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# **Government Operations Subcommittee**

**Tuesday, February 7, 2012  
9:00 AM  
306 HOB**

# **Meeting Packet**

**Dean Cannon  
Speaker**

**Jimmy Patronis  
Chair**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Government Operations Subcommittee

**Start Date and Time:** Tuesday, February 07, 2012 09:00 am  
**End Date and Time:** Tuesday, February 07, 2012 10:30 am  
**Location:** 306 HOB  
**Duration:** 1.50 hrs

**Consideration of the following proposed committee bill(s):**

PCB GVOPS 12-05 -- OGSR Florida Opportunity Fund and Institute for the Commercialization of Public Research  
PCB GVOPS 12-11 -- OGSR Florida Workers' Compensation Joint Underwriting Association, Inc.  
PCB GVOPS 12-12 -- OGSR Consumer Complaints and Inquiries  
PCB GVOPS 12-13 -- OGSR Unclaimed Property  
PCB GVOPS 12-14 -- OGSR Lifeline Assistance Plan  
PCB GVOPS 12-15 -- OGSR Economic Development Agencies

**NOTICE FINALIZED on 02/03/2012 15:48 by Godwin.Chandra**



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** PCB GVOPS 12-05 OGSR Florida Opportunity Fund and Institute for the Commercialization of Public Research  
**SPONSOR(S):** Government Operations Subcommittee  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 798

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee		Williamson <i>haw</i>	Williamson <i>haw</i>

**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.

Current law provides a public record and public meeting exemption for the Florida Opportunity Fund (FOF) and the Institute for the Commercialization of Public Research (institute). The following information is confidential and exempt from public record requirements:

- Materials that relate to methods of manufacture or production, potential trade secrets, or patentable material received, generated, ascertained, or discovered by or through research projects conducted by universities and other publicly supported organizations in Florida;
- Information that would identify investors or potential investors in projects reviewed by the FOF or the institute;
- Any information received from a person from another state or nation, or from the federal government, which is otherwise confidential or exempt under the laws governing that entity; and
- Proprietary confidential business information regarding alternative investments for 10 years after the termination of the alternative investments.

In addition, any portion of a meeting wherein confidential and exempt information is discussed is exempt from public meeting requirements.

The bill reenacts the public record and public meeting exemptions, which will repeal on October 2, 2012, if this bill does not become law. It transfers and relocates the public record and public meeting exemptions for the institute to a new section of law. As such, the bill makes conforming changes to the exemptions.

Specific to the FOF, the bill removes the public record exemption for information received from a person from another state or nation or the Federal Government which is otherwise confidential or exempt pursuant to the laws governing that entity. It was determined that this exemption was applicable to the institute only.

In addition, the bill decreases the time period for protecting proprietary confidential business information from 10 years to seven years.

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 Act<sup>1</sup> 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.<sup>2</sup> 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<sup>3</sup> then a public necessity statement and a two-thirds vote for passage are not required.

##### Florida Opportunity Fund

Created by the Legislature in 2007, the Florida Opportunity Fund (FOF) was intended to attract venture capital investment into targeted Florida industries by providing a state match.<sup>4,5</sup> The FOF is organized as a private, not-for-profit corporation, with a five-member board of directors selected by an Enterprise Florida, Inc., (EFI) appointments committee.<sup>6</sup>

The Legislature appropriated \$29.5 million for investment funds in fiscal year 2007-2008.<sup>7</sup> Originally, the FOF was established as a "fund-of-funds" program, meaning that it could only invest in investment funds, not directly in individual businesses. Additionally, the investment funds had to match each \$1 in state investment with \$2 of their own. The initial emphasis was on "seed" and "early-stage" investments, because proponents of creating the FOF concluded that these types of companies were least likely to have access to venture funding and traditional financing.<sup>8</sup>

Targeted industries for the FOF investments include life sciences, information technology, advanced manufacturing processes, aviation and aerospace, and homeland security and defense. To be eligible

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<sup>1</sup> Section 119.15, F.S.

<sup>2</sup> Section 24(c), Art. 1 of the State Constitution

<sup>3</sup> An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

<sup>4</sup> See s. 288.9624, F.S.

<sup>5</sup> The State Board of Administration (SBA) has invested in "alternative investments" that included Florida-based businesses, and in 2009, pursuant to chapter 2008-31, L.O.F., created the \$250 million Florida Growth Fund for venture-capital private-equity and direct investments within Florida. These SBA programs are separate from the FOF.

<sup>6</sup> Section 288.9624(1)(b), F.S.

<sup>7</sup> This appropriation was included in Section 4 of the substantive legislation, chapter 2007-189, L.O.F., which created the FOF.

<sup>8</sup> See Bill Analysis for CS/SB 2420 (2007).

for state participation, an investment fund must have an experienced and successful investment manager or team, and must focus on investment opportunities in Florida.<sup>9</sup>

The FOF invested in its first fund in fiscal year 2008-2009: \$594,000 in Element Partners II, according to FOF's financial statements. Currently, the FOF has invested \$27 million of the original \$29.5 million appropriation.<sup>10</sup>

In 2009, the Legislature amended s. 288.9624, F.S., to allow the FOF to make loans and other direct investments to individual businesses and infrastructure projects, to form or operate other entities, and to accept funds from other public and private sources for use as investments.<sup>11</sup> These direct investments must be made in Florida infrastructure projects, or in businesses that are Florida-based or have significant business activities in Florida, and operate in technology sectors that are strategic to Florida. The FOF may not use its original appropriation of \$29.5 million to make direct investments or for any purposes not specified in the original legislation.

In May 2010, the FOF launched a direct investment program with the now-defunct Florida Energy and Climate Commission.<sup>12</sup> This new FOF program is expected to increase the availability of investment capital in Florida for businesses engaged in developing or producing energy-efficient or renewable energy (EE/RE) products or services. The FOF initially has access to \$32.4 million in federal funds through the 2009 American Recovery and Reinvestment Act to make loans or investments in qualifying businesses. Under the terms of the federal agreement, these investments are restricted to facility and equipment improvement using EE/RE products; acquisition or demonstration of renewable energy products; and improvement of existing production, manufacturing, assembly, or distribution processes to reduce consumption or increase the efficient use of energy in such processes.<sup>13</sup>

FOF has invested \$12 million of the \$32.4 million in federal funds into three Florida companies, matching \$80 million in private investment.<sup>14</sup>

In mid-2011, EFI entered into an agreement with the Florida Department of Economic Opportunity (DEO) for use of \$43.5 million in federal funds from the United States State Small Business Credit Initiative.<sup>15</sup> These funds will be used by the FOF to make direct investments in eligible businesses.<sup>16</sup> EFI estimates that it can leverage the \$43.5 million into \$652.5 million in private investment. The United States Treasury has approved DEO's application to access Florida's full share of \$97.6 million in federal funds, and in September, the Legislative Budget Commission approved the release of a portion of the federal funds.<sup>17</sup>

#### Institute for the Commercialization of Public Research

Created in the same legislation as the FOF, the Institute for the Commercialization of Public Research (institute) was envisioned as a matchmaker for venture capitalists and young companies trying to turn research ideas, technology, or patents, developed at public institutions, into marketable products and services.<sup>18</sup> The institute's purpose is to assist in the commercialization of products developed by the research and development activities of publicly supported universities and colleges, research institutes, and other publicly supported organizations within the state.<sup>19</sup>

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<sup>9</sup> See The Florida Senate Bill Analysis and Fiscal Impact Statement for SB 798, January 30, 2012.

<sup>10</sup> *Id.* at 5.

<sup>11</sup> Sections 25-26, chapter 2009-51, L.O.F.

<sup>12</sup> The commission's statutes were repealed and its responsibilities transferred to the Florida Department of Agriculture and Consumer Services (DACS) by the Legislature in the 2011 session. See s. 500, chapter 2011-142, L.O.F.

<sup>13</sup> See The Florida Senate Bill Analysis and Fiscal Impact Statement for SB 798, January 30, 2012.

<sup>14</sup> *Id.* at 6.

<sup>15</sup> This initiative is part of the federal Small Business Jobs Act of 2010. See United States Dept. of Treasury, State Small Business Credit Initiative.

<sup>16</sup> Florida's total share of the federal funding is \$97.6 million. The monies not allocated to EFI for the investment program are earmarked for small business loans, export financing, and credit enhancement programs.

<sup>17</sup> See The Florida Senate Bill Analysis and Fiscal Impact Statement for SB 798, January 30, 2012.

<sup>18</sup> See s. 288.9625, F.S.

<sup>19</sup> Section 288.9625(2), F.S.

The institute must support existing commercialization efforts at Florida universities, and may not supplant, replace, or direct existing technology transfer operations or other commercialization programs, including incubators and accelerators.

The institute is a not-for-profit corporation subject to Florida law, but is not an “agency,” as defined in s. 20.03(11), F.S.<sup>20</sup> It is governed by a five-member board of directors comprised of:

- The chair of EFI or designee;
- The president of the state university where the institute is located or designee, or if jointly sponsored by a number of universities, the presidents of those universities must agree on the designated person to serve on the board; and
- Three appointees by the Governor, to serve staggered 3-year terms to which they may be reappointed.<sup>21</sup>

The institute is based in Boca Raton, and is preparing to open a second administrative office in Gainesville.

In 2007, the Legislature appropriated \$900,000 in general revenue to the institute for its operations.<sup>22</sup> In 2009, an additional \$600,000 was appropriated as a transfer from the Florida Small Business Technology Growth Trust Fund administered by EFI.<sup>23</sup> In 2010, the institute was authorized to use up to five percent of the \$3 million appropriated for the Research Commercialization Matching Grant Program to administer the grants.<sup>24</sup> In fiscal year 2011-2012, the institute received a \$10 million general revenue appropriation, which did not specify the uses or amount set aside for the institute’s administration.<sup>25</sup> The institute and DEO have entered into a contract that specifies how the funds may be spent, including a low-interest loan program for eligible companies.

To be eligible for the institute’s assistance, the company or organization attempting to commercialize its product or service must be accepted by the institute into its program. The institute reviews the business plans and technology information of each company recommended by an institute peer-review board, before making its decision whether to accept a recommended company.

For each company that is accepted, the institute provides mentoring, develops marketing information, and uses its resources to attract capital investment into the company. The institute’s other duties are to:

- Maintain a centralized location to showcase companies and their technologies and products;
- Develop an efficient process to inventory and publicize companies and products that have been accepted by the institute for commercialization;
- Routinely communicate with private investors and venture capital organizations regarding the investment opportunities in its showcased companies;
- Facilitate meetings between prospective investors and eligible companies in the institute;
- Develop cooperative relationships with publicly supported organizations all of which work together to provide resources or special knowledge that is likely to be helpful to institute companies; and
- Administer the Florida Research Commercialization Matching Grant Program.<sup>26</sup>

The institute is prohibited from developing or accruing any ownership, royalty, or other such rights over, or interest in, companies or products in the institute and must maintain the confidentiality of proprietary

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<sup>20</sup> See ss. 288.9625(1) and (2), F.S.

<sup>21</sup> Section 288.9625(4), F.S.

<sup>22</sup> Section 4, chapter 2007-189, L.O.F.

<sup>23</sup> Section 72, chapter 2009-81, L.O.F.

<sup>24</sup> Section 56, chapter 2010-147, L.O.F.

<sup>25</sup> Section 39, chapter 2011-76, L.O.F.

<sup>26</sup> Section 288.9625(8), F.S.

information. It also may not charge for services rendered to state universities and affiliated organizations, community colleges, or state agencies.<sup>27</sup>

In 2010, the Legislature created the Research Commercialization Matching Grant Program, to leverage existing federal grant programs for small businesses, and directed the institute to manage it.<sup>28</sup> The grant program is intended to assist small or startup companies that take advantage of federal and private financial support to accelerate their growth and market penetration. Program applicants must meet several criteria, such as having attracted funding from non-government sources and achieved certain milestones required by the federal government.<sup>29</sup>

#### Public Record and Public Meeting Exemptions under Review

In 2007, the Legislature created a joint public record and public meeting exemption for the FOF and the institute.<sup>30</sup>

The following information is confidential and exempt<sup>31</sup> from public record requirements:

- Materials that relate to methods of manufacture or production, potential trade secrets, or patentable material received, generated, ascertained, or discovered by or through research projects conducted by universities and other publicly supported organizations in Florida;
- Information that would identify investors or potential investors in projects reviewed by the FOF or the institute;
- Any information received from a person or another state or nation, or from the federal government, which is otherwise confidential or exempt under the laws of that governmental entity; and
- Proprietary confidential business information regarding alternative investments<sup>32</sup> for 10 years after the termination of the alternative investments.

