# Policy Council

## THURSDAY, MARCH 18, 2010
## 2:00 P.M. – 4:30 P.M.
## MORRIS HALL

## MEETING PACKET

**Larry Cretul**
**Speaker**

**Rep. Marcelo Llorente**
**Chair**

# Council Meeting Notice

## HOUSE OF REPRESENTATIVES

### Policy Council

**Start Date and Time:** Thursday, March 18, 2010 02:00 pm

**End Date and Time:** Thursday, March 18, 2010 04:30 pm

**Location:** Morris Hall (17 HOB)
**Duration:** 2.50 hrs

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

CS/HB 13 Senior Judges by Civil Justice & Courts Policy Committee, Ambler
CS/HB 55 District School Board Policies and Procedures by PreK-12 Policy Committee, Reed
HB 661 Minimum Surplus Requirements for Mortgage Guaranty Insurers by Nelson
HB 1001 Grayton Beach State Park by Coley

Pursuant to rule 7.13, the deadline for amendments to bills on the agenda by non- appointed members shall be 6:00 p.m., Wednesday, March 17, 2010.

By request of the chair, all committee members are asked to have amendments to bills on the agenda submitted by 6:00 p.m., Wednesday, March 17, 2010.

**NOTICE FINALIZED on 03/16/2010 16:25 by Glatfelter.Sukie**

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 13 Senior Judges
**SPONSOR(S):** Civil Justice & Courts Policy Committee; Ambler; Rouson
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 130

| | REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|---|
| 1) | Civil Justice & Courts Policy Committee | 10 Y, 0 N, As CS | Bond | De La Paz |
| 2) | Policy Council | | Varn | Ciccone |
| 3) | Criminal & Civil Justice Appropriations Committee | | | |
| 4) | Criminal & Civil Justice Policy Council | | | |
| 5) | | | | |

## SUMMARY ANALYSIS

The Chief Justice of the Supreme Court of Florida can appoint retired justices or judges, who are often referred to as senior judges, to serve in judicial positions on a temporary basis. The courts use senior judges for temporary duty, for instance, to cover for an ill judge. Senior judges are currently paid out of the General Revenue Fund.

Committee Substitute for House Bill 13 allows a local judicial circuit to create a program providing for additional appointments of senior judges provided that the state's costs for such appointments are by one or more parties. Under this bill:

- Any party may request appointment of a senior judge to conduct a non-dispositive hearing. Where the request is unilateral, the cost is not taxable against other parties.
- All parties may request appointment of a senior judge to conduct a dispositive hearing or the trial. The prevailing party's share of the costs advanced is taxable against a nonprevailing party.

This bill may have an indeterminate negative fiscal impact on state and local governments.

The bill takes effect upon becoming law.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Present Situation**

A "senior judge" is an honorary designation that refers to a retired judge serving on assignment to temporary judicial duty. The Florida Constitution and the Florida Rules of Judicial Administration allow the Chief Justice of the Supreme Court to temporarily assign retired justices or judges to any court in which they are qualified to serve.[1] The Florida Rules of Judicial Administration define a retired judge as a judge who is not engaged in the practice of law and who has been a judicial officer of this state.[2] Retired judges must comply with continuing judicial education requirements, including completion of 30 hours of approved judicial education programs every three years.[3]

Section 25.073, F.S., provides that a retired justice or judge is a former justice or judge who is not engaged in the practice of law and who has not been defeated in seeking re-election or has not failed to be retained in seeking retention in his or her last judicial office.[4] No person may serve more than 60 days on temporary duty during a year without the approval of the Chief Justice.[5]

Retired judges may receive compensation as set by law.[6] Only persons who meet the qualifications set forth in s. 25.073(1), F.S., may be compensated for service as retired justices or judges. Current law sets the compensation for retired justices or judges at not less than $200 per day.[7] According to the Florida Supreme Court's office, retired justices or judges are currently paid $350 per day for service.[8] In addition, retired justices or judges are entitled to necessary travel expenses.[9]

The Code of Judicial Conduct prohibits retired justices or judges from practicing law or accepting any assignment in which the judge's present financial business dealings or other extra-judicial activities might be affected. A retired justice or judge may serve as a mediator and may be associated with

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[1] Article 5, Section (2)(b) Florida Constitution; Florida Rule of Judicial Administration 2.030(a)(3)(A)
[2] Florida Rule of Judicial Administration 2.030(a)(3)(B)
[3] *See* Fla.R.Jud.Admin. 2.150.
[4] Section 25.073(1), F.S.
[5] *See* s. 25.073(2)(a), F.S.
[6] *See* Fla.R.Jud.Admin. 2.030(a)(3)(A).
[7] *See* s. 25.073(2)(a), F.S.
[8] Email correspondence from the State Courts System, dated March 18, 2009, on file with the Civil Justice & Courts Policy Committee staff.
[9] Section 25.073(2)(b), F.S.

mediation or alternative dispute resolution firms. A retired justice or judge is required to disclose any negotiations or agreements for the provision of mediation services between the judge and any parties or counsel on cases that the judge is assigned to adjudicate.

