

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GVOPS 14-01 OGSR Florida Insurance Guaranty Association

SPONSOR(S): Government Operations Subcommittee

TIED BILLS: **IDEN./SIM. BILLS:** SB 506

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|-----------|------------|--|
| Orig. Comm.: Government Operations Subcommittee | 11 Y, 0 N | Williamson | Williamson |

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The Florida Insurance Guaranty Association (FIGA) is a nonprofit corporation that was created in 1970 to provide a mechanism for the payment of claims of insolvent property and casualty insurance companies in Florida. It operates under a board of directors with members appointed and approved by the Department of Financial Services based upon recommendations by the member insurers.

When a property and casualty insurance company becomes insolvent, FIGA is required to take over the claims of the insurer and pay the claims of the company's policyholders. This ensures that policyholders having paid premiums for insurance are not left without valid claims being paid.

Current law provides a public record exemption for certain FIGA records. Specifically, claims files, medical records, and records pertaining to matters reasonably encompassed in privileged attorney-client communications are confidential and exempt from public record requirements. FIGA may release the confidential and exempt records to a state agency, upon written request, and the state agency must maintain the confidential and exempt status of the records received.

The bill reenacts this public record exemption, which will repeal on October 2, 2014, if this bill does not become law.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act¹ sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- 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 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.
- Protects trade or business secrets.

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 and a two-thirds vote for passage are required.² 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 created³ then a public necessity statement and a two-thirds vote for passage are not required.

Florida Insurance Guaranty Association

The Florida Insurance Guaranty Association (FIGA) is a nonprofit corporation that was created in 1970 to provide a mechanism for the payment of claims of insolvent property and casualty insurance companies in Florida.⁴ It operates under a board of directors⁵ with members appointed and approved by the Department of Financial Services based upon recommendations by the member insurers.⁶ FIGA's membership is composed of all Florida licensed direct writers of property or casualty insurance.⁷

When a property and casualty insurance company becomes insolvent, FIGA is required to take over the claims of the insurer and pay the claims of the company's policyholders. This ensures that policyholders having paid premiums for insurance are not left without valid claims being paid.

In assuming the obligation of certain existing covered claims,⁸ FIGA covers only the amount of each covered claim that is greater than \$100 and less than \$300,000, with certain exceptions. For damages

¹ Section 119.15, F.S.

² Section 24(c), Art. I of the State Constitution.

³ An example of an exception to a public record exemption would be allowing another agency access to confidential and exempt records.

⁴ Chapter 70-20, L.O.F.; codified as part II of chapter 631, F.S.

⁵ Section 631.55(1), F.S.

⁶ Section 631.56(1), F.S.

⁷ Section 631.55(1), F.S.

⁸ Section 631.54(3), F.S., defines the term "covered claim" to mean an unpaid claim, including one of unearned premiums, which arises out of, and is within the coverage, and not in excess of, the applicable limits of an insurance policy to which part II of chapter 631, F.S., applies, issued by an insurer, if such insurer becomes an insolvent insurer and the claimant or insured is a resident of this state at the time of the insured event or the property from which the claim arises is permanently located in this state. For entities other

to structure and contents on homeowners' claims, the FIGA cap is an additional \$200,000, for a total of \$500,000.⁹ For condominium and homeowners' association claims, the cap is the lesser of policy limits or \$100,000 multiplied by the number of units in the association.¹⁰ All claims are subject to a \$100 FIGA deductible in addition to any deductible identified in the insurance policy.¹¹

FIGA obtains funds to pay claims of insolvent insurance companies, in part, from the liquidation of assets of these companies by the Division of Rehabilitation and Liquidation in the Department of Financial Services. FIGA also obtains funds from the liquidation of assets of insolvent insurers domiciled in other states but having claims in Florida. In addition, after insolvency occurs, FIGA can issue two types of assessments against property and casualty insurance companies to raise funds to pay claims – regular and emergency¹² assessments.