“Proprietary confidential business information” is defined to mean information that has been designated by the proprietor when provided to the FOF or the institute as owned or controlled by a proprietor; that is intended to be and is treated by the proprietor as private and the disclosure of which would harm the business operations of the proprietor and has not been intentionally disclosed by the proprietor unless pursuant to a private agreement that provides that the information will not be released to the public except as required by law or legal process, or pursuant to law or an order of a court or administrative body; and that concerns:

- Trade secrets;
- Information provided to the FOF or institute regarding a prospective investment in a private equity fund, venture capital fund, angel fund, or portfolio company which is proprietary to the provider of the information;
- Financial statements and auditor reports of an alternative investment vehicle or portfolio company, unless such records have been released by the alternative investment vehicle or portfolio company and are publicly available;
- Meeting materials of an alternative investment vehicle relating to financial, operating, or marketing information of the alternative investment vehicle or portfolio company;

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<sup>27</sup> Sections 288.9625(9) and (10), F.S.

<sup>28</sup> See The Florida Senate Bill Analysis and Fiscal Impact Statement for SB 798, January 30, 2012.

<sup>29</sup> *Id.*

<sup>30</sup> Chapter 2007-190, L.O.F.; codified as s. 288.9626, F.S.

<sup>31</sup> 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).

<sup>32</sup> Section 288.9626(1)(a), F.S., defines “alternative investment to mean any investment by the FOF in a private equity fund, venture capital fund, or angel fund or a direct investment in a portfolio company or investment through a distribution of securities to its partners or shareholders by an alternative investment vehicle.



- Information regarding the portfolio positions in which an alternative investment vehicle or the FOF invests;
- Capital call and distribution notices to investors of an alternative investment vehicle or the FOF;
- Alternative investment agreements and related records; and
- Information concerning investors, other than the FOF itself, in an alternative investment vehicle or portfolio company.<sup>33</sup>

Proprietary confidential business information does not include:

- The name, address, and vintage year of an alternative investment vehicle or the FOF, and the identity of principals involved in the management of the alternative investment vehicle or the FOF;
- The dollar amount of the commitment made by the FOF to each alternative investment vehicle since inception;
- The dollar amount and date of cash contributions made by the FOF to each alternative investment vehicle since inception;
- The dollar amount, on a fiscal-year-end basis, of cash or other fungible distributions received by the FOF from each alternative investment vehicle;
- The dollar amount, on a fiscal-year-end basis, of cash or other fungible distributions received by the FOF, plus the remaining value of alternative-vehicle assets that are attributable to the FOF investment in each alternative investment vehicle;
- The net internal rate of return of each alternative investment vehicle since inception;
- The investment multiple of each alternative investment vehicle since inception; and
- The dollar amount of the total management fees and costs paid on an annual fiscal-year-end basis by the FOF to each alternative investment vehicle on a fiscal-year-end basis.<sup>34</sup>

Current law also provides a public meeting exemption for the FOF and the institute. The boards of directors of those entities may close that portion of their otherwise public meeting when discussing confidential and exempt information.<sup>35</sup> The closed portion of the meeting must be recorded and transcribed;<sup>36</sup> however, the transcript and minutes are confidential and exempt from public record requirements.<sup>37</sup>

The FOF and the institute may release confidential and exempt records to a governmental entity in the performance of its official duties and responsibilities, upon written request.<sup>38</sup> In addition, a request to inspect or copy a public record containing proprietary confidential business information must be granted if the proprietor of the information fails, within a reasonable period of time after the request is received by the FOF or the institute, to verify the following through a written declaration:<sup>39</sup>

- That the requested record contains proprietary confidential business information and the specific location of such information within the record;
- If the proprietary confidential business information is a trade secret, a verification that it is a trade secret;
- That the proprietary confidential business information is intended to be and is treated by the proprietor as private, is the subject of efforts of the proprietor to maintain its privacy, and is not readily ascertainable or publicly available from any other source; and
- That the disclosure of the proprietary confidential business information to the public would harm the business operations of the proprietor.<sup>40</sup>

<sup>33</sup> Section 288.9626(1)(g)1., F.S.

<sup>34</sup> Section 299.9626(1)(g)2., F.S.

<sup>35</sup> Section 288.9626(3)(a), F.S.

<sup>36</sup> Section 288.9626(3)(b), F.S.

<sup>37</sup> Section 288.9626(3)(c), F.S.

<sup>38</sup> Section 288.9626(4)(a), F.S.

<sup>39</sup> The written declaration must be verified as provided by s. 92.525, F.S.

<sup>40</sup> Section 288.9626(4)(b), F.S.

Any person may petition a court of competent jurisdiction for an order for the public release of any portion of a confidential and exempt record.<sup>41</sup>

Any person who willfully and knowingly violates the exemptions commits a first-degree misdemeanor, punishable as provided in ss. 775.082 or 775.083, F.S.<sup>42</sup>

Pursuant to the Open Government Sunset Review Act, the exemptions will repeal on October 2, 2012, unless reenacted by the Legislature.

### **Effect of Bill**

The bill removes the repeal date, thereby reenacting the public record and public meeting exemptions for the Florida Opportunity Fund (FOF) and the Institute for the Commercialization of Public Research (institute). It removes from s. 288.9626, F.S., the public record and public meeting exemptions for the institute and recreates the institute's exemptions in a new s. 288.9627, F.S. As such, the bill makes conforming changes to the definition section for both exemptions. In essence, the definition section for the FOF's exemptions is amended to reflect its application to the FOF only, and the definition section for the institute's exemptions is amended to reflect its application to the institute only. The same conforming changes also were made to the exemptions.

Specific to the FOF, the bill removes the public record exemption for information received from a person from another state or nation or the Federal Government which is otherwise confidential or exempt pursuant to the laws governing that entity. It was determined that this exemption was applicable to the institute only.

Finally, the bill decreases the time period for protecting proprietary confidential business information from 10 years to seven years.

#### **B. SECTION DIRECTORY:**

Section 1 amends s. 288.9626, F.S., to reenact the public record and public meeting exemptions for the Florida Opportunity Fund.

Section 2 creates s. 288.9627, F.S., to recreate the public record and public meeting exemptions for the Institute for the Commercialization of Public Research in a new section of law.

Section 3 provides an effective date of October 1, 2012.

## **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.

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<sup>41</sup> See s. 288.9626(4)(c), F.S.

<sup>42</sup> Section 288.9626(5), F.S.

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 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**

Not applicable.

1                                   A bill to be entitled  
2       An act relating to a review under the Open Government  
3       Sunset Review Act; amending s. 288.9626, F.S., which  
4       provides exemptions from public record and open  
5       meeting requirements for the Florida Opportunity Fund  
6       and the Institute for the Commercialization of Public  
7       Research; reorganizing the exemptions by removing  
8       references to the Institute for the Commercialization  
9       of Public Research and transferring the exemptions  
10      relating to the institute to a new statute; saving the  
11      exemptions from repeal under the Open Government  
12      Sunset Review Act; removing the scheduled repeal of  
13      the exemptions; revising definitions; clarifying that  
14      the exemptions pertaining to the Florida Opportunity  
15      Fund apply to prospective investments, alternative  
16      investments, and certain confidential proprietary  
17      information provided by a proprietor; reducing the  
18      time period during which proprietary confidential  
19      business information is confidential and exempt from  
20      disclosure; creating s. 288.9627, F.S.; providing  
21      exemptions from public record and open meeting  
22      requirements relating to the Institute for the  
23      Commercialization of Public Research which were  
24      transferred from s. 288.9626, F.S.; defining terms;  
25      providing exemptions from public record requirements  
26      for information relating to methods of manufacturing,  
27      trade secrets, patents, and research by universities  
28      or other publically supported organizations, materials

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29 | supplied by a proprietor, information that would  
 30 | identify investors or potential investors, and  
 31 | information that is confidential and exempt under  
 32 | other laws; reducing the time period during which  
 33 | proprietary confidential business information is  
 34 | confidential and exempt from disclosure; requiring the  
 35 | recording and transcription of closed meetings;  
 36 | requiring a proprietor of information to prevent the  
 37 | disclosure of proprietary confidential business  
 38 | information if a request for the information is made  
 39 | to the institute; authorizing a person to petition a  
 40 | court in Palm Beach County or Alachua County for the  
 41 | release of confidential and exempt information;  
 42 | requiring a court to make specific findings before the  
 43 | information may be released; imposing criminal  
 44 | penalties on a person who willfully and knowingly  
 45 | violates the public record or public meeting  
 46 | exemptions pertaining to the institute; providing an  
 47 | effective date.

48 |  
 49 | Be It Enacted by the Legislature of the State of Florida:

50 |  
 51 | Section 1. Section 288.9626, Florida Statutes, is amended  
 52 | to read:

53 | 288.9626 Exemptions from public records and public  
 54 | meetings requirements for the Florida Opportunity Fund ~~and the~~  
 55 | ~~Institute for the Commercialization of Public Research.~~

56 | (1) DEFINITIONS.—As used in this section, the term:

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57 (a) "Alternative investment" means an investment or  
 58 prospective investment through a loan, acquisition of an equity  
 59 interest, or other investment method by the Florida Opportunity  
 60 Fund in a private equity fund, venture capital fund, or angel  
 61 fund; an investment by the Florida Opportunity Fund or an  
 62 alternative investment ~~or a direct investment~~ in a portfolio  
 63 company; or an investment through a distribution of securities  
 64 to its partners or shareholders by an alternative investment  
 65 vehicle.

66 (b) "Alternative investment vehicle" means the limited  
 67 partnership, limited liability company, or similar legal fund  
 68 structure through which funds of, or funds managed by, the  
 69 Florida Opportunity Fund are invested ~~may elect to invest~~ in a  
 70 portfolio company.

71 (c) "Florida Opportunity Fund" ~~or "fund"~~ means the Florida  
 72 Opportunity Fund as defined in s. 288.9623.

73 ~~(d) "Institute for the Commercialization of Public~~  
 74 ~~Research" or "institute" means the institute established by s.~~  
 75 ~~288.9625.~~

76 (d)(e) "Portfolio company" means a corporation or other  
 77 issuer, any of whose securities or debt obligations are owned,  
 78 or are being considered for ownership, by an alternative  
 79 investment vehicle or the Florida Opportunity Fund and any  
 80 subsidiary of such corporation or other issuer.

81 (e)(f) "Portfolio positions" means individual investments  
 82 in portfolio companies that are made by an alternative  
 83 investment vehicle or the Florida Opportunity Fund, including  
 84 information or specific investment terms associated with any

85 portfolio company investment.

86 (f)~~(g)~~1. "Proprietary confidential business information"  
 87 means information that has been designated by the proprietor  
 88 when provided to the Florida Opportunity Fund ~~or the Institute~~  
 89 ~~for the Commercialization of Public Research~~ as information that  
 90 is owned or controlled by a proprietor; that is intended to be  
 91 and is treated by the proprietor as private, the disclosure of  
 92 which would harm the business operations of the proprietor and  
 93 has not been intentionally disclosed by the proprietor unless  
 94 pursuant to a private agreement that provides that the  
 95 information will not be released to the public except as  
 96 required by law or legal process, or pursuant to law or an order  
 97 of a court or administrative body; and that concerns:

98 a. Trade secrets as defined in s. 688.002.

99 b. Information provided to the Florida Opportunity Fund ~~or~~  
 100 ~~the Institute for the Commercialization of Public Research~~  
 101 regarding an existing or a prospective alternative investment in  
 102 a private equity fund, venture capital fund, angel fund, or  
 103 portfolio company that is proprietary to the provider of the  
 104 information.

105 c. Financial statements and auditor reports of an  
 106 alternative investment vehicle or portfolio company, unless  
 107 publicly released by the alternative investment vehicle or  
 108 portfolio company.

109 d. Meeting materials of an alternative investment vehicle  
 110 or portfolio company relating to financial, operating, or  
 111 marketing information of the alternative investment vehicle or  
 112 portfolio company.

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113 e. Information regarding the portfolio positions in which  
114 the alternative investment vehicles or Florida Opportunity Fund  
115 invest.

