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Session Law 89-015

Florida Senate & House of Representatives

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S 213  GENERAL BILL/1ST ENG by Insurance (Identical H 1721)
Risk Management Division/Claim Files: (OPEN GOVERNMENT SUNSET
REVIEW) saves from repeal exemption from public records requirements for
claim files maintained by Risk Management Div. of Insurance Dept.; provides for
future review & repeal. Amends 284.40. Effective Date: 10/01/89.

02/08/89 SENATE Filed
02/17/89 SENATE Referred to Insurance
02/20/89 SENATE On Committee agenda—Insurance, 03/07/89, 9:00 am,
03/07/89 SENATE Comm. Report: Favorable by Insurance, placed on Calen-
04/04/89 SENATE Introduced, referred to Insurance —SJ 25; Comm. Report:
04/11/89 SENATE Placed on Special Order Calendar —SJ 116; Passed;
04/11/89 HOUSE In Messages
04/19/89 HOUSE Received, placed on Calendar —HJ 236; Substituted for HB
1721 —HJ 243; Read second time; Amendments adopted
04/25/89 HOUSE Read third time; Passed as amended: YEAS 117 NAYS 0
04/27/89 SENATE In Messages
05/09/89 SENATE Concurred: Passed as amended; YEAS 37 NAYS 0 —SJ 280
05/09/89 SENATE Ordered engrossed, then enrolled —SJ 280
05/16/89 SENATE Signed by Officers and presented to Governor —SJ 378
05/22/89 SENATE Approved by Governor; Chapter No. 89-15 —SJ 414

NOTES: Above bill history from Division of Legislative Information's FINAL LEGISLATIVE BILL
INFORMATION, 1989 SESSIONS. Staff Analyses for bills amended beyond final committee action
may not be in accordance with the enacted law. Journal page numbers (HJ & SJ) refer to daily
Journals and may not be the same as final bound Journals.
I. SUMMARY:

A. Present Situation:

Section 284.40(2), F.S., provides a public record exemption for claim files maintained by the Division of Risk Management. The exemption provides the Department of Insurance with the means to investigate and evaluate claims and lawsuits against the state. The lawsuits which arise against the state include tort liability (general liability and automobile liability), medical malpractice, federal civil rights, and workers’ compensation claims.

The exemption from the public records law helps the division defend state agencies, employees, and agents involved in claims litigation. The pleadings which exist in such cases are a part of the public record by way of court files maintained by the Clerk of the Court. The pleadings and discovery documents contained in court files inform the public as to the activities which are the subject of the litigation.

The records and information falling under this exemption are generally maintained by the Chief of Claims under the direct supervision of the director of the Division of Risk Management. The records maintained by these personnel are housed in a locked file system (Lektrievers).

In the case of Department of Highway Safety and Motor Vehicles, Division of Highway Patrol vs. Kropff, 445 So.2d 1068 (Fla. 3rd DCA 1984), the issue before the Third District Court of Appeal was whether the records relating to an accident, in the custody of the Division of Risk Management, were exempt from the Public Records Act. The Court found that s. 119.07(3)(a), Florida Statutes, provides that "[a]ll public records which are presently provided by law to be confidential or which are prohibited from being inspected by the public, whether by general or special law, shall be exempt from [the inspection requirements of the Public Records Act]" (emphasis added). The Court held that "[t]he claims files of the Division of Risk Management are, therefore, exempt from the disclosure requirements of the Public Records Act."

B. Effect of Proposed Changes:

The State could incur great costs if claimants or their attorneys were allowed access to claim files. Such access would make it impossible to properly defend contested claims or to adequately determine fair settlement values.

Additionally, the information contained in the files often consists of the claimant’s medical status, history, psychological evaluations, personal data, and other facts that relate only to the evaluation of a claim.
information could invade the privacy of individuals without benefitting claims management.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:
None.

B. Government:

Continuing the public record exemption for claim files will not have a fiscal impact. However, allowing the exemption to be repealed by the Open Government Sunset Review Act, ss. 119.14 and 286.0111, F.S., would expose the state to significant additional claim expense.