The state courts utilize the following internal procedures: A retired judge seeking appointment as a senior judge must submit an application to the Chief Justice of the Supreme Court of Florida's office. The Chief Justice's office then requests information from the Judicial Qualifications Committee to determine if there is any reason why that person should not be a senior judge. After the Judicial Qualifications Committee responds to the Supreme Court, the justices review the application and the clerk's office notifies the applicant if the application is accepted. If the application is accepted, the senior judge becomes eligible for service and can be appointed to serve by the chief judge of a district or circuit court.[10]

**Effect of Bill**

CS/HB 13 amends s. 25.073, F.S., to allow the chief judge of a circuit to create a program to use senior judges to expedite cases in the circuit. Any such program must be approved by the Chief Justice.

In general:

- Only senior judges who are otherwise eligible for appointment may be used in the program.
- The requesting party or parties must show the need for appointment because of scheduling difficulties. The program may not be used to avoid the assigned trial judge.
- No party may affect the selection of which a senior judge is appointed. Appointments are done by the chief judge of the circuit.

As to non-dispositive pre-trial hearings:[11]

- Any party to the litigation may request that a senior judge be appointed.
- If less than all of the parties to the case requested the use of a senior judge, then those parties must advance the cost and may not seek reimbursement from the other parties. If all parties request the appointment of a senior judge, then the parties split the advance cost and the prevailing party in the litigation may have that party's cost taxed against a non-prevailing party.

As to dispositive hearings and trials:[12]

- All parties to the litigation must request that a senior judge be appointed.
- The parties split the advance cost and the prevailing party in the litigation may have that party's cost taxed against a non-prevailing party.

As to the financial arrangements between the parties and the state:

- The requesting party or parties must advance the cost for employing the senior judge, including taxes and travel.

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[10] Telephone Conversation with Della White, office of former Chief Justice R. Fred Lewis, Supreme Court of Florida (January 2, 2008).

[11] A non-dispositive hearing is a hearing that cannot lead to a final judgment in favor of a party. A hearing regarding disputes over discovery is an example of a non-dispositive hearing.

[12] A dispositive hearing is a hearing that may lead to a final judgment in favor of a party. Typical dispositive hearings include a motion to dismiss or a motion for summary judgment.

- The minimum time for employment of a senior judge employed under the program is one day. For more than one day, the employment must be for full days.

- The senior judge is paid at the court system's regular daily per diem rate for senior judges. A senior judge may not be paid more than one day per diem even if several paying hearings are conducted in one day.

- The funds collected from the requesting party or parties are deposited into the Operating Trust Fund within the state courts system.

- In order for the program to be cost-neutral, indigent persons may not have prepayment of costs waived.

B. SECTION DIRECTORY:

Section 1: Amends s. 25.073, F.S., regarding retired justices or judges assigned to temporary duty.

Section 2: Provides an effective date of upon becoming law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Indeterminate. Revenues to the state are dependent upon how much the program is utilized.

2. Expenditures:

   Indeterminate, see Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   Indeterminate, see Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Participants who elect to utilize a senior judge will be required to pay the regular per diem rate of such judges.

D. FISCAL COMMENTS:

CS/HB 13 provides that the State Courts System is authorized to charge participants the total per diem cost of employing a senior judge. Senior judges are paid a daily rate of $350 as an OPS employee. The term "cost" should include the daily rate plus other costs to the state including the Social Security and Medicare match (7.65%, or $26.78) and travel per diems. At worst, state revenues should equal expenditures for the appointed senior judge. It is possible that several hearings could be scheduled on one day, which would lead to a positive fiscal impact for the Operating Trust Fund. This bill may, however, increase other costs to the state.

The bill does not discuss where the trials will be conducted, but it appears that the trials will be conducted in regular courtrooms in county courthouses. If the effect of this bill is to increase the total number of trials conducted in the state, the state will incur increased expenditures for juror

compensation and the counties will incur increased expenditures for maintenance of courtrooms, security costs, and other incidental expenses.

If there is a large enough demand for the private assignment of senior judges, this demand could diminish the supply of senior judges to the point where the State Courts System might have to increase the daily per diem for senior judges or perhaps may not have sufficient senior judges to meet the current needs of the court system. In either case, the State Court System would be negatively affected.

For FY 2009-2010, the trial courts were appropriated $2,182,084 from the General Revenue Fund for compensation to retired judges.[13]

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   Article I, s. 21 of the Florida Constitution provides that the "courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay."

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On February 16, 2010, the Civil Justice & Courts Policy Committee adopted 2 amendments to this bill. The amendments:

- Require that both parties agree to the appointment of a senior judge under this program if the hearing involved is a dispositive motion.
- Specify that a senior judge may only be paid one day per diem for one day of service.

The bill was reported favorably as a Committee Substitute. The analysis reflects the Committee Substitute.

[13] Ch. 2009-81, L.O.F., appropriation 3141.

A bill to be entitled

An act relating to senior judges; amending s. 25.073, F.S.; conforming provisions to changes made by this act; providing for the chief judge of a judicial circuit, subject to approval by the Chief Justice of the Supreme Court, to establish a program for retired justices or judges to preside over civil cases and trials or to hear motions upon written request of one or more parties; providing that a party in default shall be deemed to have consented to the appointment of a retired justice or judge; providing for compensation of such justices or judges; providing for an additional court cost and for deposit thereof; providing an effective date.

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

Section 1. Subsection (3) of section 25.073, Florida Statutes, is amended, and subsection (4) is added to that section, to read:

25.073 Retired justices or judges assigned to temporary duty; additional compensation; appropriation.—

(3) Payments required under subsection (2) ~~this section~~ shall be made from moneys to be appropriated for this purpose.

