

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GAC 18-06 OGSR/Citizens Property Insurance Corporation
SPONSOR(S): Government Accountability Committee
TIED BILLS: **IDEN./SIM. BILLS:** SB 7012

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|--------|---------|--|
| Orig. Comm.: Government Accountability Committee | | Moore | Williamson |

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record exemption 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 Citizens Property Insurance Corporation (Citizens) policyholder eligibility clearinghouse program was established by the Legislature in 2013. The program identifies private-market property insurance options for homeowners who believe Citizens may be their only choice for property insurance. When the Legislature created the program, it also created a public record exemption for proprietary business information provided to the clearinghouse by insurers with respect to identifying and selecting risks for an offer of coverage.

The bill reenacts the public record exemption, which will repeal on October 2, 2018, if this bill does not become law. The bill also inserts a cross-reference to provide a specific definition for the term "trade secrets," which are protected under the public record exemption.

The bill may have a minimal fiscal impact on the state. See Fiscal Comments section.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

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

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:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect 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.
- Protect trade or business secrets.³

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.⁴ 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 created⁵ then a public necessity statement and a two-thirds vote for passage are not required.

Citizens Property Insurance Corporation Clearinghouse

The Citizens Property Insurance Corporation (Citizens) policyholder eligibility clearinghouse program was established by the Legislature in 2013.⁶ The program identifies private-market property insurance options for homeowners who believe Citizens may be their only choice for property insurance. When an applicant applies for coverage with Citizens, the Citizens-appointed agent will enter information from the applicant's application into the clearinghouse. Participating private-market companies can review the submitted information to determine whether they would like to offer coverage. If one or more private-market companies offer to insure the risk, the agent will provide the applicant with a quote sheet that includes a side-by-side list of all offers received. The quote sheet will indicate which offers are comparable to Citizens and whether any of those offers fall within a specific threshold. For new policies, the offer must be no more than 15 percent greater than Citizens' current rate to meet the threshold. For renewal policies, the offer must be no greater than Citizens' current rate to meet the threshold. If an offer from a participating private market insurer falls within these thresholds, the applicant is ineligible for coverage with Citizens.⁷ Renewal policies made ineligible for coverage due to a private market offer

¹ Section 119.15, F.S.

² Section 119.15(3), F.S.

³ Section 119.15(6)(b), F.S.

⁴ Section 24(c), Art. I of the State Constitution.

⁵ An example of an exception to a public record exemption would be allowing another agency access to confidential and exempt records.

⁶ Chapter 2013-60, L.O.F.

⁷ Section 627.3518(5), F.S.

through the clearinghouse can reapply through Citizens and be rated as a renewal if, within the first three years of leaving Citizens, their private market rate was raised more than 10 percent in one year.⁸

There are currently 15 private market insurers participating in the clearinghouse.⁹ Since its launch in 2014 through December 12, 2017, a total of 45,835 new policies consisting of \$13.56 billion in Coverage A have been channeled away from Citizens.¹⁰ In addition, during this same timeframe, 8,880 renewal policies consisting of \$1.55 billion in Coverage A have also been channeled out of Citizens and into the private market.¹¹

Public Record Exemption under Review

When the Legislature created the Citizens clearinghouse in 2013, it also created a public record exemption for proprietary business information provided to the clearinghouse by insurers with respect to identifying and selecting risks for an offer of coverage. Such information is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.

The term “proprietary business information” is defined to mean:

[I]nformation, regardless of form or characteristics, which is owned or controlled by an insurer and:

1. Is identified by the insurer as proprietary business information and is intended to be and is treated by the insurer as private in that the disclosure of the information would cause harm to the insurer, an individual, or the company's business operations and has not been disclosed unless disclosed pursuant to a statutory requirement, an order of a court or administrative body, or a private agreement that provides that the information will not be released to the public;
2. Is not otherwise readily ascertainable or publicly available by proper means by other persons from another source in the same configuration as provided to the clearinghouse; and
3. Includes, but is not limited to:
 - a. Trade secrets.
 - b. Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.

The 2013 public necessity statement for the exemption provided that:

Obtaining offers of coverage from authorized insurers through the clearinghouse will provide more choices for consumers and reduce the [Citizens’] exposure and potential for imposing assessments on its policyholders and policyholders in the private market. In order for the program to efficiently determine whether there are authorized insurers interested in making an offer of coverage for a particular risk, a substantial amount of detailed data from participating insurers must be provided to the program. Public disclosure of the detailed data could result in a substantial chilling effect on insurer participation in the program and thereby undermine the program’s success.¹²

⁸ *Id.*

⁹ Citizens Property Insurance Corporation, *Property Insurance Clearinghouse*, <https://www.citizensfla.com/clearinghouse> (last visited Feb. 23, 2018).

¹⁰ Citizens Market Accountability and Advisory Committee Depopulation and Clearinghouse Update, Dec. 12, 2017, *available at* <https://www.citizensfla.com/documents/20702/6045232/20171212+05+Depopulation+and+Clearinghouse+Update.pdf>.

¹¹ *Id.*

¹² Section 2, ch. 2013-61, L.O.F.

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2018, unless reenacted by the Legislature.¹³

During the 2017 interim, subcommittee staff consulted with staff from Citizens as part of its review under the Open Government Sunset Review Act. According to Citizens, the exemption is necessary to encourage insurers to participate in the clearinghouse and allow risks to be moved from Citizens to the private market by the clearinghouse. As such, Citizens supports reenactment of the public record exemption.

Effect of the Bill

The bill removes the scheduled repeal date of the public record exemption, thereby reenacting the public record exemption for proprietary business information provided to the clearinghouse by insurers with respect to identifying and selecting risks for an offer of coverage.

The bill also inserts a cross-reference to provide a specific definition for the term “trade secrets,” which are protected under the public record exemption. Under the new definition, the term “trade secret” means information, including a formula, pattern, compilation, program, device, method, technique, or process that:

- Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
- Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

B. SECTION DIRECTORY:

Section 1 amends s. 627.3518, F.S., to reenact the public record exemption for proprietary business information provided to the clearinghouse by insurers.

Section 2 provides an effective date of October 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to impact state government revenues.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to impact local government revenues.

2. Expenditures:

The bill does not appear to impact local government expenditures.

¹³ Section 627.3518(11)(c), F.S.
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C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill could create a minimal fiscal impact on Citizens because staff responsible for complying with public record requests could require training related to revision of the definition of the term “trade secrets” in the public record exemption. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of Citizens.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The 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.