116 f. Capital call and distribution notices to investors or  
117 the Florida Opportunity Fund of an alternative investment  
118 vehicle.

119 g. Alternative investment agreements and related records.

120 h. Information concerning investors, other than the  
121 Florida Opportunity Fund, in an alternative investment vehicle  
122 or portfolio company.

123 2. "Proprietary confidential business information" does  
124 not include:

125 a. The name, address, and vintage year of an alternative  
126 investment vehicle or Florida Opportunity Fund and the identity  
127 of the principals involved in the management of the alternative  
128 investment vehicle or Florida Opportunity Fund.

129 b. The dollar amount of the commitment made by the Florida  
130 Opportunity Fund to each alternative investment vehicle since  
131 inception, if any.

132 c. The dollar amount and date of cash contributions made  
133 by the Florida Opportunity Fund to each alternative investment  
134 vehicle since inception, if any.

135 d. The dollar amount, on a fiscal-year-end basis, of cash  
136 or other fungible distributions received by the Florida  
137 Opportunity Fund from each alternative investment vehicle.

138 e. The dollar amount, on a fiscal-year-end basis, of cash  
139 or other fungible distributions received by the Florida  
140 Opportunity Fund plus the remaining value of alternative-vehicle



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141 assets that are attributable to the Florida Opportunity Fund's  
 142 investment in each alternative investment vehicle.

143 f. The net internal rate of return of each alternative  
 144 investment vehicle since inception.

145 g. The investment multiple of each alternative investment  
 146 vehicle since inception.

147 h. The dollar amount of the total management fees and  
 148 costs paid on an annual fiscal-year-end basis by the Florida  
 149 Opportunity Fund to each alternative investment vehicle.

150 i. The dollar amount of cash profit received by the  
 151 Florida Opportunity Fund from each alternative investment  
 152 vehicle on a fiscal-year-end basis.

153 (g) ~~(h)~~ "Proprietor" means an alternative investment  
 154 vehicle or ~~a~~ portfolio company in which an ~~the~~ alternative  
 155 investment vehicle or Florida Opportunity Fund invests, or is  
 156 considering for investment ~~is invested~~, or an outside  
 157 consultant, including the respective authorized officers,  
 158 employees, agents, or successors in interest, that controls or  
 159 owns information.

160 (2) PUBLIC RECORDS EXEMPTION.—

161 (a) The following records held by the Florida Opportunity  
 162 Fund ~~or the Institute for the Commercialization of Public~~  
 163 ~~Research~~ are confidential and exempt from s. 119.07(1) and s.  
 164 24(a), Art. I of the State Constitution:

165 1. Materials that relate to methods of manufacture or  
 166 production, potential trade secrets, or patentable material  
 167 received, generated, ascertained, or discovered during the  
 168 course of research or through research projects and that is

169 provided by a proprietor ~~conducted by universities and other~~  
 170 ~~publicly supported organizations in this state.~~

171 2. Information that would identify an investor or  
 172 potential investor who desires to remain anonymous in projects  
 173 reviewed by the Florida Opportunity Fund ~~or institute.~~

174 ~~3. Any information received from a person from another~~  
 175 ~~state or nation or the Federal Government which is otherwise~~  
 176 ~~confidential or exempt pursuant to the laws of that state or~~  
 177 ~~nation or pursuant to federal law.~~

178 ~~3.4.~~ Proprietary confidential business information  
 179 regarding alternative investments for 7 ~~10~~ years after the  
 180 termination of the alternative investment.

181 (b) At the time any record made confidential and exempt by  
 182 this subsection, or portion thereof, is legally available or  
 183 subject to public disclosure for any other reason, that record,  
 184 or portion thereof, shall no longer be confidential and exempt  
 185 and shall be made available for inspection and copying.

186 (3) PUBLIC MEETINGS EXEMPTION.—

187 (a) That portion of a meeting of the board of directors of  
 188 the Florida Opportunity Fund ~~or the board of directors of the~~  
 189 ~~Institute for the Commercialization of Public Research~~ at which  
 190 information is discussed which is confidential and exempt under  
 191 subsection (2) is exempt from s. 286.011 and s. 24(b), Art. I of  
 192 the State Constitution.

193 (b) Any exempt portion of a meeting shall be recorded and  
 194 transcribed. The board ~~boards~~ of directors shall record the  
 195 times of commencement and termination of the meeting, all  
 196 discussion and proceedings, the names of all persons present at

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197 any time, and the names of all persons speaking. An exempt  
 198 portion of any meeting may not be off the record.

199 (c) A transcript and minutes of exempt portions of  
 200 meetings are confidential and exempt from s. 119.07(1) and s.  
 201 24(a), Art. I of the State Constitution.

202 (4) REQUEST TO INSPECT OR COPY A RECORD.—

203 (a) Records made confidential and exempt by this section  
 204 may be released, upon written request, to a governmental entity  
 205 in the performance of its official duties and responsibilities.

206 (b) Notwithstanding the provisions of paragraph (2)(a), a  
 207 request to inspect or copy a public record that contains  
 208 proprietary confidential business information shall be granted  
 209 if the proprietor of the information fails, within a reasonable  
 210 period of time after the request is received by the Florida  
 211 Opportunity Fund ~~or the Institute for the Commercialization of~~  
 212 ~~Public Research~~, to verify the following to the Florida  
 213 Opportunity Fund through a written declaration in the manner  
 214 provided by s. 92.525:

215 1. That the requested record contains proprietary  
 216 confidential business information and the specific location of  
 217 such information within the record;

218 2. If the proprietary confidential business information is  
 219 a trade secret, a verification that it is a trade secret as  
 220 defined in s. 688.002;

221 3. That the proprietary confidential business information  
 222 is intended to be and is treated by the proprietor as private,  
 223 is the subject of efforts of the proprietor to maintain its  
 224 privacy, and is not readily ascertainable or publicly available

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225 from any other source; and

226 4. That the disclosure of the proprietary confidential  
227 business information to the public would harm the business  
228 operations of the proprietor.

229 (c)1. Any person may petition a court of competent  
230 jurisdiction for an order for the public release of those  
231 portions of any record made confidential and exempt by  
232 subsection (2).

233 2. Any action under this subsection must be brought in  
234 Orange County, and the petition or other initial pleading shall  
235 be served on the Florida Opportunity Fund ~~or the institute,~~  
236 ~~whichever is applicable,~~ and, if determinable upon diligent  
237 inquiry, on the proprietor of the information sought to be  
238 released.

239 3. In any order for the public release of a record under  
240 this subsection, the court shall make a finding that:

241 a. The record or portion thereof is not a trade secret as  
242 defined in s. 688.002;

243 b. A compelling public interest is served by the release  
244 of the record or portions thereof which exceed the public  
245 necessity for maintaining the confidentiality of such record;  
246 and

247 c. The release of the record will not cause damage to or  
248 adversely affect the interests of the proprietor of the released  
249 information, other private persons or business entities, or ~~the~~  
250 ~~fund, or any trust fund the assets of which are invested by the~~  
251 Florida Opportunity Fund.

252 (5) PENALTIES.—Any person who willfully and knowingly

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253 violates this section commits a misdemeanor of the first degree,  
 254 punishable as provided in s. 775.082 or s. 775.083.

255 ~~(6) OPEN GOVERNMENT SUNSET REVIEW. This section is subject~~  
 256 ~~to the Open Government Sunset Review Act in accordance with s.~~  
 257 ~~119.15 and shall stand repealed on October 2, 2012, unless~~  
 258 ~~reviewed and saved from repeal through reenactment by the~~  
 259 ~~Legislature.~~

260 Section 2. Section 288.9627, Florida Statutes, is created  
 261 to read:

262 288.9627 Exemptions from public record and public meeting  
 263 requirements for the Institute for the Commercialization of  
 264 Public Research.-

265 (1) DEFINITIONS.-As used in this section, the term:

266 (a) "Institute for the Commercialization of Public  
 267 Research" or "institute" means the institute established by s.  
 268 288.9625.

269 (b)1. "Proprietary confidential business information"  
 270 means information that has been designated by the proprietor  
 271 when provided to the institute as information that is owned or  
 272 controlled by a proprietor; that is intended to be and is  
 273 treated by the proprietor as private, the disclosure of which  
 274 would harm the business operations of the proprietor and has not  
 275 been intentionally disclosed by the proprietor unless pursuant  
 276 to a private agreement that provides that the information will  
 277 not be released to the public except as required by law or legal  
 278 process, or pursuant to law or an order of a court or  
 279 administrative body; and that concerns:

280 a. Trade secrets as defined in s. 688.002.

281 b. Financial statements and internal or external auditor  
 282 reports of a proprietor corporation, partnership, or person  
 283 requesting confidentiality under this statute, unless publicly  
 284 released by the proprietor.

285 c. Meeting materials related to financial, operating,  
 286 investment, or marketing information of the proprietor  
 287 corporation, partnership, or person.

288 d. Information concerning private investors in the  
 289 proprietor corporation, partnership, or person.

290 2. "Proprietary confidential business information" does  
 291 not include:

292 a. The identity and primary address of the proprietor's  
 293 principals.

294 b. The dollar amount and date of the financial commitment  
 295 or contribution made by the institute.

296 c. The dollar amount, on a fiscal-year-end basis, of cash  
 297 repayments or other fungible distributions received by the  
 298 institute from each proprietor.

299 d. The dollar amount, if any, of the total management fees  
 300 and costs paid on an annual fiscal-year-end basis by the  
 301 institute.

302 (c) "Proprietor" means a corporation, partnership, or  
 303 person that has applied for or received assistance, financial or  
 304 otherwise, from the institute and that controls or owns the  
 305 proprietary confidential business information.

306 (2) PUBLIC RECORD EXEMPTION.—

307 (a) The following records held by the institute are  
 308 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I

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309 of the State Constitution:

310 1. Materials that relate to methods of manufacture or  
311 production, potential trade secrets, or patentable material  
312 received, generated, ascertained, or discovered during the  
313 course of research or through research projects conducted by  
314 universities and other publicly supported organizations in this  
315 state and that is provided to the institute by a proprietor.

316 2. Information that would identify an investor or  
317 potential investor who desires to remain anonymous in projects  
318 reviewed by the institute for assistance.

319 3. Any information received from a person from another  
320 state or nation or the Federal Government which is otherwise  
321 confidential or exempt pursuant to the laws of that state or  
322 nation or pursuant to federal law.

323 4. Proprietary confidential business for 7 years after the  
324 termination of the institute's financial commitment to the  
325 company.

326 (b) At the time any record made confidential and exempt by  
327 this subsection, or portion thereof, is legally available or  
328 subject to public disclosure for any other reason, that record,  
329 or portion thereof, shall no longer be confidential and exempt  
330 and shall be made available for inspection and copying.

331 (3) PUBLIC MEETING EXEMPTION.—

332 (a) That portion of a meeting of the institute's board of  
333 directors at which information is discussed which is  
334 confidential and exempt under subsection (2) is exempt from s.  
335 286.011 and s. 24(b), Art. I of the State Constitution.

336 (b) Any exempt portion of a meeting shall be recorded and

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337 transcribed. The board of directors shall record the times of  
338 commencement and termination of the meeting, all discussion and  
339 proceedings, the names of all persons present at any time, and  
340 the names of all persons speaking. An exempt portion of any  
341 meeting may not be off the record.

342 (c) A transcript and minutes of exempt portions of  
343 meetings are confidential and exempt from s. 119.07(1) and s.  
344 24(a), Art. I of the State Constitution.

345 (4) REQUEST TO INSPECT OR COPY A RECORD.-

346 (a) Records made confidential and exempt by this section  
347 may be released, upon written request, to a governmental entity  
348 in the performance of its official duties and responsibilities.

349 (b) Notwithstanding the provisions of paragraph (2)(a), a  
350 request to inspect or copy a public record that contains  
351 proprietary confidential business information shall be granted  
352 if the proprietor of the information fails, within a reasonable  
353 period of time after the request is received by the institute,  
354 to verify the following to the institute through a written  
355 declaration in the manner provided by s. 92.525:

356 1. That the requested record contains proprietary  
357 confidential business information and the specific location of  
358 such information within the record;

359 2. If the proprietary confidential business information is  
360 a trade secret, a verification that it is a trade secret as  
361 defined in s. 688.002;

362 3. That the proprietary confidential business information  
363 is intended to be and is treated by the proprietor as private,  
364 is the subject of efforts of the proprietor to maintain its



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365 privacy, and is not readily ascertainable or publicly available  
 366 from any other source; and

367 4. That the disclosure of the proprietary confidential  
 368 business information to the public would harm the business  
 369 operations of the proprietor.