(4) In addition to subsections (1)-(3), the chief judge of a judicial circuit may, subject to approval by the Chief Justice, establish a program for the optional use of retired justices or judges to preside over civil cases and trials pursuant to this subsection. The program shall be developed and

operated so as to ensure that one or more parties to the lawsuit shall pay the cost of the retired justice or judge. The use of this program shall in no way diminish or otherwise affect the power and authority of the Chief Justice to assign justices or judges, including consenting retired justices or judges, to temporary duty in any court for which the justice or judge is qualified or to delegate to a chief judge of a judicial circuit the power to assign justices or judges for duty in that circuit. At a minimum, the program developed under this subsection shall be operated as follows:

(a)1. Any party to the action may request a retired justice or judge to hear one or more motions that will not lead to final disposition of the case. The request must be in writing and addressed to the chief judge of the circuit. The party may seek appointment of a retired justice or judge to hear more than one motion in that case. The chief judge of the circuit shall not appoint a retired justice or judge if the trial judge assigned to the case can accommodate the hearing or hearings within the following 2 weeks.

2. All parties to an action may jointly request a retired justice or judge to hear one or more dispositive motions or to conduct the trial of the action, including a trial by special setting. The chief judge of the circuit shall not appoint a retired justice or judge unless all parties agree to the request and sufficient court resources are available to accommodate the request. A party in default shall be deemed to have consented to the appointment of a retired justice or judge under this subparagraph.

(b)1. A party or parties seeking to use a retired justice or judge shall submit a written request to the chief judge, stating the reasons for the request.

2. Allowable grounds for use of a retired justice or judge include the unavailability of hearing time, scheduling difficulties, difficulties with the availability of witnesses, or the need to expedite the case. A request shall not be granted if it is apparent that a party is only seeking an appointment in order to avoid the assigned trial judge.

3. The chief judge shall consider the reasons for the request and shall grant or deny the request in writing within 5 days.

4. Only retired justices or judges who are on the list that is approved by the Chief Justice are eligible for appointment in this program. Assignment of such retired justices or judges shall be made in accordance with current judge assignment procedures in each judicial circuit. No party may seek or request that a particular retired justice or judge be appointed.

5. An appointment shall be for the hearing time requested. However, the chief judge may appoint a retired justice or judge to hear multiple hearings in 1 day involving related or unrelated cases.

(c)1. Upon granting a request, the chief judge of the applicable judicial circuit shall estimate the number of days required of the retired justice or judge to complete the hearings or trial and shall inform the requesting party or parties of the cost.

2. The party or parties who requested the appointment of a retired justice or judge shall prepay the per diem rate of the retired justice or judge before the hearing or trial based on the per diem rate then in effect. The minimum charge for assignment of a retired justice or judge under this subsection shall be the per diem rate for 1 day, and any required time over 1 day shall be charged in 1-day increments for any additional days at the per diem rate. The chief judge shall set a payment deadline sufficiently prior to the date of the hearing or trial so that the appointment may be timely canceled if prepayment is not received at least 1 business day before the scheduled hearing or trial.

3. For purposes of this subsection, the term "per diem rate" means the cost to the state of 1 day of service by a retired justice or judge and shall be calculated by adding the regular daily rate set by the Chief Justice for retired justices or judges, plus the employer's share of required federal taxes, and plus, if applicable, the justice's or judge's travel and other costs reimbursable under s. 112.061.

4. The per diem paid to a retired justice or judge under this subsection for 1 day of service for all trials or hearings conducted on that one day shall not exceed the standard per diem rate for 1 day of service established by the chief justice.

5. Payments made by a party or parties under this program shall be deposited into the Operating Trust Fund within the state courts system under s. 25.3844.

6. Once a hearing or trial is scheduled, prepayment is made as required under this subsection, and the state is

required to make payment to the retired justice or judge, there shall be no refund. A refund is only authorized if the assigned retired justice or judge becomes unavailable for reasons unrelated to the conduct of the parties.

7. A person who has been relieved of the requirement to prepay costs in an action may not be relieved of the requirement under this subsection to prepay the costs of a retired justice or judge prior to a request being granted.

(d)1. If a party seeks appointment of a retired justice or judge to hear one or more motions, the cost of the retired justice or judge shall not be taxable against a nonprevailing party.

2. If all parties sought the appointment of a retired justice or judge to hear motions or conduct the trial, the amounts paid for the retired justice or judge by a prevailing party shall be taxable against a nonprevailing party, as provided in chapter 57 and in the Florida Rules of Civil Procedure.

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

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 55 District School Board Policies and Procedures
**SPONSOR(S):** Reed and others
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 206

| | REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|---|
| 1) | PreK-12 Policy Committee | 12 Y, 0 N, As CS | Beagle | Ahearn |
| 2) | Policy Council | | Varn | Ciccone |
| 3) | Education Policy Council | | | |
| 4) | | | | |
| 5) | | | | |

## SUMMARY ANALYSIS

Florida law does not currently require or encourage school districts to conduct "Academic Scholarship Signing Day" assemblies or activities. School assemblies are generally regulated by district school board policy. Guidelines for student assemblies must be included in district-adopted student codes of conduct.