III. COMMENTS:

A staff open Government Review of this exemption recommended maintaining the public record exemption for claim files.

IV. AMENDMENTS:

None.
SENATE BILL 213 (CHAPTER 89-15) provides for the continued public record exemption for claims files maintained by the Division of Risk Management to assess the state's liability in accidents or injuries involving state employees. Exempting these records from public inspection will allow the state to more efficiently manage claims and avoid additional costs.
I. SHORT SUMMARY:

Section 284.40(2), Florida Statutes, provides that claim files maintained by the Division of Risk Management of the Department of Insurance are privileged and confidential and are only for the use of the Department of Insurance in carrying out its responsibilities under Part II of Chapter 284, Florida Statutes (pertaining to the state's risk management program and the Florida Casualty Risk Management Insurance Trust Fund). This exemption from the public records law allows the state to properly defend state agencies, employees, and agents involved in claims litigation by preventing exposure of materials used by the state in preparing defenses against such claims and materials used to determine settlement amounts. The exemption also prevents exposure of information of a sensitive nature concerning individuals involved in claims litigation or settlements.

This bill reenacts, with technical modifications, the exemption from the public records law found in s. 284.40(2), Florida Statutes.

A. INTRODUCTION:

Public policy of Florida has greatly favored public access to governmental records and meetings. In fact, the "Sunshine State" has been a national leader in the area of open government. The law embodying the public's right of access to records is codified at section 119.01, Florida Statutes:

It is the policy of this state that all state, county, and municipal records shall at all
times be open for a personal inspection by any person.

This provision is mandatory and any public official with custody of a nonexempt public record is required to disclose it to any member of the public. Records are exempt from public disclosure pursuant to chapter 119, Florida Statutes, only if it is provided by law that the public records are confidential or are expressly exempted from disclosure by general or special law. Exemptions are found in section 119.07(3), Florida Statutes, and in various special acts. The provision requiring meetings to be public does not identify specific exemptions within that section, but various exemptions are included throughout the statutes.

In 1984, the Legislature enacted the Open Government Sunset Review Act to prevent the erosion of Florida's open government policy caused by unjustified exemptions to the Act. As amended by chapter 85-301, Laws of Florida, the Act provides specific criteria for the evaluation of exemptions subject to repeal. The law provides for a two-pronged test. First, it requires consideration of four factors:

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

Second, the law requires that the exemption will be maintained only if it serves an identifiable purpose. An identifiable public purpose is served when the exemption meets one of the following purposes and such purpose is considered significant enough to override the strong public policy of open government. To qualify as meeting a public purpose, an exemption must:

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

The review included in this report examines the following exemption:

s. 284.40(2), Florida Statutes.

B. PRESENT SITUATION:

Parts I, II, and III of Chapter 284, Florida Statutes, relate to the state's risk management and safety programs, including the establishment and administration of the Florida Fire Insurance Trust Fund, the Florida Casualty Insurance Risk Management Trust Fund, and the state's loss prevention program. These parts also establish the responsibilities of the Department of Insurance relating to these programs and trust funds. The exemption under review, s. 284.40(2), Florida Statutes, was enacted in 1974 and provides that claim files maintained by the Division of Risk Management of the Department of Insurance are privileged and confidential and are only for the use of the Department of Insurance in carrying out its responsibilities involving claims against the state.

The Division of Risk Management of the Department of Insurance was created by Section 1, Chapter 72-206, Laws of Florida, which is codified as s. 284.40, Florida Statutes. Under the provisions of this section, the division is responsible for administering the state's casualty and property self-insurance trust funds. The division also oversees the state's safety and loss prevention programs and provides technical assistance to the Department of General Services in matters pertaining to the purchase of all types of insurance. As the administrator of the Florida Casualty Insurance Risk Management Trust Fund (s. 284.30, Florida Statutes), the division is responsible for handling known or potential claims against the state involving tort liability (general liability and automobile liability), medical malpractice, federal civil rights, and workers' compensation, and for providing court-awarded attorney fee coverage in other proceedings against the state.