370 (c)1. Any person may petition a court of competent  
 371 jurisdiction for an order for the public release of those  
 372 portions of any record made confidential and exempt by  
 373 subsection (2).

374 2. Any action under this subsection must be brought in  
 375 Palm Beach County or Alachua County, and the petition or other  
 376 initial pleading shall be served on the institute and, if  
 377 determinable upon diligent inquiry, on the proprietor of the  
 378 information sought to be released.

379 3. In any order for the public release of a record under  
 380 this subsection, the court shall make a finding that:

381 a. The record or portion thereof is not a trade secret as  
 382 defined in s. 688.002;

383 b. A compelling public interest is served by the release  
 384 of the record or portions thereof which exceed the public  
 385 necessity for maintaining the confidentiality of such record;  
 386 and

387 c. The release of the record will not cause damage to or  
 388 adversely affect the interests of the proprietor of the released  
 389 information, other private persons or business entities, or the  
 390 institute.

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391 |       (5) PENALTIES.—Any person who willfully and knowingly  
392 | violates this section commits a misdemeanor of the first degree,  
393 | punishable as provided in s. 775.082 or s. 775.083.

394 |       Section 3. This act shall take effect October 1, 2012.



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** PCB GVOPS 12-11 OGSR Florida Workers' Compensation Joint Underwriting Association, Inc.  
**SPONSOR(S):** Government Operations Subcommittee  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 2082

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee		Williamson <i>Raw</i>	Williamson <i>Raw</i>

**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.

Current law provides a public record exemption for certain records held by the Florida Workers' Compensation Joint Underwriting Association, Inc. (JUA). It also provides a public meeting exemption for that portion of a meeting of the JUA's board of governors, or any subcommittee of the JUA's board, at which confidential and exempt records are discussed. An exempt portion of any meeting may not be off the record.

The bill reenacts the public record and public meeting exemptions, which will repeal on October 2, 2012, 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 Act<sup>1</sup> 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.<sup>2</sup> 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<sup>3</sup> then a public necessity statement and a two-thirds vote for passage are not required.

##### Florida Workers' Compensation Joint Underwriting Association, Inc.

The Florida Workers' Compensation Joint Underwriting Association, Inc. (JUA), created by the Legislature in 1993, is a nonprofit, self-funding entity that is the insurer of last resort for employers who are unable to secure workers' compensation insurance coverage in the voluntary market.<sup>4</sup> The JUA board consists of three members appointed by the Financial Services Commission, two members representing the top 20 domestic insurers writing workers' compensation, two members representing the top 20 foreign insurers writing workers' compensation, one person appointed by the largest property and casualty insurance agents' association, and the Consumer Advocate for the Department of Financial Services.<sup>5</sup>

##### Public Record and Public Meeting Exemptions under Review

In 2007, the Legislature created a public record and public meeting exemption for the JUA.<sup>6</sup>

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<sup>1</sup> See s. 119.15, F.S.

<sup>2</sup> Section 24(c), Art. 1 of the State Constitution

<sup>3</sup> An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

<sup>4</sup> Florida Workers' Compensation Joint Underwriting Association, Inc., <http://www.fwcjua.com/> (last visited Feb. 3, 2012).

<sup>5</sup> Section 627.311(5)(b), F.S.

<sup>6</sup> Chapter 2007-202, L.O.F.; codified as s. 627.3121, F.S.

The following records held by the JUA are confidential and exempt<sup>7</sup> from public record requirements:

- Underwriting files, except that a policyholder or an applicant must have access to his or her own files.
- Claims files until termination of all litigation and the settlement of all claims arising out of the same accident, with exceptions.
- Records obtained or generated by an auditor pursuant to a routine audit until the audit is completed or, if the audit is part of an investigation, until the investigation is closed or ceases to be active.<sup>8</sup>
- Proprietary information licensed to the JUA under contract if the contract requires the JUA to maintain the confidentiality of such information.
- Medical records, including information relating to the medical condition or medical status of an individual.
- All records relative to an employee's participation in an employee assistance program, except as otherwise provided.
- Information relating to negotiations for financing, reinsurance, reinsurance commutation agreements, depopulation, or other contractual services until the conclusion of the negotiations.
- Reports provided to or submitted by the JUA regarding suspected fraud or other criminal activity and producer appeals and related reporting regarding suspected misconduct until such investigation is closed or ceases to be active.
- Information received from the Department of Revenue regarding payroll information and client lists of employee leasing companies as authorized in current law.
- A public record prepared by an attorney retained by the JUA to protect or represent the interests of the JUA or prepared at the attorney's express direction, that reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the JUA.<sup>9</sup>

Upon written request, the JUA may release confidential and exempt records to another agency in the performance of that agency's official duties and responsibilities.<sup>10</sup> In addition, the JUA may release confidential and exempt underwriting files and claims files to a carrier that is considering underwriting a risk insured by the JUA, a producer seeking to place such a risk with such a carrier, or another entity seeking to arrange voluntary market coverage for association risk.<sup>11</sup> Prior to releasing confidential and exempt underwriting files or claims files, the carrier, producer, or other entity must agree in writing, notarized under oath, to maintain the confidential and exempt status of such file until that carrier, producer, or other entity agrees to underwrite the risk or provide voluntary market coverage.<sup>12</sup>

Current law also provides a public meeting exemption for that portion of a meeting of the JUA's board of governors, or any subcommittee of the JUA's board, at which confidential and exempt records are discussed.<sup>13</sup> All exempt portions of meetings must be recorded and transcribed. The board 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. An exempt portion of the any meeting may not be off the record.<sup>14</sup> The court reporter's notes of any exempt portion of a meeting must be retained by the JUA for a minimum of five years.<sup>15</sup>

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<sup>7</sup> 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).

<sup>8</sup> An investigation is considered "active" while the investigation is being conducted with a reasonable, good faith belief that it could lead to the filing of administrative, civil, or criminal proceedings. (Section 627.3121(1)(c), F.S.)

<sup>9</sup> Section 627.3121(1), F.S.

<sup>10</sup> Section 627.3121(3), F.S.

<sup>11</sup> Section 627.3121(2)(a), F.S.

<sup>12</sup> Section 627.3121(2)(b), F.S.

<sup>13</sup> Section 627.3121(4)(a), F.S.

<sup>14</sup> Section 627.3121(4)(b), F.S.

<sup>15</sup> Section 627.3121(4)(c), F.S.

A transcript and minutes of exempt portions of meetings are confidential and exempt from public record requirements.<sup>16</sup> Those portions of the transcript or the minutes pertaining to confidential and exempt claims files are no longer confidential and exempt upon termination of all litigation with regard to that claim.<sup>17</sup>

Pursuant to the Open Government Sunset Review Act, the exemptions will repeal on October 2, 2012, unless reenacted by the Legislature.

### **Effect of Bill**

The bill removes the repeal date, thereby reenacting the public record and public meeting exemptions for the Florida Workers' Compensation Joint Underwriting Association, Inc. It also removes reference to "medical records" and replaces the term with "medical information" because use of the latter term is more consistent with definitions in other statutory provisions.

#### **B. SECTION DIRECTORY:**

Section 1 amends s. 627.3121, F.S., to reenact the public record and public meeting exemptions for the Florida Workers' Compensation Joint Underwriting Association, Inc.

Section 2 provides an effective date of October 1, 2012.

## **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:**

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<sup>16</sup> Section 627.3121(4)(d)1., F.S.

<sup>17</sup> Section 627.3121(4)(d)2., F.S.

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**

Not applicable.



1                                   A bill to be entitled  
 2           An act relating to a review under the Open Government  
 3           Sunset Review Act; amending s. 627.3121, F.S., which  
 4           provides an exemption from public records requirements  
 5           for certain records held by the Florida Workers'  
 6           Compensation Joint Underwriting Association, Inc., and  
 7           an exemption from public meetings requirements for  
 8           certain meetings of the association's board of  
 9           governors, or a subcommittee of the association's  
 10          board; clarifying that the public record exemption  
 11          applies to medical information relating to the medical  
 12          condition or medical status of an individual; removing  
 13          the scheduled repeal of the exemption; providing an  
 14          effective date.

15  
 16 Be It Enacted by the Legislature of the State of Florida:

17  
 18           Section 1. Section 627.3121, Florida Statutes, is amended  
 19           to read:

20           627.3121 Public records and public meetings exemptions.—

21           (1) The following records held by the Florida Workers'  
 22           Compensation Joint Underwriting Association, Inc., are  
 23           confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
 24           of the State Constitution:

25           (a) Underwriting files, except that a policyholder or an  
 26           applicant shall be provided access to his or her own  
 27           underwriting files.

28           (b) Claims files until termination of all litigation and

29 the settlement of all claims arising out of the same accident,  
 30 except that portions of the claims files may remain confidential  
 31 or exempt if otherwise provided by law.

32 (c) Records obtained or generated by an auditor pursuant  
 33 to a routine audit until the audit is completed or, if the audit  
 34 is conducted as part of an investigation, until the  
 35 investigation is closed or ceases to be active. An investigation  
 36 is considered "active" while the investigation is being  
 37 conducted with a reasonable, good faith belief that it could  
 38 lead to the filing of administrative, civil, or criminal  
 39 proceedings.

40 (d) Proprietary information licensed to the association  
 41 under contract if the contract requires the association to  
 42 maintain the confidentiality of such information.

43 (e) Medical ~~records, which include~~ information relating to  
 44 the medical condition or medical status of an individual.

45 (f) All records relative to an employee's participation in  
 46 an employee assistance program upon the entrance of the employee  
 47 into the program, except as otherwise provided in s. 440.102(8).

48 (g) Information relating to negotiations for financing,  
 49 reinsurance, reinsurance commutation agreements, depopulation,  
 50 or contractual services until the conclusion of the  
 51 negotiations.

52 (h) Reports provided to or submitted by the association  
 53 regarding suspected fraud or other criminal activity and  
 54 producer appeals and related reporting regarding suspected  
 55 misconduct until such investigation is closed or ceases to be  
 56 active.

57 (i) Information received from the Department of Revenue  
 58 regarding payroll information and client lists of employee  
 59 leasing companies obtained pursuant to ss. 440.381 and 468.529.

60 (j) A public record prepared by an attorney retained by  
 61 the association to protect or represent the interests of the  
 62 association, or prepared at the attorney's express direction,  
 63 that reflects a mental impression, conclusion, litigation  
 64 strategy, or legal theory of the attorney or the association.  
 65 This protection is not waived by the release of such public  
 66 record to another employee or officer of the same association or  
 67 any person consulted by the association attorney.

68 (2) (a) The association may release confidential and exempt  
 69 underwriting files and claims files to:

- 70 1. A carrier that is considering underwriting a risk
- 71 insured by the association;
- 72 2. A producer seeking to place such a risk with such a
- 73 carrier; or
- 74 3. Another entity seeking to arrange voluntary market
- 75 coverage for association risks.

76 (b) Prior to the release authorized in paragraph (a), the  
 77 carrier, producer, or other entity must agree in writing,  
 78 notarized and under oath, to maintain the confidential and  
 79 exempt status of such file until that carrier, producer, or  
 80 other entity agrees to underwrite the risk or provide voluntary  
 81 market coverage.

82 (3) Records made confidential and exempt by this section  
 83 may be released, upon written request, to another agency in the  
 84 performance of that agency's official duties and

85 responsibilities.

86 (4) (a) That portion of a meeting of the association's  
 87 board of governors, or any subcommittee of the association's  
 88 board, at which records made confidential and exempt by this  
 89 section are discussed is exempt from s. 286.011 and s. 24(b),  
 90 Art. I of the State Constitution.

91 (b) All exempt portions of meetings shall be recorded and  
 92 transcribed. The board shall record the times of commencement  
 93 and termination of the meeting, all discussion and proceedings,  
 94 the names of all persons present at any time, and the names of  
 95 all persons speaking. An exempt portion of any meeting may not  
 96 be off the record.

97 (c) Subject to this section and s. 119.021(2), the court  
 98 reporter's notes of any exempt portion of a meeting shall be  
 99 retained by the association for a minimum of 5 years.