The Committee Substitute for House Bill 55 encourages district school boards to adopt policies for designating the third Tuesday in April each year as "Academic Scholarship Signing Day." The purpose of Academic Scholarship Signing Day is to recognize high school seniors who have been awarded postsecondary academic scholarships. School boards may authorize assemblies or other events for this purpose. Students may sign actual or ceremonial documents signifying acceptance of the scholarship. A school board may encourage holding these events for the entire student body to reinforce the importance of academic success.

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

The bill provides an effective date of July 1, 2010.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Present Situation**

Florida law does not currently require or encourage school districts to conduct "Academic Scholarship Signing Day" assemblies or activities. Student assemblies are generally regulated by district school board policy. Guidelines for student assemblies must be included in district-adopted student codes of conduct.[1]

**Effect of Proposed Changes**

The effect of the proposed changes of Committee Substitute for House Bill 55 is to encourage district school boards to recognize high school seniors who have been awarded postsecondary academic scholarships. CS/HB 55 encourages school boards to adopt policies designating the third Tuesday in April each year as "Academic Scholarship Signing Day." School boards may authorize assemblies or other events for this purpose. Students may sign actual or ceremonial documents signifying acceptance of the scholarship. A school board may encourage holding these events for the entire student body to reinforce the importance of academic success.

Academic Scholarship Signing Day is modeled after "letter of intent" signing activities conducted by many U.S. high schools to celebrate a student athlete's acceptance of a college athletic scholarship.[2] The purpose of Academic Scholarship Signing Day is to recognize academic achievement with similar fanfare.

B. SECTION DIRECTORY:

**Section 1.** Amends s. 1001.43, F.S.; encouraging district school boards to recognize Academic Scholarship Signing Day.

**Section 2.** Provides an effective date of July 1, 2010.

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[1] Section 1006.07(2)(c), F.S.

[2] The National Collegiate Athletic Association, National Letter of Intent, *Signing Dates, http://www.ncaa.org/wps/wcm/connect/nli/NLI/Home/* (last visited Mar. 4, 2010).

## 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:

   The bill does not require a city or county to expend funds or to take any action requiring the expenditure of funds.

   The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

   The bill does not 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/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 10, 2010, the PreK-12 Policy Committee adopted one amendment to HB 55. The difference between the CS and the HB is as follows:

The CS authorizes district school boards to encourage holding Academic Scholarship Signing Day assemblies for the entire student body, whereas the HB authorized boards to encourage holding such assemblies for freshmen and sophomores.

The bill was reported favorably as a Committee Substitute. The analysis reflects the Committee Substitute.

A bill to be entitled

An act relating to district school board policies and procedures; amending s. 1001.43, F.S.; providing legislative intent to recognize student academic achievement; encouraging each district school board to adopt policies and procedures that provide for an annual "Academic Scholarship Signing Day"; providing an effective date.

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

Section 1. Subsection (14) is added to section 1001.43, Florida Statutes, to read:

1001.43 Supplemental powers and duties of district school board.—The district school board may exercise the following supplemental powers and duties as authorized by this code or State Board of Education rule.

(14) RECOGNITION OF ACADEMIC ACHIEVEMENT.—

(a) The Legislature recognizes the importance of promoting student academic achievement, motivating students to attain academic achievement, and providing positive acknowledgment for that achievement. It is the intent of the Legislature that school districts bestow the same level of recognition to the state's academic scholars as to its athletic scholars.

(b) The district school board is encouraged to adopt policies and procedures to provide for a student "Academic Scholarship Signing Day" by declaring the third Tuesday in April each year as "Academic Scholarship Signing Day." The "Academic

Scholarship Signing Day" shall recognize the outstanding academic achievement of high school seniors who sign a letter of intent to accept an academic scholarship offered to the student by a postsecondary educational institution. District school board policies and procedures may include, but not be limited to, conducting assemblies or other appropriate public events in which students offered academic scholarships assemble and sign actual or ceremonial documents accepting those scholarships. The district school board may encourage holding such events in an assembly or gathering of the entire student body as a means of making academic success and recognition visible to all students.

Section 2. This act shall take effect July 1, 2010.

# HB 661

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 661 Minimum Surplus Requirements for Mortgage Guaranty Insurers
**SPONSOR(S):** Nelson
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 2084

| | REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|---|
| 1) | Insurance, Business & Financial Affairs Policy Committee | 13 Y, 0 N | Reilly | Cooper |
| 2) | Policy Council | | Liepshutz | Ciccone |
| 3) | General Government Policy Council | | | |
| 4) | | | | |
| 5) | | | | |

## SUMMARY ANALYSIS

Mortgage guaranty insurance protects lenders, usually a bank or mortgage company, against loss of all or a portion of the principal amount of a mortgage loan if a homeowner defaults on a loan. Lenders generally require mortgage guaranty insurance when a borrower is unable to make a down payment of 20 percent of the home's value.

In Florida, mortgage guaranty insurers are required to maintain a minimum surplus of the greater of $4 million or 10 percent of the insurer's liabilities, but not more than $100 million. They must also have sufficient capital and surplus so that the outstanding aggregate exposure (net of reinsurance) does not exceed 25 times the insurer's paid-in-capital, surplus, and contingency reserve combined. In effect, mortgage guaranty insurers are required to set aside $1 of capital for every $25 of risk they insure, and are prohibited from writing new business when their risk-to-capital ratio reaches 25 to 1. According to the Office of Insurance Regulation (OIR), as of December 31, 2008, 18 companies reported premiums for mortgage insurance policies written in Florida. Two of these companies have risk-to-capital ratios that exceed 20 to 1.