FIGA assesses solvent insurance companies directly for both assessments, and the insurance company is allowed to pass the assessment on to its policyholders. The maximum assessment in any one year is 2 percent of each affected insurer's net direct written premiums on property and casualty insurance policies in the state for the prior year.¹³

Public Record Exemption under Review

In 2009, the Legislature created a public record exemption for certain FIGA records.¹⁴ The following records are confidential and exempt¹⁵ from public record requirements:

- Claims files, until termination of all litigation, settlement, and final closing of all claims arising out of the same incident.¹⁶
- Medical records that are part of a claims file and information relating to the medical condition or medical status of a claimant.¹⁷
- Records pertaining to matters reasonably encompassed in privileged attorney-client communications.¹⁸

Upon written request, such records may be released to any state agency in the furtherance of its official duties and responsibilities. The state agency must maintain the confidential and exempt status of the records received.¹⁹

than individuals, the residence of a claimant, insured, or policyholder is the state in which the entity's principal place of business is located at the time of the insured event. The term does not include:

(a) Any amount due any reinsurer, insurer, insurance pool, or underwriting association, sought directly or indirectly through a third party, as subrogation, contribution, indemnification, or otherwise;

(b) Any claim that would otherwise be a covered claim that has been rejected or denied by any other state guaranty fund based upon that state's statutory exclusions, including, but not limited to, those based on coverage, policy type, or an insured's net worth. Member insurers have no right of subrogation, contribution, indemnification, or otherwise, sought directly or indirectly through a third party, against the insured of any insolvent member; or

(c) Any amount payable for a sinkhole loss other than testing deemed appropriate by FIGA or payable for the actual repair of the loss, except that FIGA may not pay for attorney's fees or public adjuster's fees in connection with a sinkhole loss or pay the policyholder. FIGA may pay for actual repairs to the property but is not liable for amounts in excess of policy limits.

⁹ Section 631.57(1)(a)2., F.S.

¹⁰ Section 631.57(1)(a)3., F.S.

¹¹ Section 631.57(1)(a), F.S.

¹² Emergency assessments may only be issued to pay claims of insurers rendered insolvent due to a hurricane. See s. 631.57(3)(e), F.S.

¹³ See s. 631.57(3), F.S.

¹⁴ Chapter 2009-186, L.O.F.; codified as s. 631.582, F.S.

¹⁵ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems 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, 53 (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 1994); *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).

¹⁶ Section 631.582(1)(a), F.S.

¹⁷ Section 631.582(1)(b), F.S.

¹⁸ Section 631.582(1)(c), F.S.

¹⁹ Section 631.582(2), F.S.

Pursuant to the Open Government Sunset Review Act, the public record exemption will repeal on October 2, 2014, unless reenacted by the Legislature.²⁰

During the 2013 interim, subcommittee staff sent a questionnaire to FIGA as part of the Open Government Sunset Review process. As part of its questionnaire response, FIGA recommended reenactment of the public record exemption under review. According to FIGA:

...failure to reenact the current public record exemption would expose the personal, private financial and medical information of the insureds of insolvent insurance companies and claimants of such companies to persons who have adverse interests to those individuals. The public dissemination of such personal, private information might be detrimental to the financial and personal affairs of these insureds and claimants.²¹

Effect of the Bill

The bill removes the repeal date, thereby reenacting the public record exemption for FIGA's claims files, medical records that are part of a claims file and information relating to the medical condition or medical status of a claimant, and records pertaining to matters reasonably encompassed in privileged attorney-client communications.

B. SECTION DIRECTORY:

Section 1 amends s. 631.582, F.S., to save from repeal the public record exemption for certain records of the Florida Insurance Guaranty Association.

Section 2 provides an effective date of October 1, 2014.

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:

²⁰ Section 631.582(3), F.S.

²¹ Open Government Sunset Review questionnaire for the Florida Insurance Guaranty Association, received August 28, 2013, at question 5 (on file with the Government Operations Subcommittee).

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.