100 (d)1. A transcript and minutes of exempt portions of  
 101 meetings are confidential and exempt from s. 119.07(1) and s.  
 102 24(a), Art. I of the State Constitution.

103 2. Those portions of the transcript or the minutes  
 104 pertaining to a confidential and exempt claims file are no  
 105 longer confidential and exempt upon termination of all  
 106 litigation with regard to that claim.

107 ~~(5) This section is subject to the Open Government Sunset~~  
 108 ~~Review Act in accordance with s. 119.15 and shall stand repealed~~  
 109 ~~on October 2, 2012, unless reviewed and saved from repeal~~  
 110 ~~through reenactment by the Legislature.~~

111 Section 2. This act shall take effect October 1, 2012.



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB GVOPS 12-12 OGSR Consumer Complaints and Inquiries  
**SPONSOR(S):** Government Operations Subcommittee  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 1230

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee		Williamson <i>Williamson</i>	Williamson <i>Williamson</i>

**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.

Current law provides a public record exemption for personal financial and health information held by the Department of Financial Services (DFS) or the Office of Insurance Regulation (OIR), relating to a consumer's complaint or inquiry regarding a matter or activity regulated under the Florida Insurance Code or s. 440.191, F.S. Such confidential and exempt information may be disclosed to another governmental entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities, and to the National Association of Insurance Commissioners.

The bill reenacts the public record exemption, which will repeal on October 2, 2012, if this bill does not become law. It reorganizes the definition of "personal financial and health information" to group like topics. It also allows a consumer, or the consumer's legally authorized representative, to have access to his or her personal financial and health information.

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 Act<sup>1</sup> 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.<sup>2</sup> 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<sup>3</sup> then a public necessity statement and a two-thirds vote for passage are not required.

##### Consumer Inquiries and Complaints

Consumers may file complaints with or make inquiries to the Department of Financial Services (DFS or department) or the Office of Insurance Regulation (OIR) concerning an insurance company or other entity regulated by DFS or OIR under the Florida Insurance Code. The Division of Consumer Services of the Department of Financial Services primarily is responsible for receiving inquiries and complaints from consumers and providing direct assistance and advocacy for consumers requesting such assistance or advocacy.<sup>4</sup>

According to DFS, when the department investigates the activities of insurance companies or other regulated entities, policyholders may provide the department with personal information relating to their insurance policies that often includes financial or medical information. Consumers also may contact DFS about problems they have in obtaining insurance coverage and, as such, might submit medical or financial records. Often, a policyholder who has had an insurance claim denied will request assistance from the Division of Consumer Services. In providing background information relating to the claim, the insured may provide medical records detailing the history of the claim, such as medical records revealing health information supporting why the claim should be paid.<sup>5</sup>

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<sup>1</sup> Section 119.15, F.S.

<sup>2</sup> Section 24(c), Art. 1 of the State Constitution

<sup>3</sup> An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

<sup>4</sup> See s. 20.121(2)(h), F.S.

<sup>5</sup> House of Representatives Staff Analysis for HB 7153, April 24, 2007, at 2 and 3.

## Workers' Compensation

The Division of Workers' Compensation of DFS is responsible for providing information and assistance to injured workers, employers, carriers, health care providers, and managed care arrangements.<sup>6</sup> The Employee Assistance and Ombudsman Office of the Division of Workers' Compensation is charged with the responsibility of facilitating and resolving disputes between an employee and the employer or carrier.<sup>7</sup> Frequently, an employee will submit personal financial and medical information to support a claim for benefits or other documentation to assist in the resolution process.<sup>8</sup>

## Public Record Exemption under Review

In 2007, the Legislature reenacted and expanded the public record exemption for certain information regarding a consumer complaint.<sup>9</sup> Personal financial and health information<sup>10</sup> held by DFS or OIR, relating to a consumer's<sup>11</sup> complaint or inquiry regarding a matter or activity regulated under the Florida Insurance Code or s. 440.191, F.S., is confidential and exempt<sup>12</sup> from public record requirements. Current law provides for retroactive application<sup>13</sup> of the exemption.<sup>14</sup>

Such confidential and exempt information may be disclosed to another governmental entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities, and to the National Association of Insurance Commissioners.<sup>15</sup>

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2012, unless reenacted by the Legislature.<sup>16</sup>

## **Effect of Bill**

The bill removes the repeal date, thereby reenacting the public record exemption for personal financial and health information held by DFS or OIR relating to a consumer's complaint or inquiry regarding a matter or activity regulated under the Florida Insurance Code or s. 440.191, F.S. It reorganizes the definition of "personal financial and health information" to group like topics. The bill also allows the

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<sup>6</sup> See chapter 440, F.S.

<sup>7</sup> See s. 440.191, F.S.

<sup>8</sup> House of Representatives Staff Analysis for HB 7153, April 24, 2007, at 4.

<sup>9</sup> Chapter 2007-70, L.O.F.; codified as s. 624.23, F.S.

<sup>10</sup> Section 624.23(1)(b), F.S., defines "personal financial and health information to mean:

- A consumer's personal health condition, disease, or injury;
- The existence, nature, source, or amount of a consumer's personal income or expenses;
- Records of or relating to a consumer's personal financial transactions of any kind;
- The existence, identification, nature, or value of a consumer's assets, liabilities, or net worth;
- A history of a consumer's personal medical diagnosis or treatment;
- The existence or content or any individual coverage or status under a consumer's beneficial interest in any insurance policy or annuity contract; or
- The existence, identification, nature, or value of a consumer's interest in any insurance policy, annuity contract, or trust.

<sup>11</sup> Section 624.23(1)(a), F.S., defines "consumer" to mean a prospective purchaser, purchaser, or beneficiary of, or applicant for, any product or service regulated under the Florida Insurance Code, and a family member or dependent of a consumer; or an employee seeking assistance from the Employee Assistance and Ombudsman Office under s. 440.191, F.S.

<sup>12</sup> 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).

<sup>13</sup> The Supreme Court of Florida ruled that a public record exemption is not to be applied retroactively unless the legislation clearly expresses intent that such exemption is to be applied retroactively. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d 373 (Fla. 2001).

<sup>14</sup> Section 624.23(2), F.S.

<sup>15</sup> Section 624.23(3), F.S.

<sup>16</sup> Section 624.23(4), F.S.



department or OIR to release personal financial and health information to the consumer or the consumer's legally authorized representative.

**B. SECTION DIRECTORY:**

Section 1 amends s. 624.23, F.S., to reenact the public record exemption for a consumer's personal financial and health information held by DFS or OIR.

Section 2 provides an effective date of October 1, 2012.

**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 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

Not applicable.

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1                                   A bill to be entitled  
 2           An act relating to a review under the Open Government  
 3           Sunset Review Act; amending s. 624.23, F.S., which  
 4           provides a public record exemption for certain records  
 5           from consumer complaints and inquiries regarding  
 6           matters or activities regulated under the Florida  
 7           Insurance Code or Workers' Compensation Employee  
 8           Assistance and Ombudsman Office; reorganizing the  
 9           definition of "consumer"; providing an exception to  
 10          the exemption; saving the exemption from repeal under  
 11          the Open Government Sunset Review Act; providing an  
 12          effective date.

13  
 14 Be It Enacted by the Legislature of the State of Florida:

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 16           Section 1. Section 624.23, Florida Statutes, is amended to  
 17           read:

18           624.23 Public records exemption.—

19           (1) As used in this section, the term:

20           (a) "Consumer" means:

21           1. A prospective purchaser, purchaser, or beneficiary of,  
 22           or applicant for, any product or service regulated under the  
 23           Florida Insurance Code, and a family member or dependent of a  
 24           consumer.

25           2. An employee seeking assistance from the Employee  
 26           Assistance and Ombudsman Office under s. 440.191.

27           (b) "Personal financial and health information" means:

28           1. A consumer's personal health condition, disease, or

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29 injury;

30 2. A history of a consumer's personal medical diagnosis or  
 31 treatment;

32 ~~3.2.~~ The existence, nature, source, or amount of a  
 33 consumer's personal income or expenses;

34 ~~4.3.~~ Records of or relating to a consumer's personal  
 35 financial transactions of any kind;

36 ~~5.4.~~ The existence, identification, nature, or value of a  
 37 consumer's assets, liabilities, or net worth;

38 ~~5. A history of a consumer's personal medical diagnosis or~~  
 39 ~~treatment;~~

40 6. The existence or content of, or any individual coverage  
 41 or status under a consumer's beneficial interest in, any  
 42 insurance policy or annuity contract; or

43 7. The existence, identification, nature, or value of a  
 44 consumer's interest in any insurance policy, annuity contract,  
 45 or trust.

46 (2) Personal financial and health information held by the  
 47 department or office relating to a consumer's complaint or  
 48 inquiry regarding a matter or activity regulated under the  
 49 Florida Insurance Code or s. 440.191 are confidential and exempt  
 50 from s. 119.07(1) and s. 24(a), Art. I of the State  
 51 Constitution. This exemption applies to personal financial and  
 52 health information held by the department or office before, on,  
 53 or after the effective date of this exemption.

54 (3) Such confidential and exempt information may be  
 55 disclosed to:

56 (a) Another governmental entity, if disclosure is

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57 necessary for the receiving entity to perform its duties and  
58 responsibilities. ~~and~~

59 (b) The National Association of Insurance Commissioners.

60 (c) To the consumer or the consumer's legally authorized  
61 representative.

62 ~~(4) This section is subject to the Open Government Sunset~~  
63 ~~Review Act in accordance with s. 119.15 and shall stand repealed~~  
64 ~~on October 2, 2012, unless reviewed and saved from repeal~~  
65 ~~through reenactment by the Legislature.~~

66 Section 2. This act shall take effect October 1, 2012.



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB GVOPS 12-13 OGSR Unclaimed Property  
**SPONSOR(S):** Government Operations Subcommittee  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 1208

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee		Williamson <i>haw</i>	Williamson <i>haw</i>

**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.

Current law provides a public record exemption for property identifiers and social security numbers contained in reports of unclaimed property held by the Department of Financial Services. Social security numbers must be released for the limited purpose of locating owners of abandoned or unclaimed property to certain attorneys, Florida-certified public accountants, licensed private investigators, or licensed private investigative agencies.

The bill reenacts this public record exemption, which will repeal on October 2, 2012, if this bill does not become law. In addition, it expands the public record exemption by removing access to social security numbers by certain attorneys, Florida-certified public accountants, licensed private investigators, or licensed private investigative agencies. As such, the bill provides for future review and repeal of the exemption pursuant to the Open Government Sunset Review Act, and provides a public necessity statement as required by the State Constitution.

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

**Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill expands the public record exemption under review; thus, it appears to require a two-thirds vote for final passage.**

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Open Government Sunset Review Act

The Open Government Sunset Review Act<sup>1</sup> 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.<sup>2</sup> 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<sup>3</sup> then a public necessity statement and a two-thirds vote for passage are not required.

##### Unclaimed Property

Unclaimed property consists of any funds or other property, tangible or intangible that has remained unclaimed by the owner for a certain period of time.<sup>4</sup> Savings and checking accounts, money orders, travelers' checks, uncashed payroll or cashiers' checks, stocks, bonds, other securities, insurance policy payments, refunds, security and utility deposits, and contents of safe deposit boxes are potentially unclaimed property.<sup>5</sup> Holders of unclaimed property, which typically include banks and insurance companies, are required to report unclaimed property to the Department of Financial Services (DFS).<sup>6</sup> If the property remains unclaimed, all proceeds from abandoned property are deposited by DFS into the Department of Education School Trust Fund (State School Fund), except for a \$15 million balance that is retained in a separate account (the Unclaimed Property Trust Fund) for the prompt payment of verified claims.<sup>7</sup>

##### Florida Disposition of Unclaimed Property Act

The Florida Disposition of Unclaimed Property Act serves to protect the interest of missing owners of property while the people of the state derive a benefit from the unclaimed and abandoned property until the property is claimed, if ever. DFS administers the Act through its Bureau of Unclaimed Property (bureau).<sup>8</sup>

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<sup>1</sup> See s. 119.15, F.S.

<sup>2</sup> Section 24(c), Art. 1 of the State Constitution.

<sup>3</sup> An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

<sup>4</sup> See s. 717.102(1), F.S.

<sup>5</sup> See ss. 717.104 – 717.116, F.S.