Claim files of the Division of Risk Management usually are prepared or established by the division when a notice of a claim or a lawsuit against a state agency is received by the division. If a file is to be established or prepared, the division requests that the agency that is the subject of the claim provide the division with the agency's files and materials pertaining to the claim. The materials received from the agency, and subsequent materials received or prepared by the division as part of the settlement or litigation of a claim, are used in investigating, evaluating, and making appropriate disposition of claims and
lawsuits against the state.

To determine if the exemption provided in s. 284.40(2), Florida Statutes, should be retained, various state agencies, including the Department of Insurance, were asked to respond to a questionnaire regarding the continued need for the exemption. Most state agencies indicated that the exemption should be retained. The Department of Insurance stated that:

Without confidentiality the division [of Risk Management] would not be able to properly defend state agencies, employees, and agents involved in claims litigation. It would cost the state a great deal of money if claimants and/or their attorneys were allowed access to the claim files and it would make it impossible to properly defend contested claims or to arrive at a fair settlement value.

Most other agencies agreed with this assessment. The Department of Insurance and several other agencies also indicated that certain materials contained in the Division of Risk Management's claim files are of a sensitive personal nature that, if used independently of the claim file, possibly would be damaging to an individual.

The Department of Insurance has stated that it is important to keep the claim files of the Division of Risk Management confidential in order to maintain the financial integrity of the state's Casualty Risk Management Trust Fund and to allow for the development of reasonable defenses involving claims against the state. Because of the need to ensure the efficient and effective administration of the state's risk management program and the need to avoid disclosure of information of a sensitive personal nature, it is therefore recommended that the exemption from the public records law provided in s. 284.40(2), Florida Statutes, be reenacted with technical modifications.

C. EFFECT OF PROPOSED CHANGES:

This bill would revive and readopt, with technical modifications, the public records exemption provided by s. 284.40(2), Florida Statutes, for claim files maintained by the Division of Risk Management of the Department of Insurance. The exemption would be effective October 1, 1989, and would be subject to sunset review in ten years as provided by s. 119.14, Florida Statutes.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:

Not applicable.
2. Recurring or Annualized Continuation Effects:
   Not applicable.

3. Long Run Effects Other Than Normal Growth:
   Not applicable.

4. Appropriations Consequences:
   Not applicable.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:
   Not applicable.

2. Recurring or Annualized Continuation Effects:
   Not applicable.

3. Long Run Effects Other Than Normal Growth:
   Not applicable.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:
   Not applicable.

2. Direct Private Sector Benefits:
   Not applicable.

3. Effects on Competition, Private Enterprise, and Employment Markets:
   Not applicable.

D. FISCAL COMMENTS:
   Not applicable.

III. LONG RANGE CONSEQUENCES:
   Not applicable.

IV. COMMENTS:

According to the Department of Insurance's response to the committee's questionnaire, some of the information contained in the Division of Risk Management's claim files may be disclosed as part of STANDARD FORM 1/89
the pleadings contained in the court files of claims cases. The department stated that "[t]he information contained in the court file is sufficient to inform the public as to the government activities which are the subject of the litigation and provides an appropriate balance between the public's right to know and the need to protect the interest of the state as a defendant from undue prejudice of its defense and the privacy of the claimant." The director of the Division of Risk Management also indicated that some of the materials in the division's claim files (e.g., traffic accident reports) may be public records in the custody of other agencies and are thus obtainable from those agencies.

In private litigation, information similar to the information that is kept confidential by the exemption is ordinarily confidential as well and is not available to opposing counsel, except through the discovery process. Because disputes involving claims against the state are resolved by an adversarial system, it would be prejudicial to allow the state's adversary to have access to all of the confidential information in the claim files.

V. SIGNATURES:

SUBSTANTIVE COMMITTEE:
Prepared by: ____________________________
David Hawley

SECOND COMMITTEE OF REFERENCE:
Prepared by: ____________________________

APPROPRIATIONS:
Prepared by: ____________________________

Staff Director: ____________________________
Barry Kling