legislative Services is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.¹⁷ Under the Open Government Sunset Review Act, an exemption may be created, revised, or retained only if it serves an identifiable public purpose and it is no broader than necessary to meet the public purpose it serves.¹⁸ An identifiable public purpose is served if the exemption meets one of three specified purposes and the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. An exemption meets the statutory criteria if it:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize the safety of such individuals; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.¹⁹

The act also requires consideration of the following:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?

¹³ *WFTV, Inc. v. School Bd. of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So. 2d 1015 (Fla. 2004).

¹⁴ *Id.*

¹⁵ *Id.* at 54.

¹⁶ Section 119.15(3), F.S.

¹⁷ Section 119.15(5)(a), F.S.

¹⁸ Section 119.15(6)(b), F.S.

¹⁹ *Id.*

- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?²⁰

Florida Public Hurricane Loss Projection Model

The Florida Legislature authorized and funded the development of the public hurricane loss projection model pursuant to the 2000 General Appropriations Act.²¹ The model was required to be designed in accordance with the standards set by the Florida Commission on Hurricane Loss Projection Methodology (commission).²² The Department of Insurance²³ was initially appropriated \$2.5 million to contract with the State University System and the contract was entered into with the International Hurricane Research Center at Florida International University (FIU).²⁴ Subsequent appropriations of approximately \$600,000 per year have been made to further the development of the public model at a total cost of \$7.5 million over the 9 year period. The public model was certified by the commission as acceptable in 2007 and has been certified each year thereafter.²⁵

The primary purposes in developing the public model were to assess hurricane risks, to project annual expected insured losses for personal residential properties, and to allow the Office of Insurance Regulation (OIR) to use it as a baseline for comparison to the private hurricane loss projection models utilized by insurers when the OIR reviews insurer rate filings.²⁶ The public model can provide a check on the assumptions, analyses, and results generated by the private models. The public model, as opposed to private models, is also transparent in that its assumptions, methodologies, designs, and theories are open to the public. It must be periodically updated as new meteorological and insurance claims data become available and as new scientific methodologies are available, otherwise the model will become obsolete.

In general, all hurricane loss projection models consist of a very complex set of computer programs which estimate loss costs and probable maximum loss levels from hurricane events for residential properties. These programs simulate and predict how, where and when hurricanes form, their wind speeds, intensities and sizes, how they are affected by the terrain, how much they can damage structures, how much it will cost to rebuild such structures, and how much of the loss will be paid by insurers. Such models can then generate, for a given policy or portfolio of residential policies, the annual average losses and the probable maximum losses.

²⁰ Section 119.15(6)(a), F.S.

²¹ Section 6 (2226) of ch. 2000-166, L.O.F.

²² Section 627.0628, F.S.

²³ Now referred to as the Office of Insurance Regulation.

²⁴ FIU has utilized experts in various fields from other universities and multiple organizations in the research and development of the public model.

²⁵ The commission found the public hurricane loss model in compliance with its standards on August 17, 2007.

²⁶ Legislation enacted in 2008 requires insurers to use a model (for the purposes of a rate filing) found to be accurate or reliable by the commission. The legislation also allows property insurers to use the public model for the purpose of calculating rate indications in a rate filing and for analytical purposes, but must pay for the use of the public model (Ch. 2008-66, L.O.F.). Citizens Property Insurance Corp. must use the public model which serves as a minimum benchmark for determining the windstorm portion of its rates (s. 627.315, F.S.).

Florida Commission on Hurricane Loss Projection Methodology

In 1995, the Florida Legislature established the Commission on Hurricane Loss Projection Methodology (commission) under s. 627.0628, F.S., to serve as an independent body within the State Board of Administration. Its members include experts in insurance finance, statistics, computer system design, and meteorology. The commission's role is to adopt findings relating to the accuracy or reliability of the methods, standards, principles, models, and other means used to project hurricane losses. The commission sets standards for loss projection methodology and examines the methods employed in hurricane loss models (both the public model and private models) used by insurers in setting rates to determine whether they meet the commission standards. The law provides that an insurer may use in its rate filing hurricane loss models found by the commission to be accurate or reliable and that such findings are admissible and relevant in consideration of the rate filing by OIR. There are four private models that have been certified by the commission: AIR Worldwide, Atlantic Tropical Cyclone Model V11.0; Applied Research Associates, HurLoss Version 4.2.a; EQECAT, Florida Hurricane Model 2009; and Risk Management Solutions, RiskLink Version 8.0.1a.