House Bill 661 authorizes the Commissioner of Insurance Regulation, upon written request of a mortgage guaranty insurer, to temporarily permit the insurer to continue writing new business if its risk-to-capital ratio reaches 25 to 1. The request may be granted if the Commissioner finds that the insurer's financial position is reasonable in relation to its aggregate insured risk and financial needs, i.e., that the insurer's resources are adequate to satisfy policyholder claims to continue writing new business. The bill permits the OIR to take action against any mortgage guaranty insurer that does not obtain a temporary exception, but continues to write new business after its risk-to-capital ratio reaches 25 to 1.

The bill takes effect on July 1, 2010, and does not appear to have a financial impact on state or local governments.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

### Mortgage Guaranty Insurance

Mortgage guaranty insurance protects lenders, usually a bank or mortgage company, against loss of all or a portion of the principal amount of a mortgage loan if a homeowner defaults on a loan. [1, 2] Lenders generally require mortgage guaranty insurance when a borrower is unable to make a down payment of 20 percent of the home's value.

In Florida, mortgage guaranty insurance is defined in s. 635.011, F.S., as a form of casualty insurance that insures lenders against:

> (a) Financial loss by reason of nonpayment of principal, interest, and other sums agreed to be paid under the terms of any note, bond, or other evidence of indebtedness secured by a mortgage, deed of trust, or other instrument constituting a lien or charge on real estate which contains a residential building or a building designed to be occupied for industrial or commercial purposes.
> (b) Financial loss by reason of nonpayment of rent and other sums agreed to be paid under the terms of a written lease for the possession, use, or occupancy of real estate, provided such real estate is designed to be occupied for industrial or commercial purposes.

The Office of Insurance Regulation (OIR) informs that there are 79 companies with a mortgage guaranty line of business that are eligible to write these policies, As of December 31, 2008, 18 of these companies have reported premiums for mortgage insurance policies written in Florida.

### Regulatory Requirements for Mortgage Guaranty Insurers

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[1] Mortgage guaranty insurance obtained from an insurance company in the private sector is referred to as private mortgage insurance. It is the private sector alternative to non-conventional, government-insured mortgages, which include mortgages insured by the Federal Housing Administration (FHA) or guaranteed by the Department of Veterans Affairs or the U.S. Department of Agriculture's Rural Housing Service. *See* Mortgage Insurance Companies of America, "2009-2010 Fact Book & Member Directory." Available at: http://www.privatemi.com (last accessed February 25, 2010).

[2] Unlike FHA-insured loans, private mortgage insurance does not insure the total balance of the loan. Typically, private mortgage insurance pays the lender 20% to 30% of the mortgage balance in case of default. To be considered for private mortgage insurance, a prospective homeowner must generally be able to make a down payment of at least 5% of the home's value. *Id.* at 5, 13.

Minimum surplus and capital requirements for mortgage guaranty insurers writing business in Florida are found in s. 635.042, F.S. The requisite minimum surplus is the greater of $4 million or 10 percent of the insurer's liabilities other than the required contingency reserve, but not more than $100 million. Insurers must also possess sufficient capital and surplus so that their outstanding aggregate exposure (net of reinsurance) does not exceed 25 times the insurer's paid-in-capital, surplus, and contingency reserve combined. In effect, insurers are required to set aside $1 of capital for every $25 of risk they insure, and are prohibited from writing new business when their risk-to-capital ratio reaches 25 to 1. Florida is among 16 states[3] with a risk-to-capital limitation, or its technical equivalent,[4] for mortgage guaranty insurers. Mortgage Insurance Companies of America, the trade association for the private mortgage insurance industry, informs that in each of these states mortgage guaranty insurers are prohibited from writing new business when their risk-to-capital ratio reaches 25 to 1.

Mortgage guaranty insurers also are required to establish and maintain a contingency reserve pursuant to s. 635.041, F.S. This reserve, which is in addition to other premium reserves required by law, requires insurers to set aside 50 percent of every premium dollar earned and to maintain contributions made to the reserve during each calendar year for 10 years. Upon approval by the mortgage guaranty insurer's state of domicile and 30 days' notice to the OIR, the contingency reserve will be made available to a mortgage guaranty insurer at an earlier time for loss payments only when the insurer's incurred losses in a calendar year exceed 35 percent of earned premiums

As of the end of 2008, the OIR reports that no mortgage guaranty insurer had reached the maximum allowable risk-to-capital ratio.[5] However, two mortgage guaranty insurers writing business in Florida had risk-to-capital ratios in excess of 20 to 1. These companies had risk-to-capital ratios of 23.6 to 1 (over $51 million in Florida direct written premiums in 2008) and 21.1 to 1 (nearly $84 million in Florida direct written premiums in 2008), respectively. Additionally, one mortgage guaranty insurer is not writing new business,[6] but is continuing to service existing policies.