<sup>6</sup> Section 717.117(1), F.S.

<sup>7</sup> See s. 717.123, F.S.

<sup>8</sup> See chapter 717, F.S.



Holders of inactive accounts (presumed unclaimed property) are required to use due diligence to locate apparent owners through at least one search for the owners within 180 days after an account becomes inactive (two years). Once the allowable time period for holding unclaimed property has expired, a holder is required to file a report with DFS by May 1, for all property valued at \$50 or more and presumed unclaimed for the preceding calendar year. The report generally must contain the name and social security number or federal employer identification number, if known, and the last known address of the apparent owner.<sup>9</sup>

Current law places an obligation on the state to notify owners of unclaimed property accounts valued at over \$250, in a cost-effective manner, including through attempts to directly contact the owner.<sup>10</sup> DFS indicates that the means used to find lost property owners include social security numbers, direct mailing, motor vehicle records, state payroll records, newspaper advertisements, and a state website<sup>11</sup> where unclaimed property can be found.

Attorneys, Florida-certified public accountants, Florida-licensed private investigators, and Florida-licensed private investigative agencies register with DFS in order to act as a claimant's representative, acquire ownership or entitlement to unclaimed property, and receive a distribution of fees and costs from DFS.<sup>12</sup> Claimants' representatives access information, including social security numbers, from the bureau's website or compact discs produced by the bureau.

#### Public Record Exemption under Review

In 2007, the Legislature reenacted and expanded the public record exemption for certain information contained in reports of unclaimed property.<sup>13</sup> Social security numbers and property identifiers<sup>14</sup> contained in reports of unclaimed property are confidential and exempt<sup>15</sup> from public record requirements.<sup>16</sup> Current law provides for retroactive application<sup>17</sup> of the public record exemption.<sup>18</sup>

Social security numbers must be released for the limited purpose of locating owners of abandoned or unclaimed property. Such numbers may only be released to a:

- Person who is an attorney and who is registered with DFS under chapter 717, F.S.;
- Florida-certified public accountant;
- Private investigator who is duly licensed in Florida; or
- Private investigative agency licensed under chapter 493, F.S.<sup>19</sup>

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2012, unless reenacted by the Legislature.<sup>20</sup>

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<sup>9</sup> See s. 717.117, F.S.

<sup>10</sup> See s. 717.118, F.S.

<sup>11</sup> www.fttreasurehunt.org (last visited February 5, 2012)

<sup>12</sup> Section 717.1400, F.S.

<sup>13</sup> Chapter 2007-69, L.O.F.; codified at s. 717.117(8), F.S.

<sup>14</sup> Section 717.117(8)(a), F.S., defines "property identifier" to mean the descriptor used by the holder to identify the unclaimed property.

<sup>15</sup> 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).

<sup>16</sup> Section 717.117(8)(b), F.S.

<sup>17</sup> The Supreme Court of Florida ruled that a public record exemption is not to be applied retroactively unless the legislation clearly expresses intent that such exemption is to be applied retroactively. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d 373 (Fla. 2001).

<sup>18</sup> Section 717.117(8)(d), F.S.

<sup>19</sup> Section 717.117(8)(c), F.S.

<sup>20</sup> Section 364.107(4), F.S.

## Effect of Bill

The bill reenacts the public record exemption for property identifiers and social security numbers in reports of unclaimed property. It expands the exemption by removing access to social security numbers by a person who is an attorney and who is registered with DFS under chapter 717, F.S.; a Florida-certified public accountant; a private investigator who is duly licensed in Florida; or a private investigative agency licensed under chapter 493, F.S. As such, the bill provides for future review and repeal of the exemption pursuant to the Open Government Sunset Review Act, and provides a public necessity statement as required by the State Constitution.

### B. SECTION DIRECTORY:

Section 1 amends s. 717.117, F.S., to reenact and expand the public record exemption for property identifiers and social security numbers contained in reports of unclaimed property.

Section 2 provides a public necessity statement.

Section 3 provides an effective date of upon becoming a law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

See FISCAL COMMENTS.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Certain attorneys, Florida-certified public accountants, licensed private investigators, and licensed private investigative agencies may be impacted due to their inability to no longer access social security numbers from the Department of Financial Services for purposes of locating individuals who may be the owner of unclaimed property.

### D. FISCAL COMMENTS:

The bill could create a minimal fiscal impact on the Department of Financial Services, because staff responsible for complying with public record requests could require training related to the changes in the public record exemption. The costs would be absorbed, however, as they are part of the day-to-day responsibilities of the department.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill expands the exemption under review; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands the exemption under review; thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

As part of the review process, staff met with staff from the Department of Financial Services. At that time, department staff shared copies of letters, emails, and documents used by locators to find owners of unclaimed property. Those documents, which were sent to possible owners of unclaimed property, contained social security numbers in their entirety printed on the documents. In one example, a possible owner of unclaimed property received a letter from a locator that contained the social security numbers of five other citizens.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

Not applicable.

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A bill to be entitled  
An act relating to a review under the Open Government  
Sunset Review Act; amending s. 717.117, F.S., which  
provides an exemption from public record requirements  
for social security numbers and property identifiers  
contained in reports of unclaimed property; removing  
the exception to the public record exemption for  
social security numbers; providing for future  
legislative review and repeal of the exemption;  
providing a statement of public necessity; providing  
an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (8) of section 717.117, Florida  
Statutes, is amended to read:

717.117 Report of unclaimed property.—

(8) (a) As used in this subsection, the term "property  
identifier" means the descriptor used by the holder to identify  
the unclaimed property.

(b) Social security numbers and property identifiers  
contained in reports required under this section, held by the  
department, are confidential and exempt from s. 119.07(1) and s.  
24(a), Art. I of the State Constitution.

~~(c) Social security numbers shall be released, for the  
limited purpose of locating owners of abandoned or unclaimed  
property, to a person registered with the department under this  
chapter who is an attorney, Florida-certified public accountant,~~

29 ~~private investigator who is duly licensed in this state, or a~~  
 30 ~~private investigative agency licensed under chapter 493.~~

31 (c)(d) This exemption applies to social security numbers  
 32 and property identifiers held by the department before, on, or  
 33 after the effective date of this exemption.

34 (d)(e) This subsection is subject to the Open Government  
 35 Sunset Review Act in accordance with s. 119.15, and shall stand  
 36 repealed October 2, 2017 ~~2012~~, unless reviewed and saved from  
 37 repeal through reenactment by the Legislature.

38 Section 2. The Legislature finds that it is a public  
 39 necessity that social security numbers contained in reports of  
 40 unclaimed property remain confidential and exempt from public  
 41 records requirements. Social security numbers, which are used by  
 42 a holder of unclaimed property to identify such property, could  
 43 be used to fraudulently obtain unclaimed property. The release  
 44 of social security numbers could also place owners of unclaimed  
 45 property at risk of identity theft. Therefore, the protection of  
 46 social security numbers is a public necessity in order to  
 47 prevent the fraudulent use of such information by creating  
 48 falsified or forged documents that appear to demonstrate  
 49 entitlement to unclaimed property and to prevent opportunities  
 50 for identify theft. Such use defrauds the rightful owner or the  
 51 State School Fund, which is the depository for all remaining  
 52 unclaimed funds.

53 Section 3. This act shall take effect upon becoming a law.



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB GVOPS 12-14 OGSR Lifeline Assistance Plan  
**SPONSOR(S):** Government Operations Subcommittee  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 2080

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee		Thompson <i>JWT</i>	Williamson <i>haw</i>

**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 Lifeline Assistance Plan (Lifeline) is part of a federal program designed to provide telecommunications services to low-income customers at affordable rates. Eligible persons may enroll in Lifeline by submitting an application to the Public Service Commission (PSC) that requires personal identifying information. In addition, the Department of Children and Family Services, the Department of Education, the PSC, and the Office of Public Counsel are authorized to exchange personal identifying information of eligible customers with eligible telecommunications carriers and commercial mobile radio service providers.

Current law provides that personal identifying information of a participant in Lifeline held by the PSC is confidential and exempt from public records requirements. The information may be released as provided by law. An officer or employee of a telecommunications carrier who intentionally discloses the confidential and exempt information commits a misdemeanor of the second degree.

The bill reenacts this public record exemption, which will repeal on October 2, 2012, if this bill does not become law. In addition, it expands the list of entities subject to penalties for disclosing such information to include officers or employees of the PSC.

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 Act<sup>1</sup> 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.<sup>2</sup> 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<sup>3</sup> then a public necessity statement and a two-thirds vote for passage are not required.

##### Lifeline Assistance Plan

The Lifeline Assistance Plan (Lifeline) is a component of the federal Low Income Program,<sup>4</sup> which is designed to ensure that quality telecommunications services are available to low-income customers at just, reasonable, and affordable rates.<sup>5</sup> Lifeline participants in Florida are given a \$13.50 credit per month on local phone bills.<sup>6</sup>

Current law provides oversight of Lifeline by the Public Service Commission (PSC).<sup>7</sup> A customer's eligibility for Lifeline is determined by the customer's enrollment in any one of the following programs:

- Temporary Assistance for Needy Families;
- Supplemental Security Income;
- Food Stamps;
- Medicaid;
- Federal Public Housing Assistance;
- Low-Income Home Energy Assistance Plan;
- National School Lunch Program's Free Lunch Program; and

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<sup>1</sup> See s. 119.15, F.S.

<sup>2</sup> Section 24(c), Art. 1 of the State Constitution.

<sup>3</sup> An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

<sup>4</sup> Public Law 104-104, the Federal Telecommunications Act of 1996, created the Universal Service Program, in which the Low Income Program is a part.

<sup>5</sup> The Universal Service Administrative Company (USAC), at <http://www.usac.org/li/about/default.aspx> (last visited January 23, 2012).

<sup>6</sup> Florida Public Service Commission, Link-Up Florida and Lifeline Assistance Programs, at <http://www.floridapsc.com/utilities/telecomm/lifeline/engbrochure.aspx> (last visited January 23, 2012).

<sup>7</sup> See s. 364.10, F.S.



- Bureau of Indian Affairs Programs.<sup>8</sup>

Each local exchange telecommunications company<sup>9</sup> that has more than one million access lines is required to provide Lifeline service to any otherwise eligible customer or potential customer.<sup>10</sup> The PSC, Office of Public Counsel certifies eligibility for Lifeline on income-based criteria, which is 150 percent of the federal poverty guidelines.<sup>11</sup>

Eligible persons may enroll in Lifeline by submitting an application to the PSC that requires the name, address, telephone number, service provider, and the last four digits of the applicant's social security number.<sup>12</sup>

Current law also provides for automatic enrollment. The Department of Children and Family Services (DCF), the Department of Education, the PSC, and the Office of Public Counsel are authorized to exchange information such as a person's name, date of birth, service address, and telephone number with eligible telecommunications carriers and commercial mobile radio service providers so that the carriers can identify and enroll an eligible person in Lifeline.<sup>13</sup> If any state agency determines that a person is eligible for Lifeline services, the person's information must be immediately forwarded to the PSC for automatic enrollment with the appropriate eligible telecommunications carrier. In addition, the PSC and DCF are granted rulemaking authority to create procedures for automatic enrollment of eligible customers in Lifeline.<sup>14</sup>

The number of eligible customers participating in Lifeline in Florida grew 47 between the July 2010 and June 2011 annual review period. As of June 30, 2011, 943,854 eligible customers participated in Lifeline.<sup>15</sup>

#### Public Record Exemption under Review

Current law provides that personal identifying information of a participant in a telecommunications carrier's Lifeline plan held by the Public Service Commission is confidential and exempt<sup>16</sup> from public record requirements.<sup>17</sup>

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<sup>8</sup> Rule 25-4.0665, F.A.C.

<sup>9</sup> Section 364.02(13), F.S., defines "telecommunications company" to include every corporation, partnership, and person and their lessees, trustees, or receivers appointed by any court whatsoever, and every political subdivision in the state, offering two-way telecommunications service to the public for hire within this state by the use of a telecommunications facility. The term "telecommunications company" does not include:

- (a) An entity that provides a telecommunications facility exclusively to a certificated telecommunications company;
- (b) An entity that provides a telecommunications facility exclusively to a company which is excluded from the definition of a telecommunications company under this subsection;
- (c) A commercial mobile radio service provider;
- (d) A facsimile transmission service;
- (e) A private computer data network company not offering service to the public for hire;
- (f) A cable television company providing cable service as defined in 47 U.S.C. s. 522;
- (g) An intrastate interexchange telecommunications company;
- (h) An operator services provider; or
- (i) An airport that provides communications services within the confines of its airport layout plan.