Exemption Under Review

In 2005, the Legislature mandated insurance companies provide reports of "hurricane loss data and associated exposure data" to the OIR or to a center at a state university (FIU) for developing, maintaining, and updating the public model for hurricane loss projections.²⁷ Such data was critical for the development, accuracy, and validation of the model. Passage of this legislation was necessary because the process of developing and testing the public model had been slowed by the failure of some insurers to provide this information.²⁸ A separate bill was also enacted in 2005 creating a public records exemption to protect the confidentiality of this information (s. 627.06292, F.S.).²⁹ This public records exemption will stand repealed on October 2, 2010, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act.

The bill defined hurricane loss and associated exposure data to mean the type, age, wind mitigation features, and location of each property insured; the amount and type of coverage written on each of those properties; the amount, date, and type of damage paid for by the insurer on each property; and the amount of reserves held by an insurer for future payments or expenses on damages associated with the date or dates of occurrence of hurricanes.

Banking and Insurance Committee's Open Government Sunset Review

Based upon its review of this public records exemption under the Open Government Sunset Review Act, the professional staff of the Banking and Insurance Committee recommended in its report (Interim Report 2010-204, September 2009) that the Legislature retain the public records exemption established in s. 627.06292, F.S. This provision makes reports of an insurer's hurricane loss data and associated exposure data which is provided to FIU for the development and maintenance of the public model exempt from public disclosure. Professional staff

²⁷ Chapter 2005-111, L.O.F., creating s. 627.06281, F.S.

²⁸ See Senate Staff Analysis and Economic Impact Statement, April 26, 2005.

²⁹ Chapter 2005-264, L.O.F.

concluded that insurer reports are critical for the operation, validation, and calibration of the public model and that the model is necessary to determine hurricane risks and project annual expected insured losses for residential properties in Florida as well as to provide the OIR with an invaluable tool in reviewing insurer rate filings. Officials with the OIR and FIU expressed concern that insurers would not submit their data and the viability of the public model would be jeopardized if the exemption were to be repealed. In addition, revealing this information would substantially harm a company in the insurance market and give competing insurers an unfair economic advantage. Insurer policy data is proprietary in nature and could be used by a competitor to solicit business by offering lower premiums based on the information gathered. These officials also state that the exemption furthers the State's interest in stabilizing the residential property insurance market through the use of the public model.

Committee professional staff also recommend that the Legislature consider narrowing the exemption by requiring FIU to publish on an annual basis a report to the Governor and the Legislature summarizing the insurer data by county. This report would be a valuable tool for the public and policymakers in understanding the types of structures, mitigation features, insurance coverages, and hurricane-related damages in each of Florida's 67 counties. The report would not contain information identifying a specific insurer or policyholder. Representatives with the OIR, FIU, and property insurers support this recommendation.

III. Effect of Proposed Changes:

Section 1. Amends s. 627.06292, F.S., to reenact the public records exemption and narrow the exemption by requiring FIU to publish a report on October 1, 2011, and each subsequent October 1, summarizing loss data and associated exposure data collected from residential property insurers and licensed rating and advisory organizations. The report must be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

The report must include the following information:

- total amount of insurance written by county;
- number of property insurance policies by county;
- number of property insurance policies by county and by construction type;
- number of property insurance policies by county and by decade of construction;
- number of property insurance policies by county and by deductible amount;
- number of property insurance policies by county and by wind mitigation features;
- total amount of hurricane losses by county and by decade of construction;
- total amount of hurricane losses by county and by deductible amount; and
- total amount of hurricane losses by county and by wind mitigation features.

Separate compilations and additional detail and a description of the operation and maintenance of the public model may be included in the report. The report may not contain any information that identifies a specific insurer or policyholder.

Section 2. Provides that the act shall take effect October 1, 2010.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

The bill retains the existing public records exemption, while also narrowing the exemption, by requiring FIU to annually publish a report summarizing insurer exposure and loss data by county. The bill complies with the requirement of Article I, Section 24 of the Florida Constitution that the Legislature address public records exemptions in legislation separate from substantive law changes.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Insurers and policyholders will benefit because policy exposure and loss data will remain exempt from public disclosure. The public and policy makers will benefit by having access to specified insurer exposure and loss data which will be summarized and published annually in a report by FIU.

C. Government Sector Impact:

Florida International University will absorb the costs in publishing the annual report.

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.