## Effect of Bill

House Bill 661 authorizes the Commissioner of Insurance Regulation, upon written request of a mortgage guaranty insurer, to temporarily permit the insurer to continue writing new policies in the event the insurer's risk- to-capital ratio reaches 25 to 1. Such request may be granted if the Commissioner finds that the insurer's financial position is reasonable in relation to its aggregate insured risk and financial needs, i.e., that the Commissioner finds that the insurer's resources are adequate to satisfy policyholder clams to continue writing new business.

The bill also permits the OIR to take action against any mortgage guaranty insurer that does not obtain a temporary exception, but continues to write new business when its risk-to-capital ratio is at the maximum allowable level.

B. SECTION DIRECTORY:

**Section 1.** Amends s. 635.042, F.S., Minimum surplus requirements for mortgage guaranty insurers.
**Section 2.** Provides an effective date of July 1, 2010.

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[3] *See* Mortgage Insurance Companies of America (MICA), "Florida Risk-to-Capital Ratio Requirements" (August 2009). A copy of the white paper is on file with the Insurance, Business & Financial Affairs Policy Committee.

[4] *Id.* at 1 and correspondence between representatives of MICA (Meredith Woodrum Snowden) and staff of the Insurance, Business & Financial Affairs Policy Committee. In addition to Florida, MICA informs that mortgage guaranty insurers in Arizona, California, Idaho, Illinois, Iowa, Kansas, Kentucky, Missouri, New Jersey, New York, North Carolina, Ohio, Oregon, Texas, and Wisconsin are subject to risk-to-capital requirements, or its technical equivalent. Several of these states, e.g., Arizona, California, and Wisconsin, make reference in statute or rule to terms such as "minimum policyholder position" or "minimum policy surplus." For practical purposes, MICA reports these are the equivalent of a maximum allowable risk-to-capital ratio of 25 to 1.

[5] Risk-to-capital ratios for 2009 will not be available until June 1, 2010, when insurers are required to file audited financial statements.

[6] OIR reports that this insurer had $9,063 in Florida direct written premiums in 2008.

## 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:

To the extent that mortgage guaranty insurers with a strong financial position are allowed to temporarily continue to write new business when their risk-to-capital ratio reaches 25 to 1, the bill may increase the availability of mortgage guaranty insurance in Florida and the willingness of lenders to make mortgages available to individuals unable to make a down payment of 20% of a home's value.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill allows the Commissioner of Insurance Regulation to issue a "temporary" exception to the maximum allowable risk-to-capital ratio for a mortgage guaranty insurer upon finding that the insurer's financial position is "reasonable" in relation to the insurer's aggregate insured risk and financial needs. The bill does not specify when the request for an exception is to be made (when the insurer begins to write business in Florida, when it is on the verge of reaching the maximum allowable risk-to-capital ratio, etc.), and does not provide a durational limit or risk-to-capital limit for the temporary exception.

The bill also does not define what a reasonable financial position would be to allow a mortgage guaranty insurer to continue to write new business.

An excerpt from a recent article appearing in the Insurance Networking News may help to illustrate the current dilemma facing the private mortgage insurance industry:

> Mortgage insurers are no longer an endangered species, but it will be more than a year before they return to profitability and healthy capital levels.
>
> To nurse themselves back to health, the insurers are depending on a new crop of quality mortgages that will bring in premiums to offset losses on loans made during the bubble years. Trouble is, new business is hard to come by — at least business that meets the insurers' tightened underwriting standards. . . .
>
> Mortgage insurers play an important role in the housing industry by enabling loans with low down payments to be sold to Fannie Mae and Freddie Mac. By law, the government-sponsored enterprises [GSEs] may not touch a mortgage if the borrower has equity of less than 20% unless it carries private insurance. And if lenders can't sell loans to the GSEs, they won't have funds to make new loans. . . .
>
> But losses across the industry remain high, and given the fragility of employment and the housing market, many executives aren't forecasting a profit until some time (sic) next year.
>
> Michael Grasher, an equity research analyst at Piper Jaffray, said thin capital levels remain a huge problem for the insurers.
>
> "From a capital perspective, they are no better off than they were a year ago," he said. "The biggest issue facing these companies right now is risk-to-capital ratios."
>
> The risk-to-capital ratio, a closely watched benchmark, measures how many times over an insurer's resources would be consumed if every loan it insures were to default. Sixteen states won't permit a mortgage insurer to write business if its ratio exceeds 25 to 1. (Three of those states, **North Carolina, Arizona and California, recently enacted laws that let the respective state's insurance regulator make exceptions.**) (Emphasis supplied)
>
> Risk-to-capital ratios have been creeping up, and at some companies they are approaching the 25-to-1 threshold. That's forced the companies to seek alternative ways to keep writing business.[7]

The three states mentioned in the excerpt took varying approaches to amending their statutes to authorize their insurance regulator to make exceptions to the risk-to-loss ratio. North Carolina amended its law to provide that a written request for waiver must be made at least 90 days before the insurer expects to exceed the ratio limit. Also, the request must address a list of factors that North Carolina's regulator must consider when making a determination whether the request is reasonable. The regulator is authorized to retain accountants, actuaries or other experts at the insurer's expense to assist in the review of the request, and a waiver cannot exceed two years duration or extend beyond July 2011.[8]

Arizona, rather than requiring an insurer to automatically stop transacting business whenever the minimum policy-holder position was exceeded, transformed the decision into a discretionary