<sup>10</sup> Section 364.10(2)(a), F.S.

<sup>11</sup> Section 364.10(2)(a), F.S., provides the household income level for a family of four for the 150 percent threshold would be \$33,525. Office of Public Counsel website: <http://www.floridaopc.gov/lifeline.cfm> (last visited January 23, 2012).

<sup>12</sup> Rule 25-4.0665, F.A.C., requires eligible telecommunications carriers to accept Form PSC/RAD 157 for hard copies submittals and Form PSC/RAD 158 for electronic submittals.

<sup>13</sup> Section 364.10(2)(g)1., F.S.

<sup>14</sup> Section 364.10(2)(g)2., F.S.

<sup>15</sup> Link-Up Florida Lifeline Assistance, Number of Customers Subscribing to Lifeline Service and the Effectiveness of Procedures to Promote Participation, Annual Report to the Governor, President of the Senate, and Speaker of the House of Representatives, Executive Summary, page 1, at <http://www.psc.state.fl.us/publications/pdf/telecomm/tele-lifelinereport2011.pdf>, last visited, January 25, 2012.

<sup>16</sup> 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

Such information may be released to the applicable telecommunications carrier for purposes directly connected with eligibility for, verification related to, or auditing of a Lifeline plan.<sup>18</sup> In addition, an officer or employee of a telecommunications carrier may disclose the information only as:

- Authorized by a customer;
- Necessary for billing purposes;
- Required by subpoena, court order, or other process of court;
- Necessary to an agency or a governmental entity for purposes directly connected with implementing service for, or verifying eligibility of, a participant in a Lifeline plan or auditing a Lifeline plan; or
- Otherwise authorized by law.<sup>19</sup>

Nothing precludes a telecommunications carrier from disclosing the confidential and exempt information to the extent such information is otherwise publicly available or from disclosing to a customer his or her own account record through telephonic means.<sup>20</sup>

An officer or employee of a telecommunications carrier who intentionally discloses confidential and exempt information in violation of the exemption commits a misdemeanor of the second degree, punishable as provided in ss. 775.082 or 775.083, F.S.<sup>21</sup>

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2012, unless reenacted by the Legislature.<sup>22</sup>

### **Effect of Bill**

The bill removes the repeal date, thereby reenacting the public record exemption for information of a participant in a telecommunications carrier's Lifeline Assistance Plan held by the Public Service Commission (PSC). The bill also adds officers or employees of the PSC to the list of entities who are subject to penalties for violating the exemption.

### **B. SECTION DIRECTORY:**

Section 1 amends s. 364.107, F.S., to reenact the public record exemption for information of a participant in the Lifeline Assistance Plan held by the Public Service Commission.

Section 2 provides an effective date of October 1, 2012.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

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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).

<sup>17</sup> Section 364.107(1), F.S.

<sup>18</sup> Section 364.107(2), F.S.

<sup>19</sup> Section 364.107(3)(a), F.S.

<sup>20</sup> Section 364.107(3)(b), F.S.

<sup>21</sup> Section 364.107(3)(c), F.S.

<sup>22</sup> Section 364.107(4), F.S.

**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 appear to affect county or municipal government.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

Not applicable.

1                                   A bill to be entitled  
 2           An act relating to a review under the Open Government  
 3           Sunset Review Act; amending s. 364.107, F.S., which  
 4           provides an exemption from public record requirements  
 5           for personal identifying information of Lifeline  
 6           Assistance Plan participants; providing a penalty for  
 7           intentional disclosure of confidential and exempt  
 8           information by an officer or employee of the Public  
 9           Service Commission; removing the scheduled repeal of  
 10          the exemption; providing an effective date.

11  
 12   Be It Enacted by the Legislature of the State of Florida:

13  
 14           Section 1.   Section 364.107, Florida Statutes, is amended  
 15   to read:

16           364.107   Public records exemption; Lifeline Assistance Plan  
 17   participants.—

18           (1)   Personal identifying information of a participant in a  
 19   telecommunications carrier's Lifeline Assistance Plan under s.  
 20   364.10 held by the Public Service Commission is confidential and  
 21   exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 22   Constitution.

23           (2)   Information made confidential and exempt under  
 24   subsection (1) may be released to the applicable  
 25   telecommunications carrier for purposes directly connected with  
 26   eligibility for, verification related to, or auditing of a  
 27   Lifeline Assistance Plan.

28           (3)(a)   An officer or employee of a telecommunications

- 29 carrier shall not intentionally disclose information made  
 30 confidential and exempt under subsection (1), except as:
- 31 1. Authorized by the customer;
  - 32 2. Necessary for billing purposes;
  - 33 3. Required by subpoena, court order, or other process of  
 34 court;
  - 35 4. Necessary to disclose to an agency as defined in s.  
 36 119.011 or a governmental entity for purposes directly connected  
 37 with implementing service for, or verifying eligibility of, a  
 38 participant in a Lifeline Assistance Plan or auditing a Lifeline  
 39 Assistance Plan; or
  - 40 5. Otherwise authorized by law.

41 (b) Nothing in this section precludes a telecommunications  
 42 carrier from disclosing information made confidential and exempt  
 43 under subsection (1) to the extent such information is otherwise  
 44 publicly available or from disclosing to a customer his or her  
 45 own account record through telephonic means.

46 (4)(e) Any officer or employee of a telecommunications  
 47 carrier or of the Public Service Commission who intentionally  
 48 discloses information in violation of this section ~~paragraph (a)~~  
 49 commits a misdemeanor of the second degree, punishable as  
 50 provided in s. 775.082 or s. 775.083.

51 ~~(4) This section is subject to the Open Government Sunset~~  
 52 ~~Review Act in accordance with s. 119.15 and shall stand repealed~~  
 53 ~~on October 2, 2012, unless reviewed and saved from repeal~~  
 54 ~~through reenactment by the Legislature.~~

55 Section 2. This act shall take effect October 1, 2012.



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GVOPS 12-15 OGSR Economic Development Agencies

SPONSOR(S): Government Operations Subcommittee

TIED BILLS: IDEN./SIM. BILLS: SB 1206

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee		Williamson <i>Raw</i>	Williamson <i>Raw</i>

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.

Current law provides public record exemptions for certain information held by economic development agencies. The following information is confidential and exempt from public record requirements:

- Upon written request, information relating to a business’s plans, intentions, and interests to locate, relocate, or expand its business activities in Florida.
- Trade secrets.
- Proprietary confidential business information.
- A federal employer identification number, unemployment compensation account number, or Florida sales tax registration number.
- Certain information pertaining to economic incentive programs.

The bill reenacts the public record exemptions, which will repeal on October 2, 2012, if this bill does not become law. It modifies the exemptions for plans, intentions, and interests, and for economic incentive programs, to provide for earlier release of confidential and exempt information when certain requirements are met.

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 Act<sup>1</sup> 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.<sup>2</sup> 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<sup>3</sup> then a public necessity statement and a two-thirds vote for passage are not required.

##### Public Record Exemptions under Review

Since 1977, there has been a public record exemption for records that contain information concerning the plans of a business to locate, relocate, or expand any of its business activities in Florida. The exemption has undergone several revisions over the years. The last significant modification was in 2007, which merged specific provisions of a related public record exemption regarding economic incentive programs with the public record exemption for the plans, intentions, and interests of a business to locate to Florida.<sup>4</sup>

Currently, upon written request, certain business records are confidential and exempt<sup>5</sup> from public record requirements when held by an economic development agency.<sup>6</sup> Specifically, business plans,

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<sup>1</sup> Section 119.15, F.S.

<sup>2</sup> Section 24(c), Art. 1 of the State Constitution

<sup>3</sup> An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

<sup>4</sup> Chapter 2007-203, L.O.F.

<sup>5</sup> 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).

<sup>6</sup> Section 288.075(1)(a), F.S., defines "economic development agency to mean the Department of Economic Opportunity; any industrial development authority created in accordance with part III of chapter 159, F.S., or by special law; Space Florida created in part II of chapter 331, F.S.; the public economic development agency of a county or municipality or, if the county or municipality does not have a public economic development agency, the county or municipal officers or employees assigned the duty to promote the general business interests or industrial interests of that county or municipality or the responsibilities related thereto; any research and



intentions, and interests to locate, relocate, or expand business activities in Florida are confidential and exempt for 12 months. The period of confidentiality may be extended for an additional 12 months if the business demonstrates that it is continuing its consideration to locate, relocate, or expand its activities in Florida.<sup>7</sup> A public officer or employee may not enter into a binding agreement with any corporation, partnership, or person who has requested confidentiality of information related to plans, intentions, or interests until 90 days after the information is made public unless:

- The public officer or employee is acting in an official capacity;
- The agreement does not accrue to the personal benefit of such public officer or employee; and
- In the professional judgment of the officer or employee, the agreement is necessary to effectuate an economic development project.<sup>8</sup>

This provision is to prevent a public officer or employee from using confidential information to his or her personal benefit.

Current law also provides a public record exemption for the following information held by an economic development agency:

- Trade secrets.<sup>9,10</sup>
- Proprietary confidential business information,<sup>11</sup> until such information is otherwise publicly available or is no longer treated by the proprietor as proprietary confidential business information.<sup>12</sup>
- A federal employer identification number, unemployment compensation account number, or Florida sales tax registration number.<sup>13</sup>

Current law also provides that the following information held by an economic development agency pursuant to the administration of an economic incentive program for qualified businesses is confidential and exempt from public record requirements:

- The percentage of the business's sales occurring outside Florida and, for businesses applying under s. 288.1045, F.S., the percentage of the business's gross receipts derived from Department of Defense contracts during the five years immediately preceding the date the business's application is submitted.
- The anticipated wages for the project jobs that the business plans to create, as reported on the application for certification.
- The average wage actually paid by the business for those jobs created by the project or an employee's personal identifying information which is held as evidence of the achievement or nonachievement of the wage requirements of the tax refund, tax credit, or incentive agreement programs or of the job creation requirements of such programs.
- The amount of taxes on sales, use, and other transactions paid pursuant to chapter 212, F.S.; corporate income taxes paid pursuant to chapter 220, F.S.; intangible personal property taxes

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development authority created in accordance with part V of chapter 159, F.S.; or any private agency, person, partnership, corporation, or business entity when authorized by the state, a municipality, or a county to promote the general business interests or industrial interests of the state or that municipality or county.

<sup>7</sup> Section 288.075(2), F.S.

<sup>8</sup> Section 288.075(2)(c), F.S.

<sup>9</sup> Section 288.075(3), F.S.

<sup>10</sup> Section 288.075(1)(c), F.S., provides that the term "trade secret" has the same meaning as defined in the Uniform Trade Secrets Act (*see* s. 688.002, F.S.)

<sup>11</sup> Section 288.075(1)(b), F.S., defines "proprietary confidential business information" to mean information that is owned or controlled by the corporation, partnership, or person requesting confidentiality under this section; that is intended to be and is treated by the corporation, partnership, or person as private in that the disclosure of the information would cause harm to the business operations of the corporation, partnership, or person; that has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or a private agreement providing that the information may be released to the public; and that is information concerning:

- Business plans.
- Internal auditing controls and reports of internal auditors.
- Reports of external auditors for privately held companies.

<sup>12</sup> Section 288.075(4), F.S.

<sup>13</sup> Section 288.075(5), F.S.

paid pursuant to chapter 199, F.S.; insurance premium taxes paid pursuant to chapter 624, F.S.; excise taxes paid on documents pursuant to chapter 201, F.S.; ad valorem taxes paid; or state communications services taxes paid pursuant to chapter 202, F.S.<sup>14</sup>

The exemption may not exceed the duration of the incentive agreement, including an agreement authorizing a tax refund or tax credit, or upon termination of the incentive agreement.

An economic development agency may release names of qualified businesses; the total number of jobs each business expects to create; the total number of jobs created by each business; and the amount of tax refunds, tax credits, or incentives awarded to and claimed by each business.<sup>15</sup> In addition, an economic development agency may publish statistics in the aggregate and classified so as to prevent the identification of a single qualified applicant.<sup>16</sup>

Any person who is an employee of an economic development agency and who violates any of the public record exemptions commits a second degree misdemeanor punishable as provided in ss. 775.082 and 775.083, F.S.<sup>17</sup>

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2012, unless reenacted by the Legislature.<sup>18</sup>

### **Effect of Bill**

The bill removes the repeal date, thereby reenacting the public record exemptions for economic development agencies.