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[7] "Mortgage Insurers Find Themselves in a Volume Bind," *Insurance Networking News*, February 12, 2010, reprinted with permission from *American Banker*, available at: http://www.insurancenetworking.com/news/mortgage_insurance_underwriting_standards_housing_bubble-24211-1.html

[8] N.C.G.S.A. § 58-10-125; paragraph (j), subparts (1)-(12) of the section list the factors that must be addressed in the insurer's request and be considered by the regulator; paragraph (k) authorizes the retention of experts by the regulator; and, paragraph (l) limits the duration of the waiver to 2 years, not to extend beyond July 2011.

determination to be made by its regulator.[9] The Arizona Department of Insurance granted its first waiver under this provision in February 2010 and is expected to rule on similar requests in the near future.[10]

California authorized a waiver that must be requested at least 60 days prior to the time the insurer expects to exceed the required policyholder surplus; however, if the regulator fails to respond to the request within 60 days, the insurer may continue to write policies. The regulator can retain consultants or experts to evaluate the request at the expense of the insurer, and the insurer is responsible for the cost of hearings unless the insurer waives the right to hearings.[11]

At least two other states (Kansas and Idaho) are considering legislation that would provide exceptions to their risk to capital ratios of 25 to 1. As of March 11, 2010, the House and Senate in Kansas were about to begin conferencing on HB 2501.[12] As of the same date, the Idaho House considered HB 477 and rolled the bill to third-reading.[13]

Finally, on March 10, 2010, Oregon's governor signed HB 3654 which allows the state's insurance regulator to waive the state's risk to capital ratio upon a finding that the mortgage insurer's policyholders' position is reasonable in relation to the mortgage insurer's financial needs.[14]

## IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

[9] A.R.S. § 20-1550 G.; the underlined language was added to subpart G., which now reads: "G. If a mortgage guaranty insurer does not have the amount of minimum policyholder position required by this section, the director may require that it shall cease transacting new business until such time that its minimum policyholder position is in compliance with this section."

[10] "Mortgage Insurance Firm Gets Waiver to Bypass Capital Rules," *Phoenix Business Journal,* February 26, 2010, available at: http://www.bizjournals.com/phoenix/stories/2010/03/01/story5.html?s=industry&b=1267419600%5E2944401

[11] Ann.Cal.Ins.Code § 12640.05(g)(1)

[12] The bill broadly authorizes waiver by the insurance regulator "for such time and under such conditions as the commissioner may order, except that no such waiver shall exceed two years." The House and Senate appear to disagree about whether the commissioner should be required to notify specific, standing committee members when a waiver is granted to a company and also submit ongoing reports relating to that company and the actions being taken by the commissioner.

[13] The bill authorizes waiver by the regulator "if the insurer's policyholder surplus is reasonable in relationship to the insurer's aggregate insured risk and adequate to its financial needs." It also allows the regulator to retain experts at the company's expense to assist in the review of the waiver request.

[14] The bill requires the insurer to request waiver at least 60 days prior to the date the insurer expects to exceed the ratio limitation and lists factors that the regulator may consider in making a determination. The regulator may retain accountants, actuaries, or other experts. The waiver is limited to no more than two years, but may be extended for an additional two years after another review. The regulator must charge a fee designed to reimburse the regulator for all costs associated with reviewing the waiver request.

A bill to be entitled

An act relating to minimum surplus requirements for mortgage guaranty insurers; amending s. 635.042, F.S.; authorizing the Commissioner of Insurance Regulation to permit a temporary exception to certain requirements under certain circumstances; revising authority of the Office of Insurance Regulation to take action against a noncomplying insurer under certain circumstances; providing an effective date.

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

Section 1. Section 635.042, Florida Statutes, is amended to read:

635.042 Minimum surplus requirement.—

(1) A mortgage guaranty insurer shall maintain a minimum surplus of not less than the greater of $4 million or 10 percent of the insurer's total outstanding liabilities other than the required contingency reserve. A mortgage guaranty insurer is not required to have a surplus as to policyholders greater than $100 million.

(2) A mortgage guaranty insurer must possess sufficient capital and surplus so that the total outstanding aggregate exposure net of reinsurance under mortgage guaranty policies written by the insurer does not exceed 25 times its paid-in capital, surplus, and contingency reserve combined. A mortgage guaranty insurer shall disclose in the audited financial reports required under s. 624.424(8), the total aggregate exposure net

of reinsurance under mortgage guaranty policies written by the insurer. The Commissioner of Insurance Regulation may permit a temporary exception to the requirements of this subsection at the written request of a mortgage guaranty insurer upon a finding that the mortgage guaranty insurer's financial position is reasonable in relationship to the mortgage guaranty insurer's aggregate insured risk and financial needs.

(3) If a mortgage guaranty insurer is not in compliance with this section and has not been permitted an exception as provided in subsection (2), the office may take any action against the insurer that the office may take against an insurer that is not in compliance with s. 624.408.

Section 2. This act shall take effect July 1, 2010.

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1001 Grayton Beach State Park
**SPONSOR(S):** Coley
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1882

| | REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|---|---|---|---|
| 1) | Agriculture & Natural Resources Policy Committee | 9 Y, 0 N | Kaiser | Reese |
| 2) | Policy Council | | Varn | Ciccone |
| 3) | Natural Resources Appropriations Committee | | | |
| 4) | General Government Policy Council | | | |
| 5) | | | | |

## SUMMARY ANALYSIS

Florida law prohibits the naming of any state building, road, bridge, park, recreational complex, or other similar facility for any living person except as specifically provided by law.