The bill clarifies that the public record exemption for plans, intentions, and interests only applies if a written request is provided prior to an economic incentive agreement being signed. It also provides that information concerning a business's plans, intentions, and interests to locate, relocate, or expand its business activities in Florida only remains confidential and exempt for 180 days after the final project order is issued, until a date specified in the final project order, or until the information is otherwise disclosed, whichever occurs first.

With regards to the public record exemption for economic incentive programs, the bill removes the public record exemption for anticipated wages for the project jobs that the business plans to create, and the average wage actually paid by the business for those jobs created by the project. An economic development agency may disclose in the annual incentive report the aggregate amount of each tax identified and paid by all businesses participating in each economic incentive program.

The bill provides that the following information relating to a specific business participating in an economic incentive program is no longer confidential and exempt 180 days after the final project order for an economic incentive agreement is issued, until a date specified in the final project order, or until the information is otherwise disclosed, whichever occurs first:

- The name of the qualified business.
- The total number of jobs the business committed to create or retain.
- The total number of jobs created or retained by the business.
- The amount of tax refunds, tax credits, or incentives awarded to, claimed by, or, if applicable, refunded to the state by the business.
- The anticipated total annual wages of employees the business committed to hire or retain.

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<sup>14</sup> Section 288.075(6)(a), F.S.

<sup>15</sup> Section 288.075(6)(b)1., F.S.

<sup>16</sup> Section 288.075(6)(c), F.S.

<sup>17</sup> Section 288.075(7), F.S.

<sup>18</sup> Section 288.075(8), F.S.

**B. SECTION DIRECTORY:**

Section 1 amends s. 288.075, F.S., to reenact the public record exemptions for economic development agencies.

Section 2 provides an effective date of upon becoming a law.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

The bill could create a minimal fiscal impact on economic development agencies, because staff responsible for complying with public record requests could require training related to the changes in the public record exemption. The costs would be absorbed, however, as they are part of the day-to-day responsibilities of the agency.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

Not applicable.

1                                   A bill to be entitled  
 2           An act relating to a review under the Open Government  
 3           Sunset Review Act; amending s. 288.075, F.S., which  
 4           provides public record exemptions for information held  
 5           by economic development agencies; saving from repeal  
 6           the exemption concerning plans, intentions, or  
 7           interests of a private corporation, partnership, or  
 8           person to locate, relocate, or expand any of its  
 9           business activities in this state; providing that the  
 10          exemption applies if a request for confidentiality is  
 11          made before an economic incentive agreement is signed;  
 12          revising the duration of the period in which  
 13          information may remain confidential and exempt from  
 14          disclosure; saving from repeal the exemption for trade  
 15          secrets; saving from repeal the exemption for  
 16          proprietary confidential business information; saving  
 17          from repeal the exemption for identification, account,  
 18          and registration numbers and sales, wage, and tax data  
 19          relating to a recipient of an economic development  
 20          incentive; providing that the taxes paid by businesses  
 21          participating in an economic incentive program may be  
 22          disclosed in the aggregate; authorizing the disclosure  
 23          of specified information relating to a business 180  
 24          days after the final project order for an economic  
 25          incentive agreement is issued, until a date specified  
 26          in the final project order, or if the information is  
 27          otherwise disclosed, whichever occurs first; removing

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28 the scheduled repeal of the exemptions; providing an  
 29 effective date.

30

31 Be It Enacted by the Legislature of the State of Florida:

32

33 Section 1. Section 288.075, Florida Statutes, is amended  
 34 to read:

35 288.075 Confidentiality of records.—

36 (1) DEFINITIONS.—As used in this section, the term:

37 (a) "Economic development agency" means:

38 1. The Department of Economic Opportunity;

39 2. Any industrial development authority created in  
 40 accordance with part III of chapter 159 or by special law;

41 3. Space Florida created in part II of chapter 331;

42 4. The public economic development agency of a county or  
 43 municipality or, if the county or municipality does not have a  
 44 public economic development agency, the county or municipal  
 45 officers or employees assigned the duty to promote the general  
 46 business interests or industrial interests of that county or  
 47 municipality or the responsibilities related thereto;

48 5. Any research and development authority created in  
 49 accordance with part V of chapter 159; or

50 6. Any private agency, person, partnership, corporation,  
 51 or business entity when authorized by the state, a municipality,  
 52 or a county to promote the general business interests or  
 53 industrial interests of the state or that municipality or  
 54 county.

55 (b) "Proprietary confidential business information" means

56 | information that is owned or controlled by the corporation,  
 57 | partnership, or person requesting confidentiality under this  
 58 | section; that is intended to be and is treated by the  
 59 | corporation, partnership, or person as private in that the  
 60 | disclosure of the information would cause harm to the business  
 61 | operations of the corporation, partnership, or person; that has  
 62 | not been disclosed unless disclosed pursuant to a statutory  
 63 | provision, an order of a court or administrative body, or a  
 64 | private agreement providing that the information may be released  
 65 | to the public; and that is information concerning:

- 66 |       1. Business plans.
- 67 |       2. Internal auditing controls and reports of internal  
 68 | auditors.
- 69 |       3. Reports of external auditors for privately held  
 70 | companies.

71 |       (c) "Trade secret" has the same meaning as in s. 688.002.

72 |       (2) PLANS, INTENTIONS, AND INTERESTS.—

73 |       (a) 1. ~~If Upon written request from~~ a private corporation,  
 74 | partnership, or person requests in writing before an economic  
 75 | incentive agreement is signed that, ~~information held by an~~  
 76 | economic development agency maintain the confidentiality of  
 77 | information concerning plans, intentions, or interests of such  
 78 | private corporation, partnership, or person to locate, relocate,  
 79 | or expand any of its business activities in this state, the  
 80 | information is confidential and exempt from s. 119.07(1) and s.  
 81 | 24(a), Art. I of the State Constitution for 12 months after the  
 82 | date an economic development agency receives a request for  
 83 | confidentiality ~~or until the information is otherwise disclosed,~~

84 ~~whichever occurs first.~~

85 2.(b) An economic development agency may extend the period  
 86 of confidentiality specified in subparagraph 1. ~~paragraph (a)~~  
 87 for up to an additional 12 months upon written request from the  
 88 private corporation, partnership, or person who originally  
 89 requested confidentiality under this section and upon a finding  
 90 by the economic development agency that such private  
 91 corporation, partnership, or person is still actively  
 92 considering locating, relocating, or expanding its business  
 93 activities in this state. Such a request for an extension in the  
 94 period of confidentiality must be received prior to the  
 95 expiration of any confidentiality originally provided under  
 96 subparagraph 1. ~~this section.~~

97  
 98 However, if a final project order for a signed economic  
 99 development agreement is issued, then the information will  
 100 remain confidential and exempt for 180 days after the final  
 101 project order is issued, until a date specified in the final  
 102 project order, or until the information is otherwise disclosed,  
 103 whichever occurs first.

104 (b)(e) A public officer or employee may not enter into a  
 105 binding agreement with any corporation, partnership, or person  
 106 who has requested confidentiality of information under this  
 107 subsection until 90 days after the information is made public  
 108 unless:

109 1. The public officer or employee is acting in an official  
 110 capacity;

111 2. The agreement does not accrue to the personal benefit



112 of such public officer or employee; and

113 3. In the professional judgment of the officer or  
 114 employee, the agreement is necessary to effectuate an economic  
 115 development project.

116 (3) TRADE SECRETS.—Trade secrets held by an economic  
 117 development agency are confidential and exempt from s. 119.07(1)  
 118 and s. 24(a), Art. I of the State Constitution.

119 (4) PROPRIETARY CONFIDENTIAL BUSINESS INFORMATION.—  
 120 Proprietary confidential business information held by an  
 121 economic development agency is confidential and exempt from s.  
 122 119.07(1) and s. 24(a), Art. I of the State Constitution, until  
 123 such information is otherwise publicly available or is no longer  
 124 treated by the proprietor as proprietary confidential business  
 125 information.

126 (5) IDENTIFICATION, ACCOUNT, AND REGISTRATION NUMBERS.—A  
 127 federal employer identification number, unemployment  
 128 compensation account number, or Florida sales tax registration  
 129 number held by an economic development agency is confidential  
 130 and exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 131 Constitution.

132 (6) ECONOMIC INCENTIVE PROGRAMS.—

133 (a) The following information held by an economic  
 134 development agency pursuant to the administration of an economic  
 135 incentive program for qualified businesses is confidential and  
 136 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 137 Constitution for a period not to exceed the duration of the  
 138 incentive agreement, including an agreement authorizing a tax  
 139 refund or tax credit, or upon termination of the incentive

140 agreement:

141 1. The percentage of the business's sales occurring  
 142 outside this state and, for businesses applying under s.  
 143 288.1045, the percentage of the business's gross receipts  
 144 derived from Department of Defense contracts during the 5 years  
 145 immediately preceding the date the business's application is  
 146 submitted.

147 ~~2. The anticipated wages for the project jobs that the~~  
 148 ~~business plans to create, as reported on the application for~~  
 149 ~~certification.~~

150 2.3. ~~The average wage actually paid by the business for~~  
 151 ~~those jobs created by the project or~~ An individual employee's  
 152 personal identifying information that ~~which~~ is held as evidence  
 153 of the achievement or nonachievement of the wage requirements of  
 154 the tax refund, tax credit, or incentive agreement programs or  
 155 of the job creation requirements of such programs.

156 3.4. The amount of:

- 157 a. Taxes on sales, use, and other transactions paid
- 158 pursuant to chapter 212;
- 159 b. Corporate income taxes paid pursuant to chapter 220;
- 160 c. Intangible personal property taxes paid pursuant to
- 161 chapter 199;
- 162 d. Insurance premium taxes paid pursuant to chapter 624;
- 163 e. Excise taxes paid on documents pursuant to chapter 201;
- 164 f. Ad valorem taxes paid, as defined in s. 220.03(1); or
- 165 g. State communications services taxes paid pursuant to
- 166 chapter 202.

167

168 However, an economic development agency may disclose in the  
 169 annual incentives report required under s. 288.907 the aggregate  
 170 amount of each tax identified in this subparagraph and paid by  
 171 all businesses participating in each economic incentive program.

172 (b)1. The following information held by an economic  
 173 development agency relating to a specific business participating  
 174 in an economic incentive program is no longer confidential or  
 175 exempt 180 days after a final project order for an economic  
 176 incentive agreement is issued, until a date specified in the  
 177 final project order, or if the information is otherwise  
 178 disclosed, whichever occurs first may release:

179 a. The name ~~Names~~ of the qualified business businesses.

180 b. The total number of jobs the each business committed  
 181 expects to create or retain.

182 c. The total number of jobs created or retained by the  
 183 each business.

184 d. Notwithstanding s. 213.053(2), the amount of tax  
 185 refunds, tax credits, or incentives awarded to, and claimed by,  
 186 or, if applicable, refunded to the state by the each business.

187 e. The anticipated total annual wages of employees the  
 188 business committed to hire or retain.

189 2. For a business applying for certification under s.  
 190 288.1045 which is based on obtaining a new Department of Defense  
 191 contract, the total number of jobs expected and the amount of  
 192 tax refunds claimed may not be released until the new Department  
 193 of Defense contract is awarded.

194 ~~(c) An economic development agency may publish statistics~~  
 195 ~~in the aggregate and classified so as to prevent the~~

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196 ~~identification of a single qualified applicant.~~

197       (7) PENALTIES.—Any person who is an employee of an  
198 economic development agency who violates the provisions of this  
199 section commits a misdemeanor of the second degree, punishable  
200 as provided in s. 775.082 or s. 775.083.

201       ~~(8) LEGISLATIVE REVIEW OF EXEMPTIONS.—This section is~~  
202 ~~subject to the Open Government Sunset Review Act in accordance~~  
203 ~~with s. 119.15 and shall stand repealed on October 2, 2012,~~  
204 ~~unless reviewed and saved from repeal through reenactment by the~~  
205 ~~Legislature.~~

206       Section 2. This act shall take effect upon becoming a law.