House Bill 1001 redesignates Grayton Beach State Park as the Bob Graham/Grayton Beach State Park and directs the Department of Environmental Protection to erect appropriate signs and markers to reflect the redesignation.

The bill does not appear to have a fiscal impact on local governments. The fiscal impact on state government will be approximately $1,500 to change the park signage to reflect the redesignation.

The bill provides an effective date of July 1, 2010.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

HB 1001 redesignates the Grayton Beach State Park as the Bob Graham/Grayton Beach State Park.

Florida law[1] prohibits the naming of any state building, road, bridge, park, recreational complex, or other similar facility for any living person except as specifically provided by law.[2]

Grayton Beach State Park (park) is located in Walton County and comprises nearly 2,000 acres. The park's beaches consistently rank among the most beautiful and pristine beaches in the United States. Other activities available at the park include bicycling, boating, cabin/campground rental, canoeing/kayaking, fishing, swimming, hiking/nature trails, picnicking and wildlife viewing.

Bob Graham was Florida's 38th Governor, serving two terms from 1979 to 1987. He served as one of Florida's two United States Senators from 1987 to 2005. He was first elected to public office in 1966, where he served (2) two-year terms in the State House of Representatives. In 1970, he was elected to the State Senate, where he served (2) four-year terms.

After leaving political office in 2005, Senator Graham founded the Graham Center for Public Service (center) at the University of Florida. The center provides students with opportunities to train for future leadership positions, meet current policymakers, and take courses that prepare them for public service.

The bill redesignates Grayton Beach State Park as the Bob Graham/Grayton Beach State Park and directs the Department of Environmental Protection to erect appropriate signs and markers to reflect the redesignation.

B. SECTION DIRECTORY:

**Section 1.** Redesignates Grayton Beach State Park as the Bob Graham/Grayton Beach State Park; and, authorizes the Department of Environmental Protection to erect appropriate signs and markers to reflect the redesignation.

**Section 2.** Provides an effective date of July 1, 2010.

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[1] Sectioin 267.062, F.S.

[2] See s. 267.062(3), F.S.,

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None

2. Expenditures:

   See "Fiscal Comments" section below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None

2. Expenditures:

   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

The Department of Environmental Protection (DEP) estimates the fiscal impact to be approximately $1,500 to change the park signage to reflect the redesignation. DEP states that the signage changes will include two park entrance signs at $700 each and two park highway entrance signs at $50 each.

## 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/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to Grayton Beach State Park; redesignating Grayton Beach State Park as Bob Graham/Grayton Beach State Park; directing the Division of Recreation and Parks of the Department of Environmental Protection to erect appropriate signs and markers; providing an effective date.

WHEREAS, Bob Graham's roots in Walton County go back for generations, and

WHEREAS, in the 1890s, Bob Graham's grandfather, Dr. Daniel Simmons, opened a medical practice in Freeport, and

WHEREAS, Bob Graham's mother and her five siblings were born in Walton County and his mother graduated from Walton County High School in 1924, and

WHEREAS, in 1985, as Governor, Bob Graham strongly supported the efforts of the residents of Walton County to encourage the state to purchase the beachfront and the dunes and forest land adjacent to Grayton Beach State Park, and

WHEREAS, this valuable addition to the park might never have occurred without Bob Graham's personal involvement, and

WHEREAS, Bob Graham, as a former United States Senator, Governor, State Senator, and State Representative for Florida, is recognized as one of the state's most popular political leaders and environmental policy advocates, NOW, THEREFORE,

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

Section 1. Bob Graham/Grayton Beach State Park designation.—

(1) Grayton Beach State Park is redesignated as the Bob Graham/Grayton Beach State Park.

(2) The Division of Recreation and Parks of the Department of Environmental Protection is directed to erect appropriate signs and markers designating the Bob Graham/Grayton Beach State Park as described in subsection (1).

Section 2. This act shall take effect July 1, 2010.

COUNCIL/COMMITTEE AMENDMENT

Bill No. 1001 (2010)

Amendment No.

| COUNCIL/COMMITTEE ACTION | |
|---|---|
| ADOPTED | __ (Y/N) |
| ADOPTED AS AMENDED | __ (Y/N) |
| ADOPTED W/O OBJECTION | __ (Y/N) |
| FAILED TO ADOPT | __ (Y/N) |
| WITHDRAWN | __ (Y/N) |
| OTHER | _____ |

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Council/Committee hearing bill: Policy Council

Representative(s) Rep. Coley offered the following:

**Amendment (with title amendment)**

Between lines 36 and 37, insert:

Section 2. Jack Mashburn Marina designated; Department of Environmental Protection to erect suitable markers.—

(1) The marina commonly referred to as the "boat basin" on Grand Lagoon at St. Andrews State Park in Bay County is designated as "Jack Mashburn Marina."

(2) The Department of Environmental Protection is directed to erect suitable markers designating Jack Mashburn Marina as described in subsection (1).

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**T I T L E A M E N D M E N T**

Remove all of line 4, and insert:

Amendment No.

Park; designating Jack Mashburn Marina in Bay County; directing the Division of Recreation and Parks of